

IN THE MATTER OF KEVIN HARPER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr J P Davies (in the chair)  
Mr D Glass  
Mr M G Taylor CBE

Date of Hearing: 19th June 2008

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Solicitors Regulation Authority by Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 15<sup>th</sup> October 2007 that Kevin Harper of 83/4 Soi Wat Tun Tong, Bam Pong, Nongprue, Chon Buri, 20150 Thailand might be required to answer the allegations set out in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The Applicant applied also for an Order pursuant to paragraph 5(2) of Schedule 1A to the Solicitors Act 1974 (as amended) that the direction of the Adjudicator made on 26<sup>th</sup> April 2007 arising out of inadequate professional service be treated for the purposes of enforcement as if it were contained in an Order made by the High Court.

On 7<sup>th</sup> December 2007 the Applicant made a supplementary statement containing a further allegation and on 11<sup>th</sup> March 2008 the Applicant made a second supplementary statement containing a further allegation.

The allegations set out below are those contained in the original and two supplementary statements.

The allegations against the Respondent were that he had been guilty of conduct unbecoming a solicitor in that:

- (i) he failed to comply with a direction of an Adjudicator dated 26<sup>th</sup> April 2007;
- (ii) he failed to maintain compliant professional indemnity insurance in respect of his practice as a solicitor contrary to the Solicitors Indemnity Insurance Rules 2006;
- (iii) he failed to comply with a Order made by Northampton County Court on 12<sup>th</sup> October 2006.

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 19<sup>th</sup> June 2008 when Jonathan Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

The Tribunal was satisfied that service of all relevant documentation had been effected upon the Respondent by a process server.

**At the conclusion of the hearing the Tribunal made the following Order:**

The Tribunal Orders that the Respondent, Kevin Harper of 83/4 Soi Watt Tun Tong, Bam Pong, Nongprue, Chon Buri, 20150 Thailand, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 19th day of June 2008 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,974.11 inclusive.

And the Tribunal Orders that the Direction of the Law Society's Adjudicator relating to Inadequate Professional Service dated 26<sup>th</sup> April 2007 be treated for the purposes of enforcement as if it were contained in an Order of the High Court.

**The facts are set out in paragraphs 19 hereunder:**

1. The Respondent, born in 1948, was admitted as a solicitor in 2002 and his name remains on the Roll. At the material times the Respondent practised under the style of Josephs Solicitors LLP from offices at Lister House, 6 St Andrews Street, Blackburn, Lancashire BB1 8AE. The last known address of the Respondent was 83/4 Soi Watt, Tun Tong, Bam Pong, Nongprue, Chon Buri, 20150 Thailand.
2. Mr W was one of the joint owners of a commercial property. In or about September 2005 the property was leased to a Ms S and Ms D. Two months rent was paid in advance but the tenants then defaulted and vacated the property.
3. Mr W consulted the Respondent's firm in about November 2005 and following demands for the full rent due under the terms of lease, proceedings were issued on 18<sup>th</sup> March 2006.
4. A defence and counterclaim was served by the Defendants and following the drafting of a reply to the defence and counterclaim, the allocation questionnaire was submitted to the court on 24<sup>th</sup> May 2006. A hearing date was set for 23<sup>rd</sup> October 2006. The

Respondent wrote to Mr W on 28<sup>th</sup> September 2006 confirming that he could no longer act and enclosing the file. No costs were charged save for £220 court fee.

5. Mr W instructed another firm of solicitors who advised him that he should discontinue his case and the matter was settled on the basis that both parties discontinued. Mr W complained that the Respondent failed to supply costs information, failed to give him time to comment on the draft reply to the counterclaim, failed to communicate and withdrew from acting without good reason.
6. By letter dated 16<sup>th</sup> March 2007 the Legal Complaints Service (LCS) wrote to the Respondent at Josephs Solicitors LLP seeking his explanation. The Respondent failed to reply or provide an explanation.

#### The Allegation

7. On 26<sup>th</sup> April 2007 an Adjudicator resolved that the service provided by Josephs Solicitors LLP and the Respondent was inadequate for the reasons set out in the Resolution.
8. The Adjudicator made the following directions:
 

"I therefore direct Josephs Solicitors and Mr Kevin Harper jointly and severally to pay compensation to Mr Philip Wright in the sum of £1,964.65 made up as to £750 general compensation and £1,214.65 (£1,175 plus £39.65) compensation for financial losses. The Solicitor must carry out my directions within 7 days."
9. The Respondent was notified of the Adjudicator's decision by letter dated 16<sup>th</sup> May 2007, a copy of which was sent to Josephs Solicitors LLP office address and to the Respondent's last known address together with copies being sent by fax.
10. The Respondent was reminded that he was required to comply with the Adjudicator's decision by 23<sup>rd</sup> May 2007. There was no response.
11. The LCS wrote to the Respondent on 25<sup>th</sup> May 2007 indicating that unless he provided evidence within seven days from the date of the letter, the matter would be referred to the Solicitors Regulation Authority (SRA) without further notice. The Respondent failed to reply.
12. By letter dated 9<sup>th</sup> August 2007 the SRA wrote to the Respondent about his failure to provide details of his indemnity insurance policy to a possible claimant.
13. The Respondent replied by letter dated 21<sup>st</sup> August 2007 enclosing a certificate from DUAL Corporate Risks, which the Respondent said covered both the LLP and his sole practice. The Respondent confirmed that Josephs Solicitors LLP ceased trading on 28<sup>th</sup> February 2007 and that Josephs Solicitors began on 1<sup>st</sup> March 2007.
14. By letter dated 28<sup>th</sup> August 2007 the SRA wrote to DUAL Corporate Risks seeking clarification. By email dated 31<sup>st</sup> August 2007 DUAL Corporate Risks replied indicating that the Respondent had failed to reply to their correspondence since the

inception of the policy in October 2006. It was further confirmed that the Respondent had defaulted on the premium payments which remained outstanding. The Respondent had not informed them of any change in his practice arrangements.

15. The insurers indicated that whilst they were unable to cancel the policy due to non payment of premium, the original policy covering Josephs Solicitors LLP had not been amended to Josephs Solicitors, contrary to the assertions of the Respondent.
16. The SRA wrote to the Respondent by letter dated 21<sup>st</sup> September 2007 seeking explanation from him. There was no reply.
17. By letter dated 7<sup>th</sup> June 2007 Mr M of JMCIT made complaint to the SRA relating to the Respondent. JMCIT had obtained a court judgment against the Respondent's firm for £2,072.70.
18. By letter dated 22<sup>nd</sup> June 2007 the SRA wrote to the Respondent advising him of the complaint and seeking his explanation. The Respondent did not reply and a reminder was sent on 2<sup>nd</sup> August 2007. There was no response.
19. By letter dated 30<sup>th</sup> August 2007 the SRA wrote to the Respondent advising that in the absence of a reply the matter would be referred to an Adjudicator for consideration. The SRA wrote further letters taking into account the Respondent's change of address. There was no response.

#### **The Submissions of the Applicant**

20. The Applicant relied on the documents that had been placed before the Tribunal. The Respondent had been given ample opportunity to reply to the matters alleged against him but had not done so. The Applicant had spoken with the Respondent on the telephone about the intervention into his practice. That conversation had taken place prior to the Respondent being served with disciplinary proceedings. The Applicant was able to tell the Tribunal that an intervention had indeed taken place.
21. With regard to the failure of the Respondent to take out professional indemnity insurance, the Applicant accepted that under the terms of the Solicitors Indemnity Rules the Respondent would not have found himself without indemnity insurance when he did not pay the premiums. It appeared that Josephs LLP did have insurance but the firm of Josephs did not. The Respondent had not complied with an Order of Northampton County Court. It was clear however that it was a default judgment and the facts might not have been closely scrutinised.
22. The Respondent appeared now to be living in Thailand.
23. The Applicant had sent an email to the Respondent concerning the question of costs. He had put to him a global figure relating to all three allegations. The Respondent had not made any response.
24. The Respondent had not complied with the direction of an SRA Adjudicator which seriously undermined the authority of the professional regulator. It was a serious

matter for a solicitor not to comply with a County Court judgment as he is an Officer of the Court.

**The Findings of the Tribunal**

25. The Respondent appeared simply to have abandoned his responsibilities and left the country. In all of these circumstances the Tribunal considered it right to impose an indefinite suspension upon the Respondent and would wish to make it plain that he would be very unlikely to have that suspension lifted if he could not demonstrate that he had fully regularised his position.
26. It was also right that the Respondent should bear the costs of and incidental to the application and enquiry. The Tribunal considered that the costs sought by the Respondent were in all the circumstances reasonable and in order to save the expenditure of further time and cost the Tribunal ordered the Respondent to pay those costs fixed in the sum of £6,974.11.

Dated this 2nd day of September 2008

On behalf of the Tribunal

J P Davies  
Chairman