

IN THE MATTER OF TIMOTHY PAUL SCHOOLS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J C Chesterton (in the chair)
Mr L N Gilford
Mr M C Baughan

Date of Hearing: 11th November 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Stephen John Battersby, solicitor and partner in the firm of Jameson and Hill, 72-74 Fore Street, Hertford, Herts SG14 1BY on 15th July 2008 that Timothy Paul Schools of Joss Lane, Sedbergh, Cumbria, might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation was that as a result of his failure to pay counsel's fees when the same became due the Respondent's name was placed on the list to which the Bar's Withdrawal of Credit Scheme applied, so compromising or impairing his own good repute and that of the solicitors' profession or being likely to do so contrary to Rule 1(d) of the Solicitors Practice Rules 1990.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 11th November 2008 when Stephen James Battersby appeared as the Applicant and the Respondent appeared in person.

The Evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondent. He admitted the allegation and the underlying facts but invited the Tribunal to conclude that he had not been guilty of conduct unbecoming a solicitor.

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

The Tribunal Orders that the Respondent, Timothy Paul Schools of Joss Lane, Sedbergh, Cumbria, solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,892.19.

The facts are set out in paragraphs 1 - 6 hereunder:-

1. The Respondent, born in 1961, was admitted as a solicitor in 1999. At the material times he was sole principal in the firm of Schools & Co at Kirkham, Preston, Lancashire. From 1st July 2004 until 1st November 2007 he was a member of Schools & Co LLP of Manchester.
2. From July 2003 until the cessation of his sole practice on 1st July 2004 the Respondent instructed barristers in numerous housing disrepair cases. Many of the fees due to counsel were not paid within three months of the issue of the fee note, as they should have been, and the Bar Council entered into correspondence with him about this. The barristers' fees remained unpaid. On 11th August 2006 a Withdrawal of Credit Scheme Direction was made in respect of the Respondent by the chairman of the Fees Collection Committee of the Bar Council. The effect of this was that no member of the Bar should knowingly accept instructions unless they were paid directly by the Legal Services Commission or the Criminal Defence Service or the instructions were accompanied by payment of an agreed fee or the barrister agreed in advance to accept no fee for such work or had obtained the consent of the Chairman of the Bar.
3. The Bar Council wrote a letter on 9th February 2007 to the SRA stating that the total of the unpaid counsel's fees was £23,370.99 made up of 89 outstanding sets of fees due to 18 counsel.
4. On 23rd February 2007 the SRA wrote to the Respondent seeking his explanation and he responded in detail on 24th March 2007 explaining his financial and professional difficulties.
5. On 11th May 2007 an Adjudicator resolved that unless the Respondent discharged the outstanding counsel's fees within 56 days, his conduct should be referred to the Tribunal. Following this decision, the SRA was given to understand that the situation might be resolved and disciplinary proceedings were not lodged straight away.
6. On 3rd October payments totalling £1,292.50 were made. On 24th June 2008 the Bar Council notified the SRA that further relevant payments of £1,233.75 had been made.

The Submissions of the Applicant

7. The Applicant reminded the Tribunal that the Respondent had filed a statement shortly before the hearing. The Respondent had accepted that he had not paid counsel's fees as alleged but invited the Tribunal to conclude that in his own particular circumstances this did not amount to conduct unbefitting a solicitor.
8. It was the Applicant's position that counsel was entitled not to be put in the position of having to wait 3, 4 or 5 years for his fees to be paid. The very fact that the Respondent's name had been placed on the Bar's Withdrawal of Credit Scheme brought the solicitors' profession into disrepute and that in itself merited a finding by the Tribunal of professional misconduct.
9. The Applicant accepted that a large proportion of the outstanding fees had now been paid and it was understood that the balance of fees was in the process of being paid.
10. The Applicant accepted that sympathy should be held for the Respondent for the position in which he found himself. However, he could not avoid the fact that the Respondent had instructed counsel and he remained responsible for the payment of their fees. The SRA had properly and helpfully delayed the bringing of disciplinary proceedings when it received an indication that the situation might be resolved.

The Submissions of the Respondent

11. The Respondent set up Schools & Co solicitors in Kendal, Cumbria when he qualified in 1999. From April 2000 he was the sole principal.
12. The Respondent made arrangements to sell Schools & Co in July 2004 when the practice became Schools & Co LLP. It was agreed that the Respondent was to be paid for the practice over a 12 month period and until he had been paid in full he remained a member of the LLP to protect his interest. He was not an active or practising member and he had no daily involvement in the LLP. The firm had since changed its name and was run by Mr C.
13. Schools & Co specialised in personal injury litigation. Around the same time as setting up Schools & Co the Respondent formed a number of companies which ultimately formed into a group of companies, Life Repair Group, which provided accident victims with a structured support scheme. The scheme relied exclusively on the support of First National Bank to provide funding to individuals by means of a consumer credit loan to fund disbursements and a legal expenses policy provided by underwriters at Lloyds. The scheme supported claimants pursuing personal injury and housing disrepair claims.
14. The Respondent's firm, and others, entered into contractual arrangements with the Life Repair Group companies and First National Bank and the underwriters. The only means by which those firms could accept instructions from Life Repair Group to act on behalf of clients was to rely on the funding provided by the scheme's funder, First National Bank.

15. A condition of the scheme, stipulated by underwriters, was that firms were required to report to the insurer certain events which might lead to an increase in the level of risk so that the likelihood of success was less than 51%. Following the judgement in *Bowen v Bridgend Borough Council* the underwriters became extremely nervous about the level of risk on housing repair cases and instructed firms to obtain counsel's opinion on the merits of each case and the level of risk. It became common practice for the firm to seek counsel's opinion. Where it was advised that the likelihood of success had fallen below 51% the file had to be closed and a claim made against the insurance policy for disbursements incurred, including counsel's fees. This situation led to the closure of the Schools & Co housing department.
16. The demise of The Accident Group in April/May 2003 coincided with the housing disrepair case problems. Claims Direct had ceased the year before. Both these schemes had been supported by the same funders and insurers as Legal Repair Group. Eventually in November 2003 the funding for the Legal Repair Group scheme was withdrawn by First National bank. Legal Repair Group was placed into administration on 28th November 2003. Because of the withdrawal of funding counsel's fees went unpaid.
17. It had been a traumatic experience for the Respondent to see the company he had developed into a highly profitable organisation employing over 300 people being placed into administration simply because of 'sector issues' rather than anything Legal Repair Group had done wrong.
18. The Respondent decided to sell his practice as he was so disheartened with all that had happened. He entered into negotiations with a number of interested parties in early 2004 and ultimately sold the practice to a Bury based firm with three partners who decided that they wanted to keep things separate rather than have a merger. They nominated one of their senior assistant solicitors, Mr C, to join Schools & Co as their "nominee". One of the attractions was that the Respondent's practice had just secured a new funding facility with HBOS. HBOS required the firm to convert to LLP status. It was necessary for the Respondent to find a partner to set up the new LLP and the appointment of Mr C was ideal.
19. It was agreed that on the sale of the practice to the LLP, the LLP was to be the 'successor practice' which would deal with all contractual and professional obligations of the previous practice.
20. Within a few weeks of the sale the Respondent established that the Bury firm was in financial difficulties. He did not receive the payments due to him under the agreement. The Bury firm entered into a Partnership Voluntary Arrangement, which subsequently failed and all three equity partners of that firm entered bankruptcy. The three partners had acted as "guarantors" for the performance of the new LLP's obligation to pay the Respondent. This did not have a direct immediate impact on the new LLP, but the Respondent's 'deal' with those partners had been eroded. He had to rely on the precise terms of the agreement namely that the LLP purchased the old practice rather than the individual partners of the Bury firm.
21. Since that time the Respondent had had to rely on Mr C to ensure that the LLP stood by its obligations. Mr C had taken the view that he was not one who had entered the

original deal and he had paid only lip service to the LLP's obligations. That had led to many problems between the Respondent and Mr C. The Respondent had taken advice on his position and reserved his rights to pursue an action against the LLP. He had tried desperately to avoid this and had been encouraged on a few occasions to believe that Mr C might honour the terms of the agreement, but he had not done so.

22. Mr C had taken the view that counsel's fees and other unpaid disbursements in old Legal Repair Group claims were not his problem as they related to a period before the formation of the LLP or that they remained the Respondent's responsibility. The Respondent had been pursued and had received writs in matters where he had not been kept aware of pre-action demands in correspondence. The Respondent was not in a position personally to deal with these claims. The insurers had confirmed to the Respondent that if Mr C had paid the fees and sent them receipted invoices, they would have refunded the LLP for these fees, subject to the usual terms and conditions of the insurance policy. The problem could have been resolved and avoided but the Respondent had no control over this matter and no access to the files.
23. The Respondent had been placed in a "no-win" situation. He had no money. He had no control, but continued to have all the problems. He had been unable to offer any settlement terms because of his financial position. What he had done was to apply pressure on Mr C to discharge the fees and this had been a very difficult and time consuming process. The Respondent had been placed under an unacceptable level of stress.
24. The Respondent had provided the Applicant with information relating to payments being made by Mr C. Mr C had advised the Respondent that he had sent the final batch of cheques to the remaining counsel's chambers and that all liabilities should have been discharged in full.
25. The Respondent had not deliberately set out to withhold payment to counsel and his failure to do so had come about directly because of the situation in which he found himself. That situation was not of his making and he invited the Tribunal to conclude that in all the particular circumstances he had not been guilty of conduct unbefitting a solicitor.

The Findings of the Tribunal

26. The Tribunal noted that the facts were not in dispute.
27. The Tribunal found the allegation to have been substantiated, indeed it was admitted by the Respondent save that he invited the Tribunal to find that he had not been guilty of conduct unbefitting a solicitor. With regard to that issue the Tribunal took into account the background and the submissions of both parties.
28. The Tribunal concluded that the non payment of counsel's fees, over a long period of time in a situation where there was no doubt that the Respondent himself had instructed counsel and was personally responsible for the payment of those fees, even though he had passed that responsibility on, remained a failure on the Respondent's part. That passing on of responsibility was a matter between himself and those accepting liability and was not a matter which altered his position with counsel he had

instructed. The Respondent had not met his professional obligation to pay counsel's fees at a time when it was not open to counsel to sue for such fees. In such circumstances counsel were entitled to expect solicitors to meet their fees. Failure on the part of a solicitor to do so, and also the fact that a solicitor's name has been placed on the Bar's Withdrawal of Credit Scheme, did amount to conduct unbefitting a solicitor. Such conduct adversely affects the good reputation of the individual solicitor and the good reputation of the solicitors' profession as a whole.

Previous disciplinary matter

29. Following a hearing on 29th March 2007 the Tribunal found the following allegations to have been substantiated against the Respondent:-

- 1) Failed to act in the best interests of his clients contrary to Rule 1c of the Solicitors Practice Rules 1990;
- 2) Not substantiated.
- 3) Acted in breach of Rule 3 of the Solicitors Practice Rules 1990 and the Solicitors Introduction and Referral Code 1990;
- 4) Not substantiated.
- 5) Acted for clients in a situation where their interests conflicted with his own.

In its written findings dated 5th July 2007 the Tribunal said:-

“No dishonesty had been alleged against the Respondent and none was found. Nevertheless, the Respondent's conduct had not been of the standard expected of solicitors. Clients had to be confident that their interests were paramount and were not in conflict with their solicitor's own interests. The Tribunal would impose a financial penalty on the Respondent at a level which showed the Tribunal's serious concern about this matter. The Tribunal would impose a maximum fine of £5,000 in respect of allegation 5, £4,000 of respect of allegation 1 and £3,000 in respect of allegation 3 together with payment of the Applicant's agreed costs.

The Tribunal noted that the Respondent had conditions on his Practising Certificate set out in the Decision of the Adjudicator dated 8th March 2007 including a condition that the Respondent should not accept new instructions for the practice save with the agreement of his co-member of Schools and Company LLP (Clear Law). The Tribunal recommended to the Law Society that the conditions set out in paragraphs 2 of the Decision be continued for so long as the Law Society considered it appropriate.

The Tribunal ordered that the Respondent Timothy Paul Schools of Schools & Co, LLP trading as Clear Law, 7th Floor, Paragon House, Seymour Grove, Old Trafford, Manchester, M16 0LN, solicitor, do pay a fine of £12,000, such penalty to be forfeit to Her Majesty the Queen, and they further Ordered that he pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.”

Costs

30. The Applicant sought the costs of and incidental to the application and enquiry in the sum of £2,892.19. The Respondent did not dispute the amount of costs sought. He reminded the Tribunal of his financial position where he had not been able to discharge his liability to pay counsel's fees and he asked for recognition of that and of the problems which he had tried to overcome when making its order.

The Tribunal's decision on sanction and its reasons

31. The Respondent's downfall had been that he had entered into a scheme for the funding of cases which had proved not to work. The Tribunal noted the earlier findings of the Tribunal and recognised that the allegation substantiated against the Respondent on this occasion was all part of the same debacle and recognised that the earlier allegations and this allegation should not be viewed cumulatively. The Tribunal recognised that the Respondent had done his best and, indeed, by the time the disciplinary hearing took place he had discharged if not all almost all of the outstanding counsel's fees.
32. The Tribunal noted that the Tribunal had at the conclusion of the earlier case imposed a very substantial fine on the Respondent. Because of the background and in recognition of the impossible situation in which the Respondent found himself and having regard to the great efforts which he had made to discharge outstanding counsel's fees the Tribunal concluded that it would be both appropriate and proportionate to impose a fine upon the Respondent. The Tribunal could not ignore the failure on the part of a solicitor to meet a professional obligation and imposed a fine of £1,000.00 upon the Respondent. It was right that the Respondent should meet the Applicant's costs. The Tribunal took into account the Respondent's ability to pay but considered that the Applicant's costs were entirely reasonable and ordered that the Respondent do pay such costs fixed in the sum of £2,892.19. The Tribunal recognised that the Solicitors Regulation Authority would give proper consideration to any offer to pay by instalments.

Dated this 25th day of February 2009
On behalf of the Tribunal

J C Chesterton
Chairman