

IN THE MATTER OF MICHAEL JOHN BEN MARLOW, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr W M Hartley (in the chair)  
Mr R Nicholas  
Mrs V Murray-Chandra

Date of Hearing: 7th August 2007

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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 Law Society by Paul Robert Milton, Solicitor employed by The Law Society, Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CV32 5AE on 20 November 2006 that Michael John Ben Marlow Solicitor of 1 Lavender Sweep, London SW11 1DY 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 fit.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects:

1. That he failed to deliver or alternatively delayed in delivering, to The Law Society an Accountant's Report for the period ending 30 April 2005, contrary to Section 34 of the Solicitors Act 1974 and the Rules made thereunder.
2. That he failed to comply with a direction of a Law Society Adjudicator dated 20 June 2006.
3. That he failed to reply to correspondence from The Law Society promptly or at all.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 20<sup>th</sup> November 2006 when Paul Robert Milton appeared as the Applicant and the Respondent was represented by Jeremy Carter-Manning of Queen's Counsel.

The evidence before the Tribunal included the admissions of the Respondent and the oral evidence of his Honour Judge Peter Moss and Philippa McAtasney of Queen's Counsel.

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

The Tribunal Orders that the Respondent Michael John Ben Marlow of Attridge Law, 1 Lavender Sweep, London, SW11 1DY, solicitor, do pay a fine of £3,000.00, 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 £1,016.00.

**The facts are set out in paragraphs 1 - 7 hereunder:**

1. The Respondent, born in 1948 was admitted as a solicitor in 1975. At the material times he practised on his own account under the style of Marlows at Kingston Upon Thames, Surrey. The Respondent closed his practice on 30<sup>th</sup> April 2004 before commencing his employment as an Assistant Solicitor which employment continued at the date of the Hearing.
2. On 29 March 2006 The Law Society wrote to the Respondent about an Accountant's Report for Marlows for the period ending 30 April 2005, which should have been delivered to The Law Society by 31 October 2005, but had not. There was also a requirement that the Respondent file a "cease to hold client money" Report.
3. The last Accountant's Report submitted by the Respondent for Marlows related to the period ending 1 April 2004 which showed that £9,886.88 was still being held on client account. The Respondent did not respond to The Law Society's letter.
4. On 13 April 2006 The Law Society wrote to the Respondent again enclosing a further copy of the letter dated 29 March 2006. The Respondent failed to respond to this letter.

**Failure to comply with a Decision of a Law Society Adjudicator**

5. On 10 May 2006 the Respondent was informed that his failure to submit an outstanding Accountant's Report would be considered by a Law Society Adjudicator. Although notified of his right the Respondent did not make representations.
6. On 20 June 2006 the Adjudicator found that the Respondent had acted in breach of Principle 30.04 of The Guide to the Professional Conduct of Solicitors 1999 in that he had failed to reply to correspondence from The Law Society promptly or at all. The Adjudicator expected the Respondent within 28 days of the letter notifying him of the decision, to deliver the outstanding Accountant's Report, failing which the conduct of the Respondent would be referred to the Tribunal. If the Respondent complied, he was to be reprimanded severely.

7. The Accountant's Report and two subsequent Reports for the year ending April 2006 and April 2007 had been filed before the date of the hearing. The Respondent gave an assurance that the filing of the "cease to hold" report was imminent.

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

8. The Respondent had failed to comply with the important regulatory requirement that he file annual Accountant's Reports while he continues to hold clients' money. It was accepted that he had now regularised his position and the final "cease to hold" report was shortly to be filed with The Law Society.
9. The Respondent had admitted the allegations and had agreed that he should pay the Applicant's costs and had agreed the quantum of the same.

#### **The Submissions of the Respondent**

10. The Respondent while practicing alone had been a very good local solicitor, having previously practiced for many years in partnership. The Respondent specialised in the practice of criminal law and times had been very difficult for criminal practitioners in particular those practising as sole principals as the Legal Services Commission gave contracts for the provision of legal aid services to larger firms. In the face of this the Respondent had very properly closed down his firm and accepted paid employment as an assistant solicitor where he could continue to practise in the field of law in which he had expertise. The Respondent had held a small amount of money in client account at the date when his practice was closed. This was the reason why he was required to continue to file Accountant's Reports until he ceased to hold any money on that firm's client account.
11. The Respondent had been very busy working for his new firm and had put the question of filing Accountant's Reports to one side. The clients entitled to part of the money held had not been traced and the Respondent had sought the consent of The Law Society to pay over such money to charity. Indeed the Respondent was content to pay any money to which he himself was correctly entitled.
12. The Tribunal was invited to give due weight to the many written testimonials in support of the Respondent and of the two character witnesses who gave evidence at the hearing. All attested to the Respondent's competence and good character.
13. The pressures to which the Respondent had been subjected had affected his health both mentally and physically. At about the same time the Respondent's wife had been made redundant from a high powered job and his daughter had been diagnosed as suffering from a long term and incurable illness. The Respondent's wife had become depressed and, indeed, had not been told of the disciplinary proceedings.

#### **The Findings of the Tribunal**

14. The Tribunal found the allegations to have been substantiated, indeed they were not contested. Full compliance with important statutory regulatory requirements was an essential part of a solicitor's practice. Those requirements were in place to protect the public and to enable The Law Society to give assurance to the public that monies held

by a solicitor would not be placed in jeopardy. The Tribunal accepted that the sum of money held by the Respondent was relatively modest and also accepted that he had been faced with a number of difficulties. The Tribunal had given the Respondent credit for having regularised his position and noted that he would file a “cease to hold report” shortly.

15. Because The Law Society had given a number of reminders to the Respondent and had given him every opportunity to put matters right and he had on occasions ignored correspondence addressed to him by The Law Society, The Tribunal did not feel that it would be appropriate to treat the Respondent with the utmost leniency. In order to demonstrate that failures to respond to his professional body by a solicitor and failures to comply fully with statutory requirements are not matters to be taken lightly, the Tribunal imposed a fine of £3000.00 upon the Respondent. It was right that he should pay the costs of and incidental to the application and enquiry. The Tribunal noted that the quantum of costs had been agreed between the parties and it therefore ordered the Respondent to pay the Applicant’s costs fixed in the agreed figure of £1016.00.

Dated this 16<sup>th</sup> day of October 2007  
On behalf of the Tribunal

W M Hartley  
Chairman