

IN THE MATTER OF MICHAEL JOHN RAYNER, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs. E. Stanley (in the chair)
Miss. N. Lucking
Mr. M. G. Taylor CBE

Date of Hearing: 9th July 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Robert Simon Roscoe, solicitor and partner in Victor Lissack, Roscoe & Coleman Solicitors of 70 Marylebone Lane, London, W1U 2PQ on 23rd February 2007 that Michael John Rayner of 17A Duke Street, Darlington, County Durham, DL3 7RX solicitor 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 against the Respondent was that he had been guilty of conduct unbecoming a solicitor in the following particular namely:-

On 18th December 2006 at Newcastle Crown Court, following a trial, he was convicted upon indictment of eleven counts of cheating the Revenue, contrary to Common Law, for which he was sentenced to 12 months imprisonment on each count concurrent suspended for 12 months and ordered to pay £36,089.00 compensation to HM Revenue & Customs and £20,000.00 prosecution costs.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 9th July 2007, when Robert Roscoe appeared as the Applicant and the

Respondent was represented by Peter Harland Cadman, solicitor and partner in the firm of Russell-Cooke LLP, 8 Bedford Row, London, WC1R 4BX.

The evidence before the Tribunal included the admission of the Respondent.

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

The Tribunal ORDERS that the Respondent, MICHAEL JOHN RAYNER of 17A Duke Street, Darlington, County Durham, DL3 7RX, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 9th day of August 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,281.00

The facts are set out in paragraphs 1 to 8 hereunder:-

1. The Respondent born in 1956 was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
2. The relevant period covered by the eleven count indictment referred to in the allegation was 28th January 1991 to 5th April 2001 (covering the eleven tax years during such period). During the relevant period the Respondent was initially employed as an assistant solicitor by Freeman Johnson solicitors and subsequently, between 1992 and 2000, by Hodgsons & Mortimer.
3. In January 1991 the Respondent set up an account with the Legal Services Commission (or its predecessor, the Legal Aid Board) when he was approved to join the Duty Solicitor scheme.
4. Thereafter completed claims forms were submitted to the Legal Services Commission (or its predecessor, the Legal Aid Board) in the Respondent's own name in respect of out of office hours advice given to referred clients who were not clients of the firm at which he was employed as an assistant solicitor.
5. The Legal Services Commission (and its predecessor, the Legal Aid Board) would, after receiving and processing the claims forms, send cheques to the Respondent's home address made out and payable to the Respondent as 'M J Rayner'. The Revenue and Customs Prosecutions Office, on behalf of HM Revenue and Customs (and its predecessor, the Inland Revenue), contended that in respect of claims made and payments received for such out of office hours advice the Respondent was self-employed.
6. At no time during the relevant period did the Respondent notify the Inland Revenue that he was in receipt of this source of income, which was in addition to any salary upon which PAYE and NI contributions were paid by his employers. No evidence was adduced by the Respondent during the trial proceedings before the Newcastle Crown Court that he had either paid the monies over to his employers or provided to them for tax and accounting purposes details of the fees claimed or the payments received by him. The Respondent was under a duty to inform the Inland Revenue of such income in accordance with Section 7 of the Taxes Management Act 1970.

7. At Newcastle Crown Court the Respondent entered not guilty pleas. The indictment specified that the Respondent had received but not disclosed the following payments during the relevant tax years:

28.01.91 – 05.04.91	£733.59
06.04.91 – 05.04.92	£9,876.20
06.04.92 – 05.04.93	£4,703.78
06.04.93 – 05.04.94	£6,245.46
06.04.94 – 05.04.95	£6,754.26
06.04.95 – 05.04.96	£6,078.36
06.04.96 – 05.04.97	£6,884.00
06.04.97 – 05.04.98	£7,923.11
06.04.98 – 05.04.99	£6,580.40
06.04.99 – 05.04.00	£10,460.49
06.04.00 – 05.04.01	£10,485.94

8. Following trial by jury and conviction, on 18th December 2006 the Respondent was sentenced to 12 months imprisonment on each count concurrently which was suspended for 12 months and he was ordered to pay £36,089.00 compensation to HM Revenue and Customs and £20,000.00 towards the prosecution costs.

The Submissions of the Applicant

9. The Respondent had admitted the allegation.
10. It had often been said that the Tribunal could not go behind a conviction.
11. The Respondent while employed as an assistant solicitor had carried out work as a duty solicitor. The Legal Services Commission required lawyers doing such work to be registered and the Respondent had been properly registered as was the firm. Where the Respondent acted for the firm's clients, the firm's reference was submitted to the LSC. While working out of hours the Respondent used his own reference.
12. The Respondent would say that all claims were sent by the firm in the DX. The Legal Services Commission had sent out one set of cheques to the firm and one set quite properly to the Respondent at his home address. The Respondent had quite properly paid these into his own account. The failure to include this money on tax returns had resulted in the conviction.
13. The Tribunal was referred to the sentencing remarks of His Honour Judge Lancaster who had said:-

“I accept Mr Bethel's point, that you did not set out to set up a scheme to deceive the Revenue.

It is a fact that you were employed as a solicitor on a very modest salary for the work that you did and the unsocial hours that you kept. It is my belief that after you failed to declare the earnings, but without any adverse tax consequences, you later became

aware of your duty to do so and you simply carried on, probably in the belief that there would be no adverse consequences for you...

The offence, in my judgment, is serious enough to cross the custody threshold and I intend to impose a concurrent sentence of imprisonment in respect of each of the counts, but I find that there are exceptional circumstances, which I will refer to in a moment, which justify suspending the sentence”.

14. The Applicant did not take issue with the skeleton argument submitted on behalf of the Respondent.
15. The Applicant sought his costs in the agreed sum of £2,281.00.

The Submissions on behalf of the Respondent

16. The Tribunal was referred to the Respondent's bundle of documents which showed that this matter had been self-reported to The Law Society by the Respondent.
17. The Tribunal was referred to the Forensic Accountant's Report dated 11th February 2005 which considered the Respondent's employment status when he was conducting business under the Duty Solicitor's scheme. The Respondent for his salary was obliged to work both office hours and also to look after all office clients arrested out of hours. He was also obliged to fill his slots on the duty rota and to cover partners slots if required. If he dealt with a client of the firm he received no money. If it was not a client of the firm he made a claim. The Learned Judge had declined to look at the Report regarding the employment on the grounds that whether or not the Respondent was an employee did not affect the gravity of what had occurred.
18. Under Section 7 of the Taxes Management Act if a person believes part of their remuneration has not been declared for PAYE purposes they are obliged to disclose it and this appears to be a matter of strict liability. Most employees at the Respondent's firm did not receive a tax return to complete.
19. This matter had started in 2002. There had been two trials conviction, (one being a re-trial in 2006) and sentence.
20. From 1992 to 2000 the Respondent had been employed by Hodgsons & Mortimer but had had no contract of employment until he was about to leave when restrictive covenants were sought. He had refused to sign the contract at that time. Throughout his employment however he had received P60s. At the end of his employment he was earning £25,000.00 for his day job and for dealing with the firm's clients at night.
21. The Respondent's view was that he was an employee obliged to do duty solicitor work. All his claims were processed through the office. Any Legal Services Commission disputes were sent to the office. All files and paperwork were kept at the office.
22. The Tribunal was asked to note that the Respondent had left the firm and set up his office opposite his former employers and there had been an ongoing dispute between them.

23. The Respondent had been subjected to an Inland Revenue raid, a visit from Environmental Health, an anonymous complaint that he had no insurance and an inspection.
24. The Respondent had acted for a former employee of his former employers in the Employment Tribunal and had given evidence in their partnership dispute.
25. The normal obligation was for an employer to deduct tax but there had been no parallel raid on his former employers. When the Respondent left in 2000 had he indicated that tax should have been deducted the burden would have fallen on the employer.
26. The Tribunal was asked to note the comments of the Learned Judge that the Respondent had been employed on a very modest salary and also the matters referred to by the Learned Judge in mitigation:-

“Your previous good character. You are a man of 50 and so far has [sic] led a blameless life, working hard in your chosen profession. You have submitted a favourable reference. That and the evidence that you gave at trial demonstrate that you are a hardworking man and you contribute to the community in the way in which you do criminal Legal Aid duty work at unsocial hours for a modest income. I also acknowledge that the delay in the proceedings has caused you considerable distress and the fact is that you have had knowledge of these proceedings now for a period approaching five years”.
27. At the time of sentencing the Learned Judge could only have suspended the sentence if he had found exceptional circumstances. He had done so.
28. The Tribunal was referred to the Respondent’s smaller bundle of documents submitted today, including the advice given to the Respondent by The Law Society in 2006 that "Not automatic that he would be struck off would be likely to have some limitation on his Practising Certificate in due course by an assessor".
29. The Tribunal was also referred to the references in support of the Respondent including the reference from Mr Green who had represented the Respondent in the criminal proceedings.
30. The Tribunal would consider whether the Respondent should be struck off the Roll of Solicitors.
31. The Tribunal was referred to the previous Tribunal case of Paul Simon Andrews number 9139/2004. A two year period of suspension had been imposed in that case. The culpability of the Respondent was in some ways less. His criminal conviction was based on non-action or in other words, a sin of omission, whereas that of Mr Andrews had been one of positive dishonesty. The Respondent had received a suspended sentence.
32. The Tribunal was asked to note that both cases related to raids many years earlier. It was submitted that there was no need to end the Respondent’s career.

33. If the Respondent was not allowed to practise Mr Green would take over his practice. The Respondent had on advice made preparations to ensure that his clients were looked after. If he was allowed to practise two fellow advocates were prepared to join him in practice. A condition had been imposed on his Practising Certificate which had come into force some 10 days ago stating that he could not practise alone.
34. The Respondent was a hard working lawyer who had looked after the interests of his clients on a modest salary. He was a well respected local solicitor who had been convicted for a sin of omission. Anyone knowing the full facts and the unusual circumstances would not take an adverse view of a decision not to strike the Respondent off the Roll.
35. The Learned Judge had accepted that the Respondent had initially thought that the position was acceptable but found that he had later realised it was not. The Tribunal was urged to say that the documents which the Judge had not allowed in the criminal proceeding were relevant to the disciplinary proceedings.
36. If the matter had been dealt with by the alternative route of tax assessment the obligation would have fallen on the employers. The employers knew the amount involved as they sent off all the claims. It could not be submitted on behalf of the Respondent that he believed that tax was paid as the jury in the criminal proceedings had not accepted this assertion.
37. The Respondent had made formal complaints to the Inland Revenue and through his MP and indeed a senior member of the Inland Revenue had been suspended for a matter linked to this investigation. The Respondent had made a complaint regarding the close relationship between that official and one of his employers but it was right to say that there had been no adverse finding against his former employers. It did not mean however that the Respondent's belief was unfounded.
38. The Respondent was also concerned that the Inland Revenue wrote to The Law Society on 18th August 2006 stating a figure for the loss to the Inland Revenue when they knew that the correct figure was a lower figure. The Applicant had accepted that the lower figure was correct.

The Findings of the Tribunal

39. The Respondent had admitted the allegation and the Tribunal found that it had been substantiated.
40. The Tribunal had considered carefully the submissions of the parties, the documentation including the skeleton argument on behalf of the Respondent and the references in his support. The Tribunal had found this a challenging decision. The Tribunal had taken account of the Learned Judge's sentencing remarks and the perhaps uncharacteristic approach of the Inland Revenue to this particular case in which it appeared that no demand had been issued. The Tribunal also considered carefully the earlier Tribunal case of Andrews to which it had been referred. The Tribunal did not seek to go behind the conviction. Weighing everything in the balance however the Tribunal had, in what it regarded as a highly unusual combination of circumstances, decided that the appropriate penalty was that the Respondent be suspended from

practice for a period of one year. The Tribunal was satisfied, exceptionally, that despite the conviction, the protection of the public and the reputation of the profession did not require the Respondent's permanent exclusion from practice. The suspension would take effect in one month's time to allow an orderly transfer of the Respondent's existing workload. The Tribunal noted that the Respondent had already taken preparatory steps to protect his clients' interests in that regard. The Tribunal would also Order that the Respondent pay the Applicant's agreed costs.

41. The Tribunal Ordered that:-

The Tribunal ORDERED that the Respondent, MICHAEL JOHN RAYNER of 17A Duke Street, Darlington, County Durham, DL3 7RX, solicitor, be suspended from practice as a solicitor for the period of one year to commence on the 9th day of August 2007 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,281.00.

DATED this 2nd day of November 2007
on behalf of the Tribunal

Mrs E Stanley
Chairman