

IN THE MATTER OF GRAHAM LAURENCE ROSS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A N Spooner (in the chair)  
Mr A Gaynor-Smith  
Mr P Wyatt

Date of Hearing: 12th July 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 Iain George Miller, solicitor of Wright Son & Pepper, 9 Gray's Inn Square, London WC1R 5JF on 7th April 2006 that Graham Laurence Ross of 161 Banks Road, West Kirby, Wirral, Merseyside, CH48 3HU, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such order might be made as the Tribunal should think right. At the date of the hearing the Applicant had become a partner in Bevan Brittan LLP.

The allegations against the Respondent were that:-

1. He failed to take out qualifying insurance in the indemnity year starting 1st September 2001 contrary to Rule 5 of the Solicitors Indemnity Insurance Rules 2001 ("the SIIRs");

2. Having failed to obtain qualifying indemnity insurance for the indemnity year 1st September 2001, he failed to apply to enter the Assigned Risks Pool contrary to the SIIRs Rule 8;
3. He failed to pay the premium of the Assigned Risks Pool contrary to the SIIRs Rule 16.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NY on 12th July 2007 when Iain George Miller appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent. The Respondent handed up written testimonials in his support.

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

The Tribunal Orders that the Respondent Graham Laurence Ross of 161 Banks Road, West Kirby, Wirral, Merseyside, CH48 3HU, solicitor, do pay a fine of £6,000, 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 to be subject to a detailed assessment unless agreed between the parties.

**Preliminary matter**

1. At the opening of the hearing the Respondent sought an adjournment of the substantive hearing. He had withdrawn his challenges to the three allegations made against him.
2. His adjournment application was made on the basis that he was underprepared for the substantive hearing.
3. He had been prevented from preparing because of the heavy workload he had had to carry in connection with a client's case over the past few days. The Respondent had been given by the Applicant all of the documents which he had sought which were ordered by the Tribunal at an earlier hearing. The last of those documents had arrived only about a week before the hearing. Only one other case had been identified where solicitors had been required to answer allegations before the Tribunal that they had not paid indemnity premiums to the Assigned Risks Pool. The Respondent had wished to demonstrate that the allegations against him had been exceptional. The Respondent also understood that there had been an article in the Law Society's Gazette which supported his position and he had not had time to obtain a copy of that article.
4. The Applicant opposed the adjournment. The case was a simple one where the facts and allegations had been admitted. Obtaining the information that the Respondent had sought had taken longer than expected but the information had been obtained and supplied.
5. All of the information sought and supplied was profoundly irrelevant to the matters in hand. It was for the Tribunal to take a view as to how serious the allegations against

the Respondent were in this case. The Applicant understood that the comparative exercise that the Respondent had undertaken and proposed further to undertake was perhaps attractive to him but was of no more use to him than was a claim by a driver stopped for speeding that others had been driving faster.

6. The Tribunal was reminded of the policy practice note of the Tribunal dated 4th October 2002 which pointed out that a lack of readiness on the part of a Respondent would not generally be regarded as providing justification for an adjournment.

### **The Tribunal's Decision on the adjournment application**

7. The Tribunal had listened carefully to the Respondent and noted the points upon which he based his application for an adjournment, namely the late disclosure of certain documents, his extremely high workload over the few days prior to the hearing date and the work that the Respondent considered he had to do on a case on the date fixed for the hearing.
8. The Tribunal noted that the application and statement was dated 7th April 2006. The matter had come before the Tribunal in June 2006, September 2006 and February 2007. The date of the substantive hearing was fixed in consultation with the parties at the end of April 2007. The Tribunal noted the Tribunal's Policy Practice Note of 4th October 2002 at paragraph 4(b) that "lack of readiness of the part of either Applicant or Respondent or any claimed inconvenience or clash of engagements whether professional or personal" would not generally be regarded as providing justification for an adjournment.
9. The Respondent agreed that full disclosure of all documents required by him had now been given, albeit some of it somewhat late. The statistical information, which the Respondent sought to extract relating to other solicitors referred to the Tribunal to answer similar allegations based on similar facts, was of very limited use, each case before the Tribunal was fact-sensitive, the Respondent admitted the allegations, and it was open to him to raise such points in mitigation if he considered it appropriate.
10. The Tribunal refused the Respondent's application for an adjournment and ordered that the matter proceed to the substantive hearing.

### **The Substantive Hearing**

#### **The facts are set out in paragraphs 11 to 19 hereunder:-**

11. The Respondent, born in 1946, was admitted as a solicitor in 1972. His name remained on the Roll. Until 31st August 2002 the Respondent practised alone as Ross & Co of Hinderton Hall, Chester High Road, Neston, Cheshire, CH64 7TS. At the date of the hearing the Respondent was practising as a locum solicitor.
12. In the year 2000/01 the Respondent obtained professional indemnity insurance which complied with the minimum standards set out in the SIIRs for that year. The period of that insurance expired on 31st August 2001.

13. On 23rd August 2001 the manager of the Assigned Risks Pool (“ARP”) informed the Respondent that if he did not obtain insurance from a qualifying insurer then he would be automatically insured by the ARP as a firm in default but he would be liable to pay a premium 20% higher than the ordinary ARP premium.
14. The Respondent had indicated to his brokers on 3rd September 2001 that he proposed to seek to practise on 30th September 2001. He was told that six years run off cover would be £44,272 (250% of the previous year’s premium). The Respondent did not accept this.
15. On 22nd January 2002 the Respondent completed a proposal form for insurance with a qualifying insurer outside the ARP. This was declined by the insurers.
16. On 7th February 2002 the Respondent submitted an application for entry to the ARP for the period 1st September 2001 to 31st August 2002. On 19th February 2002 the Respondent was notified that the premium would be £56,847.73.
17. The Respondent did not pay that premium and proceedings for recovery were commenced in the Chancery Division of the High Court leading to a judgment that he pay £56,847.73 with interest to the qualifying insurers subscribing to the ARP.
18. The Respondent had not made payment.
19. The ARP had dealt with four claims made in respect of the Respondent’s practice. On two of those matters there were reserves of £32,500 and £90,000 (including defence costs) respectively. The ARP had paid out £196,592.67 on a third matter.

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

20. The allegations against the Respondent were of “statutory” misconduct, namely a breach of particular rules. The Tribunal was not invited to consider whether the facts would enable it to reach a conclusion that the Respondent had been guilty of conduct unbecoming a solicitor.
21. In connection with such statutory breaches the Respondent’s intention was not relevant. A breach of statutory provisions amounted to an absolute offence.
22. Solicitors should or ought to know the rules with which they were all required to comply.
23. The Respondent’s failures looked more like a lack of focus upon his obligations rather than anything else. There was of course no suggestion that he had been dishonest. At some stage he became insolvent and had been unable to pay the ARP premium.
24. The Tribunal was invited to bear in mind when considering the seriousness of the Respondent’s admitted failures that it was important that solicitors complied with the obligations of practice; professional indemnity insurance was at the heart of safeguarding the public. Not only were members of the public protected from financial loss in the case of a mistake being made, but the fact that such insurance was in place served to safeguard the good reputation of the solicitors’ profession.

25. The Respondent would say that the public had not been at risk because the ARP provided protection to the public in any event. It was right that the ARP scheme should adopt that approach but that did not detract from the Respondent's responsibility for meeting premiums required for such insurance cover.
26. It was noteworthy that claims had been made upon the ARP. The cost to the profession as a whole of indemnity insurance reflected the Respondent's failure to pay.
27. With regard to the Respondent's proposed comparative exercise in which he said he had not been treated fairly having regard to the way in which other solicitors in a similar position had been treated, in his submissions in this connection together with earlier points which he had now abandoned, the Respondent had been hopelessly missing the point.
28. The Law Society had brought the disciplinary proceedings and the Tribunal had found a prima facie case. It was open to the Respondent to put himself in as good a light as possible by way of mitigation. The other matters which he had raised had been profoundly irrelevant. The Tribunal's role was to look at the facts in connection with this particular matter and these particular allegations and to consider the conduct of this particular Respondent and then decide, in the light of his admissions, the appropriate sanction to be imposed.
29. The Applicant sought the costs of and incidental to the application and enquiry. He had discussed the quantum of costs with the Respondent, who had not agreed. In such circumstances the Applicant invited the Tribunal to award him his costs but to order that they be subject to a detailed assessment if not agreed. Details of the Applicant's costs calculation were supplied to the Tribunal.

### **The Respondent's mitigation**

30. The Tribunal was invited to consider the written references handed up which attested to the Respondent's competence and integrity.
31. The Respondent accepted that he had been guilty of a lack of focus on what were administrative matters within his firm. He had been a sole practitioner and was driven by his professional work, undertaking a great deal of pro bono work and work which had a social element. He had to earn a living but he regarded the interests of his clients and the community at large as taking priority. The Respondent accepted that he had let matters slip. The Respondent no longer ran a sole practice.
32. It was right to say that the public was protected despite the Respondent's failures and he had been notified of this by the manager of the ARP. It was not a case where members of the public had been prejudiced.
33. The ARP premiums were at a heinous level. The Respondent had never expected to find himself answering allegations before his professional disciplinary Tribunal. He had expected to pay higher premiums even though hitherto he had enjoyed a good claims record over a long period of practice.

34. The calculation of the premium had not been based on a risk basis but on gross turnover. The premium was 25% of the Respondent's relatively modest turnover of £180,000. He simply did not have the money to pay. His previous insurance premium had been in the region of £16,000. The premium went up to £54,000 at the ARP which included a penalty for making late application.
35. In earlier years it had been possible to apply a little late for one's professional indemnity insurance and to have the policy backdated. That had been both a common and a lawful practice. Such backdating had proved on the material occasion not to have been possible.
36. The Tribunal was invited to note the Respondent's mitigation that other solicitors finding themselves in a similar position had not been brought before the Tribunal. Solicitors before the Tribunal were being dealt with by their peers and this was an important element, as was the fact that the fact that the Tribunal should be guided by determinations made other Tribunals in other cases.
37. The Respondent's experience of appearing before the Tribunal and the cost implications at the stage in his career which he had reached amounted to a massive punishment.
38. The Respondent had not ignored the need to insure himself but had found himself in considerable difficulty because the provision of Legal Aid had been destroyed by the government and a whole section of the Respondent's profession had in effect lost its livelihood. Unlike any other business it was not possible simply to decide to close the business and although the Respondent determined that it would be sensible to close his business the cost of run off insurance cover had been prohibitive.
39. The Respondent had enjoyed a long and good reputation in the law. He had acted in group actions and had handled a number of high profile claims. At the date of the hearing the Respondent was acting as a locum solicitor. He held a practising certificate subject to conditions and the Law Society had approved his locum work. He was covered by his employer's indemnity insurance.
40. The main points of mitigation that the Tribunal was invited to take into account were that no clients had in fact been unprotected and no clients had suffered loss, the Respondent had not flagrantly or deliberately refused to pay his insurance premium but he had not paid because he could not afford to. The Respondent had believed that he could backdate his insurance cover as he had done so on earlier occasions. The rules unfortunately had changed.
41. The Respondent was in a parlous financial position. He had been discharged from his bankruptcy. He had been adjudicated bankrupt after unsuccessful attempts to enter an IVA.
42. The Respondent had obtained work as a locum and had had to work away from home.
43. The Respondent had started a company involved in technology and law which spearheaded mediation. The Respondent had in the past founded Lawtel.

44. The Respondent was producing an income and living with his family. The technology firm was not currently producing an income but was producing projects. The Respondent anticipated that it would produce an income in the future. The Respondent was 61 years of age. He hoped to continue to practise as a solicitor. He had been trained as a mediator.

### **The Tribunal's Findings**

45. The Tribunal found the allegations to have been substantiated, indeed they were not contested. The Tribunal did not feel able to overlook the seriousness of a solicitor who had not complied with the professional rules relating to practice as a solicitor in connection with the requirement that a solicitor have professional indemnity insurance.
46. The Tribunal recognises the difficulties in which the Respondent found himself, namely the reduction in the provision of Legal Aid, the fact that he believed that he could backdate his insurance and finally his inability to meet the very large premiums required either for run off insurance or to be paid to the ARP.
47. Despite the fact that it was clear to the Tribunal that the Respondent had enjoyed an unblemished career in the law and had undertaken pro bono and Legal Aid work, he had failed to comply with the important obligation that he at all times had professional indemnity insurance cover in place.
48. In all of the circumstances the Tribunal considered that it would be both appropriate and proportionate to impose a financial sanction.
49. Three allegations had been established against the Respondent and the Tribunal considered that he should pay a fine of £2,000 in respect of each of them, making a total fine of £6,000. It was also right that the Respondent should pay the costs of and incidental to the application and enquiry. As the costs were likely to be substantial in view of the number of hearings which had occurred in connection with this case and the time taken up by them, the Tribunal concluded that it would be right to order that the Respondent pay the costs of and incidental to the application and enquiry, such costs to be subject to a detailed assessment unless agreed between the parties.

DATED this 9<sup>th</sup> day of November 2007  
on behalf of the Tribunal

A N Spooner  
Chairman