

IN THE MATTER OF JOHN MICHAEL FISHER and KATHLEEN ERIDANI, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Mr D Green
Mrs C Pickering

Date of Hearing: 5th June 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 the firm on Victor Lissack, Roscoe & Coleman, solicitors of 70 Marylebone Lane, London W1U 2PQ on 13th November 2006 that John Michael Fisher of Michael Fisher and Co., Solicitors of 4 Upper Tachbrook Street, London SW1V 1SH and Ms Kathleen Eridani of Michael Fisher and Co, Solicitors of 4 Upper Tachbrook Street, London, SW1V 1SH and of Flat 26, Woodlands Gate, Woodlands Way, London, SW15 2SY solicitor might be required to answer the allegation contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

On 18th May 2007 the Applicant made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements (in respect of the latter the Respondents agreed an abridgement of time as they had not had the required 30 days' notice of the supplementary allegations).

The allegations were that the Respondents had been guilty of conduct unbefitting a solicitor in the following particulars namely:-

- (a) That they practised or held themselves out to practise as solicitors without holding a current Practising Certificate contrary to Sections 1 and 1A of the Solicitors Act 1974;
- (b) That knowing that they were not holding current practising certificates they continued to use professional notepaper purporting to show both were in partnership as solicitors in breach of Rules 1 and 2 Solicitors Practice Rules 1990 and the Solicitors Publicity Code 2001;
- (c) That they failed to deliver to the Law Society an Accountant's Report in respect of their practice as solicitors for the period 24th February 2003 to 23rd August 2004 contrary to Rule 35 of the Solicitors Accounts Rules 1998 and Sections 34 of the Solicitors Act 1974;
- (d) That they failed to deliver to the Law Society an Accountant's Report in respect of their practice as solicitors for the period 23rd August 2004 to 23rd August 2005 contrary to Rule 35 of the Solicitors Accounts Rules 1998 and Section 34 of the Solicitors Act 1974;
- (e) That they failed to deal promptly and substantively with correspondence from the Law Society;
- (f) That they failed to act in the best interests of their clients, purchasers and the mortgagees in conveyancing transactions, by failing to pay stamp duty and to register their clients' interests in property with HM Land Registry in breach of Rule 1 Solicitors Practice Rules 1990;
- (g) That they improperly withdrew or allowed to be withdrawn client money from their designated client account and in breach of Rule 22(5) of the Solicitors Accounts Rules 1998;
- (h) That they failed to maintain their designated client account in accordance with Rule 32 of the Solicitors Accounts Rules 1998;
- (i) That the First Respondent failed to comply with or delayed compliance with conditions imposed under Section 13A(2)[a] of the Solicitors Act 1974 (as amended) on his Practising Certificate in respect of the year 2005 - 2006 in breach of Rule 1 of the Solicitors Practice Rules 1990 and the Solicitors Act 1974 (as amended).

The further allegations against Mr Fisher were that he had been guilty of conduct unbecoming a solicitor in the following particulars, namely:-

- (j) That since 5th January 2007 he practised or held himself out to practise as a solicitor without holding a current Practising Certificate contrary to Sections 1 and 1A of the Solicitors Act 1974;
- (k) That he practised in breach of conditions imposed on his Practising Certificate for the practising year 2005/2006 contrary to Sections 1 and 1A of the Solicitors Act 1974.

A further allegation against Ms Eridani was that she had been guilty of conduct unbecoming a solicitor in the following particular, namely:-

- (l) That she failed to deal promptly and substantively with correspondence from the Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th June 2007 when Robert Simon Roscoe appeared as the Applicant and the Respondents appeared in person.

The evidence before the Tribunal included an acceptance by the Applicant that the Accountant's Reports referred to in allegations (c) and (d) above had been delivered to the Law Society on 26th March 2007. The Accountant's Reports had therefore been delivered late rather than not delivered at all. Mr NP Shepherd gave oral evidence. The allegations were admitted.

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

The Tribunal Orders that the Respondent, John Michael Fisher of Michael Fisher & Co, 4 Upper Tachbrook Street, London, SW1V 1SH, solicitor, do pay a fine of £3,000, 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 fixed in the sum of £3,000.

The Tribunal Orders that the Respondent Kathleen Eridani of Michael Fisher & Co, 4 Upper Tachbrook Street, London, SW1V 1SH solicitor, be reprimanded and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

For the avoidance of doubt the Applicant's costs were £3,000 inclusive of VAT and were awarded against the Respondents on a joint and several basis.

The facts are set out in paragraphs 1 to 22 hereunder:-

1. Mr Fisher, born in 1946, was admitted as a solicitor in 1973. Ms Eridani, born in 1970, was admitted as a solicitor in 1997. At the material times the Respondents practised in partnership under the style of Michael Fisher & Co at 4 Upper Tachbrook Street, London, SW1V 1SH. Mr Fisher had taken over the practice of Ralph Haems & Co where Ms Eridani had been a salaried partner.
2. Mr Fisher specialised in the practice of criminal law and Ms Eridani specialised in publicly funded matrimonial law. Ms Eridani had begun maternity leave in January 2006.

Accountant's Reports

3. The Respondents' Accountants Report for the period 24th February 2003 to 23rd August 2004 was due to be delivered to the Law Society within six months. The Respondent had sought extension of time and had offered assurances that the Report would be delivered.

4. On 20th September 2003 the Law Society Adjudicator directed that the Respondents deliver their Accountant's Report to the Law Society within 28 days of notification of her decision, failing which their conduct was to be referred to the Tribunal. The Respondents did not deliver the Report within the 28 day period.
5. The Respondents did not deliver their Accountant's Report for their financial year ending on 23rd August 2005.
6. The Respondents did not deliver to the Law Society their above Accountant's Reports until 26th March 2007.

No Practising Certificate - Ms Eridani

7. On 15th November 2005 and 2nd December 2005 the Law Society reminded Ms Eridani by letter that she had not submitted an application to renew her Practising Certificate for the year 2005 to 2006. Having received no response, on 20th December 2005 the Law Society terminated her Practising Certificate for the year 2004 to 2005 and notified both Respondents.
8. Ms Eridani continued to be named on the firm's notepaper as a partner. Mr Fisher advised the Law Society that Ms Eridani was on maternity leave.
9. The Law Society had written on 10th January 2006 to Ms Eridani to ascertain the extent to which she had practised uncertificated. When told that she had been on maternity leave the Law Society closed its investigation. The subsequent receipt from the Respondents' firm of notepaper showing Ms Eridani as a partner prompted the Law Society to reopen the investigation. Letters were written to Ms Eridani on 3rd and 22nd March 2006. Ms Eridani accepted that her name remained on the firm's notepaper as a partner.

No Practising Certificate - Mr Fisher

10. On 15th November 2005 and 2nd December 2005 the Law Society reminded Mr Fisher by letter that he had not submitted an application to renew his Practising Certificate for the year 2005 to 2006. Having received no response from him on 20th December 2005 the Law Society terminated his Practising Certificate for the year 2004 to 2005 and notified him of this.
11. Mr Fisher accepted in his letter to the Law Society of 18th January 2006 that he had practised uncertificated.

Failing to comply with Practising Certificate conditions

12. On 6th March 2006, having received an application from him to renew his Practising Certificate for 2005 to 2006, the Law Society's Adjudicator granted Mr Fisher a Practising Certificate subject to conditions that included a condition that he might act as a solicitor only in approved employment or in approved partnership. The Adjudicator allowed Mr Fisher three months to make appropriate arrangements.
13. On 26th July 2006 Mr Fisher confirmed to a Law Society Investigation Officer that he had not complied with the conditions.

Solicitors Publicity Code 2001

Failure to reply

14. Mr Fisher wrote to the Law Society on 18th January 2006. He used notepaper that indicated that Ms Eridani was a partner of the firm although she was not holding a Practising Certificate. The Law Society wrote to Mr Fisher on 25th April 2006 seeking his explanation but did not receive a reply.

Forensic Investigation Unit inspection

15. On 10th July 2006 the Law Society's Senior Investigation Officer (the SIO) attended the Respondents' practice to inspect the books of account and other documents.
16. The SIO's Report dated 4th August 2006 was before the Tribunal.

Breach of Rule 22(5) of the Solicitors Accounts Rules 1998

Breach of Rule 32 of the Solicitors Accounts Rules 1998

17. The SIO found that the Respondents' books of account were not in compliance with the Solicitors Accounts Rules in that there was a cash shortage on client account at the inspection date established by comparing liabilities to clients with cash held in client bank accounts, after allowance for uncleared items. The cash shortage had arisen as the result of nine debit balances totalling £1,429.60 and a book difference (shortage) of £1,175.72. The shortage had been identified and rectified before the SIO's inspection.

Failing to act in the best interests of their clients

18. In a review of six client matter conveyancing files, the SIO found delays in attending to post completion work. Stamp Duty had not been paid in three matters. The interests of both the purchasers and the mortgagees, where the firm had been acting for either or both, had not been registered at HM Land Registry.
19. Where Mr Fisher acted for himself and his wife in a remortgage, the redemption of the earlier mortgage had been delayed for over eight months.

Mr Fisher's further practising uncertificated and in breach of conditions on his Practising Certificate

20. On 5th January 2007 Mr Fisher's Practising Certificate for the practice year 2005/2006 had been terminated automatically by the Solicitors Regulation Authority as Mr Fisher had not submitted a Section 12 [of the Solicitors Act 1974] Practising Certificate renewal application form as he was required to do.
21. Following termination it came to light that Mr Fisher had continued to practise under the style of Michael Fisher Solicitors.
22. It also became apparent that Mr Fisher had practised during 2005/2006 in breach of conditions imposed upon his Practising Certificate for the practice year 2005/2006 which required that Mr Fisher practise only as a solicitor in employment or

partnership, or as a member, office holder or share holder of an incorporated solicitors practice, the arrangements for which had first been approved by the SRA.

The Submissions of the Applicant

23. The Respondents had helpfully agreed to abridged time for notice in connection with the supplementary statement and the allegations contained therein. They were both happy that the additional allegations be dealt with at the current hearing. Both Respondents admitted the allegations. The facts spoke for themselves.
24. The Applicant accepted that Ms Eridani had at all material times been a salaried partner and accepted that she had not been responsible for undertaking conveyancing work.
25. The Applicant sought the costs of and incidental to the application and enquiry. The sum which he sought had been agreed by both of the Respondents and the Applicant invited the Tribunal to make a ruling upon the apportionment of those costs as between the two Respondents.

The Submissions of Mr Fisher

26. Mr Fisher accepted the allegations.
27. Mr Fisher had purchased the practice of the late Ralph Haems at Victoria but things had not worked out as he had expected. There had been litigation between Mr Fisher and Mr Haems. This had led to cashflow problems the result of which persuaded Mr Fisher to take on more conveyancing work than he otherwise would have done. He was a solicitor experienced in the practice of criminal law and that had always been his main area of work.
28. Eighteen months before the hearing Mr Fisher had been instructed to act for a client in connection with a major terrorism case and had become overwhelmed. It had been a complex case on which he concentrated and that caused him to neglect other matters. That was how the muddles with the conveyancing matters had arisen.
29. The Law Society's SIO had noted that a modest shortage which had occurred on client account had been corrected before he began his inspection.
30. Mr Fisher's failure to redeem his earlier mortgage upon completing a remortgage had been drawn to his attention by the SIO. Mr Fisher's error had meant that he had been paying interest payments on two mortgage loans. That was to his own detriment and there was no detriment to either lender or anyone else. Mr Fisher had struggled to comply with the condition on his Practising Certificate. He had negotiated a partnership arrangement with another local sole practitioner. He had believed that the merger of the two firms had been imminent but in fact the merger did not happen because of the failure of his prospective partner to complete the necessary arrangements. Mr Fisher had given the Law Society assurances that matters were proceeding satisfactorily and it was only when the Law Society approached Mr R direct and was told something different that Mr Fisher realised that the merger never would take place.

31. Mr Shepherd, a former barrister who had crossed the bar to become a solicitor, had a practice with a number of branches. Mr Shepherd and Mr Fisher had known each other for some 30 years and they discussed matters. Mr Shepherd had agreed to take over the Respondents' Victoria firm and to employ the Respondent. That had taken place. Mr Fisher had notified the Law Society of the arrangement by email on the date when it was resolved to terminate his Practising Certificate.
32. Mr Fisher had not been flagrantly in breach of the condition on his Practising Certificate but had made strenuous steps to comply. The fact that he was in a position to comply had not been communicated to the relevant Law Society committee in time.
33. At the date of the hearing Mr Fisher was no longer practising.
34. Mr Fisher recognised how serious the allegations against him appeared but hoped that the Tribunal would feel able to allow him to continue in practice as he had a further 10 years of working life and had a fairly young family.
35. Mr Shepherd confirmed that he had known Mr Fisher for a long time and had taken over his solicitors' firm in Victoria.
36. Mr Fisher was highly thought of by those who practise in the field of criminal law. He had been a founding partner of two well-known firms which practised in the criminal law field. Mr Fisher still had a great deal to contribute to the profession and Mr Shepherd would be happy to employ him.
37. Mr Fisher explained to the Tribunal that he had "inherited" Ms Eridani with the firm of Ralph Haems & Co. She had been a salaried partner of Ralph Haems and had continued to be a salaried partner in Michael Fisher & Co. Mr Fisher told the Tribunal that Ms Eridani was in the position that she found herself and was appearing before the Tribunal as a result of Mr Fisher's own conduct. He told the Tribunal that she was a competent solicitor who had had a baby and did not deserve to be in the predicament in which she found herself.

The Submissions of Ms Eridani

38. Ms Eridani told the Tribunal that she had practised as a solicitor for some eight years before taking maternity leave beginning in August 2005. Depending upon the outcome of the disciplinary hearing, she hoped to return to the field of practice in which she was experienced.
39. Ms Eridani accepted that her name had appeared on the firm's letterhead but that had been without her knowledge. Ms Eridani recognised that she should have notified the Law Society that she was going on maternity leave and she apologised for not having done so. She had rectified the position when matters had been pointed out to her.

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The Tribunal's Findings

40. The Tribunal found all the allegations to have been substantiated, indeed they were not contested.

41. The Tribunal noted that Ms Eridani did not hold a Practising Certificate but she had been on maternity leave and had not in fact been practising. Her name had been held out on the firm's letterhead as a partner and the mischief there was that the public was thereby led to believe that Ms Eridani was a partner in the firm and that the firm was regulated by the Law Society with all the protections that that involved. Those protections might well not be available. Solicitors are expected to act with the utmost probity and integrity at all times and an indication that a solicitor holds a Practising Certificate and is a partner in a firm when neither of those assertions is true falls very far short of the requirements for integrity, probity and trustworthiness.
42. The Tribunal recognised that Ms Eridani's culpability fell at the low end of the scale and gave her credit for the fact that she readily accepted her liability and the fact that she had not responded to certain correspondence addressed to her by the Law Society as she should have done, whatever her domestic situation.
43. The Tribunal recognised that Mr Fisher had enjoyed a long and unblemished career in the law, where he had an enviable reputation as a practitioner in the field of criminal law. The Tribunal accepts that his breaches were not flagrant or deliberate but rather had been the result of a set of circumstances which included a dispute with the solicitor from whom he took over a firm, the taking on of conveyancing work to assist with cashflow when he did not have up-to-date experience of undertaking that sort of work and the pressures which taking on a major terrorism case imposed upon him. The Tribunal also recognised that Mr Fisher had taken steps to try to comply with the conditions on his Practising Certificate and had been let down somewhat by a prospective partner, and subsequently had disposed of his firm and had gained the offer of employment from Mr Shepherd, but those arrangements had been concluded close to the date when the Law Society decided to terminate Mr Fisher's Practising Certificate and his email notification of that arrangement had apparently not been before the Law Society's decision makers.
44. The Law Society through its representative had informally indicated that it would not consider a further application from Mr Fisher during the practice year but would consider an application for a Practising Certificate for the practice year commencing on 1st November 2007. The Tribunal noted that Mr Fisher would take steps to look further into this matter, supported by Mr Shepherd. The Tribunal hoped that it would assist the Law Society if it made it plain that no dishonesty had been alleged against Mr Fisher and, of course, none had been found, and the Tribunal took the view that Mr Fisher was a good solicitor experienced in the field of criminal law and that matters relating to his new practice had overwhelmed him and although, as he himself accepted, he had been guilty of breaches, those breaches had not been deliberate or flagrant and in particular Mr Fisher had taken considerable steps to comply with the conditions on his Practising Certificate, even though he had not done so timeously.
45. The Tribunal did not consider that a finding that the allegations against each of the Respondents had been substantiated necessitated, either for the protection of the public or to maintain the good reputation of the solicitors' profession, the imposition of a sanction that would interfere with their respective abilities to practise.
46. The Tribunal accepted that Ms Eridani's culpability was at a lower end of the scale and imposed a reprimand upon her.

47. Mr Fisher himself recognised that the breaches found substantiated against him were on the face of it serious. Having heard details of the surrounding circumstances, the Tribunal took the view that a financial sanction would be both appropriate and proportionate and it ordered Mr Fisher to pay a fine of £3,000 to be forfeit to Her Majesty the Queen.
48. The Tribunal further noted that the Respondents had agreed the Applicant's quantum of costs and the Tribunal therefore ordered that the Respondents should pay the costs of £3,000 inclusive of Value Added Tax and their liability for such costs should be joint and several.

DATED this 23rd day of August 2007
on behalf of the Tribunal

J R C Clitheroe
Chairman