

IN THE MATTER OF DAVID VAUGHAN HOWELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)
Mr K W Duncan
Lady Bonham Carter

Date of Hearing: 17th December 2009

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 Sara Dickerson of Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire CB32 5AE on 30th June 2009 that David Vaughan Howell of Vaughan Howell Solicitors, Westwood Park, London Road, Great Horkesley, Colchester, Essex CO6 4BS, 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.

The allegations against the Respondent were that he had been guilty of professional misconduct in that he:-

1. Wrote letters dated 12th, 25th February and 11th March 2008 to the Army Criminal Legal Aid Authority (ACLAA) in the name of Mr Kim Kennedy, Partner at John Fowlers LLP without the knowledge or consent of Mr Kennedy in breach of Rule 1.02 and/or 10.01 Solicitors' Code of Conduct 2007.
2. Submitted a letter dated 12th February 2008 to ACLAA purportedly written and signed by Mr Kennedy when the letter had been written and signed by the Respondent.
3. Wrote letters dated 22nd February and 10th March 2008 to ACLAA in the name of Mrs Evelyn Hicks, a solicitor at John Fowlers LLP without the knowledge or consent of Mrs Hicks in breach of Rule 1.02 and/or 10.01 Solicitors Code of Conduct 2007.

4. Submitted a letter dated 22nd February 2008 to ACLAA purportedly written and signed by Mrs Hicks when the letter had been written and signed by the Respondent.
5. Amended his firm's letterhead so as to mislead in breach of Rule 7.01 Solicitors Code of Conduct 2007.

The allegations were pursued on the basis that the Respondent had been dishonest.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 17th December 2009 when Sara Dickerson appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent to all the allegations save the allegation of dishonesty.

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

The Tribunal Orders that the Respondent, DAVID VAUGHAN HOWELL of Westwood Park, London Road, Great Horkesley, Colchester, Essex, CO6 4BS, solicitor, do pay a fine of £2,000.00, 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 £1,750.00.

The facts are set out in paragraphs 1 - 19 hereunder:-

1. The Respondent, born in 1953, was admitted on 1st March 1996 and his name remained on the Roll.
2. The Respondent, a sole practitioner of Vaughan Howell Solicitors, Westwood Park, London Road, Great Horkesley, Colchester, Essex CO6 4BS worked as a criminal law/military law consultant for John Fowlers LLP, Solicitors, Town Hall Chambers, St Runwald Street, Colchester, Essex CO1 1DS at the material time.
3. In January 2008, the Army Criminal Legal Aid Authority (ACLAA) temporarily suspended the Respondent from receiving instructions following information received from North Yorkshire Police that they were investigating him following allegations from a former client. By letter dated 7th February 2008, the Respondent challenged ACLAA's decision to suspend him, however, their decision dated 12th February 2008 remained unchanged.
4. A letter dated 12th February 2008 purportedly written and signed by Mr Kennedy of John Fowlers LLP was sent to the ACLAA explaining that Mr Kennedy had been given the letters from the ACLAA and had agreed to take over full management of Vaughan Howell from the Respondent to ensure the practice remained open. The letter requested the ACLAA to continue to send instructions to the firm and that Mr Kennedy would monitor with his staff all work sent to the practice. The ACLAA responded to Mr Kennedy at Vaughan Howell requesting more information.

5. A letter dated 22nd February 2008 purportedly written and signed by Mrs E Hicks, solicitor at John Fowlers LLP was sent to the ACLAA. The letter enclosed an invoice for the matter the Respondent had been instructed on prior to his suspension and also reaffirmed that John Fowlers LLP would be managing and conducting the business of Vaughan Howell. It also further stated that the Respondent had removed himself from the firm until the matter had been resolved.
6. A letter dated 25th February 2008 purportedly written by Mr Kennedy and signed “pp” by the Respondent was sent to the ACLAA. This letter confirmed that the Respondent had handed over management and supervision of his firm, Vaughan Howell, to John Fowlers LLP, that new cases would be dealt with by Mr Kennedy and assisted by his solicitor staff and that the Respondent would complete any outstanding matters.
7. A letter dated 10th March 2008 purportedly written by Mrs E Hicks and signed “pp” by the Respondent was sent to ACLAA enclosing an invoice for work completed by the Respondent.
8. A letter dated 11th March 2008 purportedly written by Mr Kennedy and signed “pp” by the Respondent was sent to the ACLAA. This letter was sent in response to the ACLAA’s letter dated 5th March 2008 with Mr Kennedy allegedly expressing his dissatisfaction with their queries about the management of Vaughan Howell by John Fowlers LLP (referring to the letters from Mrs Hicks) and their unwillingness to lift the Respondent’s suspension as a failure to comply with the human rights of service personnel who had the right to be represented by whomever they wish.
9. The Respondent in the letters dated 22nd and 25th February 2008 and 10th and 11th March 2008 amended his firm’s letterhead to include in the statement “Managed and Supervised by John Fowlers LLP Solicitors” when in fact John Fowlers LLP had not taken over any form of management or supervision of the Respondent’s firm at the material time.
10. On 17th March 2008, Mr Miles Crowley, Director Military Court Service of ACLAA telephoned Mr Kennedy to clarify further the relationship between John Fowlers LLP and Vaughan Howell. Mr Kennedy confirmed during this conversation that he had not written any letters to the ACLAA and Mr Crowley agreed to fax copies to him.
11. On receipt of those copy letters, Mr Kennedy wrote to the Solicitors Regulation Authority (SRA) on 18th March 2008 seeking guidance and advice explaining what the Respondent had done. Mr Kennedy also suspended the Respondent from his employment at John Flowers LLP.
12. A letter dated 18th March 2008 from the Respondent to Mr Crowley ACLAA apologised for “my major errors in judgement...” and explained/mitigated his behaviour.
13. By letter dated 19th March 2008, Mr Kennedy wrote to the SRA explaining that having spoken with the Respondent he was content to lift the suspension he had imposed on the Respondent. In response to a letter from the SRA dated 26th March 2008, a further letter dated 27th March 2008 was received by the SRA from Mr

Kennedy. Mr Kennedy wanted to clarify that although duty bound to report matters to his regulator, he was “not making any kind of complaint about David Howell...”

14. In a letter from the Respondent to the SRA dated 16th May 2008 the Respondent stated:-

“I accept that I didn’t show or properly discuss the individual letters with either Kim Kennedy, or Evelyn Hicks, before they were written, but I honestly believed that as I had fully discussed my situation in a lot of detail and that the contents of the letters reflected their views on the situation. It was certainly my intention to write letters on behalf of John Fowlers which I believed I was entitled to do. It certainly was never my intention to forge the signatures of either Kim Kennedy or Evelyn Hicks. Indeed, with regards to two letters written by me in the name of Evelyn Hicks, the letters were signed “pp Evelyn Hicks”.”

15. In a letter from Mrs Hicks to the SRA dated 23rd July 2008, she stated:-

“I understand that Mr Howell had advised your office to state that I had subsequently confirmed I “have no problem with the content of the letter” he sent in my name. Should the letter he refers to be the letter of which a copy, namely the letter dated 10th March 2008 on Vaughan Howell’s note paper to the Legal Aid Scheme Summary Appeal Courts in respect of Corporal J.M. R, then I would have had a problem with the content of this letter.

The second paragraph stated “Kim Kennedy, Partner and his staff solicitors, James O’Toole and I of John Fowlers LLP, solicitors were managing and conducting the business of Vaughan Howell Solicitors until the temporary suspension has been lifted against David Howell”. This is completely inaccurate at the material time. I had no knowledge that Mr Kennedy, myself and James O’Toole would be managing and conducting the business of Vaughan Howell Associates until the suspension had been lifted. At this material time I was unaware that there was a temporary suspension against David Howell.

This paragraph further states “I enclose an invoice and court report on this case from Vaughan Howell Associate”. Again I would have had a problem with the content of this letter since it would presumably have enclosed an invoice – which I have not seen – and may have given the impression that I either managed or conducted any of the case of Corporal J.m [sic] R, which of course I did not.

Furthermore this letter refers to a case of which I have no knowledge and also reminds ACLLA [sic] to settle the invoice within 30 days. I have no knowledge of ACLLA [sic] and its obligation with regards to settling invoices within 30 days and therefore this entire letter would not accurately represent my views.

Lastly the final paragraph states “If any servicemen request Vaughan Howell Solicitors you are requested to continue to instruct the firm as David Howell

has removed himself until matters against him have been resolved. This will be the last case where he is involved until further notice". I would have had a problem with the content of this part of the letter since I had no knowledge that David Howell had removed from all matters until the conclusion of investigations against temporary suspension".

16. Mr Kennedy in a letter dated 10th July 2008 to the SRA stated:-

"There might be circumstances where David Howell would write letters in my name. For example if we were both working on a particular file he might write a letter to the client at the end of the day confirming the outcome and tidying matters up".

The Tribunal was provided with copies of all relevant correspondence.

The Application of the Respondent for the hearing to take place in private

17. The Respondent referred the Tribunal to Rule 12 (4) of the Solicitors (Disciplinary Proceedings) Rules 2007 and made an application for the hearing to be conducted in private. He submitted there was a person present in court and given the history of the conduct complained of and action carried out by various organisations, the Respondent submitted he would be prejudiced representing himself if that person remained in court, which could ultimately affect his ability to practice. The prejudice he faced was in clarifying or explaining statements that had been made and answering questions from the Tribunal as the person present in court was an author of some of the letters before the Tribunal. The Respondent believed that due to the strength of feeling there had been interference with complaints made, actions taken and the method in which he had been treated. The Respondent felt he would suffer exceptional prejudice due to the actions of the person in court and the manner in which he had been treated.

The Applicant's submissions on the Respondent's application

18. The Applicant confirmed she only intended to refer to the organisation as a matter of background and did not intend to discuss any matter not relevant to the Tribunal proceedings. She could not see any prejudice if the person remained in the room.

The Tribunal's Decision

19. The Tribunal listened to the submissions of both parties and had been asked by the Respondent to make an order that the hearing should be conducted in private on the grounds of exceptional prejudice which the Respondent considered he would suffer if a person in the Court room remained in the Court whilst the case was dealt with. The Applicant did not support the application and on the basis of the submissions and evidence before the Tribunal, the Tribunal could not see any reason for the Respondent's belief that he would suffer exceptional prejudice unless the hearing was conducted in private. Accordingly, the Respondent's application was refused.

The Submissions of the Applicant

20. The Applicant submitted allegations 2 and 4 had been brought separately on the basis that letters had been composed and typed in someone else's name. This covered allegations 1 and 3.
21. Allegations 2 and 4 referred to letters that had been "pp'd" by the Respondent but sent in someone else's name.
22. The Applicant submitted this was a course of conduct and that even if the Respondent had composed the letters and not sent them, he would still have been in breach.
23. The Applicant referred the Tribunal to the case of *Twinsectra Ltd v Yardley and Others* [2002] UKHL 12 which set out the test for the Tribunal to apply when considering the issue of dishonesty. Essentially, the Tribunal had to establish the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people, and secondly that he himself realised that by those standards his conduct was dishonest.
24. The Applicant submitted the Respondent should not have lost his objectivity as a solicitor. He had sent five letters between 12th February 2008 and 11th March 2008 which was not simply a one off aberration but a course of conduct.
25. The Applicant submitted an application for her costs and provided the Tribunal with a schedule indicating that these amounted to £2,805.70.

The Submissions of the Respondent

26. The Respondent referred the Tribunal to his witness statement dated 17th December 2009. He admitted all the allegations but did not admit dishonesty.
27. The Respondent accepted he had written the letters and confirmed that at the time this conduct took place he had recently moved to John Fowlers LLP where he had an office and had typed the letters in their offices but using his own letterhead. He was under the supervision of John Fowlers LLP and his own premises had completely closed down.
28. 90% of the work the Respondent did was military work and when the Respondent had been initially suspended by the ACLAA he had discussed the matter with Mr Kennedy who was fully aware of the background. Mr Kennedy had told him he could work at John Fowlers LLP offices if he wished to do so. ACLAA had determined that it would not allow those whom it funded to be represented by the Respondent any further. The police investigation was completed in January 2009, the Respondent was not contacted by the police or interviewed and none of the allegations were substantiated and the police did not take any action against him. The Respondent had intended to advise the ACLAA that he had moved from his office to the offices of John Fowlers LLP and that from the beginning of February 2008, he was working only on John Fowlers LLP cases and being managed and supervised by the firm.

29. The Respondent accepted that with hindsight he should have shown the letters to Mr Kennedy and Mrs Hicks and, in hindsight, he should have sent the letters on John Fowlers LLP letterhead as he was acting for them and they were supervising him. His intention had not been to mislead but he accepted it could and did mislead. He was looking after the clients' best interests and trying to do pro bono work which supported the profession.
30. The Respondent was disgusted with himself and did not seek to excuse his behaviour but he did not intend to be dishonest. He was simply seeking to ensure servicemen could be properly represented and did discuss the contents of the letter with Mr Kennedy. The Respondent believed Mr Kennedy would have sent those letters and although he drafted them and could not explain why he did not give them to Mr Kennedy, this was simply because he had acted rashly. The ACLAA had removed him as a duty solicitor and prevented him from acting on any work which they funded which had grossly affected his income. He had no other work and was working for John Fowlers LLP as and when they needed him.
31. The Respondent apologised unreservedly to everyone affected by his conduct and whilst he accepted his actions had been improper, he did not think at the time they were wrong and the letters had been drafted with the intention of protecting clients and had encompassed facts that he believed were correct from discussions he had had with Mr Kennedy. The Respondent did not intend to be dishonest.
32. The Respondent reminded the Tribunal that the letters had been pp'd and that the Respondent had no motive for financial gain from sending letters to which the reply came to John Fowlers LLP.

The Tribunal's Findings

33. The Tribunal had listened carefully to the submissions of both parties and had considered all the documentary evidence before it.
34. The Respondent had admitted the allegations, save the allegation of dishonesty and the Tribunal found those allegations that had been admitted to have been substantiated.
35. In relation to the disputed matter of dishonesty, the Respondent had not given evidence on oath and the Tribunal was required to deal with this issue based on the documents provided.
36. The Tribunal had been referred to the test of dishonesty in the case of *Twinsectra Ltd v Yardley* and was satisfied that the objective test was proved in that the Respondent's conduct would be considered dishonest by the ordinary standards of reasonable and honest people. The Respondent was a solicitor with many years experience and the Tribunal was satisfied his conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. However, the Tribunal was not satisfied that the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal accepted the Respondent's submissions that he had been blinded by the extraordinary and unfair manner in which he had been treated and that he believed that what he had written in the letters was factually accurate and

represented what he had discussed with Mr Kennedy, which Mr Kennedy confirmed was correct. The Tribunal also accepted the Respondent's submission that he was trying to ensure military servicemen would have proper representation by appropriately qualified advocates. The Tribunal was also mindful that the letters submitted on behalf of Mrs Hicks were pp'd which made it clear she had not signed them.

The Respondent's Mitigation

37. The Respondent confirmed the practice of Vaughan Howell still existed but was not functioning. He submitted invoices to John Fowlers LLP for the work he carried out for them and occasionally carried out sub-contract work for other firms. The Respondent did his own typing, he did not have any staff and any income he had was used to provide for his three sons who were at university.
38. The suspension imposed by the ACLAA had been all encompassing and the Respondent did not feel he had been treated fairly. He had accepted responsibility from the outset for his conduct and had apologised to everyone affected immediately. The Respondent felt very aggrieved and had had these proceedings hanging over him which had caused him and his family problems.
39. Any financial punishment would be difficult for the Respondent. The Respondent referred the Tribunal to the references provided and reminded the Tribunal that he was suffering from a medical condition which had deteriorated as a result of these proceedings. He disputed the costs claimed by the SRA but would be willing to provide an undertaking to pay the money to disabled/ vulnerable servicemen instead.

The Tribunal's Decision

40. The Tribunal had considered carefully the Respondent's mitigation and the documents provided. Whilst there had been no finding of dishonesty, the allegations were still serious and the Tribunal viewed them in that context.
41. However, the Tribunal was also mindful that the Respondent had been deprived of his living since January 2008 and that in itself was a punishment for the Respondent. The Tribunal understood that the suspension remained in place and it was not clear why that was necessary, especially when the North Yorkshire police had confirmed in January 2009 that no further action would be taken against the Respondent, and indeed, the Respondent had not been interviewed by the police. The Tribunal hoped that the suspension imposed by the ACLAA would be lifted immediately.
42. The Respondent had accepted in his submissions that whilst he did not intend to mislead, he accepted that his conduct could and did mislead. As a result of this he had brought the reputation of the profession into disrepute and the Tribunal ordered he be fined the sum of £2,000.00.
43. In relation to the question of costs, the Tribunal did consider the costs to be disproportionate especially in view of the fact that the Respondent accepted responsibility for his conduct immediately, he had co-operated with the SRA and

admitted the allegations save for the allegation of dishonesty. The Tribunal assessed the costs at £1,750.00.

44. The Tribunal Ordered that the Respondent, DAVID VAUGHAN HOWELL of Westwood Park, London Road, Great Horkesley, Colchester, Essex, CO6 4BS, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,750.00.

Dated this 20th day of April 2010
On behalf of the Tribunal

J P Davies
Chairman