

IN THE MATTER OF DEAN ROBERT AULD, TIM GORMAN, DAVID HAMILTON,  
STEPHEN MCCOURT, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. R. B. Bamford (in the chair)  
Mrs E Stanley  
Mr. S. Howe

Date of Hearing: 8th September 2009

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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 of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London, EC4M 7RD on 12<sup>th</sup> June 2008 that Dean Robert Auld, Tim Gorman, David Hamilton and Stephen McCourt, all solicitors of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW 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 allegations against the Respondents were that:-

- (1) Contrary to Rule 3 of the Solicitors Practice Rules 1990 (“the SPRs”) they accepted introductions and referrals of business from other persons in breach of and otherwise than in compliance with the Solicitors Introduction and Referral Code 1990 (“the Code”).
- (2) Contrary to Rule 9 of the SPRs they entered into arrangements for the introduction of clients and/or acted in association with an organisation who were not solicitors and whose business or part of whose business was to make, support or prosecute claims

arising from death or personal injury and who in the course of such business solicited or received contingency fees.

- (3) Contrary to Practice Rule 7 they shared fees with a person other than one permitted by that Rule.
- (4) Contrary to Practice Rule 1 (a), (c) and (d) they failed to inform clients of payments made to introducers in respect of that client's matter.

The application was heard in the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 8<sup>th</sup> September 2009 when Iain Miller appeared as the Applicant and Mr Robin Havard represented the Respondents who were all present save Tim Gorman.

The evidence before the Tribunal included the admissions of the Respondents and a bundle of documents provided by the Respondents.

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

The Tribunal Orders that the Respondent, Dean Robert Auld of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

The Tribunal Orders that the Respondent, Tim Gorman of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

The Tribunal Orders that the Respondent, David Hamilton of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

The Tribunal Orders that the Respondent, Stephen McCourt of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

And it further Orders that the Respondents do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,715.38. Costs are to be paid jointly and severally by all Respondents.

**The facts are set out in paragraphs 1 to 12 hereunder:-**

1. The First Respondent, Dean Robert Auld was born in 1968 and was admitted as a solicitor on 1<sup>st</sup> September 1993. His name remained on the Roll.
2. The Second Respondent, Tim Gorman, was born in 1960 and was admitted as a solicitor on 2<sup>nd</sup> March 1987. His name remained on the Roll.
3. The Third Respondent, David Hamilton, was born in 1962 and was admitted on 2<sup>nd</sup> December 1991. His name remained on the Roll.
4. The Fourth Respondent, Stephen McCourt, was born in 1967 and was admitted on 15<sup>th</sup> July 1994. His name remained on the Roll.

5. At all material times the Respondents were equity partners in the firm of Gorman Hamilton (“the firm”) which has offices at Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW and also at 2 Lisbon Square, Leeds, LS1 4LY and at St Vincent House, 1 Cutler Street, Ipswich, IP1 1JD.
6. An inspection of the firm was undertaken on behalf of the Law Society and the Tribunal had before it a copy of the investigation report (“the FI Report”) dated 20<sup>th</sup> December 2006.
7. The firm acted for claimants in relation to miners’ compensation schemes and that capacity registered 6,000 claims on behalf of miners or representatives of deceased miners. This figure represents less than 1% of the total number of claims registered nationally.
8. The allegations concerned the firm’s relationship with organisations that referred miners’ compensation claim cases to the firm. These were:-
  - 11.1 Industrial Disease Compensation Limited (“IDC”);
  - 11.2 Miners & General Workers Compensation Recovery Unit which was also known as Sureclaim;
  - 11.3 LCS Limited (“LCS”);
  - 11.4 ASL Limited (“ASL”).
9. In early 1999, the Respondents decided to obtain miners’ compensation work from IDC. The IDC fee payable by the firm was 16% of costs received on claims. Some of this was paid upfront and the balance at the end of the matter if the claim was successful. Potential claimants were invited by IDC to “surgeries” which were also attended by representatives of the firm who discussed the claims and funding options with the claimants. The majority of claimants opted for “funding” through IDC.
10. The arrangement between the claimant (i.e. the client of the firm) and IDC was contained in a standard form agreement, copies of which were before the Tribunal. The terms of this agreement were that IDC would underwrite the legal costs of the claimant in return for a fee based on a sliding scale with an initial fee of £35.00 due to IDC upon signing the agreement. This was changed to a fixed fee of £100.00 plus VAT at the beginning of 2000. There was no written contractual agreement between the firm and IDC.
11. The total payments out of clients’ damages were £380,000.00. In addition, the firm paid IDC a net amount of £223,662.97 for the introductions which were described as “marketing fees”.
12. Copies of the agreements relating to the purchase of introductions from Sureclaim, LSC and ASL were before the Tribunal. All of the agreements were in similar terms. In these agreements an initial fee of £250.00 plus VAT was payable for each claim taken on and for each successful claim a further payment of £175.00 plus VAT (£150.00 plus

VAT in the case of ASL) was due from the firm. The amounts paid by the firm to each organisation were as follow:-

19.1	Sureclaim	£1,206,475.00
19.2	LSC	£180,525.00
19.3	ASL	£61,025.00

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

13. The Applicant confirmed the Respondents had admitted all of the allegations. He submitted that this was a case where commercial expediency had taken precedence over the Rules the purpose of which was to preserve the independence of a solicitor. The amounts involved were substantial and the reputation of the profession had been damaged.
14. Gorman Hamilton had dealt with approximately 6,000 cases which was a substantial number.
15. The Applicant confirmed the Respondents had been realistic in dealing with these proceedings. They had co-operated with the Legal Complaints Service in reimbursing claimants for deductions made and there was no suggestion that the quality of the work provided by the firm was in question.
16. The Applicant confirmed costs had been agreed with the Respondents in the sum of £17,715.38.

### **The Submissions of the Respondents**

17. Mr Havard on behalf of the Respondents confirmed all of the allegations were admitted and that costs had been agreed as indicated by the Applicant. The Tribunal was referred to a letter from Mr Gorman dated 4<sup>th</sup> September 2009 apologising for his absence and confirming that he had retired from the firm in late 2007 and had not renewed his practising certificate in November 2008.
18. Mr Havard submitted this was a case where Gorman Hamilton had not considered the Rules and had honestly believed they were operating within the Rules and in their clients' best interest. None of the Respondents had appeared before the Tribunal previously and indeed the firm had co-operated fully with the Legal Complaints Service and the SRA.
19. When cases were initially received from IDC, it had been difficult to estimate what the success rates would be. Any miners had been encouraged to pursue claims when they would not have been willing to do so had they been exposed to any liability for costs. There was no allegation that clients had been misled regarding costs. The Tribunal was reminded that other firms had appeared before the Tribunal involved in this area of work who had been found to have breached Rule 15.
20. In September 2003, the Respondents had realised that many of the uncertainties connected to these types of claims had disappeared and accordingly no further

deductions from damages were paid to intermediaries. There were other firms who continued to make such deductions but Gorman Hamilton did not do so as they felt it was not justified. They had always strived to pursue maximum compensation for their clients and there was no suggestion that claims had been settled at an undervalue or that the firm had acted in any way to prejudice the clients' best interests. The partners themselves did not receive any monies from the clients damages and the only costs paid to the firm were those paid by the Department of Trade and Industry under the Claims Handling Agreements. At no stage did any of the Respondents act dishonestly and there was no suggestion that they had.

21. There were other cases that had been before the Tribunal where firms had received work and income from trade unions, but there were also some clients whose claims were dealt with through intermediaries. This had come about because by the time the claims came to light, the claimants were no longer members of trade unions so they went through intermediaries who were reputable companies making such claimants aware of their potential claims.
22. The only deductions from client damages in this particular case were ones paid to IDC and none were paid to the Respondents. IDC were slightly different from the other organisations mentioned in that offered more services to claimants. As well as marketing services, they also provided an indemnity for costs and they paid for disbursements and provided ongoing support and assistance throughout the claim. Sureclaim, LSC and ASL provided marketing services only to ensure claimants were aware of their entitlement. Gorman Hamilton had considered doing their own marketing but decided against this, on the basis of previous attempts at marketing which had not proved successful. Gorman Hamilton were of the view that these organisations were experienced in marketing and would do a better job.
23. The Tribunal was referred to an article printed in the magazine of the Motor Accident Solicitors Society which referred to a paper presented by Janet Paraskeva, then Chief Executive of the Law Society in relation to the ban on referral fees. She had stated this remained a difficult issue because "on the one hand the ban in its current form is essentially unenforceable, and it is honoured more in the breach than in the observant (sic)". This article had been published shortly after 2003 when the Respondents had entered into the agreement with Sureclaim.
24. The Tribunal were asked to give the Respondents the benefit of the doubt as they had honestly believed they were complying with the Rules. When the Claims Handling Agreements were initially set up, there had been a gross under estimation of the amount of work that would be pursued and indeed, many former miners were not aware of their ability to pursue legitimate claims until they were so informed by IDC.
25. The Tribunal was asked to consider this case on its own merits. The number of complaints from Gorman Hamilton clients was very small, and overwhelmingly they were satisfied. The Tribunal was provided with a sample of questionnaires from clients to confirm this. Out of thousands of cases pursued by Gorman Hamilton, only 30 complaints had been received.
26. The Tribunal was referred to the Respondents' bundle of documents and asked to take into account a number of references that had been provided. These were highly

complementary and in particular, two references from the Chief Executive of the Legal Complaints Service confirmed the level of co-operation from Gorman Hamilton in writing to claimants who had been subject to deductions from their successful claims. Gorman Hamilton had been the only firm who wrote to their clients on two occasions to ensure clients were aware of their entitlement to reimbursement of the amounts deducted from their compensation. They were also the first firm to pay interest on deductions made and had been open throughout the process.

27. The Respondents now accepted with hindsight that their interpretation of the Rules had been incorrect and that it was this that had given rise to the breach of the Rules. The Tribunal was also reminded that at the time it was believed that such cases were non contentious in nature however, the Tribunal had found in other cases before it, that these types of case were indeed contentious business.
28. Mr Havard submitted that Gorman Hamilton had approached the whole area of work in an honest and transparent manner. All intermediaries were thought to be complying with the Rules and if the Respondents had been told at any time that they were not complying, they would have taken steps to ensure compliance immediately.
29. The Tribunal was referred to a table of cases where the firm had acted for clients who had recovered compensation of less than £500.00. In these cases Gorman Hamilton had topped up the clients compensation so that they received £500.00. The partners had stood together. They all accepted they had been part of the process and the Tribunal was reminded that despite the Law Society's investigation, all the Respondents held unconditional practising certificates. This could be contrasted with other firms who had appeared before the Tribunal. In particular, the Tribunal was referred to the case of Brook, Hartley, Hodgson and Kaur [9658-2007] which, it was submitted, could be compared favourably to the case of Gorman Hamilton.
30. The Respondents had accepted there had been a failure to declare the referral fees to clients. However, they had always tried to maximise clients claims, there had been no conflict of interest at any stage and there had been no dependency by Gorman Hamilton on IDC as they had also received work from other sources.
31. Gorman Hamilton had been set up in 1995 by Mr Gorman and Mr Hamilton. It was a specialist personal injury practice doing principally road traffic accidents. However, it was expanding every year and now employed 190 staff of which 100 were fee earners. There were 9 partners and the firm was doing well, which was also illustrated by the fact that there was a very low 3% turnover of staff. The partners were very supportive of their staff and took training very seriously to ensure proper compliance with the Rules. Mr Gorman had been the Chairman of the Motor Accident Solicitors Society for 1 year and Deputy Chair for 2 years. Mr Hamilton had been on the Motor Accident Solicitors Executive Committee for 7 years and had been involved heavily with the local Law Society.
32. The Law Society investigation had started on 9<sup>th</sup> May 2006 and accordingly, these proceedings had been hanging over the Respondents for a long time. It had been a very stressful time for them during which they had been concerned about adverse publicity and about their individual reputations. The Tribunal were invited to place this case at the lower end of the scale and it was submitted that taking into account all the

circumstances, the Tribunal should consider a financial penalty would be appropriate in relation to sanction.

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

33. The Tribunal had listened carefully to the submissions and had considered all the documents provided. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
34. There were 4 allegations altogether but the facts relating to this case before the Tribunal today were very different from earlier cases. The Tribunal had taken into account the co-operation of the Respondents with the Legal Complaints Service as exemplified in the two letters before the Tribunal from the Chief Executive of the Legal Complaints Service. The Tribunal had also taken into account the extensive reparations that the partners had made and the references provided.
35. The Tribunal had considered the case of Brooke, Hartley, Hodgson & Kaur but found that that case was different on its facts. In the case before the Tribunal today the distinctions were:-
  - (1) Miners had been provided with accurate information regarding costs.
  - (2) Gorman Hamilton had fully co-operated with the Legal Complaints Service and the SRA.
  - (3) Whilst there had been a breach of the Rules, clients did not suffer as a result of these, and indeed, were fully refunded any amounts deducted and received interest on those amounts to ensure there was no loss.
  - (4) Clients interests were not compromised and their claims were pursued to ensure maximum recovery.
  - (5) Clients were fully aware of deductions being made.
36. Whilst the Tribunal accepted there were probably many miners who would never have pursued claims had it not been for the intermediaries making them aware of their positions, it was still essential for solicitors accepting work from such intermediaries to ensure there was proper compliance with the Rules, which were in place for the protection of those clients. In this case, it had been careless of the Respondents not to check the Rules properly and whilst the Tribunal accepted that clients had not suffered as a result of the breaches, the reputation of the profession had been damaged.
37. The Tribunal were mindful that Gorman Hamilton had dealt conscientiously and in clients' best interests with regard to their claims and gave the Respondents credit for their honesty to clients. Taking into account all the circumstances of this case, the Tribunal considered the appropriate sanction was a financial penalty.
38. As the Respondents had stood shoulder to shoulder on the matter, the Tribunal saw no reason to Order different punishments against each individual Respondent and

accordingly imposed a fine of £4,000.00 on each Respondent together with an Order for the costs as agreed.

39. The Tribunal made the following Orders:-

The Tribunal Ordered that the Respondent, Dean Robert Auld of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

The Tribunal Ordered that the Respondent, Tim Gorman of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

The Tribunal Ordered that the Respondent, David Hamilton of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

The Tribunal Ordered that the Respondent, Stephen McCourt of Gorman Hamilton Solicitors, Percy House, Percy Street, Newcastle upon Tyne, NE1 4PW, solicitor, do pay a fine of £4,000.

And it further Ordered that the Respondents do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,715.38. Costs are to be paid jointly and severally by all Respondents.

Dated this 23<sup>rd</sup> day of December 2009  
On behalf of the Tribunal

R B Bamford  
Chairman