

IN THE MATTER OF DAVINDER SINGH BAL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W. M. Hartley (in the chair)
Mr I R Woolfe
Mr. D. Gilbertson

Date of Hearing: 10th September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stuart Roger Turner of Lonsdale's Solicitors, 7 Fishergate Court, Fishergate, Preston PR1 8QF on 21st July 2008 that Davinder Singh Bal, solicitor of 5 Broadway, Broad Street, Birmingham B15 3BQ 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 were that Davinder Singh Bal (the Respondent) was guilty of professional misconduct in each, any/or all of the following, namely:

1. That he had caused or had allowed a cash shortage of £83,521.50 on client account;
2. That contrary to Rule 19 (1) (b) of the Solicitors Accounts Rules 1998, he had failed to either ensure the payment of disbursements within two days of receipt of the funds or if not paid to transfer an equivalent sum for its settlement to client account;
3. That contrary to Rule 32 (1) of the Solicitors Accounts Rules 1998, he had failed to maintain adequate accounting records;

4. That contrary to Rule 7 of the Solicitors Accounts Rules 1998, he had failed to rectify breaches of the Rules promptly upon discovery;
5. That he had misinformed a client with respect to the payment of After the Event insurance premiums;
6. That he had misled a third party's insurers and the Court by informing them that clients had entered into Conditional Fee Agreements before they had;
7. That he had failed to inform clients or to inform them clearly of his relationship with a company known as "Medical Today";
8. That contrary to Rule 15 of the Solicitors Practice Rules 1990 and the Solicitors Client Care and Costs Information Code 1999, he had failed to provide adequate costs information to clients;
9. That he had used misleading letter-headed notepaper contrary to Section 1 of the Solicitors Publicity Code 2001.
10. [This allegation was withdrawn at the hearing with the consent of the Tribunal]

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 10th September 2009 when Stuart Roger Turner appeared as the Applicant and David Morgan of Radcliffes Le Brasseur appeared for the Respondent who was also present.

The evidence before the Tribunal included a statement with exhibits from the Respondent together with his admissions to allegations 1-4, 8 and 9.

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

The Tribunal Orders that the respondent, Davinder Singh Bal of 3 Blackbushe Close, Harborne, Birmingham, B17 8SB, solicitor, do pay a fine of £10,000.00, 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 £16,000.

The facts are set out in paragraphs 1 – 22 hereunder:

1. The Respondent born in 1970, was admitted as a solicitor in 1997. His name remains on the Roll of Solicitors.
2. At all material times the Respondent carried on practice as a sole practitioner in the style of Davy Bal Solicitors (trading as Claim Today Solicitors), 3 Broadway, Broad Street, Birmingham B15 3BQ.
3. The Respondent's businesses had been the subject of an investigation by The Law Society, now the SRA, and on 16th May 2006 its Investigation Officer (IO) Miss Taylor, had begun her inspection resulting in a report being prepared and sent to DJ Middleton, Head of Investigation and Enforcement on 11th October 2006 (the FI Report).

Allegations 1 – 4

4. The IO had established that a minimum cash shortage of £83,571.50 had existed at the inspection date 27th April 2006. Of the shortage, £32,664.75 had been rectified during the course of the inspection by the following payments; £26,244 paid to “80E” in respect of After the Event Insurance premiums and £6,420 on 1st June 2006 to Medical Today.
5. The minimum cash shortage had arisen following the incorrect retention in office account of disbursement payments from third party insurers. The Respondent had informed the IO that he had been in the process of discussing the position with the providers of the After the Event insurance with a view to him paying the balance in instalments. The Respondent had since provided a bank statement which he maintained was documentary evidence that the outstanding shortage had been replaced on 20th October 2006.
6. The books of account had not been in compliance with the Solicitors Accounts Rules. Properly written up accounting records had not been kept to show the Respondent’s dealings with client money in the following regards:-
 - (a) No client ledgers for individual clients had been maintained;
 - (b) No client cash book had been maintained.
 - (c) Disbursements in respect of medical report fees and insurance fees had been routinely paid into office account for longer than the permitted two days.
7. During the investigation the Respondent had accepted that he had been in breach of the Solicitors Accounts Rules.
8. The Law Society had written to the Respondent with a copy of the FI report asking for an explanation of their findings. He had replied inter alia:-

“.....poor systems and a reliance on a large national firm of accountants has led to the poor record keeping and retentions of disbursements.....since [September 2005] a new Accounts Department has been established and considerable resources invested in new systems....a new system has been effective for some time....all disbursements are paid promptly within two days of receipt”.
9. The IO had been provided with a list containing 127 clients where After the Event insurance premiums totalling £77,101.50 had been due to “80E”, an After the Event insurance provider. These amounts had been collected following the partial or full payment of costs from respective third party insurers at the conclusion of cases. The sums had been incorrectly retained in the firm’s office bank account. The Respondent had maintained that he had “administration issues” with 80E and that they had let things slip, although his own firm was similarly at fault. In his written response to The Law Society he had stated that monies owed to 80E were now held in client account.

10. The IO had been provided with a list of 14 archived matters which had revealed £6,420 worth of unpaid Medical Today invoices despite the firm having been paid them. The sums had been lodged directly into the firm's office bank account. The IO had discovered that a central record of invoices was not being maintained and accounting staff had not known how to tell whether the firm had paid Medical Today's invoices or not.
11. In his written response to The Law Society the Respondent had confirmed that those items had remained unpaid, in error, due to poor accounting systems but that new procedures had been put in place to ensure it would not happen again.

Allegation 5

12. It had been noted that the Respondent had represented a Mr B in his personal injury claim and that the Respondent's firm had written to Mr B confirming: -

“...that it is the policy of Claim Today Solicitors Limited to meet all costs of this insurance policy.”

That had been incorrect and misleading, as on 2nd February 2006 the firm had sent a schedule of costs and disbursements to the third party's insurer which had included the After the Event insurance premiums. Claim Today Solicitors did not therefore meet the costs of the policy as those costs had been met by a third party. The premium had been subsequently paid by them.

Allegation 6

13. From the sample of 23 client files, the IO had noted that there had been a delay of at least 43 and at most 873 days between the client care letter being sent and the conditional fee agreement being sent to the client for signature. A majority of the files however had shown that the third party's insurers had been informed that the client had entered into a CFA from the outset, in other words before they had actually done so.
14. The IO had also noted from the 23 files reviewed that if a matter had proceeded to Court, the firm would have completed a notice of funding by way of a CFA dated at the date of the initial retainer and not dated when it had actually been signed. The Respondent had told the IO that it had been the intention for the CFA to be entered into at the date of the retainer but he had admitted that the letter sent to the other side had been standard and could have caused some ambiguity.

Allegation 7

15. The IO had also noted that the Respondent's firm had provided inaccurate and misleading information to their clients by writing to them:-

“...our medical department will contact you once they have obtained your medical notes.....”

The Respondent had accepted that he had not had a medical department and that the medical department he had been referring to had been the medical agency his firm had instructed.

16. The Respondent's company had used the services of Medical Today a medical agency which instructed doctors to obtain medical evidence for clients of solicitors. The Respondent had told the IO that Medical Today had been his mother's company and that his brother had been the company secretary and that he, the Respondent, sometimes had worked as a consultant to Medical Today.
17. The Respondent's accounts staff had provided the IO with a schedule of payments made to Medical Today from 23rd May 2005 to 22nd December 2005 which had totalled £278,840. £490 had been charged by them per report. The IO had noted that in some cases clients had been medically examined at the Respondent's office premises. On 3rd March 2006 the Respondent had received written guidance from the Ethics Department of The Law Society which had stated inter alia that:-

“...Your relationship with it [Medical Today] is relevant to your clients. You should, therefore, mention to them that directors of Medical Today are related to you, but can of course give them your reassurances in respect of your independence etc.”

18. The client care letter shown to the IO by the Respondent had demonstrated that clients had not been informed of the relationship with Medical Today. For example, in a personal injury claim handled by the firm where Medical Today had been instructed:-
 - (a) On 11th March 2005 Mr B, a medical expert, had sent an invoice addressed to the firm asking for payment for preparing a medical report;
 - (b) On 4th September 2005 the firm had received a chasing letter from Mr B;
 - (c) On 7th September 2005 the firm had sent a cheque to Mr B from the office bank account;
 - (d) On 4th May 2006 the case had settled;
 - (e) On 24th April 2006 the firm had claimed costs and disbursements from the third party's insurer which had included a medical report from Medical Today for £490.

The expert had written directly to the firm and not to Medical Today for payment and the schedule sent to the third party insurers had claimed a medical report fee from Medical Today.

Allegation 8

19. Additionally, from the sample of 23 clients the IO had noted that in 21 cases the client care letters had failed to mention how the client's case was to be funded. The Respondent had informed the IO that the CFA should have been explained to the client from the outset although it had sometimes been done on the second telephone

call with a signed CFA being obtained from the client later in the proceedings. The Respondent had accepted that the levels of service leaflet sent out with the client care letter had not used the expression “CFA” or “Success Fee” but it had used the phrase “No Win – No Fee” which the Respondent had felt clients would understand. The Respondent, however, in his written response to The Law Society had not accepted that there had been a breach of Rule 15 despite having accepted in interview with the IO that prior to a new level of service leaflet being introduced in December 2005:-

“...it was a haphazard system which had been watered down and diluted until it was more or less non-existent”.

The Respondent had also accepted that he had delegated many functions to other members of staff and that he should have taken into consideration what the paralegals had been sending out to clients.

20. In the matter of Mrs JB a client of the firm:-
- (a) On 3rd December 2003 a client care letter had been sent to the client;
 - (b) On 31st December 2003 the firm had written to the third party’s insurers advising them that they had entered into a CFA with the client;
 - (c) On 7th January 2006 the firm had written to Mrs JB asking her to sign a CFA;
 - (d) On 16th January 2006 the client had telephoned the firm and had asked for the CFA to be explained;
 - (e) On 27th January 2006 another letter had been sent to the client informing her that the CFA had been mislaid and asking her to sign a further agreement.
 - (f) On 3rd March 2006 the client had accepted an offer of £4,000 in full and final settlement.
 - (g) On 16th March 2006 a schedule of costs and disbursements had been sent to the third party insurers which had included a success fee totalling £800.

Allegation 9

21. On the letter-headed notepaper of both Davy Bal Solicitors and Claim Today Solicitors it was stated that, “A list of Directors is available for inspection at our registered office”. This had been misleading because Mr Bal had been the only director of both businesses. That statement had also been in contravention of the Solicitors Publicity Code which requires the names of all partners and/or directors to be listed where the number of partners is less than twenty. Despite this the Respondent had rejected the comment that the notepaper was misleading.
22. On 19th December 2006 an Adjudication Panel had resolved, amongst other things, to refer the Respondent’s conduct to the Solicitors Disciplinary Tribunal.

The submissions of the Applicant

23. The Applicant sought the Tribunal's permission to withdraw allegation 10 on the basis that the SRA accepted that there had not been a breach of the relevant Rules. The Tribunal allowed allegation 10 to be withdrawn.
24. The Applicant took the Tribunal through the allegations and the facts in support together with the relevant documentation in the FI report dated 11th October 2006. He explained that the Respondent admitted allegations 1-4, 8 & 9 and also admitted the facts related to allegations 5-7 but denied that those facts had amounted to professional misconduct.
25. Dealing with allegation 5, misinforming a client, the Applicant explained the allegation related to the Respondent's firm, Claim Today Solicitors, informing clients in correspondence that "our medical department will contact you once they have obtained your medical notes...." The firm had not had a medical department and had used a related company, "Medical Today" to obtain medical notes and to arrange medical appointments. Moreover, the firm had claimed that it met all the costs of an ATE insurance policy should a claim be lost. However in fact that had not been the case.
26. Allegation 6 referred to the notification by the Respondent's firm to third parties that clients had signed CFAs before they had even received those agreements to sign. The Applicant submitted that third parties had been misled in that some CFAs had been backdated. Such notifications had not reflected the true position, merely the intention under the retainer. Backdating, the Applicant submitted, affected both the integrity of the solicitor concerned and the reputation of the profession in general. He referred to the opinion of Counsel produced by the Respondent which had made it clear that backdating should not take place. As an alternative a statement such as "this agreement takes effect from...." with a date could be used. In response to a question from the Tribunal, the Applicant explained that success fees were payable from the date of the CFA.
27. Turning to allegation 7, that the Respondent had failed to inform clients of his relationship with "Medical Today", the Applicant submitted that it involved serious misconduct. He referred to the file of Mr AC in which a Medical Today report had been claimed as a disbursement of £490 from the third party insurers while direct payment of only £300 had been made to the Doctor from the firm's office account. "Medical Today" was a company owned by the Respondent's mother and in which the Respondent's brother was the company secretary. The Respondent had said that he had sometimes worked for Medical Today as a consultant and that his firm's accounting staff had carried out the company's bookkeeping. The Applicant submitted that the extra sum of £190 for the provision of a medical report was in effect "a hidden profit".

Oral evidence by the Respondent

28. The Respondent relied on his statement dated 10th September 2009. In relation to allegation 5, he stressed that clients had never been asked to pay any contribution to the ATE policy whether successful or unsuccessful in their claims.

29. The Respondent said that it had always been clear from the outset both to clients and to third parties that matters were being pursued under CFAs. He confirmed that since the investigation he had ensured that all CFAs were signed at the outset. Any previous backdating had been caused by exceptional circumstances within his firm. The Respondent explained that he had sought Counsel's opinion on the law relating to CFAs having retrospective effect because of his concerns about the allegation. He fully accepted that as a solicitor he should not do anything to represent that an agreement was signed other than on the actual date of signature.
30. The Respondent detailed the work of Medical Today and compared its rates to those of 'Mobile Doctors' which applied a similar uplift to the actual cost of a medical report.
31. In mitigation, the Respondent referred to a medical report from his general practitioner explaining about his work related stress caused by difficulties with a former senior employee of his firm. He referred to the relevant details in his statement. The Respondent also explained the changes in procedures in his firm since Robin Bhol joined the firm in August 2007. Moreover, his firm Davy Bal Solicitors Ltd, trading as Claim Today Solicitors now had four solicitor directors as part of a staff of 47. The Respondent wished the Tribunal to know that he accepted his shortcomings and that he had made some serious errors of judgement but he had been overwhelmed at the time by very difficult circumstances involving the need for police protection.
32. In response to a question from the Tribunal, the Respondent confirmed that if a matter was unsuccessful neither his firm nor the client was liable to pay the ATE insurance. The Respondent also confirmed that Medical Today was a separate company from which he did not benefit financially in that he was not a shareholder and did not receive any payment from the company by way of commission or otherwise.
33. In cross examination, the Respondent accepted that, relating to allegation 5, misinforming a client with respect to ATE insurance by stating that it was the policy of Claim Today to meet the costs of the insurance policy, could be seen as inaccurate. However, the purpose of the letter, as a whole, had been to reassure the client that he would not personally have to pay for the costs of the ATE policy.
34. With reference to allegation 6, misleading the Court and third parties, the Respondent said that some CFAs had been backdated when the usual procedures had broken down because of exceptional circumstances in the office. The intention of the backdating had not been to mislead but to reflect the pre-existing agreement with the client. Third parties had been aware of the CFA basis of the retainer from the beginning. However, procedures now ensured that all CFAs were signed at the outset of the matter.
35. Dealing with Medical Today, the Respondent said that medical reports could be independent even if a client was examined in the solicitor's offices because the key issue was the independence of the medical expert. If the firm of solicitors did not use a company like Medical Today they would have to do the administrative work relating to obtaining the report at solicitor charging rates.

Submissions on behalf of the Respondent

36. Referring to allegation 5, Mr Morgan submitted that the effect of the misinformation had been nil. There had been no cost to the client. He stressed that the wording had been sloppy but there had been no intention whatsoever to mislead. As to misleading other parties, again there had been no intention to mislead. The Respondent should not have backdated but could have achieved the same end by expressing the CFA to be effective from a particular date. In any event, evidence from reviewed files showed that third party insurers were being told that the matter was proceeding under a CFA. Testimonials on behalf of the Respondent were handed to the Tribunal.

Further oral evidence on behalf of the Respondent

37. Robin Dranath Bhol gave evidence on oath as to his role in Davy Bal Solicitors Ltd and of the changes in procedures that had taken place in the firm over the last two years. He relied on his witness statement of 14th August 2009. He explained that from his professional experience, he was very familiar with CFAs and that the firm did not now proceed with matters involving CFAs until the relevant CFA had been signed by the client.

Further submissions on behalf of the Respondent

38. Dealing with allegation 4, failure to rectify errors promptly, Mr Morgan referred the Tribunal to the details in the Respondent's statement about the very unpleasant parting of the ways with Mr Khan, a former senior employee of the firm, in 2005. Mr Khan had set up a firm with a very similar name "Claim Time Solicitors" and had taken some 200 clients away from Claim Today Solicitors. Mr Morgan referred to judgements by the Employment Tribunal against a former employee of the Respondent working for Mr Khan. The Employment Tribunal had noted that "rarely has the Tribunal made such a strong finding in respect of credibility and intimidating behaviour against a party". That statement had referred to behaviour against the Respondent by a former employee who had been totally unsuccessful before the Employment Tribunal. Mr Morgan submitted that the judgments of the Employment Tribunal confirmed the pressures on the Respondent during the relevant period.
39. Turning to Medical Today, Mr Morgan explained that the Respondent had accepted that he should have told his clients more but that he had not been making any secret profit by using Medical Today. The Respondent had also admitted not providing adequate costs information to clients. Previously he had considered that all clients needed to know was that they would not incur any costs or charges.
40. As to allegation 9, the Respondent now accepted that he should have disclosed his name on the firm's letter-head. He had submitted a copy of the letter head to The Law Society for approval and had never intended to deceive.
41. Mr Morgan also referred the Tribunal to the issue of delay. He explained that there had been some 19 months between the referral of the Adjudication Panel in December 2006 and the issue of proceedings in July 2008. The Respondent, as evidenced by his

GP's Report, had suffered additional stress because of the time between the referral in December 2006 and the Tribunal's hearing in September 2009.

The decision of the Tribunal

42. Having considered all the evidence and the testimonials together with the helpful submissions of both the Applicant and Mr Morgan, for the Respondent, the Tribunal found all the allegations proved. However, the Tribunal was satisfied that the Respondent had not at any time consciously sought to mislead either clients or third parties. Although recognising the Respondent's position as to retainers being from the outset on the basis of CFAs, the Tribunal agreed with the findings of previous Tribunals that backdating by solicitors was not a trivial matter. It was not something that a solicitor should do because it had the potential to mislead. However, the Tribunal had taken into account the difficult situation faced by the Respondent in 2005 – 2006, the subsequent revision of procedures and the delay in the proceedings.
43. In all the circumstances the Tribunal considered that a financial penalty of £10,000 was appropriate. The Tribunal noted that no individual client had suffered from the Respondent's shortcomings and that the Respondent had taken steps to put matters right and to ensure that he had the involvement of experienced colleagues in the running of the business. The Tribunal also Ordered that the Respondent pay the costs agreed and fixed in the sum of £16,000.

Dated this 12th day of January 2010
On behalf of the Tribunal

Mr. W. M. Hartley
Chairman