

IN THE MATTER OF JULIAN PETER WILLIAM FALLOWS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr D Glass
Mr D E Marlow

Date of Hearing: 29th September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An Application was duly made by Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on 22nd January 2009 on behalf of the Solicitors Regulation Authority that Julian Peter William Fallows of Fallows & Co, 83 Great Bridge, Tipton, West Midlands, DY4 7AY, solicitor, 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 allegation against the Respondent was that contrary to principle 30.04 of the Guide to Professional Conduct of Solicitors 1999 and Rule 20.03 (1) of the Solicitors' Code of Conduct 2007, he failed to deal with the Solicitors Regulation Authority and the Legal Complaints Service in an open, prompt and co-operative way:-

1. in respect of a complaint from Mrs G between 23rd August 2007 and 26th June 2008.
2. in respect of a complaint from Miss J between 6th November 2007 and 22nd July 2008.
3. in respect of a complaint from Mr W between 20th September 2005 and 30th October 2008.

The allegation was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 29th September 2009 when the Applicant appeared and the Respondent appeared and was represented by Mr Clive Woolliscroft of Hacking Ashton solicitors of Berkeley Court, Borough Road, Newcastle under Lyme ST5 1TT.

The evidence before the Tribunal

The evidence before the Tribunal included the rule 5 statement of the Applicant together with an accompanying bundle, the statement of the Respondent, together with accompanying testimonials and a written submission on behalf of the Respondent.

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

The Tribunal Orders that the respondent, Julian Peter William Fallows of Fallows & Co, 83 Great Bridge, Tipton, West Midlands, DY4 7AY, solicitor, do pay a fine of £1,000, 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 £2,500.

The facts are set out in paragraphs 1 – 13 hereunder:-

1. The Respondent was born in July 1960 and admitted as a solicitor in September 1995. His name remains on the Roll of Solicitors and his last address is Fallows & Co, 83 Great Bridge, Tipton, West Midlands DY4 7AY where he remains in practice.

Complaint by Mrs G

2. In 2002 the Respondent was instructed by Mrs G to deal with a personal injury claim on her behalf. She became dissatisfied with the way in which the matter was being dealt with and made a complaint to the Legal Complaints Service (LCS) in 2007. On 23rd August 2007 the LCS wrote to the Respondent seeking his explanation in the matter. No response was received and the Respondent was written to again on 17th October 2007. In between the letters an unsuccessful attempt had been made to contact him by telephone on 18th September. A further telephone call was made on 1st November 2007 but it was not possible to speak to the Respondent. However, his partner, Mr H, returned the call and the next day a short letter of response was sent to the LCS by Fallows & Co; the letter had the reference of the Respondent but it was not clear who actually wrote it.
3. On 20th November 2007 the LCS wrote to Mr H following a telephone conversation seeking further particulars. A response was provided by an undated email to which the LCS responded on 4th December 2007 with a request for further particulars, including a chronology of the work carried out by the firm. There was no response to this request and on 24th January 2008 the LCS wrote to Mr H enclosing a direction under Section 44B Solicitors Act 1974 for the file to be sent to them within 7 days.
4. The file was not received from the Respondent until six weeks after the request was made (under cover of a letter dated 6th March 2008). In the meantime, the matter had been referred by the Legal Complaints Service to the SRA who wrote to the Respondent on 4th March 2008. The SRA wrote to the Respondent on 2nd April 2008

seeking his explanation in respect of this failure to respond adequately or at all to letters from the LCS of 23rd August, 17th October, 20th November 2007 and 24th January 2008. They also asked him to explain why the Order made under Section 44B of the Solicitors Act 1974 on 24th January 2008 which required production of the file within 7 days was not complied with for almost six weeks. A similar letter was sent to Mr H who sent a response on 8th April 2008 expressing regret at his partner's failure. There was still no response from the Respondent, who was written to again on 27th April with a response required within eight days. No such response was received and the Respondent was told on 5th June that the matter was being referred to an Adjudicator. Although there was a letter from Mr H of 17th June 2008 there was still nothing from the Respondent.

5. On 26th June 2008 an Adjudicator resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

Complaint by Miss J

6. In 2002 the Respondent was instructed by Miss J in connection with a personal injury claim. He handled the matter until 2006, but missed the limitation date which was 31st May 2006. The matter was taken over by a new firm, C&Co who requested the file from the Respondent but did not receive it for some considerable time. They made a complaint to the LCS in February 2007.
7. There followed correspondence from the LCS to the Respondent and on 6th November 2007 he offered to conciliate the complaint for £1,000. C&Co took their client's instructions and Miss J accepted the offer on the basis that the compensation would be paid within 14 days. This information was conveyed to the Respondent on 19th November. The LCS closed the file as it appeared that the matter had been resolved.
8. The compensation was not paid by the Respondent within 14 days and the LCS made attempts to call him. He was written to on 18th December and further telephone calls were made by the LCS on 19th and 20th December. A further attempt was made to contact him by phone on 3rd January 2008 and this was followed up by a letter sent both by fax and DX requesting that he send the money by 14th January 2008.
9. The compensation was not sent to Miss J as requested and this caused the LCS to reopen their complaint file on 7th February 2008. They wrote to the Respondent on this date but again there was no reply and they wrote again on 22nd February requesting a response by 29th February. Having had no response, they attempted to contact him by telephone on 3rd March and followed this up with a letter which was sent in the fax and DX. None of this contact brought any response and a further letter was sent on 12th March 2008. Ultimately the compensation was paid on 25th March 2008 nearly four months after it should have been paid.
10. The conduct of the Respondent was referred to the Solicitors Regulation Authority and they wrote to him on 28th May and 16th June 2008 seeking his explanation. No response was received to either of these letters and the matter was referred to the Adjudicator on 9th July 2008. On 22nd July he resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

Complaint by Mr W

11. In 2005, the Respondent was the subject of a complaint from a client Mr W, for whom he had been acting in a personal injury matter. There were delays in his dealings with correspondence with the Legal Complaints Service in 2005 and 2006 and on 3rd March 2006 a requirement was made under Section 44B Solicitors Act 1974 for him to send a file in to the matter to the LCS. This he failed to do.
12. The matter remained unresolved at the beginning of 2008 and the LCS wrote to the Respondent on 27th March, the 16th and 30th April without getting any response. The matter was thereafter referred to the SRA who wrote to him on 9th July, finally eliciting a response on 27th July.
13. The SRA wrote to the Respondent again on 30th July 2008 and thereafter prepared a case note for an Adjudicator who resolved on 30th October 2008 to refer the conduct of the Respondent to the Tribunal.

The Submissions of the Applicant

14. The Applicant indicated that there was one allegation containing three breaches of the Solicitors' Code of Conduct arising from three separate complaints. The allegation was admitted and the costs in the case amounted to £3,174.23.

The Submissions of the Respondent

15. The Respondent told the Tribunal that he was deeply ashamed and wished to apologise to them for his actions which meant he appeared before them today. He believed that his problems had a root cause in health problems that manifested themselves during 2006. In the months that followed the discovery of these problems he was under a lot of strain generally which had been greatly exacerbated by his health problems. In short, he had been unable to cope with the strain and stress of his problems and this led to the spiralling difficulties with the LCS and the SRA.
16. The Respondent indicated that some of his failure to reply was essentially due to his ignorance of the procedures and the fact that he believed the LCS and the SRA were working in tandem upon the cases.
17. In the case of Mrs G he had genuinely believed that the documentation had been provided to the LCS before he had even been notified of the complaint. Similarly in the case of Mr W he had worked on the complicated personal injury file for some five years and had mistakenly believed that the matter had been resolved, a belief that he had formed from correspondence received from the LCS to whom he had provided the file. He believed that during all of this time he was not functioning properly due to the state of his health.
18. The Respondent asked the Tribunal to accept that his performance over this period was entirely inconsistent with his past performance and his present and future performance. He also asked the Tribunal to consider the testimonials that had been given on his behalf, to the effect that he was a highly regarded solicitor who is prepared to go "the extra mile".

19. The testimonials confirmed that the Respondent operated in an area of deprivation and that he was providing legal services to some of the most vulnerable members of society, often with very little financial reward. His personal circumstances were that his practice was operating with a small profit split between Mr Fallows and his partner. In addition he still had family responsibilities. It was submitted on behalf of the Respondent that his financial position was not strong and that that should be taken into account in any penalty or costs that the Tribunal should impose.

The Findings of the Tribunal

20. The Tribunal found the allegation to have been substantiated, indeed it was not contested. The Tribunal had listened very carefully to the submissions on behalf of the Respondent and read the references supplied on his behalf but had regard to the fact that it was a serious matter for a solicitor to ignore his regulators. In the Respondent's case it would appear that in addition to his health problems he needed more support in his practice in order to prevent the situation recurring. The Tribunal was of the view that a fine was the most appropriate sanction in this case and that a fine in the order of £2,500 would reflect the seriousness with which the Tribunal viewed these failures. However, in the Respondent's financial circumstances the Tribunal recognised that the principles laid out in the Administrative Courts judgement in the case of Frank De Souza - v - The Law Society [2009] EWHC 2193 (admin) would apply. It therefore thought it appropriate in this case to reduce the fine to £1,000. Similarly, the schedule of costs in the sum of £3,174.23 seemed eminently reasonable but this would be reduced to £2,500 using the same principles.
21. The Tribunal Orders that the respondent, Julian Peter William Fallows of Fallows & Co, 83 Great Bridge, Tipton, West Midlands, DY4 7AY, solicitor, do pay a fine of £1,000, 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 £2,500.

Dated this 18th day of December 2009
On behalf of the Tribunal

Mrs J Martineau
Chairman