

IN THE MATTER OF BRIAN HAZLEHURST, CHRISTOPHER MURPHY,
STEPHEN DAVID GARRETT and MARTYN ROBERT BROWN, solicitors
and SARAH LOUISE MORLEY, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr I R Woolfe
Mrs N Chavda

Date of Hearing: 16th June 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 ("SRA") by Jonathan Richard Goodwin of Jonathan Goodwin, solicitor advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 29th August 2008 that Brian Hazlehurst, Christopher Murphy, Stephen David Garrett, and Martyn Robert Brown, solicitors, 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.

A further application was made on behalf of the SRA that an Order might be made by the Tribunal directing that, as a date to be specified in the Order, no solicitor should except with the permission of the SRA for such period and subject to such conditions as the SRA might think fit to specify in the permission, employ or remunerate in connection with the practice of a solicitor, Sarah Louise Morley of 10 Kinloss Road, Greasby, Wirral, Merseyside, CH49 3PS a person who was or had been a clerk to a solicitor within the meaning of the Solicitors Act 1974 or that such Order might be made as the Tribunal should think right.

The allegations against Brian Hazlehurst ("First Respondent"), Christopher Murphy ("Second Respondent"), Stephen David Garrett ("Third Respondent") and Martyn Robert Brown ("Fourth Respondent") were that they had:

1. Facilitated, permitted or acquiesced in money being withdrawn from client bank account, contrary to Rule 22 of the Solicitors Accounts Rules 1998 ("the 1998 Rules");
2. Failed to keep accounts properly written up in accordance with Rule 32 of the 1998 Rules;
3. Failed to exercise any or adequate supervision contrary to Rule 13 of the Solicitors Practice Rules 1990.

The allegation against Sarah Louise Morley ("Fifth Respondent") was that she had been guilty of conduct of such nature that in the opinion of The Law Society it would be undesirable for her to be employed by a solicitor in connection with his or her practice as a solicitor in that she had utilised client and office account funds for her own benefit. For the avoidance of doubt this was an allegation of dishonesty.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 16th June 2009 when Jonathan Goodwin appeared as the Applicant and the First, Second, Third and Fourth Respondents were represented by Paul Mitchell of Counsel instructed by Simon Oliver of Parabis Law LLP. The Fifth Respondent did not appear nor was she represented.

The evidence before the Tribunal included the admissions of the First, Second, Third and Fourth Respondents.

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

The Tribunal Orders that the Respondent, Brian Hazlehurst of Fanshaw Porter & Hazlehurst, 11 - 12 Hamilton Square, Birkenhead, Merseyside, CH41 6AX, solicitor, do pay a fine of £4,000, 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 £13,000, such costs to be joint and several.

The Tribunal Orders that the Respondent, Christopher Murphy of Fanshaw Porter & Hazlehurst, 11 - 12 Hamilton Square, Birkenhead, Merseyside, CH41 6AX, solicitor, do pay a fine of £4,000, 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 £13,000, such costs to be joint and several.

The Tribunal Orders that the Respondent, Stephen David Garrett of Fanshaw Porter & Hazlehurst, 11 - 12 Hamilton Square, Birkenhead, Merseyside, CH41 6AX, solicitor, do pay a fine of £4,000, 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 £13,000, such costs to be joint and several.

The Tribunal Orders that the Respondent, Martyn Robert Brown of Fanshaw Porter & Hazlehurst, 11 - 12 Hamilton Square, Birkenhead, Merseyside, CH41 6AX, solicitor, do pay a fine of £4,000, 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 £13,000, such costs to be joint and several.

The Tribunal Orders that as from 16th day of June 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Sarah Louise Morley of 10 Kinloss Road, Greasby, Wirral, Merseyside, CH49 3PS a person who is or was a clerk to a solicitor and the Tribunal further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,000, such costs to be joint and several.

The facts are set out in paragraphs 1-32 hereunder:

1. The First Respondent, Brian Hazlehurst, born in 1950, was admitted as a solicitor in 1974. His name remained on the Roll of Solicitors.
2. The Second Respondent, Christopher Murphy, born in 1953, was admitted as a solicitor in 1980 and his name remained on the Roll of Solicitors.
3. The Third Respondent, Stephen David Garrett, born in 1953, was admitted as a solicitor in 1978 and his name remained on the Roll of Solicitors.
4. The Fourth Respondent, Martyn Robert Brown, born in 1967, was admitted as a solicitor in 1998 and his name remained on the Roll of Solicitors.
5. The Fifth Respondent, Sarah Louise Morley, born in 1967, was employed as a clerk by the Respondent's firm.
6. At all relevant times the First, Second, Third and Fourth Respondents had carried on practice in partnership under the style of Fanshaw Porter & Hazlehurst from offices at 11-12 Hamilton Square, Birkenhead, Merseyside, CH41 6AX and 38 Bebington Road, New Ferry, Merseyside, CH62 5BH.

Solicitors Accounts Rules breaches

7. The Forensic Investigation Unit of the SRA had carried out an inspection of the Respondents' books of account commencing on 4th June 2007. A Report had been prepared as a consequence of the inspection and dated 31st July 2007.
8. The books of account had not been in compliance with the Solicitors Accounts Rules.
9. The Fifth Respondent, Ms Morley, a former unadmitted clerk, had misused clients' funds and as a consequence had created a minimum cash shortage on client bank account of £102,826.99 which subsequently had been rectified in full.
10. The First, Second, Third and Fourth Respondents had previously rectified part of the shortage by payment of £82,678.11, had replaced a further sum of £2,000 on 15th July 2007 and had subsequently replaced the balance of £18,148.88.

11. The partners had had cause to investigate one of Ms Morley's files and subsequent enquiries had revealed Ms Morley's widespread misuse of client funds. The firm had self-reported the conduct of Ms Morley to the SRA.
12. The minimum cash shortage had occurred as a consequence of:
- | | |
|--|------------|
| (i) personal payment by Ms Morley | £2,853.57 |
| (ii) payments of a personal nature by Ms Morley | £13,634.65 |
| (iii) incorrect payments to Financial Institutions | £14,388.23 |
| (iv) cash withdrawn from estates by Ms Morley | £71,950.54 |

Personal payment from client bank account

13. On 20th April 2006 client bank account had been charged with a cheque payment to "NatWest Home Loans" in the sum of £2,853.57. The payment had been requested by Ms Morley on 7th April 2006 and had been allocated to the EH deceased client ledger account.
14. Enquiry had revealed that there had been no connection at all between the payment and the affairs of EH deceased. Following subsequent enquiry by the Fourth Respondent with NatWest bank, the bank had confirmed that the payment of £2,853.57 had been applied to the mortgage account of Mr KR and Ms S Morley for the property, 10 Kinloss Road, being the private address of the Fifth Respondent. Mr R was known to be Ms Morley's partner.

Payments of a personal nature

15. Between 29th April 2005 and 15th March 2006 client bank account had been charged with seven payments to H Limited ranging between £1,272.91 to £2,839.18 totalling £13,634.65.
16. The payments had been made at the request of Ms Morley and charged to four ledger estate accounts. Enquiry had revealed no connection between the payments and the affairs of the estate matters to which they had been charged.
17. Subsequent enquiry by the Fourth Respondent with H Limited had shown that the company had received the funds in respect of rental for business premises for FR, a business operated by Mr KR, Ms Morley's partner.
18. The Senior Investigation Officer had written to H Limited who had replied by letter dated 20th July 2007 indicating that the funds had been paid directly into their bank account by FR in respect of rent due on an industrial workshop.

Incorrect payments to financial institutions

19. Between 24th December 2004 and 18th November 2005 client bank account had been charged with 12 payments to financial institutions ranging between £98.70 and £2,934.68 totalling £14,388.23. The payments had been made at the request of Ms Morley and had been charged to seven client ledger estate accounts.
20. Enquiry had revealed that there had been no connection between the payments and the affairs of the estate matters charged.

Cash withdrawals from estates

21. Between 4th February 2003 and 4th May 2006 client bank account had been charged with 75 payments ranging between £112 to £4,450 and totalling £71,950.54 which had been drawn to cash.
22. The payments had been made in cash at the request of Ms Morley and had been charged to 12 client ledger estate accounts. There had been no evidence that the cash sums drawn had been applied for the affairs of the estate matters charged, with no receipts or acknowledgements for any cash sums being found.
23. The partners had indicated that they believed that Ms Morley had withdrawn the cash sums for her own purpose.
24. The partners had established that Ms Morley had instigated false entries in the books of account, whereby client payments had been charged to incorrect ledger accounts and client receipts had been credited to incorrect ledger accounts.
25. It had been also ascertained that between August 2003 and July 2005 Ms Morley had withdrawn eleven amounts in cash from office account, ranging between £28 to £750 and totalling £1,331.
26. Further, it had been ascertained that between 2003 and 2006 Ms Morley had received funds in cash from ten clients for the payment of bills which she had not paid over to the practice.
27. The First, Second, Third and Fourth Respondents had accepted the contents of the Report dated 31st July 2007.
28. By letter dated 19th September 2007 the Fourth Respondent, who responded to the SRA on behalf of the First, Second and Third Respondents as well as himself, had said:

"As a firm we have to accept that, with the benefit of hindsight, the supervisory arrangements in place at the time that Ms Morley was employed were not sufficiently robust.

He went on to indicate that procedures had been implemented to ensure that such problems did not occur in the future.

29. By letter dated 6th September 2007 the SRA had written to the Respondents enclosing a copy of the Report and seeking their explanation. The Fourth Respondent had provided a collective response on behalf of himself, the First, Second and Third Respondents by letter dated 19th December 2007.
30. Further representations had been provided on behalf of the First and Fourth Respondents respectively by letter dated 20th December 2007.
31. The Fifth Respondent had failed to reply or provide an explanation.
32. The matter had been considered by an Adjudicator on 14th February 2008 who had resolved to refer the conduct of the Respondents to the Tribunal.

The submissions of the Applicant

33. The Applicant explained that service on Ms Morley had been effected by a process server at her last known address. He referred to the witness statement of Mr John Bailey. Subsequently, notice of the hearing date had been effected by way of special delivery. That notice had not been returned. The Tribunal confirmed that it was satisfied as to service under the provisions of the Tribunal's Rules.
34. The Applicant took the Tribunal through the allegations and the relevant facts and documentation, including the Forensic Investigation Report. He submitted that Ms Morley had misappropriated clients and office funds for her own benefit and in so doing she had acted dishonestly.
35. The First, Second, Third and Fourth Respondents had admitted the alleged breaches of the Solicitors Accounts Rules. The Applicant submitted that the First, Second, Third and Fourth Respondents had a duty to ensure compliance with the Solicitors Accounts Rules. He said that it was a matter of some concern that Ms Morley had been able to misappropriate clients' funds over a period of approximately three years and in particular, had been able to draw in excess of £71,950 in cash directly from client account.
36. Moreover, the Applicant submitted that the First, Second, Third and Fourth Respondents had failed to exercise any, or any adequate, supervision of Ms Morley. During the course of the inspection the First Respondent had said that as "nominal" head of the non-contentious department he had supervised Ms Morley's work as an unadmitted "para legal". However, with the benefit of hindsight the First, Second, Third and Fourth Respondents had accepted that the supervisory arrangements had not been sufficiently robust.
37. The Applicant explained that whilst Ms Morley had taken no part in the proceedings, the First, Second, Third and Fourth Respondents had agreed costs at £13,000.

The Submissions on behalf of the Respondents

38. Counsel stressed that although his clients had admitted the allegations against them, he asked the Tribunal to take into account that they had not acted improperly and that their integrity had not been impugned. They had self-reported Ms Morley's behaviour

and no member of the public had suffered any loss because of her cunning and deceitful acts.

39. Counsel referred the Tribunal to the definition of "professional misconduct" and to the case of Bolton -v- The Law Society [1994] 1 WLR 512CA. He stressed that breaches of the Solicitors Accounts Rules involved strict liability. He explained that the firm's accountants had audited the firm's books each September over the three relevant years and had not discovered Ms Morley's actions. The Respondents had trusted Ms Morley. Moreover, Mr Perkins from The Law Society had, on the 2nd and 3rd May 2006, inspected some of Ms Morley's files while investigating a failure to deal with complaints. Mr Perkins had not noticed any problems. While not seeking to excuse the Respondents, Counsel submitted that in not appreciating what Ms Morley had been doing, they had not been incompetent.
40. Turning to the allegation as to lack of supervision, Counsel stressed that the Respondents had trusted Ms Morley because they had had no reason not to trust her and she had deceived them. Counsel submitted that part of the purpose of sanctions was to ensure compliance in the future. He explained to the Tribunal that the Respondents had taken steps to change the way in which clients' monies were handled so as to avoid any future losses. Counsel stressed that the Respondents had acted with integrity in taking out loans in order to make immediate repayments. Counsel explained that not only had the Respondents self-reported but they had cooperated with the police and had hired a locum solicitor to go through all of Ms Morley's files.
41. In response to a question by the Tribunal, Counsel explained that the matters had taken some twelve months to sort out. While the firm had been covered by its insurers, subject to an excess of £5,000, they had had to take out loans of £30,000, the interest on which had not been covered by insurance nor had the cost of a locum solicitor at some £50,000. The Tribunal also asked about the procedure for the requisition of cheques. Counsel explained that had Ms Morley requested a cheque to be issued to a bank and had stated on the cheque requisition that the monies were required to settle the debt on behalf of an estate, that would not have appeared unreasonable or suspicious.
42. Counsel confirmed that costs had been agreed at £13,000 on a joint and several basis among the Respondents, but submitted that because of Ms Morley's role she should bear 50% of the total costs.

The decision of the Tribunal

43. Having considered all the evidence and the submissions of the Applicant and on behalf of the Respondents, the Tribunal found the three allegations against the First, Second, Third and Fourth Respondents both admitted and proved and the allegation against Ms Morley proved. The Tribunal was satisfied that Ms Morley's conduct had been dishonest by the standards of reasonable and honest people and that she herself had realised that by those standards her conduct had been dishonest.
44. The Tribunal was extremely concerned both by the breaches of the Accounts Rules and by the lack of adequate supervision of an unadmitted member of staff. In the

Tribunal's view the lack of a tight and rigorous control of cheque requisitions and a system of file review contributed to the insufficient supervision of Ms Morley. It was vital for the reputation of and trust in the profession that client monies were held strictly in accordance with the Solicitors Accounts Rules.

45. The Tribunal Ordered that the First, Second, Third and Fourth Respondents each pay a penalty of £4,000, that an Order under s.43 of the Solicitors Act (as amended) 1974 be made against Ms Morley and that all Respondents pay fixed costs of £13,000 on a joint and several basis.

Dated this 13th day of January 2010
on behalf of the Tribunal

W M Hartley
Chairman