

IN THE MATTER OF JONATHAN BRUCE JARVIS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Ms A Banks (in the chair)
Mr J R C Clitheroe
Mrs V Murray-Chandra

Date of Hearing: 24th September 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 Johanna Davies of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ on 2nd September 2008 that Jonathan Bruce Jarvis, solicitor, of 22 Chesterfield Road, Brimington, Chesterfield, Derbyshire S43 1AD 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 made against the Respondent, Jonathan Bruce Jarvis, were that:-

1. Contrary to Rule 1 of the Solicitors Practice Rules 1990 (“SPR”) he has done things in the course of acting as a solicitor which have compromised or impaired or were likely to compromise or impair:-
 - 1.1 His independence or integrity; and/or
 - 1.2 A persons freedom to instruct a solicitor of his or her own choice; and/or
 - 1.3 His duty to act in the best interests of clients; and/or

- 1.4 His good repute and the good repute of the Solicitors' profession; and/or
- 1.5 [Withdrawn]
2. He is guilty of conduct unbecoming a solicitor in that he has acted in circumstances where there was a conflict and/or a significant risk of conflict of interest between the interests of the clients and his own interests and/or the interests of his clients and Justice Direct.
3. That he has accepted instructions 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") contrary to Rule 3 of the SPR 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th September 2009 when Margaret Bromley, a solicitor of Bevan Brittan LLP appeared for the Applicant and the Respondent was present and represented by Mr Ben Hubble QC of 4 New Square, Lincolns Inn, London WC2A 3RJ.

The Evidence before the Tribunal

The evidence before the Tribunal included the Rule 5 Statement of the Applicant dated 2nd September 2008 with accompanying bundle, the first statement of the Respondent dated 30th December 2008 with accompanying bundle and the second statement of the Respondent dated 17th September 2009.

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

The Tribunal Orders that the Respondent, Jonathan Bruce Jarvis of 22 Chesterfield Road, Brimington, Chesterfield, Derbyshire, S43 1AD, solicitor, do pay a fine of £2,500, 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 £9,000.

The Agreed Facts were as follows:-

1. The Respondent was admitted as a solicitor in October 1992; he was born in January 1951 and his name remains on the Roll of Solicitors.
2. At all material times the Respondent practised as a sole practitioner under the style of J B Jarvis Solicitors. His last address is 22 Chesterfield Road, Brimington, Chesterfield, Derbyshire S43 1AD.

The agreement with Justice Direct

3. The Respondent entered into two agreements with Legal Link Introductory Services Limited trading as Justice Direct, one dated 20th September 2002 ("the first agreement") and one dated 25th November 2005 ("the second agreement"). The main provisions of these agreements which are relevant to this matter are set out as follows:-

The First Agreement dated 20th September 2002

- 3.1 The recital to the agreement provides “LL hereby appoints the firm as a member of the LL panel of solicitors and the firm hereby agrees to the terms of its appointment as detailed below”.
- 3.2 Clause 1.1 of the agreement provides that the merits of the claim will be promptly considered by the firm, clause 1.2 states that the firm agrees not to request from Justice Direct any further information other than reported to it, and clause 1.3 states that the firm will advise Justice Direct whether or not it wishes to be recommended to the potential claimant.

The Second Agreement dated 25th November 2005

- 3.3 The recital to the agreement provides that “The firm has agreed to purchase.....the name, address, and telephone number of persons which Justice Direct has identified as requiring the services of the Firm”. Justice Direct is described as being “in the business of marketing to attract Claimants”.
- 3.4 Clause 2.1 of the agreement provides:
- “For each Claimant introduced the Company agrees to notify the Firm in writing by facsimile...the following:
1. The data in respect of the Claimant
 2. A notice detailing the date and time the Company has arranged with the Claimant for the firm to contact the Claimant.
 3. The name of the fee earner to be allocated to the Claimant”.
- 3.5 Clause 2.2 of the agreement provides:-
- “For every Claimant introduced the Firm agrees:
1. To offer and accept instructions in accordance with clauses 2.2.2, 3, 4, 5 and 6.
 2. That it will cause one of its suitable and responsible employees or partners to contact by telephone each Claimant introduced on the designated date and at the designated time as advised to the firm under clause 2.1.2.
 3. To allocate the fee earner indicated in clause 2.1.3.
 4. To obtain a written irrevocable authority (sic) Claimant to:
 - a. Deduct from any award the appropriate amount to discharge all and any fees payable by the Claimant to the Company.

- b. Provide the Company with all such information regarding the Claimant's claim as the Company may from time to time require".
- 3.6 Clause 4.1 provides that only the nominated fee earner allocated under clause 2.1.3 may take instructions from, or discuss the same with the client, the opponent or any third party as appropriate; and under clause 4.2 Justice Direct are required to be notified if the nominated fee earner is to take annual leave (of whatever length) or is on sick leave. Further under clause 4.3 the allocated fee earner can only be changed with the agreement in writing of a director of Justice Direct.
- 3.7 Clause 5.2 provides that:

"The Firm, at its absolute discretion, may if it so wishes, complete a conditional fee agreement with the Claimant introduced subject to such conditional fee agreement being in a form expressly agreed in writing by a director of the company".
- 3.8 Clause 6.1 of the agreement provides that the Firm may "only use the wording in appendix 1 or 2 (whichever is appropriate to the claim) attached for its client care letter unless first agreed in writing by a director of the company".
- 3.9 Clause 9 sets out a list of key stages in the case where Justice Direct should be notified and provided with information about the case and clause 32 gives the right to enter the firm's offices to inspect the clients files and ledgers, no more than once a year upon 48 hours prior written notice.
- 3.10 Clause 11 provides that the Firm "agrees and undertakes" that prior to forwarding or accounting to the Claimant for any money in respect of an award it will agree with an officer of Justice Direct the fee payable by the client to Justice Direct under the terms of the Purchase Order and forward them the fee.
- 3.11 Clause 12.1 provides "In circumstances where a Claimant who is introduced wishes to instruct the Firm in respect of a second or subsequent claim that is in respect of an accident caused by a third party or a claim that could be brought in the Employment Tribunal (or its equivalent) or to the Criminal Injuries Compensation Authority (or its equivalent) then the firm agrees not to accept such instructions; rather refer such Claimant to the company".
- 3.12 Clause 13.1 provides "In circumstances where the Firm wishes to accept an instruction from an individual in respect of an accident caused by a third party or a claim...and as such individual was referred to the Firm by a Claimant previously introduced then the Firm agrees not to accept such instructions; rather refer such individual to "the company".
- 3.13 Clauses 14-17 inclusive set out the basis upon which referral fees will be payable by the Firm to Justice Direct in a variety of cases. Clause 15.1 sets out the basis of calculating the referral fee in respect of Employment Tribunal

cases which is that “The fee due and payable...will be 12% plus VAT of any fee(s) the Firm receives from the Claimant (howsoever received) and 47.6% plus VAT of any legal costs awarded or settled in favour of the Claimant”.

- 3.14 Under clause 15 the fee is stated to be payable for the introduction (i.e. passing of data) from Justice Direct to the firm. Clause 2.5.4 acknowledges that Justice Direct does not provide any support or service to the Claimant or to the Firm in respect of a claim for any period following the introduction unless or until the Firm ceases to act on behalf of the Claimant.

Justice Direct’s Agreement with the Client

4. The agreement between Justice Direct and the client was contained in a document referred to as a Purchase Order and Terms of Acceptance. The main terms of this document were that in return for Justice Direct supplying the client with details of a solicitor Justice Direct were provided with a series of rights and benefits:
- (a) A broker’s fee of 25% plus VAT of any amount received from the client’s claim.
 - (b) Alternatively an advanced payment of £999 and a broker’s fee of 15% plus VAT of any amount recovered from the client’s claim.
 - (c) Alternatively an advance payment of £1,999.
 - (d) The right to receive the broker’s fee as a deduction by the claimant’s solicitor from the monies received on behalf of the claimant.
 - (e) The right to receive information about the claimant’s claim and that if the solicitor charges for providing the information the client agrees to pay the charge.
 - (f) The client should keep the information confidential and that if he breaches that obligation he shall compensate Justice Direct in full for all loss, damage, costs and expenses suffered as a consequence.
5. The brochure and covering letter which accompanied the Purchase Order described the benefits of using Justice Direct as “Complete financial protection”. The Purchase Order contained, inter alia, an irrevocable authorisation for the solicitor to deduct from those damages and forward the broker fee to Justice Direct.

Cases referred to the Respondent under the Scheme

6. The Respondent provided a schedule setting out the details of all clients referred to him by Justice Direct. Between 20th December 2002 to 25th September 2006 the Respondent acted for 164 clients pursuant to the agreement. The amount awarded or agreed in compensation ranged from £92.00 to £13,000.
7. The schedule also shows that during this period £90,073.14 was paid to Justice Direct and £77,335.57 was paid to the Respondent in respect of costs. The clients therefore

paid more to Justice Direct for being provided with a name than they paid to the Respondent for conducting their case and recovering damages.

8. Between August 2004 and September 2006 finder's fees of £5,607.14 were paid by the Respondent to Justice Direct. This fee comprises 12% plus VAT of the costs recovered by the Respondent.
9. In June 2006 the Respondent terminated his agreement with Justice Direct.

Breaches of Rule 1 of the Solicitors Practice Rules

10. The agreement which the clients entered into with Justice Direct was contrary to the clients' interests, and the Respondent should have advised his clients on this.
11. The agreements with Justice Direct emphasised that all they did was supply the details of a solicitor.
12. Adverse costs orders are extremely rare in an Employment Tribunal case, and therefore there was negligible risk of the client being exposed to financial liability other than for their own costs, which could be adequately covered by a standard conditional fee agreement. There was no justifiable reason for Justice Direct to be paid an amount dependent on the amount of damages received.
13. Both the 2002 agreement and the 2005 agreement sought to prevent the Respondent from accepting further instructions either from a client referred by Justice Direct or from a third party who was introduced by a client who had previously been referred by Justice Direct. This disabled him from advising his clients as to the desirability of the client becoming liable to pay 25% of any recoverable damages to Justice Direct in return for an introduction to the solicitor. The benefits of the scheme could not justify so disproportionate a share of the damages being paid to Justice Direct.
14. The contingency amount of the payment to Justice Direct could have the effect of increasing disproportionately the cost to the client of a successful claim without any regard to the complexity or difficulty of the claim. The facilitation of such arrangements by solicitors would be seen as not being in the best interests of the client.

Conflict of Interest

15. The Respondent was in a position of conflict between his contractual obligations to Justice Direct and his duty to give independent advice to his client. The Respondent's obligation was not to put himself in a position where his duties or interests might conflict.

Breach of the Introduction and Referral Code 1990

16. Section 1 of the Code provides:

- “(1) Solicitors must always retain their professional independence in their ability to advise their clients fearlessly and objectively. Solicitors should never permit the requirements of an introducer to undermine this independence”.
- (2) In making or accepting introductions or referrals, solicitors must do nothing which would likely to compromise or impair any of the principles set out in Practice Rule 1.”
17. The Respondent accepted referrals from Justice Direct pursuant to arrangements which would be likely to compromise or impair the principles set out in Practice Rule 1.
18. Section 2A(2) of the Code provides that a solicitor may only make a payment to a third party in relation to the introduction of clients if the introducer undertakes to comply with the terms of the Code. During the course of a Practice Standards Unit visit to the firm conducted by Mr T Babra on 30th March 2006, it was noted that the Respondent had not obtained an undertaking from Justice Direct in compliance with Section 2A(2) of the Code. Section 2A(3) of the Code provides that a solicitor may only make a payment to a third party in relation to the introduction of clients where “immediately upon receiving the referral and before accepting instructions to act the solicitor provides the client with all relevant information concerning the referral and in particular the amount of the referral”. The clients were not provided with all the relevant information. The Respondent, in breaching the Introduction and Referral Code 1990 has breached Rule 3 of the SPR.

Preliminary Matter

19. The Applicant indicated that she wished to withdraw allegation 1.5 against the Respondent. The Tribunal indicated that it agreed that allegation 1.5 could be withdrawn.

The Submissions of the Applicant

20. The Applicant indicated that the Respondent admitted all of the remaining allegations. A statement of agreed facts was before the Tribunal and the Applicant made two points:-
- (i) Whilst it was true that the Respondent had opened a new office, in fact it was the accommodation that was new, the firm had continued as before.
- (ii) The Applicant’s position was that the contingency amount of the payment to Justice Direct **would** have the effect of increasing disproportionately the cost to the client of a successful claim without any regard to the complexity or difficulty of the claim.

The Respondent’s position, put in the statement of agreed facts, was that it **could** have that effect. In this regard the Applicant wished to draw the attention of the Tribunal to the case of Andrew Michael Tilbury, solicitor, before the Tribunal on 14th October 2008. In this case the allegations were virtually identical and also involved Justice Direct. The Tribunal’s reasons for its findings on that occasion at paragraph 88 were

that the arrangements with Justice Direct were “damaging to the reputation of solicitors generally because the contingency amount recovered by Justice Direct increased disproportionately the cost to the client of a successful claim without any regard to complexity or difficulty of the claim”.

The Submissions of the Respondent

21. The Respondent had come to accept that however well motivated he had been in dealing with these matters, he had been in breach of Rule 1 of the Solicitors Practice Rules and the Solicitors Introduction and Referral Code. He acknowledged that this must be a serious matter but it was also submitted on his behalf that there were substantive mitigating factors.
22. The Respondent wished to apologise unconditionally to the Tribunal and now admitted all the allegations remaining against him. He accepted that the case of Tilbury brought to the Tribunal’s attention by the Applicant strongly correlated with his case.
23. Mr Hubble told the Tribunal that when the Respondent had entered into the Justice Direct scheme he had attended at their offices and had been provided with a QC’s advice on the scheme; the advice appeared to bless the scheme. With hindsight the Respondent could now see that the advice dealt in the main with the issues of champerty and maintenance, considered Rule 9 of the SPR and appeared to approve the essence of the scheme. However he now accepted that the particular issues now in front of the Tribunal had not been canvassed nor advised upon. However, at the time, the Respondent had read the advice and that had led him to believe he was dealing with a reputable scheme and thought that his activities were pursuant to such a scheme. At all times he had acted in good faith and acted in his clients’ best interests. There had been no complaints about his work and whilst he now accepted that the nature of the scheme was unsatisfactory his remuneration from it had been extremely modest. His accounts, which were before the Tribunal, showed the modest profit that he was making from his practice. It would therefore be wholly wrong to suggest that there was any motivation of greed or excessive remuneration on his part in operating this scheme.
24. Mr Hubble also wished to draw the attention of the Tribunal to his client’s dealings with the Law Society. In his submission there had been a protracted delay in the Law Society/Solicitors Regulation Authority dealing with his matter. The Practice Standards Inspection by the Law Society took place in March 2006 and further information was requested by the Law Society in September 2006, which was provided by the Respondent in October 2006. He was then told that further investigation into his conduct was necessary. It was not until April 2007 that he received notification that the Adjudicator had decided to refer his conduct to the Solicitors Disciplinary Tribunal (“SDT”). He had then undergone a period of chasing the SRA for some sort of certainty as to how the matter would be progressed and he had received no satisfactory response. On 12th July 2007 he had written to the SRA telling them of the effect that the continuing uncertainty was having upon his mental and physical health but received no reply. His earnings consequently suffered over that period. It was not until April 2008 that the SRA informed him of a provisional decision to place a restriction on his practising certificate to the effect that he should

inform the SRA if he took on any referral work. In May 2008 he had written a further letter again asking for some certainty and to be informed as to whether a final decision had been made to refer the matter to the SDT but it was not until August 2008 that he was told there had been an oversight in forwarding his file to a prosecutor for preparation of a Rule 5 Statement. The Rule 5 Statement was finally served upon the Respondent in October 2008, 2 and a half years after the first inspection by the Law Society and 18 months after the Adjudicator resolved that his conduct should be referred to the Tribunal.

25. Mr Hubble invited the Tribunal to take these matters into account when they came to consider the question of sanction and costs. In his submission the way in which the correspondence had been dealt with between the Respondent and the SRA reflected extremely badly upon the SRA. The impact upon the Respondent had been considerable both on his state of mind and health and his marriage and had had significant financial consequences. His profit and loss account showed extremely modest profits for 2006 and 2007 these had only started to recover in 2008. From July 2007 the Respondent had worked from home closing his High Street office, and from January 2008 he had worked for two days per week as a principal trainer and duty solicitor with Derbyshire Housing Aid. It was not until March 2009 that he had re-opened his High Street office with a former trainee. His financial position was modest.
26. In conclusion, Mr Hubble, on behalf of the Respondent, urged the Tribunal to impose a fine in respect of these admitted allegations. In his submission there was no proper basis for restricting his practising certificate. He referred again to the case of *Tilbury* and submitted that this was the sort of case where a fine would be appropriate. In terms of quantum he asked the Tribunal to take into account his client's modest means. In the case of *Frank D'Souza v the Law Society* [2009] EWHC 2193 (Admin) before the Administrative Court in July 2009 Mr Justice Coulson had concluded that a Respondent's means should be taken into account by the Tribunal when deciding quantum of fine and costs. Therefore with regard to fine the Respondent urged the Tribunal to impose one at the lower end of the scale and with regard to costs to take account of his limited means but in view of the delays on the part of the SRA to make no order as to costs.

The Tribunal's Preliminary Findings

27. The Tribunal found all the allegations substantiated, indeed they had all been admitted. In this case, they had taken the case of *Tilbury* into consideration and found that this was not at the high end of offending. A fine would be the appropriate penalty.

The Applicant's Representations as to Costs

28. The Applicant's schedule of costs was in the sum of £12,152.43. The Applicant submitted that there were two main authorities with regard to the imposition of costs. In the first one *Merrick v the Law Society* [2007] EWHC 2997 (Admin), the solicitor had been found guilty of conduct unbecoming a solicitor by the Tribunal and was suspended from practice as a solicitor for a period of 12 months and ordered to pay the Law Society's costs of £45,000. On appeal it was held that whether an order for

costs, in addition to a suspension order, was appropriate was to be determined on the facts of each individual case but in the circumstances of this case and the fact that the appellant was 67 years old and that his suspension would bring his professional career to an end, the imposition of a costs order was not justified. However in the Applicant's submission this case was distinguishable from the current case. Mr Jarvis was 58 years old and if fined for these breaches, would continue to practice.

29. The next case was that of D'Souza. In that case Coulson J had reviewed the Merrick case and concluded that the means of a defendant may be a relevant consideration as to the level of fines or costs to be imposed but usually with a suspension or strike off order. Mr D'Souza's financial position had been parlous as he had earned a total of £30,000 in a period of six years and was 67 years old. Again the Applicant submitted that the D'Souza case could be distinguished from that of the current Respondent's financial situation which was better. The Applicant drew the Tribunal's attention to paragraph 18 of the D'Souza judgment where Coulson J had said:-

“There will be exceptional cases where, even though a solicitor is allowed to continue in practice, his income may be a relevant consideration both as to any costs sanction and in respect of any financial penalty that might be imposed.”

The Applicant submitted that this was not such an exceptional case, the Respondent now had a reasonable income and he would continue to earn for the foreseeable future, indeed he had just taken on an employee. In short her application was that the Tribunal make an order for costs in the sum sought.

The Respondent's Submission as to Costs

30. In the Respondent's submission there should be no costs order. The Respondent submitted that the delay in itself was a reason why the Tribunal should not order the SRA's costs. There had been two periods of delay and the SRA's explanation was unsatisfactory. To say the matter had been overlooked was clearly not a good explanation as the Respondent had written chasing letters. In addition it was as a result of the SRA's delays that the Respondent had had to close his office, his health had suffered and this had had a striking effect on his accounts.
31. There was also the issue of his means and the Respondent submitted that this was an exceptional case as had been anticipated in D'Souza. It was readily apparent that this Respondent was impecunious.

The Tribunal's Further Findings and its Reasons

32. The Tribunal had listened most carefully to the representations made by both the Applicant and the Respondent's representative as to quantum of fine and costs. It had looked at the guidelines in the case of Tilbury and considered the principles from the D'Souza case. In this case looking at the extent of the Respondent's culpability, the fact that his actions appeared to have been misguided rather than intentional and that the profit that he had made was not excessive and considering the principles in D'Souza the fine would be £2,500. The Tribunal found that this was not such an exceptional case as to fall within the D'Souza principles concerning mitigation of the fine.

33. Similarly in regard to costs the Tribunal found that D'Souza did not apply as this was not an exceptional case. However, there had been a delay by the SRA which had affected the Respondent's health and therefore the costs would be reduced to a figure of £9,000.
34. The Tribunal Ordered that the Respondent, Jonathan Bruce Jarvis of 22 Chesterfield Road, Brimington, Chesterfield, Derbyshire, S43 1AD, solicitor, do pay a fine of £2,500, 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 £9,000.

Dated this 21st day of December 2009
On behalf of the Tribunal

A Banks
Chairman