

IN THE MATTER OF MARCUS PETER BEMROSE, HOWARD ROBERTS BECKETT
and ALAN HAGAN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss N Lucking (in the chair)
Mr L N Gilford
Mr M G Taylor CBE DL

Date of Hearing: 12th May 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 Geoffrey Williams QC solicitor and a partner in the firm of Geoffrey Williams and Christopher Green, Solicitor Advocates of 2A Churchill Way, Cardiff CF10 2DW on 19th June 2007 that Marcus Peter Bemrose, solicitor, and Howard Roberts Beckett, solicitor, both of Eastham Hall, Eastham Village, Wirral, Cheshire CH62 0AF and Alan Hagan, solicitor, of 37/39 Wallasey Road, Wallasey, Wirral, Merseyside CH45 4NN might be required to answer the allegations contained in the statement of 19th June 2007 that accompanied the application and further the allegations contained in a further statement dated 29th January 2008 and that such Order might be made as the Tribunal should think right.

The allegations against the Respondents, Marcus Peter Bemrose, Howard Roberts Beckett and Alan Hagan were that they had:-

- (a) Breached the terms of Rule 1(d) Solicitors' Practice Rules (as amended) ("SPR") by virtue of their failure to report to the Law Society dishonest conduct on the part of an employee of which conduct they had become aware.
- (b) Breached the terms of Rule 1(a) – independence, (c) and (e) SPR by virtue of their failure to properly advise clients who had entered into or were to enter into Agreements with Industrial Diseases Compensation Ltd ("IDC") upon the status and merits of those Agreements.

- (c) Breached the terms of Rule 1(c) SPR by virtue of their continuing to act for clients notwithstanding their failure as set out in Allegation (b) above given which in the circumstances there had been conflicts of interest between the Respondents and their clients.
- (d) Breached the terms of Rule 9 SPR by entering into a prohibited arrangement or association with IDC for the introduction of clients by IDC which was not a firm of solicitors but a company receiving contingency fees in the course of its business.
- (e) Breached the terms of Rule 3 SPR by accepting instructions and referrals of business from IDC in breach of the Solicitors' Introduction and Referral Code 1990 ("the Code") both in its original and amended forms.
- (f) Breached the terms of Rule 1(c) and (e) SPR by virtue of the conduct of certain conveyancing transactions.

And as against Mr Bemrose and Mr Beckett only they had:-

- (g) Failed to comply with Rule 3 of the SPR 1990 (as amended) and the Solicitors' Introduction and Referral Code 1990 (as amended).
- (h) Failed to comply with Rule 1(c) SPR 1990 (as amended) with respect to their payment of fees to a third party from loan funds held for the benefit of clients and with respect to their treatment of interest accruing as a result of the said payments.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 12th May 2009 when Geoffrey Williams QC appeared as the Applicant and Gregory Treverton-Jones QC appeared for the Respondents who were also present.

The evidence before the Tribunal included two Forensic Investigation Reports dated 3rd April 2006 and 24th May 2007 which were agreed, together with admissions from the Respondents.

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

The Tribunal Orders that the Respondent, Marcus Peter Bemrose of Eastham Hall, Eastham Village, Wirral, Cheshire, CH62 0AF, solicitor, do pay a fine of £2,500.00, 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 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of The Law Society. Such costs to be joint and several with Mr Beckett.

The Tribunal Orders that the Respondent, Howard Roberts Beckett of Eastham Hall, Eastham Village, Wirral, Cheshire, CH62 0AF, solicitor, do pay a fine of £5,000.00, 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 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of The Law Society. Such costs to be joint and several with Mr Bemrose.

The Tribunal Orders that the Respondent Alan Hagan of 37/39 Wallasey Road, Wallasey, Wirral, Merseyside, CH45 4NN solicitor, be Reprimanded.

The facts are set out in paragraphs 1 – 27 hereunder:-

1. Mr Bemrose, born in 1956 was admitted as a solicitor in 1980.
2. Mr Beckett, born in 1969 was admitted in 1996.
3. Mr Hagan, born in 1945 was admitted in 1996.
4. The names of all three Respondents remain on the Roll of Solicitors.
5. At the material times and since 2001 the Respondents had practised as solicitors in partnership with each other under the style of Beckett, Bemrose and Hagan (“the firm”) at Eastham Hall, 109 Eastham Village Road, Eastham, Wirral, Merseyside CH62 0AF and at 96 Wallasey Road, Wallasey, Wirral, Merseyside CH44 2AE.
6. Mr Hagan who had been a salaried partner had left the firm on 16th July 2004 to practice in partnership elsewhere.
7. An inspection of the books of account and other documents of the firm had been carried out by Ms S Taylor of the Forensic Investigation Unit (“FIU”) of The Law Society resulting in a Report dated 3rd April 2006.
8. Following the FIU Report The Law Society had carried out an enquiry with which the Respondents had all cooperated fully.
9. On or about 26th June 2002 the firm’s bookkeeper had effected a dishonest transfer of £20,696.30 from the firm’s client bank account. The Respondents had become aware of the act of dishonesty in June 2004.
10. The cash shortage on the firm’s client account created by the dishonest transfer had been made good by the Respondents on or about 14th July 2004.
11. The bookkeeper had made an immediate admission of wrongdoing when confronted with the matter and had made repayment to the firm in October 2004.
12. The Respondents had failed to report the matter to The Law Society. However, the bookkeeper subsequently had obtained employment with other solicitors. On 28th March 2007 an Adjudication Panel of The Law Society had made an Order against the bookkeeper, Mrs Susan Sheppick (also known as Suzanne Sheppick) pursuant to Section 43 (2) of the Solicitors Act 1974.
13. Allegations (b), (c), (d) and (e) had arisen from the firm’s handling of claims for Respiratory Disease (RD) and Vibration White Finger (VWF) under the relevant Claims Handling Agreements (CHAs).
14. By the date of the first FIU inspection (November 2005) the firm had conducted about 204 claims on behalf of miners. The majority of the claims had been referred to the firm by Industrial Diseases Compensation Limited (IDC).

15. Mr Beckett had become an IDC Panel Solicitor in August 2002. IDC had arranged venues at which potential claimants met with representatives of the firm. No other solicitors would be present.
16. In all cases in which the firm had been instructed as a result of its dealings with IDC an Agreement would be entered into between the Claimant and IDC.
17. The terms of the Agreement had included IDC agreeing to underwrite the legal costs of the Claimant in return for a fee. This had been agreed in circumstances in which the Department of Trade and Industry (DTI) had been paying the costs in successful cases and not claiming any costs in unsuccessful cases. Moreover, by virtue of its retainer with its Claimant clients, the firm had not been entitled to claim any fees in failed cases.
18. The fee payable by the Claimant to IDC had only been payable in the event of a successful claim.
19. IDC had been described as agreeing to pay legal fees and as appointing solicitors on behalf of the Claimant.
20. The Claimant had had the benefit of a 14 day “cooling off period”.
21. While earlier IDC Agreements had provided for the fee to IDC to be based upon a sliding scale, according to the amount of compensation recovered, later Agreements had involved a fixed fee of £100.00.
22. In most cases the IDC Agreements had appeared to be entered into before the firm had issued its client care letter to the Claimant, although in some cases the opposite had happened. However, the Respondents had not advised any of their Claimant clients upon the status and terms of the Agreements that they had entered into or had been about to enter into with IDC.
23. The firm had paid some £15,500 to IDC with respect to invoices relating to the claims.
24. Allegation (f) had arisen from the identification, during the first FIU inspection, of three transactions in which there had been unacceptable delays in the conduct of post-completion conveyancing work.
25. Allegations (g) and (h) relating to Mr Bemrose and Mr Beckett only, had arisen from the second FIU inspection in February 2007.
26. Mr Bemrose and Mr Beckett had had dealings with two Claims Management Companies namely Clear Contact Marketing Limited (formerly Clear Claims Limited) (CCM) and Claims Care Centre (CCC). The relationship with CCM had commenced in November 2004 and that with CCC in December 2004. The CCC relationship had ceased in July 2005.
27. Both CCM and CCC had introduced and referred clients to the Respondents. The Respondents had made payment to CCM and CCC at the time of the referrals.

The Submissions of the Applicant

28. The Applicant sought the Tribunal's leave to withdraw allegation (a) on the basis that the Respondents had acted in good faith having taken professional advice. They had made good the loss promptly and to pursue the allegation against them in such circumstances would not be in the public interest. The Applicant also sought leave to withdraw allegation (f) on the basis that the matters identified had been dealt with by the Respondents promptly and had been "de minimus" given the extent of the firm's conveyancing work.
29. The Tribunal allowed allegations (a) and (f) to be withdrawn.
30. The Applicant noted that it was accepted that as a salaried partner Mr Hagan had had little influence on the general policies of the firm.
31. Turning to allegation (b) the Applicant stressed that as the Tribunal had found in previous cases all claims under the British Coal litigation had been contentious matters. IDC had been an introducer of work to the firm. Mr Beckett had joined the IDC Panel in August 2002 and by November 2005 the firm had conducted some 204 miners' compensation cases.
32. The Applicant referred the Tribunal to a copy of the Agreement signed by the individual Claimant and IDC. He submitted that the whole basis of the Agreement had been illusory, based as it had been on the provision of an indemnity for costs by IDC in exchange for a fee in circumstances in which the Claimant would not in any event have had any liability for costs. It had been an agreement to provide for IDC to appoint solicitors for a Claimant.
33. The Applicant submitted that whether the Agreement with IDC had been entered into before or after the firm was instructed to act, the firm should have advised its Claimant clients upon the status and terms of that Agreement. In particular, the firm should have advised about the illusory nature of the Agreement; as to whether or not the Agreement had been in the best interests of the client; as to (when appropriate) whether or not the client should have taken the opportunity to terminate the Agreement during the cooling off period and that if IDC had been providing services of value it was under no contractual obligation to do so.
34. Further that the relevant advice should have been given regardless of whether or not the Agreements had been legally enforceable. The Applicant stressed that the firm should have advised all Claimants that they could instruct the firm directly without having to suffer any deductions out of their compensation. He noted that some 50 Claimants had apparently instructed the firm directly without any subsequent deductions.
35. Turning to allegation (c) the Applicant submitted that in acting whilst failing to render any advice to Claimants with respect to the IDC Agreements, the Respondents had preferred their own interests, specifically the maintenance of their relationship with IDC and the flow of referrals, to the interests of their clients.

36. Dealing with allegation (d), the Applicant referred the Tribunal to the terms of Rule 9 of the Solicitors Practice Rules (as amended) as follows:-

“A solicitor shall not in respect of any claim or claims arising as a result of death or personal injury either enter into an arrangement for the introduction of clients with or act in association with any person (not being a solicitor) whose business or any part of whose business is to make support or prosecute (whether by action or otherwise and whether by a solicitor or agent or otherwise) claims arising as a result of death or personal injury and who in the course of such business solicits or receives contingency fees in respect of such claims.”

37. The Applicant submitted that part of the business of IDC had been to make, support or prosecute claims arising as a result of death or personal injury.

38. Moreover, he submitted that IDC had received contingency fees in respect of the miners’ claims. The Applicant referred to the definition of “Contingency Fee” in Solicitors’ Practice Rule 18 (2) as follows:-

“Any sum (whether fixed or calculated either as a percentage of the proceeds or otherwise) howsoever payable only in the event of success in the prosecution or defence of any action suit or other contentious proceeding”.

39. The Applicant submitted that it had been established that the miners’ compensation claims under the CHAs had been contentious business as properly defined and that plainly the fees paid to IDC had depended upon the success of the Claims.

40. Moreover, the Respondents had had an arrangement with IDC as defined in Rule 18(2) SPR as follows:-

“any express or tacit agreement between a solicitor and another person whether contractually binding or not”

The Applicant noted that Mr Beckett had been appointed to the IDC Panel; IDC had organised events at venues where the firm had been in attendance but at which no other solicitors had participated; in every case involving an Agreement, the Respondents had made payments to IDC; the Respondents had obtained their clients’ signature to an authority to deduct the amount of the payment due to IDC from the Claimant under the Agreement from compensation recovered and IDC had recommended the services of the Respondents to certain Claimants.

41. The Applicant submitted that the whole scheme involving IDC had offended against Rule 9 SPR (as amended).

42. It was accepted that the Respondents had paid about £15,500.00 to IDC with respect to invoices delivered in the miners’ claims. Those invoices had been for round sum amounts and had been unparticularised with respect to the work allegedly carried out by IDC. Although the Respondents had asserted that the payments were for administrative services provided by IDC, the Applicant submitted that the payments had in fact been payments to IDC in consideration of the referral of cases in breach of

Rule 3 SPR and the associated Code - the Solicitors Introduction and Referral Code 1990 (the Code) both in its original and amended forms.

43. The Applicant noted that the Agreements had imposed no obligation upon IDC to perform any particular tasks; the Agreements had provided for IDC appointing (not recommending) solicitors to act on behalf of the Claimant; the Respondents had made payments to IDC in each and every case in which IDC was involved and when potential Claimants had attended the meetings arranged by IDC only the firm was present.
44. The Applicant submitted that all such payments made by the Respondents to IDC, prior to 9th March 2004, had been referral fees contravening Rule 3 SPR and Section 2(3) of the Code. Thereafter, the Applicant submitted that the Respondents had breached Section 2A of the amended Code in that IDC had not undertaken to the Respondents to comply with the terms of the Code; the clients had not been told of the referral arrangements and the firm had not satisfied itself that IDC had provided the clients with all relevant information before the referrals took place.
45. Turning to allegations (g) and (h) against Mr Bemrose and Mr Beckett only, the Applicant submitted and the Respondents had accepted that in the circumstances the fees paid to CCM and CCC had contained, at the least, an element of referral fees. The Applicant noted that the services claimed to have been provided by CCM and CCC as demonstrated by their invoices had not been for genuine services provided to the Respondents but rather for services provided for the benefit of the clients. This was because the services had included work that the Respondents would normally have done for the clients. In addition, the fees paid had been fixed rather than calculated in accordance with the work apparently done. Indeed, in the context of the claims referred, the fees charged had been very high for the services apparently provided.
46. The Applicant noted that with respect to CCM the Respondents had negotiated service standards subsequent to 13th February 2007. These had involved a relatively modest fee increase from £450.00 to £575.00 per case for a good deal more work. He also referred the Tribunal to an Agreement between the Respondents and CCM dated 20th March 2007 that specifically provided for "Payment for Referrals". The Applicant noted that the Respondents had never suggested that their relationship with CCM had changed in any way by virtue of the conclusion of the formal Agreement. Moreover, the sums paid to CCM and CCC had not been reclaimed as disbursements when the cases in question had settled.
47. The Applicant referred the Tribunal to various examples of cases in the FIR of 24th May 2007. He submitted that the Respondents had acted in breach of the Code by failing to keep records of their Agreements with CCM (until 20th March 2007) and CCC and by failing to give clients all relevant information concerning the referrals and in particular the fee, immediately upon receiving the referral and before accepting instructions to act.
48. The Applicant referred the Tribunal to the case of Mr DM and explained that there were some five cases introduced by CCC in which the Respondents had discharged the CCC fee from disbursement funding advanced as an interest bearing loan to the

clients from third parties. He explained that the accrued interest had ultimately been repaid by the Respondents.

49. In conclusion, the Applicant submitted that while dishonesty was not an issue, the case was serious involving as it did multiple rule breaches. He stressed that the protection of the interests of clients was vital in situations involving referrals hence the relevant Regulations and Code. While The Applicant acknowledged that the Respondents had subsequently taken remedial action, he submitted that for a time the firm had allowed its commercial priorities to prevail over its ethical responsibilities.
50. The Applicant applied for costs fixed at £24,547.96 including FIU costs of £10,296.64. He produced a schedule of costs dated 11th May 2009.

Submissions on behalf of the Respondents

51. Mr Treverton-Jones QC, in response to a question from the Tribunal, confirmed that all interest relating to the funding of referral fees had been re-paid by the Respondents.
52. Mr Treverton-Jones QC stressed that while the Respondents had made errors of judgment, they had at all times acted in good faith. Moreover they had cooperated fully with their Regulator during all enquiries.
53. Mr Treverton-Jones QC referred to 5 previous cases relating to miners' compensation claims in which he had been involved before the Tribunal. He referred to the numbers of claims handled by those firms ranging from some 92,000 claims to some 32,500 claims. The total number of claims had been some 760,000 of which the Respondents had handled just over 200. Accordingly, they were, Mr Treverton-Jones QC submitted, right at the bottom of the scale of operations.
54. Mr Treverton-Jones QC explained that there had been three major problems involving deductions from claimants' compensation; deductions paid as success fees to solicitors, those paid to trade unions and, as in the present case, those paid to introducers. He explained how following the negotiation of the CHAs organisations had sprung up in mining communities, of which IDC had been one. Once scale fees had stopped the only fee to the Claimant was £100.00.
55. Although both schemes (RD and VWF) had started in 1999, Mr Beckett had not become involved until 2002. Indeed, Mr Beckett had refused to buy files from an insolvent firm but when approached by IDC, had believed that he was paying for genuine work carried out by IDC. For example, home visits to sick miners. Moreover, at the time Mr Beckett had not noticed the illusory nature of the IDC Agreement. However, the firm's client care letter had explained to clients that their fees would be paid by British Coal in successful cases and that there would be no charge in unsuccessful cases. Leading Counsel commented that this was far better costs information than provided by many firms dealing with larger numbers of claims.
56. Mr Treverton-Jones QC explained that Messrs Bemrose and Hagan had not handled any of the miners' claims.

57. Mr Treverton-Jones QC noted that allegation (c) flowed from allegation (b). Turning to allegation (d) he explained that Mr Beckett had believed that claims under the CHAs had been non contentious business and therefore that Rule 9 did not apply. As to allegation (e) the Respondents now accepted that following previous decisions of the Tribunal, the payments to IDC had been referral fees. However, he stressed that they had not believed them to be referral fees at the material time. Although errors of judgment had been made, Mr Treverton-Jones QC submitted that these had not been at the more serious end of the scale.
58. Turning to allegations (g) and (h) Mr Treverton-Jones QC stressed that appropriate and immediate steps had been taken to address the issues raised during the second FIU inspection. The charging of interest had been a total error. Again only a small amount of work had been introduced to the firm, some 46 matters by CCC and some 150 matters by CCM.
59. Mr Treverton-Jones QC explained the current professional circumstances of the Respondents including the effects on their practices of the current financial situation. He conveyed his clients' apologies for the breaches to the Tribunal. Because of his lack of involvement in the relevant matters, Mr Treverton-Jones QC invited the Tribunal to consider a Reprimand for Mr Hagan.

The Decision of the Tribunal

60. Having considered all the evidence including the admissions and the extremely helpful submissions of both Leading Counsel, the Tribunal found all the allegations proceeded with by the Applicant to have been proved and admitted. Further, the Tribunal accepted that all three Respondents had cooperated fully with their Regulator and had taken timely steps to comply with the relevant Regulations following the inspections.
61. The Tribunal noted that the Regulations and the Code relating to referrals were vital to ensure that the interests of the public were protected. Transparency and clarity as to referral arrangements were essential to ensure such protection.
62. The Tribunal accepted that while serious, the breaches had been at the lower end of the scale of seriousness. Accordingly, given the degrees of responsibility involved, the Tribunal was satisfied that a financial penalty of £2,500 was appropriate for Mr Bemrose, a financial penalty of £5,000 appropriate for Mr Beckett and a Reprimand appropriate for Mr Hagan. As to costs, these were to be shared on a joint and several basis by Mr Bemrose and Mr Beckett, to be assessed if not agreed.

Dated this 30th day of November 2009
On behalf of the Tribunal

N Lucking
Chairman