

IN THE MATTER OF GEORGE MCLOUGHLIN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss N Lucking (in the chair)  
Mrs E Stanley  
Mrs N Chavda

Date of Hearing: 19th May 2009

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill Solicitors of 72-74 Fore Street, Hertford, Herts SG14 1BY on 3<sup>rd</sup> November 2008 that George McLoughlin of 53 Seymour Terrace, Seymour Street, Liverpool L3 5PE, solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such Order shall be made as the Tribunal should think right.

The allegations against the Respondent were that:-

1. Contrary to Rule 15 (1) Solicitors Accounts Rules 1998 he did fail to pay client money into client account without delay.
2. That, contrary to rule 32 (1) Solicitors Accounts Rules 1998 he did fail to keep his accounting records properly written up.
3. That contrary to Rule 22 (5) Solicitors Accounts Rules 1998 he did withdraw monies from client accounts in excess of monies held on behalf of clients.
4. That contrary to Rule 7 Solicitors Accounts Rules 1998 he did fail to remedy breaches of the said Rules promptly upon discovery.
5. That he used clients' monies for his own purposes.

6. That contrary to Section 2 (2) Solicitors Introduction and Referral Code he did fail to draw the attention of potential introducers of business to the provisions of the Code and the relevant provisions of the Solicitors Publicity Code.
7. That contrary to Section 2A of the Solicitors Introduction and Referral Code, in cases in which payments were made to third party introducers he did fail immediately upon receiving the referral and before accepting instructions to act to provide the client with all relevant information concerning the referral and in particular the amount of any payment.

The application was heard at The Court Room, Gate House, 3<sup>rd</sup> Floor, 1 Farringdon Street, London EC4M 7NS when Stephen John Battersby appeared as the Applicant and the Respondent appeared and was represented by Geoffrey Williams QC.

### **The evidence before the Tribunal**

The evidence before the Tribunal included the admissions of the Respondent and a number of references regarding the Respondent's character.

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

The Tribunal Orders that the respondent George McLoughlin of 53 Seymour Terrace, Seymour Street, Liverpool, L3 5PE solicitor, be Reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.

### **The facts are set out in paragraphs 1 – 8 hereunder:**

1. The Respondent was born in 1963 and was admitted as a solicitor on 2<sup>nd</sup> October 1989. At the material time he was in practice on his own account as McLoughlin Solicitors at 53 Seymour Terrace, Seymour Street, Liverpool L3 5PE where he continues to practise.
2. The Respondent's practice conducted Personal Injury Litigation, mainly on behalf of claimants and received referrals from third party introducers.
3. On 3<sup>rd</sup> October 2007 an inspection of the Respondent's books of accounts and other documents was commenced by a Senior Investigation Officer ("IO") of the Solicitors Regulation Authority. His report dated 14<sup>th</sup> December 2007 was before the Tribunal.
4. In successful cases the Respondent would often also receive monies in connection with professional disbursements. These were to cover expenditure incurred through obtaining medical and Engineers' Reports and instructing Counsel, as well as other payments. Note (i) (b) to Rule 13 of the Solicitors Accounts Rules 1998 makes it clear that monies received for payment of unpaid professional disbursements is client money and should therefore be paid without delay into client account. During his inspection the IO found there were credit balances on office bank account totalling £230,660.06 relating to unpaid medical fees, engineers' fees, Counsels' fees and other miscellaneous receipts

5. The Respondent told the IO that he had considered the monies received in connection with unpaid professional disbursements as debts owed by the practice and therefore his own personal liability. He had not regarded them as client account funds but accepted that he had been incorrect. He did not believe that he had put clients at risk.
6. As well as the £230,660.06 incorrectly retained in office bank account in respect of disbursements, there had been overpayments and incorrect transfers of £5,523.64 and an incorrect retention in office account of £40.00 representing outstanding damages due to a client. The matter of Mr P, in respect of which an overpayment was made from client account, was drawn to the Tribunal's attention.
7. It was noted that as at the date of the inspection in October 2007, postings had only been made to the books of account up until 31<sup>st</sup> March 2007. It was explained to the IO that this was because the last financial accounts for the practice had not yet been finalised and closed off thereby allowing new postings to be made.
8. The Respondent relied upon third party introducers for a significant proportion of his work and details of referrers used and payments made to them were before the Tribunal. The Respondent admitted being in breach of S2 of the Solicitors' Introduction and Referral Code 1990 in that until 3<sup>rd</sup> April 2007 he had not drawn the attention of potential introducers to the provisions of the Code and the relevant provisions of the Solicitors Publicity Code. From that date, referrers were made to sign an Introduction and Referral Agreement with the firm. The Respondent also conceded that until 1<sup>st</sup> April 2007 he had failed to comply with Section 2A of the Code by not before accepting instructions to act in cases in which payments had been made to third party introducers providing clients with all relevant information concerning referrals and in particular the amounts of any payments. He said that as from April 2007, he had complied with the Code.

### **The submissions of the Applicant**

9. The Respondent had been frank and had admitted the allegations. There was no allegation of dishonesty and indeed, the Respondent had worked hard to stave off an intervention which had been considered by the SRA. This was to the benefit of his clients.
10. The Applicant submitted that the seriousness of this case was that the Respondent had been using money which did not belong to him to fund his practice. Whilst the Respondent had been frank and admitted he had not appreciated that he had put his clients at risk. Clearly if he had been declared bankrupt, his clients would have been at risk with regard to repayment of those amounts. It was to the Respondent's credit that prior to the inspection starting, he had made a start at refunding money and had corrected the position with regard to the referral of business. There had been concern that the reporting accountant had failed to draw severe problems to the attention of the Respondent and the Applicant confirmed that that particular reporting accountant was no longer allowed to provide accountant's reports for solicitors.
11. The Applicant confirmed that the Respondent had agreed his costs in the sum of £7,000.

## **The submissions of the Respondent**

12. Geoffrey Williams QC on behalf of the Respondent confirmed that the allegations were admitted and had been from the outset. The Respondent was wholly contrite to be appearing before the Tribunal. He was very embarrassed to be here and apologised profusely. He was an honest man who had never had any disciplinary history or convictions and in nineteen years of practise had only attracted three complaints which had all been dealt with by conciliation.
13. The Respondent never intended to transgress. He had corrected all the wrongs, many before the SRA investigation had started and there had been no loss to any client or third party.
14. The Respondent had been a solicitor for twenty three years and set up his own practice in October 2003 with a couple of members of staff. At the material time he employed twelve people and become the Principal of a firm conducting high volume but low value personal injury cases.
15. The Respondent was a family man with four daughters. Due to his financial circumstances he had closed down the practice in an orderly fashion transferring all the files, bar six, to another firm of solicitors. The six remaining files related only to outstanding costs and both clients' and creditors' positions had been protected by the transfer of the files. The Respondent had paid a heavy price which he had brought on himself through lax management and he had suffered greatly as a result.
16. The Respondent had not received any complaints from clients and there was no suggestion that the cases had been conducted in anything other than a proper manner.
17. Whilst postings had not been written up after 31<sup>st</sup> March 2007, all client reconciliations had been properly carried out and by January 2008 all the accounts were up to date and complete. Incorrect transfers had been remedied before the investigation started and the Respondent had been let down by his bookkeeper who, it transpired had multiple sclerosis and left the practice a year ago. The matter was further complicated by the Respondent's reporting accountants who had delivered unqualified reports for the period in question. Clearly the Respondent was entitled to draw comfort from this fact. The accountants were an established reputable firm who had acted for other practices.
18. The Respondent accepted that the issue concerning unpaid disbursements was serious. He handled 1,000 cases per year to a high standard and when monies were recovered for disbursements, he had regarded them as personal liabilities of the firm so that they could be paid into office account. He accepted he was mistaken in this but he had not been dishonest. The books were transparent and revealed the true situation and the Respondent had cooperated completely with the IO throughout. Indeed, the Respondent had taken out a loan of £35,000 in January 2008 in order to pay off disbursements and recapitalise the practice. It was right that the SRA had considered an intervention but the Respondent had gone to great lengths to put things right and the SRA resolved not to intervene.

19. Regrettably, as the Respondent had closed down his practice, he was now seeking employment but awaited the conclusion of the SDT proceedings as he felt that nobody would offer him a position while proceedings were outstanding.
20. It was submitted the Respondent was honest. He had started to put things right before the investigation took place. There had been no loss to clients or third parties and he had been open, honest and cooperative with the IO. He had been badly let down by his chartered accountant and had already suffered severe financial consequences. He had agreed to pay £7,000 for the SRA's costs but needed time to pay. These proceedings had been hanging over him for some time and the Respondent confirmed he did not contemplate practising alone again and would only seek to be employed by other solicitors.

### **The Findings of the Tribunal**

21. The Tribunal found the allegations to have been substantiated, indeed they were admitted by the Respondent.
22. The allegations included serious allegations including the misuse of client funds for the Respondent's own purposes. However, the Tribunal noted no dishonesty had been alleged.
23. The Tribunal had taken into account the fact that the Respondent had cooperated with the authority throughout and had gone to considerable lengths to correct the position so that there had been no loss to clients or third parties.
24. The Tribunal had also taken into account the excellent character references supplied and the fact that the Respondent had already suffered the loss of his practice. The Tribunal did not consider this was a case where the public required protecting from the Respondent and were mindful that the Respondent appeared to have been wrongly advised by his previous accountant. There was no allegation of dishonesty or recklessness or negligence against the Respondent and indeed, he had done everything he could to try and put his house in order.
25. The Tribunal felt that given the particular facts of this case, the appropriate sanction was to reprimand the Respondent. The Tribunal also made an Order that he should pay the authority's costs in the sum of £7,000 as agreed.
26. The Tribunal Orders that the respondent George McLoughlin of 53 Seymour Terrace, Seymour Street, Liverpool, L3 5PE solicitor, be Reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.

Dated this 10<sup>th</sup> day of December 2009  
On behalf of the Tribunal

Miss N Lucking  
Chairman