No. 10285-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RUSSELL PETER EATON, solicitor (Respondent)

- AND -

Upon the application of Stephen Battersby
on behalf of the Solicitors Regulation Authority

Mr D Glass (in the chair)
Mr A Gaynor-Smith
Mr M Hallam

Date of Hearing: 11 March 2010

FINDINGS & DECISION

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

Mr Stephen John Battersby, solicitor and partner of Jameson & Hill of 72-74 Fore Street, Hertford, Herts, SG14 1BY for the Applicant.

The Respondent appeared in person.

The application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 26th June 2009.

Allegations:

(1) that he had failed to act with integrity towards his clients, Mr K and Miss T, contrary to Rule 1.02 Solicitors Code of Conduct 2007 ("the Code");

(2) that he had failed to act in the best interests of his clients, Mr K and Miss T, contrary to Rule 1.04 of the Code;

(3) that he had failed to offer a proper standard of service to his clients, Mr K and Miss T contrary to Rule 1.05 of the Code;

(4) that in connection with his clients, Mr K and Miss T he had behaved in a way which was likely to diminish the trust which the public placed in him or the profession, contrary to Rule 1.06 of the Code

(5) that he had failed to keep his client, Miss T properly informed of progress in her case, contrary to Rule 2.02 of the Code;

(6) that in connection with his client, Mr K, had failed to give clear costs information in writing, contrary to Rule 2.03 of the Code;

(7) that he acted on his own account on behalf of clients without having in force the requisite indemnity insurance cover contrary to the Solicitors Indemnity Insurance Rules.

The Factual Background

1. The Respondent, born in 1956, was admitted as a solicitor in 1981. At the times material to these allegations he was employed by Davis & Co Solicitors, 3 Victoria Mews, De Montford Place, Leicester, LE1 7GZ where he remained from November 2005 until July 2008 as an assistant solicitor carrying out criminal work. His name remains on the Roll of Solicitors.

2. These matters were brought to the attention of the SRA by the Respondent's former employer, Mr TD under cover of a letter dated 2nd September 2008.

3. Mr TD also made a complaint to the police in Northampton as a result of which the Respondent went to the police station as a volunteer and was interviewed under caution on 3rd November 2008. The Crown Prosecution Service deemed the evidence against the Respondent to be insufficient to support any criminal prosecution.

4. On 11th May 2007 Miss T appeared before the Magistrates Court in Northampton on a drink driving allegation and was disqualified from driving for three years until 11th May 2010. Some time after her conviction she approached the Respondent to seek advice on having her ban lifted. At his request she paid him £175 but thereafter heard nothing at all from him. The Respondent, when interviewed by the police about this matter, claimed that he had been instructed by her privately to deal with the matter direct and she had given him £175 in cash but he did not deal with the matters. He admitted that he had not had contact details for Miss T and that he had not dealt with matters and had let her down.

5. There was no indication that the Respondent had ever written to Miss T to explain to her how he proposed to deal with the case and what the costs implications would be.

6. In 2008 the Respondent took over the conduct of a case involving a client Mr K who faced allegations of historic sexual abuse. Mr K was eventually charged on 2nd June 2008 but before this the Respondent had two consultations with Mr K for each of

which Mr K paid him £20 in cash. Receipt of one of these amounts is recorded on the back of one of the Respondent's business cards. As in the case of Miss T the Respondent claimed to have been acting for Mr K in his private capacity rather than through the firm by which he was employed.

7. As soon as Mr K had been charged with the offences on 2nd June 2008, it would have been clear to the Respondent that his case had to go to the Crown Court. This was because one of the allegations (of rape) was triable only at the Crown Court and the other two, which involved indecent assault on the same victim, would be certain to follow. In these circumstances, Mr K would have had an automatic entitlement to legal aid and it is clear from the forms which the Respondent filled out on his behalf on 10th June 2008 on Mr K's first appearance before the Tower Bridge Magistrates Court that he was fully aware of this. It was the Respondent's obligation to provide full and clear information about the costs in the case to the client in writing but this he failed to do.

8. Legal Aid cover was granted to allow Davis & Co to represent Mr K in the Magistrates Court on 10th June 2008 and thereafter in the Crown Court. Despite this, the Respondent asked for and accepted a cash payment of £160 from Mr K for what he described as 'his expenses'. It is possible that had the Respondent made a claim from the Legal Aid fund for travel time and expenses this would have been granted. He would have been covered for preparation, attendance, waiting and advocacy times on 10th June but the client was clearly under the belief that he would have to fund the case privately. Mr K’s wife sold her cafe business to fund the conduct of the case. Had matters been properly explained to Mr K, this would not have happened.

9. The Respondent claimed, in explanations given both to the police and the SRA, that his understanding was that his employment arrangements with Mr TD would not preclude him from carrying out private work on his own account. This was what he had done in the case of Miss T and that of Mr K up until the grant of legal aid. He accepted that despite carrying out work on his own account, he did not have the requisite indemnity insurance cover in force.

10. In the Respondent's written representations to the SRA he claimed that Mr TD had conducted a 'vendetta' against him but did concede that his conduct had fallen short of the required standard.

11. On 20th March 2009 an authorised SRA Officer resolved to refer the Respondent’s conduct to the Tribunal which was invited to make such Order as it thought fit.

12. The Tribunal reviewed the Rule 5 Statement of the Applicant dated 26th June 2009 together with accompanying bundle.

13. The Tribunal reviewed the testimonials supplied by the Respondent as well as findings by the Tribunal on 17th November 2009 made against the Respondent's former employer.

Finding as to facts and law

14. The Applicant had indicated that there was no allegation of dishonesty in this case and that the Respondent admitted all of the allegations. The allegations were inter-connected and involved two clients, Miss T and Mr K. The Respondent's former employer, Mr TD had complained to both the police and the SRA but the police had taken no further action.

15. The Respondent having admitted all of the allegations, the Tribunal found them to have been substantiated on the facts.

Mitigation

16. The Respondent told the Tribunal that he offered no excuse for his conduct but would like to explain what had occurred. Whilst his former employer had offered him a job on the basis that there would be support, no support had been forthcoming. His former employer, Mr TD, had also said that he could do private work.

17. In relation to Mr K, he had sacked his previous lawyers and had come to the Respondent through recommendation. He had had to deal with Mr K's bail application by means of a substantial argument for conditional bail put before the Magistrates.

18. In relation to Miss T he had acted for her family for 20 years and accepted that he had let her down. He had not been used to working in the chaotic atmosphere of Mr TD's firm and had left that firm before he could resolve the matter.

19. The Respondent had been qualified since 1981 and had been dealing with some very stressful cases as a result of which he had suffered a partial breakdown between July and September 2009. He was now working full time for the firm of Lawrences, a solicitors' firm based in Wellingborough and the Tribunal was informed that his employer, Mr James Smith-Wilds was present at the Tribunal to support him.

20. The Respondent's finances were constrained at the present, although his salary would rise in October 2010 and he was just about managing to balance his personal finances.

Costs application

21. The Applicant requested costs fixed in the sum of £3,161.23. These costs were agreed by the Respondent.

Previous disciplinary sanctions before the Tribunal

22. None.

Sanction and reasons

23. The Tribunal noted that in this case the Respondent's testimonials said that what had happened Miss T and Mr K was out of character. It was apparent that the chaos in his previous firm had allowed him an opportunity to do something which would not

normally have occurred to him. The Tribunal had looked very carefully at all of the facts and mitigation in this matter and at the testimonials provided by the Respondent as well as the Tribunal's findings against the Respondent's previous employer.

24. The Tribunal considered the Respondent's conduct to be of an extremely serious nature. He had taken advantage of vulnerable clients. Given the serious nature of the allegations and the effect on the regard in which the profession was held by the public, the Tribunal had seriously considered suspending the Respondent. However, it could be seen from the testimonials supplied by the Respondent that he was held in high regard in his local area by the profession, the police and magistrates. The Tribunal had also noted from the references that the Respondent was regarded as a competent and respected advocate, which made it even more extraordinary that he had behaved as he did. The Tribunal had also been impressed that his current employer held him in such regard that he was present at the hearing to provide support to him. Therefore taking into account his admissions from an early stage and his cooperation with the SRA, the penalty in this case would be a fine. Given the serious nature of the allegations the fine would be £7,000.

Order of the Tribunal

25. The Tribunal Ordered that the Respondent, Russell Peter Eaton of 76 Allard Close, Rectory Farm, Northampton, NN3 5LZ, solicitor, do pay a fine of £7,000.00, such penalty to be forfeited 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 £3,161.23.

Dated this 14th day of May 2010
On behalf of the Tribunal

D Glass
Chairman