

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MICHAEL EDWARD FRENCH, solicitor (Respondent)

Upon the application of Victoria Jane Hunt, Solicitor
On behalf of the Solicitors Regulation Authority

Mrs J Martineau (In the Chair)
Mr M Sibley
Mr G Fisher

Date of Hearing: 22nd April 2010

FINDINGS & DECISION

Appearances

Victoria Jane Hunt, Solicitor, employed by The Law Society at the SRA at 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE.

Michael Edward French appeared in person.

The initial application to the Tribunal, on behalf of the Solicitors Regulation Authority (SRA), was made on 10th December 2008, followed by a Supplementary Statement dated 3rd December 2009.

Allegations

The allegations against the Respondent were that he had:-

1. Delayed in complying with an undertaking given by his firm on 30th January 2008 to Hughes-Narborough & Thomas (H-N&T) in breach of Rule 10.05(1) of the Solicitors Code of Conduct 2007.
2. Failed to comply with an Adjudicator's decision made on 26th March 2008 in respect of inadequate professional service (IPS) in relation to the estate of the late Mr H.
3. Failed to deal with the SRA and the Legal Complaints Service (LCS) in an open, prompt and co-operative way in breach of Rule 20.03 of the Solicitors' Code of Conduct 2007.

4. Failed to act in the best interests of his clients by failing to deal with the administration of the estate in breach of Rule 1.04 of the Solicitors' Code of Conduct.
5. Failed to comply with an Adjudicator's decision made on 12th March 2009 in relation to the estate of the late Mrs C.
6. Allegation withdrawn

Preliminary Matter

The Applicant sought the Tribunal's permission to withdraw allegation 6 explaining that the Respondent had provided proof that he had been instructed by his client not to provide certain information to a complainant. The Tribunal agreed that the allegation be withdrawn.

Factual background

1. The Respondent, born in 1947, was admitted in 1974. His name remains on the Roll. At all material times, the Respondent practiced on his own account under the style of Michael French & Booth Hearn at 50 – 52 High Street, Chatham, Kent, ME4 4DZ.

Allegation 1

2. The Respondent had acted for Mr B, the Personal Representative of the late Mr DB in the sale of 2AC to Mr F, who had been represented by H-N&T.
3. On 30th January 2008, the Respondent had confirmed that he held the Land Certificate and Lease and had undertaken to pass them to H-N&T on completion. Completion had taken place on 31st January 2008 but, despite chasing letters of 25th March, 9th April and 18th April 2008, H-N&T had not received the title documentation or any response from the Respondent.
4. On 29th April 2008, H-N&T had complained to the SRA. Although written to on 2nd June, 5th June, 20th June, 17th July and 7th August 2008 by the SRA, the Respondent had failed to respond. Consequently, following an Adjudication on 21st August 2008, and the Respondent's continuing failure to supply the title documentation, the matter had been referred to the Tribunal.

Allegation 2

5. A complaint of IPS had been made by the beneficiaries in relation to the estate of the late Mr H. In a decision, dated 26th March 2008, an Adjudicator had made three directions.
6. A direction to refund costs of £587.50 to the Estate, within seven days, had not been complied with until the Respondent's firm's Professional Indemnity Insurers had made a payment on 2nd October 2008.
7. Directions to indemnify the Estate, against the reasonable legal costs incurred in various matters, had not been complied with within the time specified. Neither had a direction to release estate monies and documents relating to the late Mr H's property in Jamaica.
8. In order to enforce the directions, an agent had attended the firm's offices on or

around 20th January 2009. Monies and a ledger sheet had been handed over but no papers relating to the Jamaican properties. An investigation officer of the SRA had attended the Respondent's firm on 1st May 2009, when the Respondent had explained that he could not find any papers relating to the Jamaican properties. There remained a dispute between Mrs H and the Respondent as to whether he had been holding copy or original documents.

Allegation 3

9. In relation to the complaint made by the beneficiaries of the estate of Mr H, the Respondent had failed to reply to the LCS's letters of 21st April, 28th April, 8th May, 2nd September and 2nd October 2008. In addition the Respondent had failed to reply to the SRA's letters of 8th, 23rd & 28th October 2008.
10. In relation to the complaint made by H-N&T, the Respondent had failed to reply to the SRA's letters of 2nd, 5th, 20th June and 17th July 2008.
11. In relation to the complaint made by Mr E, the Respondent had failed to respond to the LCS and the SRA in an open and prompt manner in that he had not responded to letters of 28th April and 19th May 2008. While the Respondent had sent his file on 13th June 2008, in response to a section 44B Notice, he had failed to address any of the issues raised by the complaint.
12. Conciliation had been explored and a resolution agreed by 9th July 2008. However, when the LCS had written to the Respondent, on 26th September 2008, about his failure to comply with the agreed terms, he had not replied and the matter had been referred to the SRA. The SRA had written to the Respondent on 11th November, 9th December and 8th January 2009, but had received no response.
13. The matter had been referred to an Adjudicator who, on 12th March 2009, had made a finding of inadequate professional services and had made various directions to be complied with by 31st March 2009. The Respondent had failed to comply and the SRA had sent an officer to uplift papers and monies relating to the estate of Mrs C.
14. In the matter of Mrs W, the Respondent had been instructed to deal with a matter concerning a Power of Attorney, including the Court of Protection. Mrs W had complained about the service provided to the LCS. Subsequently, the Respondent had failed to respond to letters, to a section 44B Notice and to telephone calls from the LCS.
15. An agent had been sent to the Respondent's offices to collect the client's files and monies. The matter had been referred to the SRA, whose caseworker had written to the Respondent on 7th & 27th May and 8th & 19th June 2009. The Respondent had failed to reply and the matter had been authorised for incorporation into the existing referral of the Respondent's conduct to the Tribunal.

Allegation 4

16. From early July 2006, when MC had joined the Respondent's firm, it had been acting for Mr E, the executor of the late Mrs AC, his Aunt. Triggs Read & Dart (TR&D) had been acting for the Uncle, as there had been a dispute as to who had died first. On 1st February 2007, Mr E had been told by the Respondent's firm that it would take

a couple more months to deal with everything, namely the preparation of the estate accounts. Chasing letters had been sent by both Mr E and TR&D until, on 21st January 2008, Mr E had complained to the Legal Complaints Service (LCS).

17. The LCS had written to the Respondent on 28th April, 19th May & 29th May 2008. The Respondent had replied on 13th June 2008, enclosing his file. Little work appeared to have been done to finalise the estate matter since the departure of MC from the firm in April 2007. Mr E had indicated to the LCS that the failure of the Respondent to deal with the estate matter had caused much distress to him and his family following the death of his Aunt and Uncle in a tragic car accident.

Allegation 5

18. In failing to deal with the Adjudicator's directions relating to the payment of compensation and the delivery up of papers and monies, in the estate matter of the late Mrs C, the Respondent had failed to comply with the decision of the Adjudicator of 12 March 2009. The SRA had had to send an officer to the offices of the Respondent's firm to uplift the papers and monies.

Documentary Evidence before the Tribunal

19. The Tribunal reviewed the Rule 5 Statement and the Supplementary Statement together with their Appendices. The Respondent referred the Tribunal to his letter of 16th April 2010 to the Applicant with admissions.

Findings as to fact and law

Allegation 1. That the Respondent had delayed in complying with an undertaking given by his firm on 30th January 2008 to Hughes-Narborough & Thomas (H-N&T) in breach of Rule 10.05(1) of the Solicitors Code of Conduct 2007.

20. The Tribunal found that the Respondent had delayed in complying with his undertaking, given to H-N&T, in that completion had taken place on 31st January 2008 and the relevant documentation had not been sent by the Respondent to H-N&T until 23rd December 2008.
21. The Tribunal found the allegation proved and noted that it was admitted by the Respondent who said that he much regretted the long delay.

Allegation 2. That the Respondent had failed to comply with an Adjudicator's decision made on 26th March 2008 in respect of inadequate professional service (IPS) in relation to the estate of the late Mr H.

22. The Tribunal was satisfied that the Respondent had failed to comply with the direction made by the Adjudicator on 26th March 2008, namely as to the release of documents relating to the late Mr H's property in Jamaica. It noted that the matter would have to be dealt with by the Respondent's insurance company, as he was unable now to trace any relevant papers. Moreover, the Tribunal was satisfied that there had been excessive delay on the Respondent's part in relation to his compliance with the other directions dealing with indemnity and refunds.

23. The Tribunal found the allegation proved and noted that it was admitted by the Respondent. The Tribunal also noted that the Respondent agreed that he had not complied within the time set and deeply regretted his failure. He also explained that he did not hold original deeds or documents relating to the property in Jamaica. However, when Mr H had died he recollected seeing copies of various relevant documents but that those documents had not been in the file when the papers had been delivered up.

Allegation 3. That the Respondent had failed to deal with the SRA and the Legal Complaints Service (LCS) in an open, prompt and co-operative way in breach of Rule 20.03 of the Solicitors' Code of Conduct 2007.

24. In relation to complaint made by the beneficiaries of the Estate of Mr H deceased, the complaint made by H-N&T, the complaint made by Mr E and the complaint made by Mrs W, the Tribunal was satisfied that the Respondent had failed to deal with both the LCS and the SRA in an open, prompt and co-operative way.
25. The Tribunal found the allegation proved and noted that it was admitted by the Respondent who expressed his deep regret.

Allegation 4. That the Respondent had failed to act in the best interests of his clients by failing to deal with the administration of the estate in breach of Rule 1.04 of the Solicitors' Code of Conduct.

26. The Tribunal was satisfied that the Respondent's excessive delay in dealing with the Estate of Mrs C had amounted to failing to act in the best interests of his client. It noted that the delay had caused the client and his family, a great deal of distress as, following a tragic car accident, they had been unable to move forward because of the Respondent's delay in bringing matters to a conclusion.
27. The Tribunal found the allegation proved and noted that it was admitted by the Respondent who expressed his deep regret.

Allegation 5. That the Respondent had failed to comply with an Adjudicator's decision made on 12th March 2009 in relation to the estate of the late Mrs C.

28. The Tribunal was satisfied that in failing to pay the compensation and deliver up the papers and monies in relation to the client matter of Mr E, the Respondent had also failed to comply with the decision of the Adjudicator. The SRA had had to send an Officer to the Respondent's firm to uplift the file of papers and to obtain cheques for the IPS award and for the balance of the estate monies.
29. The Tribunal found the allegation proved and noted that it was admitted by the Respondent who expressed his deep regret at his failure to act effectively.

Mitigation

30. The Respondent expressed his deep regret for the effects of his inactivity on his clients and for the time and effort that he had caused the SRA. He gave the Tribunal details of his practice and of the of the problems he had encountered over the last few years relating to staff-turnover and changes in work in-puts. The Respondent also told the Tribunal about his health and personal problems which had resulted in him

putting his “head in the sand” in relation to certain difficult files. He stressed that he was now in a more positive frame of mind and felt that he could move forwards.

31. The Respondent provided details of his financial position, together with relevant detailed documentation, and of his projections for the future of his small firm. He explained the conditions on his Practising Certificate.

Costs Application

32. The Applicant explained that costs had been agreed in the sum of £4,161.00.

Sanction and Reasons

33. The Tribunal found all of the allegations both proved and admitted. It was extremely concerned by the Respondent’s failure to engage both with the Legal Complaints Service and with his Regulator; the SRA. The Tribunal stressed that it was vital, both for the protection of the Public and in order to maintain the reputation of the Profession, that solicitors comply with their undertakings in a timely manner, that they engage in an open, prompt and co-operative way with the LSC and the SRA and that they comply promptly with any decisions made by an Adjudicator.
34. Although the allegations proved against and admitted by the Respondent were serious, the Tribunal had taken into account his health and his personal problems and his efforts to consolidate his practice and move forward. In the particular circumstances, the Tribunal considered that the Respondent should be subject to a penalty of a fine of £8,000. However, the Tribunal warned the Respondent that should he appear again before the Tribunal on similar charges, it was likely that it would be less sympathetic.

Decision as to costs

35. The Tribunal noted the agreement of the parties and determined that the costs order should be made as agreed.

The Order of the Tribunal

36. The Tribunal Ordered that the Respondent, Michael Edward French of Michael French & Booth Hearn, 50 – 52, High Street, Chatham, Kent, ME4 4DZ, solicitor, do pay a fine of £8,000.00, 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 £4,161.00.

Dated this 26th day of May 2010

On behalf of the Tribunal

Mrs J Martineau
Chairman