

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ANDREW JOHN MCHALE (First Respondent) and WAHEED
ABDUR RAHMAN ASLAM (Second Respondent), solicitors

Upon the application of David Barton Solicitor Advocate
On behalf of the Solicitors Regulation Authority

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr M Sibley
Mr G Fisher

Date of Hearing: 22nd April 2010

FINDINGS & DECISION

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

David Barton Solicitor Advocate, 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX,
the Applicant on behalf of the Solicitors' Regulation Authority (SRA)

Jonathan Goodwin, Solicitor Advocate, 17e, Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on behalf of the Respondents. The First Respondent was present. The Second Respondent was unable to appear.

Allegations

The allegations against the Respondents were that:-

1. In breach of Rule 15 of the Solicitors' Accounts Rules 1998 (SAR) client money had been incorrectly retained in office account.
2. In breach of Rule 22 SAR monies had been withdrawn from client account in circumstances other than as permitted by Rule 22.
3. In breach of Rule 32 SAR accounting records had not been properly written up at all times.
4. In breach of Rule 32(7) of the SAR client account had not been reconciled in accordance with the requirements of Rule 32(7).
5. (As amended) In breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 (the Code) they had behaved in such a way as was likely to diminish the trust the public placed in them or in the profession.

The further allegations as against the First Respondent only were that:-

6. In breach of Rule 5 of the Code he had failed to make arrangements for the effective management of his firm.
7. In breach of Rule 9 of the Code he had arrangements in place with introducers that had failed to comply with the provisions of Rule 9.
8. Contrary to Rule 3 of the Code he had acted in circumstances where there had existed a conflict between his interests and those of his client.

Preliminary Matters

Mr Goodwin explained that the Second Respondent was unable to attend the hearing because he could not get a return flight owing to the closure of UK air-space. However, he had instructed Mr Goodwin that he was content for the matter to proceed in his absence.

The Applicant sought the Tribunal's permission to amend allegation 5 explaining that the underlying facts were not in issue. He also asked to withdraw allegations 6 and 7 as against the Second Respondent on the basis that he had not played an active role in the practice.

The Tribunal agreed that allegations 6 & 7 be withdrawn as against the Second Respondent and that allegation 5 should proceed as against both Respondents as amended.

Factual background

1. The First Respondent, born in 1969, was admitted as a Solicitor in 1996. His name remains on the Roll. The Second Respondent, born in 1969, was admitted in 2003. His name remains on the Roll. At all material times, the Respondents had carried on practice under the style of McHale and Co (the firm) of 19 – 21 High Street, Altrincham, Cheshire, WA14 1QP.
2. A forensic investigation officer of the SRA, Mr Rowson, had commenced an inspection of the books of account and other documents of the firm on 22nd January 2008 resulting in a report dated 19th September 2008 that was before the Tribunal.
3. During the course of the inspection Mr Rowson had found that the sum of £4,928.74 had been incorrectly retained in office account. The sum had been in respect of 31 client matters ranging in amount from between £3.03 and £2,239.69. The individual amounts had been identified when the office accounting records had been brought up to date and had all been due to accounting errors. The resulting client account shortage had been rectified during the investigation.
4. As at 31st December 2007, there had been a cash shortage of £172,680.65 established by a comparison between the total liabilities to clients and the cash available. The cash shortage had been caused by debit balances due to overpayments, over-transfers and improper transfers from client to office account of £167,751.91 and by client monies incorrectly retained in office bank account of £4,928.74. Debit balances, ranging in value from £0.01 to £65,110.30 and totalling £167,751.91, as at 31st December 2007, had arisen on 44 client matters at varying times during the period 21st September 2006 – 31st December 2007. The cash shortage had been rectified by transfers from office to client bank account between January and March 2008.
5. As at 17th January 2008, the only client account reconciliation statement available had been that for the month of April 2007.
6. The Respondents had practised in partnership from 5th April 2004 – 22nd March 2006 and from 9th March 2007 – 1st February 2008. However, during the latter period the Second Respondent had had no involvement in the management of the firm, no involvement in the day to day running of the firm, no involvement in the accounting functions of the firm and had only visited the firm occasionally. He had not supervised staff nor had carried out any fee-earning work at the firm.
7. During the relevant period the First Respondent had failed to supervise the work of his cashier or of one of the firm's fee-earners.
8. The firm had received referrals of clients wishing to pursue personal injury claims from two introducers. However, although agreements had been in place with both introducers, the requirements of Rule 9 of the Code had not been complied with. The firm had received 22 referrals and paid out £11,000 in referrals to one introducer and had received eight from the other, for a total of £6,345.00.
9. In December 2007 the First Respondent had taken a loan from a client who had also

been a personal friend. The client had not been required or advised by the First Respondent to take independent advice.

Documentary Evidence before the Tribunal

19. The Tribunal reviewed the Rule 5 Statement together with the Forensic Investigation Report dated 19th September 2008 and correspondence passing between the SRA and the Respondents. The Respondents referred the Tribunal to a small bundle of documents including references on behalf of the First Respondent and a letter dated 15th April 2010 containing admissions.

Findings as to fact and law

20. **Allegation 1. That in breach of Rule 15 of the Solicitors' Accounts Rules 1998 (SAR) client money had been incorrectly retained in office account.**
21. The Tribunal found the allegation proved and noted that it had been admitted by both Respondents. The Second Respondent had admitted all the accounts allegations on the basis of strict liability.
22. **Allegation 2. That in breach of Rule 22 SAR monies had been withdrawn from client account in circumstances other than as permitted by Rule 22.**
23. The Tribunal found the allegation proved and noted that it had been admitted by both Respondents. The Second Respondent had admitted the allegation on the basis of strict liability.
24. **Allegation 3. That in breach of Rule 32 SAR accounting records had not been properly written up at all times.**
25. The Tribunal noted that, at the commencement of the inspection in January 2008, the books of account had not been properly written up to date. The Tribunal found the allegation proved and noted that it had been admitted by both Respondents. The Second Respondent had admitted the allegation on the basis of strict liability.
26. **Allegation 4. That in breach of Rule 32(7) of the SAR client account had not been reconciled in accordance with the requirements of Rule 32(7).**
27. The Tribunal noted that, as at the commencement of the inspection in January 2008, only a client account reconciliation for the month of April 2007 had been available. The Tribunal found the allegation proved and noted that it had been admitted by both Respondents. The Second Respondent had admitted the allegation on the basis of strict liability.
28. **Allegation 5. That in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 (the Code) they had behaved in such a way as was likely to diminish the trust the public placed in them or in the profession.**
29. The Tribunal noted that both the Respondents had viewed their arrangements as to partnership as not being inappropriate in that they had considered continuity and

retention on lender panels as adequate reasons. Moreover, they had offered each other mutual support and advice and assistance. However, in all the circumstances, the Tribunal found the allegation proved and noted that it had been admitted by both Respondents.

30. **Allegation 6. That in breach of Rule 5 of the Code the First Respondent had failed to make arrangements for the effective management of his firm.**
31. The Tribunal noted that during the inspection the First Respondent had stated that in respect of the accounting function he had “failed miserably in [the] supervisory role”. The Tribunal found the allegation both admitted and proved.
32. **Allegation 7. That in breach of Rule 9 of the Code the First Respondent had arrangements in place with introducers that had failed to comply with the provisions of Rule 9.**
33. The Tribunal noted that the First Respondent had accepted that Rule 9 had not been fully complied with due to an absence of an undertaking from the Introducer and of a signed agreement as between the Introducer and the firm although he had maintained that clients had been aware of the arrangement. The Tribunal found the allegation both admitted and proved.
34. **Allegation 8. That contrary to Rule 3 of the Code the First Respondent had acted in circumstances where there had existed a conflict between his interests and those of his client.**
35. The Tribunal noted that a loan had been made to the First Respondent by a client who had not been advised or required to take independent advice and found the allegation both admitted and proved.

Mitigation

36. Mr Goodwin told the Tribunal that both Respondents offered their apologies both to the Tribunal and to the Profession. He reminded the Tribunal that solicitors can be partners in more than one firm. Mr Goodwin explained the professional history of the Respondents and their firms together with the circumstances leading to their partnership. He submitted that the Respondents had intended to and had entered into a partnership arrangement with legal consequences. Moreover, that both Respondents had accepted the responsibilities flowing from their status as partners and had never intended to mislead.
37. Mr Goodwin stressed that both Respondents had co-operated fully with the SRA and that the Accounts Rules breaches had occurred as a result of errors and had not been the result of conscious impropriety. He explained that systems had been introduced to ensure that such errors would be unlikely to be repeated.
38. Mr Goodwin detailed the present position of the firm and referred the Tribunal to the references before it. He detailed the significant financial impact on the firm caused by the breaches and stressed that the Respondents had sought to provide explanations

rather than excuses. Moreover, he explained that costs had been agreed and that the First Respondent had accepted that he should pay all of the costs in the matter.

Application for Costs

39. The Applicant explained that costs had been agreed in the sum of £20,000.

Sanction and Reasons

40. The Tribunal found all of the allegations both proved and admitted. While accepting that the Respondents had not set out to mislead, the Tribunal was concerned that their partnership had had the potential to diminish trust in the Profession. However, it accepted that neither Respondent presented a risk to the public and was satisfied that an appropriate sanction, taking into consideration all the circumstances, was a fine. On the basis of the number of allegations and the greater culpability of the First Respondent, the Tribunal imposed upon him a fine of £10,000 and in respect of the Second Respondent, a fine of £3,000.

Decision as to costs

41. The Tribunal noted the agreement of the parties and determined that the costs order should be made as agreed as against the First Respondent only.

The Order of the Tribunal

42. The Tribunal Ordered that the First Respondent, Andrew John McHale of 19 – 21 High Street, Altrincham, Cheshire, WA14 1QP, solicitor, do pay a fine of £10,000.00 such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £20,000.00.

43. The Tribunal Ordered that the Second Respondent, Waheed Abdur Rahman Aslam of 880, Stockport Road, Manchester, M19 3BN, solicitor, do pay a fine of £3,000.00 such penalty to be forfeit to Her Majesty the Queen.

Dated this 26th day of May 2010
On behalf of the Tribunal

Mrs J Martineau
In the Chair