

IN THE MATTER OF WILLIAM MITCHELL, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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

Date of Hearing: 25th February 2010

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Margaret Eleanor Bromley of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ on 6th April 2009 that William Mitchell of Blackstones LLP, 35 Devonshire Street, Keighley, West Yorkshire BD21 2AU, a solicitor, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondent were that:

1. withdrawn;
2. he inappropriately charged his client costs after his client had terminated his instructions and additionally charged what was described as a success fee which was wholly disproportionate to the work involved when he ought to have known that those charges could not be justified in breaches of Rules 1(a), (c) and (d) of the Solicitors Practice Rules 1990 and Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007;

3. withdrawn.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 25th February 2010 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent appeared and was represented by Sarah Knight, solicitor of Townshends LLP.

The evidence before the Tribunal included the Rule 5 Statement of the Applicant, together with an accompanying bundle, the statement of the Respondent dated 10th February 2010 and a personal testimonial given on behalf of the Respondent.

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

The Tribunal Orders that the Respondent, William Mitchell of The Haven, 6 Lyon Road, Eastburn, West Yorkshire, solicitor do pay a fine of £10,000 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 fixed in the sum of £8,600.

Preliminary Matter

The Applicant indicated to the Tribunal that following a further review of the allegations she would apply to withdraw allegations 1 and 3 and to amend allegation 2. The Tribunal considered the matter and agreed to the amendment.

The facts as set out in paragraphs 1 - 27 hereunder:-

1. The Respondent William Mitchell was born in November 1967 and was admitted as a solicitor in October 1999 and his name remains on the Roll of Solicitors.
2. At all material times the Respondent practised as a member of an LLP under the style of Blackstones LLP of 36 Devonshire Street, Keighley, West Yorkshire, BD21 2AU. The Respondent was also a member at the following LLPs:-
 - (a) ARC Property Solicitors LLP, Simpson House, 11 Windsor Court, Clarence Drive, Harrogate, North Yorkshire HG1 2PE.
 - (b) ARC Property Solicitors LLP, Suite 404, Albany House, 324-326 Regent Street, London W1B 3HH.
3. On about 22nd May 2007 Mr F instructed the Respondent in connection with a debt allegedly owed by Mr F to Ms L who had been made bankrupt. The Official Receiver ("OR") was pursuing recovery of the debt and had written to Mr F on 18th May 2007.
4. The Respondent's initial attendance note recorded that Mr F told him that Ms L had provided a loan of £16,500 and that Mr F had repaid £22,000. The OR advised that £40,000 was owed, "Advised evidence req'd of payment from him and OR before proper assessment." Costs were estimated at "between £5/£8k + VAT & disbs". On 22 May 2007 the Respondent wrote a client care letter to Mr F in which he estimated

that the charges would be between £5,000 and £8,000 and stated that his hourly charging rate was £165 per hour. That letter was signed by Mr F on 24th May 2007.

5. Mr F paid £500 on account of costs on about 29th May. Mr Mitchell's attendance note of that date records that Mr F told the Respondent that the OR claimed that he owed £40,000.
6. On 31st May 2007 the Respondent wrote to the OR requesting evidence of the alleged debt. On the same day, the Respondent sent out a client care letter to Mr F dealing with the sale of Mr F's business.
7. The Respondent telephoned the OR on 4 June 2007 and was informed that the OR did have letters from Mr F requesting money from Ms L. On 6 June 2007 the OR wrote indicating that they would reply shortly to the May letter. A fuller response followed on 8 June 2007 when the OR stated "The bankrupt states that she has lent Mr F sums totalling £90,000 since January 2000. To date she has received a repayment of £22,000 which leaves £68,000 outstanding". The letter also enclosed letters from Mr F to the bankrupt.
8. On 12th June 2007 the Respondent rang Mr F and asked him to come into his office. At the meeting the Respondent informed Mr F of the letter from the OR which referred to the figure of £90,000 but said that he could get it down lower than that. Whilst Mr F was there the Respondent spoke to the OR's office. His attendance note of the telephone call records "I said I wanted to know what evidence they have to prove £90k is owed and how they can prove my client has already paid £22k". Mr F's recollection is that the Respondent then told him that the figure was £68,000 and that he wanted a win fee for dealing with the matter. Mr F repeated that he had only borrowed £16,500 and had already repaid £22,000 and that the amounts the OR was referring to were not correct. The Respondent's attendance note of the meeting records that: "Advised the client I charge a success fee on getting this case resolved satisfactorily for him, to which he agreed at 10% of the sale value of his business". However, Mr F recalls that he asked what Mr Mitchell meant by a win fee and was told that it was 10% of whatever is outstanding on the alleged debt. At the moment it was £68,000 but the Respondent would work with the OR to reduce it. Mr F agreed because he felt he had no choice.
9. Mr F returned to his shop and then received another phone call from the Respondent asking him to go straight back to the office. He said that it was important that he saw Mr F again. On his return to the Respondent's office the Respondent produced a revised client care letter and told Mr F that he had to sign it. Mr F asked what was in it and the Respondent told him it was the success fee which they had discussed. The Respondent put the letter in front of Mr F and asked him to sign on the last page. Mr F did not read the letter. Mr F was given a copy of the letter after he had signed it.
10. On 12th June 2007 the Respondent spoke again to the Official Receiver's office. His attendance note records that PJR "advised that the evidence they have includes the amounts to the bankrupt Ms L has advised them of in interview and the letters. I said that does not confirm the amounts owed to a great extent and unless there is a paper trail to confirm the amount owed our client denies anything except that he did receive

money. The amount is in dispute”. This was followed by a letter from the Respondent later that day, again asking for evidence of the amount owed.

11. The Respondent’s attendance note of the meeting with Mr F (which followed the second call to the OR) notes “He signed new client care letter agreeing to the success fee”. On the same day the Respondent wrote to Mr F enclosing an amended client care letter and stating “This covers the success fee which you have now agreed to pay in light of the changed circumstances of your case”. The amended client care letter (still dated 22nd May 2007) in addition to the estimated charges of between £5,000 and £8,000 stated “plus a success fee of 10% of the value of the business”. The file copy of the amended client care letter has a manuscript note “10% of £68,000”.
12. On 12th June 2007 Mr Mitchell raised an invoice for £620.40 inclusive of VAT. Mr F paid this on about 18th June 2007.
13. On 13th June 2007 the Respondent wrote to Mr F enclosing a valuation of his business in the sum of £135,000 and stating “We confirm our success fee for your debt matter is 10% of the value of your business, which in this case will be £13,500 + VAT subject to satisfactorily reducing your liability by more than 50% as agreed.”
14. On receipt of that letter Mr F rang the Respondent and said that that was not what had been agreed. The Respondent insisted that that was what was agreed and was adamant that Mr F would have to pay that amount.
15. On 20th June 2007 the Respondent wrote to Mr F advising him that the OR’s office was awaiting further evidence from Ms L.
16. On 6th July 2007 the OR wrote to the Respondent concluding “Based on the information Miss L has supplied it appears that your client owes her bankruptcy estate in the region of £40,715”. The Respondent replied by letter and email dated 9th July 2007 asking for clarification as to the differing amounts mentioned to date by the OR, and repeating his request for evidence regarding the alleged debt.
17. On 9th July 2007 the Respondent wrote to Mr F reporting a reduction in his liability to the Insolvency Services of £49,285. This figure appeared to be based on the difference between £90,000 (referred to in the OR’s letter of 8th June 2007 and £40,715 (referred to in the OR’s letter of 6th July 2007). The letter states that “In accordance with our renegotiated retainer an invoice is enclosed for the success fee.” An invoice totalling £16,056.37 was raised incorporating profit costs of £165, and a success fee of £13,500 plus VAT.
18. On the same date the Respondent emailed the OR querying the figures in the letter of 6th July and concluding “If you are going to pursue someone for money then it is only reasonable to ask for proof of any claim against them and to date I have received nothing to substantiate the claim by the OR”.
19. On 11th July 2007 the Respondent wrote to Mr F confirming an agreement to pay the invoices by three monthly instalments. A manuscript note records the first payment of £5,352.12 as “paid”.

20. On 27th July 2007 the OR wrote to the Respondent again seeking clarification as to whether Mr F was claiming that all amounts owed had been repaid or whether he was simply disputing the amount owed, and referring to correspondence between Mr F and the bankrupt. The Respondent replied on 30th July 2007 enclosing a handwritten note from the bankrupt acknowledging that £22,000 had been repaid, and stating that “Mr F does not accept any further liability to the bankrupt”.
21. On the same day, the Respondent wrote to Mr F seeking details of his direct correspondence with the OR and asking him to make an appointment to see him. He went on to state:
- “On that note we shall forward the accounts provided to us by your accountant together with a copy of the handwritten letter by Mrs C. We anticipate this will reduce your liability further but do not guarantee it will eliminate it”.
22. On 6th August 2007 Mr F terminated his instructions and requested that his file be transferred to B&H Solicitors. On the same date he made a complaint to the firm. The Respondent replied to that complaint on 7th August 2007. On the Respondent’s own figures the work done totalled 4.4 hours. On 9 August 2007 the Respondent wrote to Mr F enclosing a final invoice in the sum of £313.50 plus VAT covering 1.9 hours further work.
23. On 9th August 2007 the OR wrote to the Respondent dealing with the sum owed by Mr F to the bankrupt which was now estimated at £15,531.
24. On 13th August 2007 the Respondent wrote to Mr F stating that the amount owed to the OR had been reduced to £15,531 and “We have successfully reduced your liability by almost £75,000.” On the same date he wrote to B&H saying that the file of papers would only be released on payment of the outstanding costs of £11,072.61 or an undertaking from them to pay that sum.
25. On 13th August 2007 Mr F complained to the Legal Complaints Service (“LCS”). The details of the complaint refer to the Respondent demanding 10% of £68,000. Mr F gave further details in his letter of 9th September 2007.
26. The final invoice covered 1.9 hours work. In the period between 9 July (the date of invoice 525) and 9 August (the date of invoice 545) the only work done by the Respondent in connection with the dispute with the OR consisted of three letters written, two telephone calls and one letter from the OR.
27. The work done on this matter amounted to just over £1,000 plus VAT in fees. B&H charged £588 plus VAT in order to bring the matter to a satisfactory conclusion whereby Mr F was exonerated from liability altogether.

The Submissions of the Applicant

28. The Applicant indicated that the Respondent would admit the remaining allegation as amended.

29. The Applicant submitted that this remained a serious matter as the Respondent had admitted breaches of Rules 1(a), (c) and (d) of the Solicitors Practice Rules 1990 and the corresponding sections of the Solicitors Code of Conduct 2007. The impression given from the facts was that the Respondent was only interested in maximising his fees without regard to his client. Success fees usually applied in litigation matters where they were only paid on a successful outcome and the solicitor had to fund the matter as it progressed. This was not the case here.
30. The whole matter had had a serious impact on Mr F who in the complaint made to the LCS had indicated the worry and strain the matter had put him under. In particular he had said that “this has ruined my life I shall never trust solicitors again ...” It was clearly illustrated from these comments that the Respondent’s actions had had an effect on the reputation of the profession.
31. The Respondent had been asked whether he had any proposal for repayment of Mr F and none had been forthcoming. He had charged a total amount of £17,044.73 to Mr F yet had failed to resolve the matter with the OR. This was in stark contrast to B&H who had resolved the matter leaving Mr F with a nil liability for £588 plus VAT.
32. The Applicant applied for costs in the sum of £11,466.36. Whilst she understood that the Respondent would give details of his financial position, which he said was parlous, she asked the Tribunal to note the decision in the case of D’Souza v The Law Society [2009] EWHC 2193 (Admin). In that case it had been said that means may be relevant to the issue of costs, however, it had also been indicated that this would only apply in exceptional circumstances. Whereas Mr D’Souza had been some 67 years old this Respondent was 42 years old with many more years of earning. The reality was that he had a good chance of employment, capital assets and reasonable equity in his home. In the Applicant’s submission the burden of costs should fall on the Respondent rather than on the profession.

The Submissions and Mitigation of the Respondent

33. The Respondent had admitted the amended allegation. However in his submission it was important to look at all of the circumstances of the case as to what he “ought to have known”, which was the wording of the allegation.
34. In the Respondent’s submission his original charges were not excessive (his retainer of £165 per hour being £120 per hour less than the going rate in the County Court) and he had not entered into the success fee arrangement to maximise his profit. There were inconsistencies in what the Respondent had been told by Mr F and there also appeared to be no documentary evidence. This had lead the Respondent to become alarmed as although the matter was not complex it did appear to be messy and complicated as Mr F had made demands for money from Ms L. It also appeared that the loans were substantial.
35. The Respondent had only been in practice on his own account for three years and his experience was in conveyancing and criminal law, he had no experience of general litigation or bankruptcy or of dealings with the OR. Whilst he should perhaps have been on notice that he was out of his depth with this matter he had failed to appreciate at the time that his inexperience would influence the course of events.

36. The Respondent had fixed the success fee at 10% of the valuation of Mr F's business although with the benefit of hindsight he could not explain why that was appropriate. Perhaps it was that that was the only fixed figure in the matter. He now appreciated that a success fee was wholly inappropriate. The Respondent had suffered from a complete aberration in this matter and thought that there was a high likelihood of litigation.
37. In the end the relationship between the Respondent and Mr F had broken down completely over the costs issues and once his retainer had been terminated he had raised an invoice for the remaining costs. He now conceded that this was inappropriate.
38. The Respondent indicated that he was extremely sorry and had not appreciated the level of stress that the matter had placed Mr F under. He much regretted his actions. He would like to repay Mr F by instalments but he was in financial difficulties. It was not the case that he did not wish to do so.
39. The Respondent had responded to the LCS and the SRA promptly and professionally. He was no longer practising but had been granted a practising certificate with no conditions on it in October 2009. He had dissolved his partnership and wanted to continue as a sole practitioner but due to the downturn in conveyancing, the expense of the SRA investigation and the professional indemnity insurance premiums, he was unable to pay his premium and had to close the business which had cost him dearly.
40. It was submitted on behalf of the Respondent that there was no allegation of dishonesty and no outstanding disciplinary proceedings. These events constituted an isolated incident caused by an error of judgment. The Respondent's financial position was precarious and evidence was presented to the Tribunal of his financial situation should the Respondent face suspension from practice this would compound his financial difficulties.
41. In regard to costs requested by the Applicant the Tribunal was asked to be mindful that there was now only one allegation and the costs awarded should reflect that fact.

The Tribunal's Decision and its Findings

42. The allegation was found to be proved, indeed it had not been contested.
43. The Tribunal considered this matter to be a serious case of overcharging. It had given anxious consideration to whether the Respondent should be suspended in all of the circumstances. However, having considered the evidence presented to it, including the submissions of both the Applicant and the Respondent, in this case a substantial fine would reflect the gravity of the matter.
44. In regard to costs, the Tribunal considered the matter had been properly brought but would reduce the costs a little in view of the amendment to the original allegations. In those circumstances costs would be awarded in the sum of £8,600.

45. The Tribunal Ordered that the Respondent William Mitchell of The Haven, 6 Lyon Road, Eastburn, West Yorkshire, solicitor, do pay a fine of £10,000, 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 £8,600.

Dated this 4th day of May 2010

On behalf of the Tribunal

Miss J Devonish
Chairman