

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RICHARD ANTHONY STRIPE, solicitor (Respondent)

Upon the application of Peter Harland Cadman (Applicant)  
on behalf of the Solicitors Regulation Authority

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Mr J N Barnecutt (in the chair)  
Mr D Glass  
Mr M C Baughan

Date of Hearing: 12<sup>th</sup> April 2010

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**FINDINGS & DECISION**

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**Appearances**

Timothy Dutton of Queen's Counsel, instructed by Russell-Cooke LLP of 8 Bedford Row, London WC1R 4BX for the Applicant.

Gregory Treverton-Jones of Queen's Counsel, instructed by Radcliffes Le Brasseur, solicitors, 5 Great College Street, London SW1P 3SJ for the Respondent.

The application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 16<sup>th</sup> November 2007.

At the hearing two allegations were amended and one was withdrawn with the agreement of the Respondent and the consent of the Tribunal.

The allegations are set out below in the agreed amended form.

**Allegations**

1. That by virtue of his relationship with an introducer the Respondent acted and/or continued to act when there was a conflict and/or significant risk of conflict of interests between the interests of the clients and his interests.
2. That he failed to act in the best interests of clients in that he:-

- (a) Caused his clients to enter into improper and/or unenforceable conditional fee agreements (“CFAs”);
  - (b) Improperly recovered “success fees” from his clients pursuant to the said CFAs.
  - (c) Failed to provide any or adequate advice on the funding of claims generally.
  - (d) Failed to advise the clients fairly and openly with regard to the success fees.
3. That he acted and/or continued to act when there was a conflict and/or significant risk of conflict of interests between the interests of the clients and his interests by asserting that he was entitled to recover success fees from them when he was not so entitled.
  4. That he accepted introductions and referrals of business from other persons in breach of, and otherwise than in compliance with, the Solicitors Introduction and Referral Code (“the Code”) contrary to Rule 3 of the Rules.
  5. That contrary to Rule 15 of the Rules he has failed to give the information required to be given to clients in accordance with the Solicitors Costs Information and Client Care Code (“the Client Care Code”).
  6. That being aware of Rules 3 of the Solicitors Practice Rules 1990 and the Solicitors Introduction and Referral Code 1990 (as amended) he categorised payments as disbursements on a client ledger which were in fact payments of referral fees.
  7. Withdrawn.

### **The Factual Background**

1. The Respondent admitted the facts and the allegations.
2. The Respondent, born in 1961, was admitted as a solicitor in 1985 and his name remained on the Roll of Solicitors.

### **Introduction**

3. The Respondent was the senior partner of Stripes, Solicitors, practising in Manchester and was the partner ultimately responsible for the conduct of claims under the Miners Compensation Scheme involving miners, former miners or their estates, for the illnesses of Vibration White finger (VWF) or Respiratory Diseases (RD). The cases were referred to him by a “claims farmer” Miners Welfare Compensation Agency (MWCA) which was a private business, owned (as to 50%) and run by Mr Quigley, a struck off solicitor. Stripes undertook more than 400 cases under the Miners Compensation Scheme referred by MWCA. The fee income received by the Respondent’s firm for MWCA referred cases for a three year period ending in 2007 was £525,091.75. MWCA was an important source of work for the Respondent.

4. The British Coal Corporation had been found to have acted negligently in two separate High Court group actions. The Department of Trade and Industry (“DTI”), as successor to the business of the British Coal Corporation, accepted liability for VWF and RD suffered by those employed in the mining industry.
5. Claims Handling Agreements (“CHAs”) were concluded on 22<sup>nd</sup> January 1999 and 24<sup>th</sup> September 1999. The CHAs constituted a Court-approved scheme which provided the framework for the conduct of all claims. Under the CHAs there were time limits for bringing claims.
6. A total of 750,000 claims were received (580,000 for Chronic Obstructive Pulmonary Disease (COPD) and 170,000 for VWF). As at November 2005 about half of these had been settled. £2.6 billion had been paid out in compensation. It was estimated that the likely cost of the schemes would be £6.9 billion.
7. The CHAs stipulated that all claims had to be made through a firm of solicitors appointed to a Panel by the DTI, save that the Union of Democratic Mineworkers was permitted to prosecute claims under its own separate CHA.
8. The DTI appointed Aon IRISC (“IRISC”) to administer the schemes under their supervision. The CHAs covered the medical evidence required to support a claim; the way in which a claim would be processed; the amount of damages to be paid on a successful claim; and the costs payable to the solicitors for acting in the claim.
9. The CHAs dealt with payment of solicitors’ costs. The solicitor was to receive costs based on the type of respiratory disease claim and further costs dependent upon other factors such as if it were a posthumous claim, and probate was required, or where there was an additional claim for special damages. No costs were payable to the claimant’s solicitor where a claim proved unsuccessful.
10. The CHAs provided,
 

“The DTI anticipates that these agreed fees will represent the total sums payable to a claimant’s representative in relation to a claim. The DTI will not be liable for any additional fees or disbursements, howsoever they might arise, which have been paid to the claimant’s representative”.

Broadly similar provisions related to VWF claims.

11. There were High Court deeming provisions to implement the miners’ claims. The claims were litigious or contentious claims, so that it would not have been proper for a solicitor to charge a contingency fee.
12. Under the Miners Compensation Schemes, which began in 1999, the DTI agreed to pay costs on scales agreed with the steering group of solicitors for claimants, in the expectation that these fees would be the full amount and no more which would be charged by solicitors. The DTI further agreed to pay for the costs of medical reports, and not to seek payment of costs for cases where there was no award of damages so that there was no adverse costs risk for unsuccessful claimants.

13. The Respondent had charged his clients a success fee of 15% of the damages awarded by the DTI and had paid unlawful referral fees to MWCA. He had not properly advised clients. He had mis-described in his bills the fees paid to MWCA as a “disbursement” of £250.00 for an “Investigation Report”. The £250.00 was a standard fee paid by the Respondent in every case for a referral and this was made up of £150 for “investigation” and £100 for “panel membership”. The payment of £250 was recorded on the Respondent’s firm’s ledgers as a disbursement. The “Investigation Report” comprised a three page list of client particulars and a work history. The payment made was a referral fee and was not a proper disbursement.
14. Allegation 1 related to the conflict of interest which arose out of the business relationship between the Respondent and MWCA and his duty to his clients. The Respondent had a relationship with MWCA which he had a financial interest in maintaining. The Respondent maintained this relationship in his own self interest by making improper referral payments to MWCA. The Applicant pointed out the impropriety here but did not allege that the Respondent had been dishonest.
15. Clients needed clear and frank, open advice, as to the Scheme and its costs provisions, including the Respondent’s wish to charge a success fee of 15% of the client’s damages. Such advice should have been given in a clear and open manner at the start of the retainer and certainly before any Conditional or Contingency Agreement was put to the miner/client for signature. The Respondent did not give such advice. The Respondent’s standard letter to a miner/client referred to the Coal Board paying a fixed fee and “therefore at no time will we request any funds from you”. The client signed his agreement to those terms, which contained no indication of a charge of success fees. After the client signed the standard terms of retainer, a further letter was sent referring to a success fee of 15%.
16. The attention of the Tribunal was drawn to a particular matter where the client’s signature was obtained to a document described as a “Conditional Fee Agreement” although it was a Contingency Fee Agreement. No advice was given. The client had therefore been taken through a process which led to his agreeing to terms with no explanation of the costs regime and some months later signing a Contingency Fee Agreement, misleadingly described as a Conditional Fee Agreement. It was not alleged that this conduct was dishonest, but it lacked the requirement of openness between a solicitor and his client.
17. The Respondent had acted and/or continued to act when there was a conflict and/or significant risk of conflict of interests between the interests of his clients and his own interests when he asserted that he was entitled to recover success fees from them when he was not so entitled.
18. Contrary to Rule 15 of the Rules the Respondent failed to give the information required to be given to clients in accordance with the Client Care Code.
19. The Respondent’s firm had received costs on each claim in accordance with the CHA Agreement. However, in addition to those costs, the Respondent charged success fees. These success fees were invariably 15% of the damages received on behalf of each client. In accordance with these success fees the Respondent received a total sum of £112,132.71. He had repaid £1,696.22 following complaints from individual

clients in three matters. In two claims following complaints from clients the amount of the success fee was reduced so that the Respondent waived a total of £750.82 plus VAT. The Respondent had also refunded in respect of eighteen matters a total of £12,098.63. At the date of the hearing a substantial proportion of the “success fees” charged to clients and deducted from their damages had not been returned to those clients. The Respondent explained that he was in contact with the Legal Complaints Service as to the steps that he should take in this regard.

20. It was the Applicant’s submission that there was a consistent pattern of a 15% success fee being charged in all matters and irrespective of any risk analysis on a case to case basis. There was no evidence on client files that any risk analysis was undertaken. The 15% fee was simply a standard “success” fee.
21. The Tribunal considered in detail what had occurred in three separate client matters, one of which was a posthumous claim.
22. It was the Applicant’s case that the Respondent’s workload in this area was dependent on referrals from MWCA. In return, the Respondent paid fees to MWCA. Although the Respondent received full costs in accordance with the CHA for each case, the Respondent in addition charged a success fee of 15% of the damages received. This was done in part to recoup the fees to MWCA. MWCA was paid on the successful conclusion of the case.
23. The Respondent was unable to (and did not) provide adequate or independent advice on the funding of the claims generally. In particular he was unable to (and did not) provide clients with advice as to whether the success fee was appropriate at the level of 15% or at all. MWCA had an interest in recovering its referral fees out of the client’s damages recovered under the Miners Compensation Scheme.
24. The Respondent accepted instructions and referrals of business from MWCA in breach of the requirements of the Code. He failed always to retain his professional independence and ability to advise clients objectively. These arrangements were likely to and did compromise or impair the principles of Practice Rule 1. MWCA was rewarded for the referral by payments inaccurately described in the firm’s books of account as a disbursement relating to investigation reports.
25. The Respondent failed clearly to explain to the clients the costs arrangement in particular the success fee. The success fee could not properly be justified.
26. There was no policy of the Law Society which ever justified, or could justify, the Applicant’s conduct on these cases. In particular there was none which could justify taking success fees from damages or making unlawful referral payments and without advice being given to clients. As the Court of Appeal made clear in *FSA v Fox-Hayes* compliance is the responsibility of the regulated and not the regulator.
27. The documents the Tribunal reviewed included:
  - (a) The statement and accompanying documents submitted by the Applicant which included the Report of the Investigation Officer of the SRA, and the Applicant’s outline submission.

- (b) The documents submitted by the Respondent which included the Respondent's statement, his bundle of documents and which also included a number of written testimonials in his support.

**The Tribunal's findings as to fact and law**

28. Neither the facts nor the allegations were in dispute. The facts have been summarised above. The Tribunal found the allegations to have been substantiated indeed they had not been contested.

**The Respondent's mitigation**

29. The Tribunal was reminded of the fact that it had ruled on a number of professional disciplinary cases brought against solicitors who had acted under the Miner's Compensation Scheme CHAs.
30. The Respondent had admitted the allegations. No dishonesty had been alleged against him.
31. The Respondent had not deliberately exploited his clients. He was a decent man doing the best that he could in an unclear regulatory environment. The Respondent accepted that he had made mistakes and he apologised for that.
32. The Respondent had already repaid some of the success fees charged and he confirmed that the balance would be repaid.
33. The Respondent had been a commercial litigator and had not undertaken very much personal injury work. Initially he had refused the introduction of work from "claims farmers".
34. He had been introduced to Mr Quigley by a former employee. The Respondent had been at Law School with Mr Quigley but had not known that he had been struck off the Roll. He agreed to take on work introduced by Mr Quigley's organisation.
35. The Respondent believed that he could properly charge success fees.
36. The Tribunal was invited to take the view that the ground had shifted somewhat. Although the Applicant said there was no justification for the way in which the Respondent charged, it was only fairly recently that the Law Society had been explicit in connection with referral fees and other related matters. In the submission of the Respondent there were some types of non contentious work in which contingency fees could be charged, for example in Employment Tribunal cases. There had been real muddle and confusion with regard to such matters.
37. It had been alleged that the Respondent's clients had not been put fully in the picture. Most of the work relating to miners' claims was handled by a member of staff. The Respondent had believed that such work was non contentious.

38. It was accepted that in the case of Beresfords before the Tribunal and on appeal it had been ruled that such work was in fact contentious work. In all of the circumstances the Respondent might be forgiven for getting it wrong. The Respondent had some justification for taking the position that he did as the CHAs provided that solicitors should not be paid where a case proved unsuccessful. The question was asked how could a solicitor fund unsuccessful claims otherwise?
39. A huge number of miners' claims had been made which had not been anticipated by the government and another problem faced by solicitors undertaking such work was that the government had not been geared up to handle the volume of work.
40. Solicitors had discussed the position between themselves. Substantial firms of solicitors had been in discussion with the government as a "steering group" and they had told the Respondent that there had been nothing objectionable with his practice.
41. Concern had been raised in Parliament about the payment by miners of referral fees and other deductions from their compensation. The matter had gained a high profile. Reports had been commissioned and a preliminary conclusion reached in 2003 had been that the practices adopted by the Respondent had not been objectionable. It was only following public disquiet that the Compliance Board of the Law Society made a policy statement and even that did not state that success fees were objectionable.
42. A debate had taken place on the radio in June 2004 in which the then chief executive of the Law Society had pointed out that the original arrangement made by the DTI did not prevent solicitors from double charging the client. She had said,
- "We did much more than remind people to look at their files and the vast majority of solicitors have behaved absolutely properly and repaid the money. This organisation has changed rapidly and radically in the last four years. We were in a position when the information was brought back to our attention in 2003 to act - and act relatively quickly. We had to get a change of policy for our own compliance board. We did that and we acted then directly with solicitors in the way that we could, which was to ask them to repay their clients."
43. It was against this confusing background that the Respondent had charged a 15% success fee. He had never increased it but when publicity drew to his attention the fact that some substantial compensation payments had been agreed he decided to cap his success fee at £1,500. He had handled only two cases in which the success fee had amounted to more than £2000. It was plain that the Respondent was not trying to "fleece" his clients.
44. The member of staff who had been charged with the day-to-day work involved with the miners' cases had come from a reputable firm of solicitors. It had not been known to the Respondent at the time that she had been in a relationship with Mr Quigley.
45. The Respondent had spoken to the Law Society's Ethics Department and had been told that it was alright to charge a success fee if the situation was made clear to the clients. He regretted he had not made an attendance note of that conversation but he had had discussions and reassurance.

46. The Respondent had come to accept that he had not given the requisite amount of detail to clients and had not put them fully and completely in the picture. He had formulated no intention to mislead a client.
47. The member of staff handling the claims had indicated that she made detailed notes of her explanations telling them that under the DTI's scheme the government would pay the solicitor's costs. She had said that the firm might recover all costs but they might not.
48. The Respondent had come to accept that the documents used by him in connection with the claims were defective, but it appeared that the clients had nevertheless been given correct information.
49. It had been the member of staff's position that she under recorded her time so that the time that she spent on any particular case had not been fully recorded.
50. Compared with other firms of solicitors which had made very large amounts of money in connection with the handling of miners' claims the Respondent fell at the lower end of the scale.
51. The Respondent had already repaid some success fees and confirmed that he would pay back the balance totalling some £100,000. There had been delays by the Legal Complaints Service which had been slow in rolling out programmes for repayment. The Respondent had taken the view that he would have to wait to make sure that any such repayments were approved by his regulator.
52. The Tribunal was invited to give due regard to the fact that the Respondent had not deliberately exploited his clients and he had taken no unfair advantage of his clients. He had already achieved some voluntary repayment of success fees charged.
53. The Respondent had been proud of his work as a solicitor. The Investigation Officer of the SRA had expressed himself to be impressed by the way in which his files had been kept. The Respondent had never had any client complain. The Respondent had instituted a system to obtain feedback from clients and the responses received had been universally flattering.
54. The Respondent's position was not to be compared with that in the [well known] Beresfords' case. There was no suggestion that he had settled miners' claims at a lower figure than was appropriate and he had not been dishonest.
55. When paying MWCA the Respondent genuinely believed that he was not paying a referral fee. The legal landscape in relation to referral fees had been very uncertain at the material time. The Respondent was a decent man trying to do his best for his clients at a time when the situation relating to referral was less than certain.
56. The Respondent was 49 years of age. He enjoyed a relationship with the widow of a deceased friend of his who had two small boys. One of the boys suffered from serious health issues and the Respondent had shown great patience and love towards

him. He had also taken great responsibility for the care of his sister who suffered from Downs syndrome.

57. The Tribunal was invited to have due regard to a reference from the Respondent's secretary who confirmed that he was a caring and decent employer.
58. A wealth of written testimonials had been written in support of the Respondent. They had been written by judges, barristers, former clients and other solicitors. They all confirmed that he was a decent and honest man and a competent solicitor.
59. The disciplinary proceedings had been hanging over the Respondent's head for a very long time.
60. Because of the outstanding disciplinary proceedings the Respondent had not been able to move his practice forward. He hoped that he would be able to merge his practice with another.
61. The Respondent had suffered from worry, shame and uncertainty. He had sought psychiatric advice and had been diagnosed as suffering from moderate depression and prescribed with anti-depressant medication.
62. It was not right that such a decent man should have been subjected to the rigour of the disciplinary process.
63. A list of solicitors who had faced disciplinary proceedings based on miners' compensation scheme claims was drawn to the attention of the Tribunal and the Tribunal was invited to have due regard to the level and nature of the sanctions that had been imposed in a number of cases.
64. The Applicant had sought huge costs against the Respondent who was a sole practitioner.
65. The Tribunal was invited to take into account the fact that the Respondent had made admissions although it had to be accepted that some of them had come rather late in the day.

### **Costs**

66. On the subject of costs the Applicant requested costs fixed in the full amount claimed of some £71,000 on the basis that such costs represented the time spent on the conduct of the matter, including the costs of the Investigating Officer of the SRA. For the Respondent it was said that the costs were extremely high. He provided the Tribunal with information about his financial background. The Respondent did not object to meeting the Applicant's costs in principle but objected very strongly to the quantum.

### **The Tribunal's sanction and its reasons**

67. The Tribunal having found all of the allegations to have been substantiated noted that errors had been made by the Respondent and they were errors and omissions that a careful solicitor should not have made.

68. The Respondent had entrusted miners' compensation scheme claims work to a junior fee earner and she had carried out the work. It was serious that inadequate costs information had been provided to clients. Clients were entitled to be put in a position where they have absolutely no doubt as to the nature of a solicitor's costs and be given a good idea of quantum.
69. It was a serious mistake on the part of the Respondent to tell his clients that they were entering into a conditional fee agreement when in fact it was a contingency fee agreement.
70. Where the government had approved a schedule of fees to be paid to solicitors representing miners under the scheme it was clearly wrong for a success fee to be claimed and indeed the propriety of a flat rate of success fee without any analysis of the risk could not be justified. Such success fee was deducted from the miners' compensation thereby reducing his entitlement. A court approved scheme was in place and that scheme had not permitted success fees. The charge of such fees was prejudicial to clients because they did not receive their full damages.
71. The Respondent had paid referral fees to a "claims farmer". He had indicated that he had not believed them to be referral fees but it was absolutely clear that the "claims farmer" had not undertaken £250 worth of work or, indeed, where the payment was split, £150 worth of work. The Tribunal simply does not understand how the Respondent, when considering the fee paid to the "claims farmer" split as to £150 for investigation and £100 to remain on the panel, could consider that the payment to remain on the panel could be anything other than a referral fee.
72. The Respondent had treated the payment to the "claims farmer", and had referred to it, as a disbursement when clearly it was not a disbursement either in fact or in law.
73. The Tribunal noted that the Applicant did not make an allegation of dishonesty against the Respondent. The Respondent had placed before the Tribunal a number of very impressive references all of which attested to the Respondent's competence and integrity. The Tribunal gave the Respondent credit for such support but also took into account the fact that he had not repaid to his clients more than a small percentage of the success fees he had charged.
74. The Tribunal considered that it was both proportionate and appropriate to order the Respondent to pay a substantial fine that would serve to indicate both to the public and to the profession as a whole that such conduct is to be regarded as seriously falling below the required standards.
75. On the question of costs the Tribunal considered that it was right that the Respondent should bear the Applicant's costs. It accepted that the sum sought was high. It considered that in the absence of agreement it was right that such costs should be subject to a detailed assessment unless the parties could reach agreement.
76. In all of these circumstances the Tribunal ordered that the Respondent, RICHARD ANTHONY STRIPE of Grange House, John Dalton Street, Manchester, M2 6FW, solicitor, do pay a fine of £15,000.00, 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 to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Officer of the Solicitors Regulation Authority.

Dated this 18<sup>th</sup> day of May 2010  
On behalf of the Tribunal

J N Barnecutt  
Chairman