

IN THE MATTER OF THOMAS WILLIAM TIMOTHY WELLS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mrs K Todner (in the chair)  
Mr A Gaynor-Smith  
Mr S Marquez

Date of Hearing: 8th October 2009

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was made on behalf of the Solicitors Regulation Authority (“SLA”) by George Marriott, a partner in the firm of Gorvins of 4 Davy Avenue, Knowlhill, Milton Keynes MK5 9NL on 19 December 2008 that Thomas William Timothy Wells of Wells Connor & Co Solicitors, 145/147 Town Street, Horsforth, Leeds LS18 5BL might be required to answer the allegations contained in the statement that accompanied the application and that such order should be made as the Tribunal should think right.

The allegations against Thomas William Timothy Wells (the Respondent) were that he had:-

1. Failed to advise his client to seek independent legal advice regarding a potential claim against his firm.
2. Misled the Legal Complaints Service.
3. Misled his client.
4. Compromised the solicitors’ duty to act in the best interests of the client, the good repute of the solicitors’ profession and the solicitors’ proper standard of work contrary to Rule 1(c), (d) and (e) Solicitors’ Practice Rules 1990.

The application was heard at the Courtroom, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7SN when George Marriott appeared as the Respondent and Andrew Lockley of Irwin Mitchell represented the Respondent who was also present.

The evidence before the Tribunal included the admissions of the Respondent and his statement dated 28 September 2009. However, the Respondent denied dishonesty.

**At the conclusion of the hearing the Tribunal made the following order:-**

The Tribunal orders that the Respondent, Thomas William Timothy Wells of 145-147 Town Street, Horsforth, Leeds LS18 5BL, solicitor, be suspended from practice as a solicitor for the period of four months to commence on the 1<sup>st</sup> day of November 2009 and it further orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500.00.

**The facts are set out in paragraphs 1-41 hereunder.**

1. The Respondent, born in 1956, was admitted as a solicitor in 1980. His name remained on the Roll. At the material time the Respondent was a partner in the firm Wells Connor & Co solicitors.
2. Wells Connor & Co (“the Firm”) was at 145/147 Town Street, Horsforth, Leeds LS18 5BL. The Respondent was one of two partners at the Firm.
3. On 1 March 2007 SA, a client of the Respondent, had made a complaint to the Legal Complaints Service (“LCS”) regarding the Respondent’s failure to keep her up-to-date with the status of her personal injury claim.
4. Following the LCS’s investigation, the Respondent’s conduct had been referred to the SRA for further consideration.

**SA – Road Traffic Accident**

5. On 21 July 2003, SA had been involved in a road traffic accident with a taxi driver BD.
6. The Respondent, who had conduct of the matter, had first attended SA on 1 August 2003 and had recorded that SA had been struck from behind whilst stationary. SA’s claim had been for personal injuries sustained and items of loss ie. special damages.
7. Two initial letters of claim had been sent to BD on 11 August 2003, one to his home address and one to his employer.
8. Following correspondence, it had been established that the taxi firm had been operating without a valid insurance policy. The consequence of that had been that SA’s claim was redirected against the Motor Insurance Bureau (“MIB”).
9. On 22 January 2004 the Respondent had submitted SA’s application to the MIB. On the same day the Respondent had informed SA that the application had been

submitted. He had also stated "I do not anticipate any difficulties in the MIB processing your claim ...".

10. The MIB had requested further information which SA had supplied to the Respondent by telephone. The Respondent had sent the information to the MIB on 1 March 2004.
11. The Respondent had requested a progress report from the MIB on 29 June 2004 having corresponded with SA on 29 March 2004 and again on 29 June 2004 when he had stated "it may well be some time before the MIB bring the claim to a conclusion".
12. The MIB had updated the Respondent on 21 August 2004 informing him that they had instructed an enquiry agent as they were having difficulty in identifying the third party. The Respondent had written back stating that he was surprised at the MIB's position and had provided details of BD's and AL's cars. The Respondent had informed SA that the MIB were making "slow progress ...".
13. Eventually, on 22 January 2005, MIB had written to the Respondent confirming that they were willing to accept liability, subject to causation, under the terms of the uninsured driver's agreement "subject to our being able to agree quantum we will deal with the matter as soon as possible". That information had been relayed to SA on 28 January 2005.
14. The Respondent had written to the MIB on 10 February 2005 asking whether the MIB had obtained information to enable the parties to agree quantum. The next document had been a telephone attendance note dated 7 September 2005, some 7 months later; there being no record of letters being sent to the MIB during the intervening period.
15. The telephone attendance note of 7 September 2005 had stated that the MIB had been telephoned regarding the position of the case. The MIB had stated that they needed medical evidence in support of the claim. There had been a further letter from the MIB on 16 January 2006 which had stated that they had not heard from the Respondent for some time and requested confirmation that SA's claim was still being pursued. They had also repeated their request for medical evidence.
16. The MIB had sent a further reminder to the Respondent on 18 March 2006 stating that they had not received any reply to their letter of 16 January 2006.
17. The Respondent had replied to the MIB on 27 April 2006. He had stated that they were awaiting medical evidence from SA's GP and Leeds General Infirmary. However, the file showed that letters to SA's GP and Leeds General Infirmary bore the same date as that to the MIB, namely 27 April 2006.
18. Medical records had eventually been forwarded to the MIB on 25 May 2006; some 34 months after the accident and 7 months after the MIB had made the initial request for medical information.
19. On 13 June 2006 the Respondent had asked the MIB for a settlement proposal.
20. On 2 August 2006 the MIB had written to the Respondent enquiring whether proceedings had been issued in the matter. The Respondent had replied stating that

they had not, given the fact that liability had been dealt with. The MIB, by their letter dated 4 November 2006, had stated that SA's claim was statute barred by reason of the expiration of the limitation period of 3 years following the accident. That had been the last letter from the MIB.

21. At that stage the Respondent had been under a duty to notify SA of that material fact and to advise her to seek independent advice regarding a claim for professional negligence against the Response. In fact he had taken no action.
22. On 1 March 2007 SA had written to the LCS complaining that she had not heard from the Respondent since his letter of 28 January 2005.
23. The LCS had written to the Respondent on 16 March 2007 outlining the complaint made by SA. The Respondent had replied on 5 April 2007. He had stated that SA's claim was against the MIB who had been very slow to respond; however, he had stated that he had reported all relevant developments to SA at all relevant stages by telephone. In fact the matter file had contained no such telephone attendance notes.
24. The Respondent had further stated "the claim has now progressed to the stage where an offer has been made although I have not yet conveyed this to (SA) given the fact that there is now a pending complaint ... my personal view is that I should now re-engage in communications with (SA), bring the MIB claim to a satisfactory conclusion ...".
25. Following the Respondent's letter of explanation and with SA's consent, the LCS had closed their file.
26. The Respondent had written to SA on 24 April 2007. He had stated that applying the Judicial Studies Board guidelines for the assessment of general damages he had assessed SA's injuries as minor and therefore would attract no more than £1,000 damages "I would therefore recommend settling at this figure and would be grateful if you could please confirm in writing that you are agreeable to this proposition."
27. On 4 May 2007 SA had requested further information as to whether the £1,000 was the total sum or merely in respect of general damages, not including her other expenses.
28. The Respondent had replied on 4 June 2007 and had stated that the position was that he was "still negotiating in relation to your various financial expenses ... my letter of 27 April relates solely to the value of your damages in relation to the personal injuries ...".
29. SA had written two further letters to the Respondent on 20 June 2007 and 20 August 2007. The last letter had stated that in the absence of a reply she would ask the LCS to reopen the complaint. No reply had been received and so on 11 September 2007 SA had written to the LCS who had reopened the complaint.
30. By letter dated 6 September 2007 to SA, the Respondent had stated that total damages could be agreed. The letter had provided a full breakdown of SA's damages totalling £2,843.20. The letter had stated "I now therefore require your views on the total

value of the damages claim, which I would recommend to be accepted". The Respondent had implied that he had an agreement with MIB "subject to SA's approval" that the figure would be paid. SA had denied receipt of the letter and also of a reminder letter.

31. The LCS had written to the Respondent on 18 October 2007 requesting an explanation for his continuing delay in the matter and his failure to keep SA informed. The LCS had given the Respondent a deadline of 31 October 2007 in which to reply. He had not and the LCS had imposed a new deadline of 13 November 2007.
32. On 14 November 2007 LCS had contacted SA regarding her complaint. It had been explained to the LCS that she was still awaiting a response from the Respondent. It had been suggested to SA that she contact the MIB directly to establish the status of her claim. SA had informed the LCS that the Respondent had informed her that the MIB would not deal with her directly. The LCS had provided SA with a reference number and contact details for the MIB.
33. SA had contacted the MIB and had been informed that the Respondent had never issued proceedings in the matter and as a result, her claim had lapsed. On 15 November the LCS has received a letter from the Respondent, dated 15 October 2007 (this is thought to be an incorrect date). The letter had enclosed the Respondent's letter of 6 September 2007 and a reminder letter sent 8 October 2007. The Respondent had stated "it seems to me that the priority in this matter should be to conclude (SA's) personal injury claim ...". SA had claimed that she had not received either of those letters.
34. The LCS had written further to the Respondent's partner requesting the matter file. There had been no response. A section 44B notice had been sent to the Respondent on 23 November 2007 and complied with on 30 November 2007.
35. The LCS had received a fax from the Respondent on 30 November dated 20 November 2007 (again, this is thought to be an incorrect date). The Respondent had stated:-

"I am at a loss to understand not only (SA's) position in relation to this matter but also the position by the LCS.

In very simple terms (SA) is entitled to compensation as a result of the road traffic accident. I accept (sic) that that compensation should have stemmed from the MIB but for reasons that do not seem to me to be relevant it will not be possible to obtain the compensation from the MIB because of the limitation position. I am therefore quite happy to reimburse (SA) for the full value of her claim ...".

36. The LCS had informed the Respondent that having reviewed the file they were looking for offers of compensation from the firm to settle SA's complaint. The Respondent had accepted the LCS's recommended figure and had sent a cheque for £6,343.20 to the LCS who had forwarded it onto SA. The cheque had consisted of £2,843.20 damages which SA would have received and £3,500 compensation.

37. The LCS had referred the conduct of the Respondent to the SRA who had written to the Respondent on 10 January 2008 requesting an explanation of his conduct by 28 January 2008. The Respondent had not replied and so the SRA had written again on 5 March 2008.
38. The Respondent had replied on 13 March claiming that he had not received the SRA's letter of 10 January 2008.
39. In his explanations the Respondent had stated that when he had discovered that SA's claim was barred he had arranged for the Firm to provide appropriate compensation to SA by reference to her original accident. The Respondent had stated "... I did not believe that it would be in anyone's interest least of all (SA's) to cause her further alarm when I had determined to adopt this course of action and this is the reason why I did not inform her immediately that the claim had become statute barred."
40. The Respondent had stated that the reference in his correspondence to the MIB in his letter of 5 April 2007 had been a generic reference and not a specific reference to the source of the compensation.
41. The Respondent's conduct was referred to the Tribunal on 21 August 2008.

#### **The Submissions of the Applicant**

42. The Applicant took the Tribunal through the allegations and the facts and documents in support. He submitted that the Respondent's letter to the MIB of 27 April 2006 was misleading because that letter had created the impression that the Respondent had already made the appropriate requests to SA's GP and to Leeds General Hospital prior to 27 April 2006. However, the letters to SA's GP and to the hospital had made no reference to previous requests and there had been no earlier correspondence on the file.
43. Moreover, the Applicant submitted that the Respondent had failed to act in the best interests of his client and had failed to carry out work to the proper standard. SA's accident had occurred in July 2003. However, before April 2006, there was no evidence of the Respondent attempting to obtain SA's medical records, despite the fact that he should have been aware that the records would be relevant to the issue of quantum and despite the MIB requesting them as far back as September 2005.
44. Moreover, in his letter of 5 April 2007 to the LCS, the Applicant submitted that the Respondent had misled the LCS in that the MIB had made no offers and had told the Respondent that the claim was statute barred.
45. Furthermore, the Applicant submitted that the Respondent had misled his client in the response of 4 June 2007. The Respondent's letter had stated that he was still negotiating, however, at the time of writing there had been no party to negotiate with; the MIB had withdrawn from the case. The Applicant submitted that the purpose of that statement had been to mislead SA into believing that her case had been still progressing against the MIB and that any offers of compensation had been from the MIB.

46. Although dishonesty was not an essential ingredient of any one of the allegations, the Applicant explained to the Tribunal that nevertheless the case was put against the Respondent on the basis that he had been dishonest with regard to allegations 2 and 3. The Applicant referred the Tribunal to the case of *Twinsectra v Yardley* [2002] UKHK 12.
47. The Applicant noted that it appeared that the Respondent failed to identify a conflict or to recognise the need for the client to be independently advised in the particular circumstances. Moreover, he submitted that the Respondent had set out to deceive both his client and the LCS and in so doing had been aware both that what he was doing would be regarded as dishonest by honest people and that he himself had realised that by those standards what he was doing was dishonest.

### **The Oral Evidence of the Respondent**

48. The Respondent relied on his statement of 28 September 2009. He admitted all the allegations but denied any dishonesty. He gave the Tribunal details of the development of his firm. In relation to his letter of 27 April 2006, to the MIB, he denied that he intended to mislead the MIB into believing that he had previously written to the hospital and to the GP. He had written those letters on the same day and had not meant to infer otherwise. Turning to his letter of 5 April 2007 to LCS, the Respondent insisted that he had understood his client's main complaint to be about a lack of communication on his part. He had been seeking solely to provide the LCS with the background information to explain his lack of progress.
49. The Respondent explained that he had concluded that his firm would have to pay appropriate damages to the client and while he accepted now that his conduct had been incorrect, at the time, he had not considered that he was being dishonest. In his letter of 24 April 2007 to his client, he had put forward a figure of £1,000 in the light of his assessment of the medical evidence. Dealing with his letters of 4 June 2007 to his client, the Respondent was unable to explain his words "still negotiating" other than his consideration of her special damages. While he accepted that other people might have considered his words dishonest, he did not believe that his client had done so. The Respondent stressed that he had believed that getting her damages agreed and paid had been in his client's best interests. Referring to his letter of 6 September 2007, the Respondent said he had been seeking to give an explanation of the total sum of damages to his client. He had not considered that he was being dishonest in that he had decided that he should pay the claim. He had not been aware that the client knew that the MIB had rejected the claim.
50. Turning to his letter dated 30 November 2007 to the LCS, the Respondent explained that it had in fact been sent by fax on 20 November 2007. The Respondent accepted that there had been an element of misleading in his actions but not of dishonesty. He admitted failing to advise his client to take legal advice but he insisted that had he done so he would still have had to pay and the whole process would have taken longer.
51. The Respondent gave the Tribunal details of a complex negligence claim against his firm which had resulted in him facing possible personal liabilities of some £500,000. Moreover, dealing with this matter had resulted in him not being able to give his full

attention to his own work during 2005. While he fully apologised to the Tribunal for his actions, the Respondent still believed that the action he had taken had been in the client's best interests although, with hindsight, he admitted that he could have dealt with it differently.

52. In cross examination the Respondent explained that £5,000 was the excess on his policy and had his client's damages been greater he would have reported it to his insurance company. Moreover, while the outcome had been pragmatic, he would not do the same thing again. However, he had believed that the client's complaint had been solely about the breakdown in the solicitor-client relationship and that she would not have been concerned about the source of her damages. However, he now accepted that he should have told her about the limitation problem and referred her for independent advice. The Respondent stressed that he would have obtained no benefit from deliberately misleading his client as with the breakdown of their relationship all the client goodwill had gone. However, he agreed he would have had to pay the costs of the independent solicitor, although he did not believe that those costs would have been significant.
53. The Respondent accepted that his letter of 5 April 2007 to the LCS was misleading but not that it was in any way dishonest. He had been solely dealing with the breakdown in communications not the issue of limitation and had been trying to say that he would address the issue of damages and make an offer. The Respondent also agreed that his letter of 24 April 2007 was also misleading in recommending the settlement but he said that the purpose of his letter had been to explain to the client the concept of general damages and how her claim would be assessed. He insisted that there was nothing dishonest in its content. The Respondent confirmed that although his letter to his client of 4 June 2007 referred to "negotiating", he had not in fact been negotiating with anybody.

#### **Submissions on behalf of the Respondent**

54. Mr Lockley submitted that while the Respondent accepted misleading both his client and the LCS and breaching his fiduciary relationship with his client, those actions have been undertaken without any dishonesty. The Respondent had believed that he was acting in the best interests of his client and his references in letters to the "MIB claim" had been generic and not specific. The Respondent had not been seeking to make any financial gain. Mr Lockley stressed that the Respondent's oral evidence had been consistent in that while acting in a misleading way he had not been acting dishonestly.

#### **The Decision of the Tribunal**

55. While noting the Respondent's lack of personal gain, having considered all of the evidence before it, the Tribunal was satisfied, so that it was sure, that the Respondent had acted dishonestly by the standards of reasonable and honest people and that he himself had realised that by those standards his conduct had been dishonest both when communicating with his client and in communicating with LCS in letters dated 5 April 2007, 24 April 2007, 4 June 2007, 6 September 2007 and 15 October 2007 (sent by fax on 15 November 2007).

**Submissions as to Penalty on behalf of the Respondent**

56. Mr Lockley invited the Tribunal to take into account the difficulties that the Firm had been experiencing during the relevant period. He stressed that the Respondent had expressed his regrets for behaviour that he had accepted had been inappropriate. Such behaviour, he maintained, was not likely to be repeated. The Respondent had believed that what he had been doing in paying an appropriate amount of damages had been in the best interests of his client.
57. Mr Lockley referred the Tribunal to the Court of Appeal decision in the case of *The Law Society v Salisbury* [2008] EWCA C( iv) 1285. He submitted that the Respondent's case fell within a small, residual category of cases of dishonesty with wholly exceptional facts where striking off might not be appropriate. He stressed that there had been no question of abuse or theft of client's funds in that the Respondent had been seeking to ensure that his client received the damages to which she was entitled, albeit without her knowledge, from him rather than from the MIB. Mr Lockley gave the Tribunal details of the work and of the viability of the firm. He submitted that although dishonesty was always very serious and the Tribunal would need to express its displeasure and disapproval, the Respondent's actions had been at the bottom end of the scale. Mr Lockley also referred to the Respondent's previous appearance before the Tribunal in 2000 when he had been ordered to pay a penalty of £2,500 in respect of acts of omission. Finally, Mr Lockley informed the Tribunal that costs had been agreed at £7,500.

**The Decision of the Tribunal as to both Penalty and Costs**

58. Having considered the helpful submissions by the Applicant and on behalf of the Respondent, the Tribunal was satisfied that although the Respondent had acted dishonestly in a matter relating to a client, that client had suffered no loss, albeit a great deal of inconvenience, for which the Respondent had had to pay compensation of £3,500. The Tribunal considered that the case was exceptional and did not believe that the Respondent would ever repeat such conduct. The Tribunal did not consider that the Respondent continuing to practice would constitute any danger to the public. However, in order to maintain the reputation of the solicitors' profession, the Tribunal considered it necessary to suspend the Respondent for a period of 4 months so as to emphasise the seriousness of his conduct. The Tribunal also ordered the Respondent to pay costs agreed at £7,500.

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

K Todner  
Chairman