

IN THE MATTER OF ANDREW JONATHAN CROSSLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Miss T Cullen
Mrs V Murray-Chandra

Date of Hearing: 2nd February 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by David Elwyn Barton, solicitor advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE on 12th September 2005 that Andrew Jonathan Crossley, solicitor of Merriman White Solicitors, 14 Took's Court, London, EC4A 1LB 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 were that the Respondent had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:-

- (a) He failed to deliver to the Law Society his Accountant's Report for the 12 month period ended 31st December 2002 (due by 30th June 2003);
- (b) He failed to deliver to the Law Society his Accountant's Report for the six month period ended 3rd June 2003 (due by 31st December 2003);
- (c) He failed to deliver to the Law Society his Accountant's Report for the six month period ended 31st December 2003 (due by 29th February 2004);

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when David Elwyn Barton appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent. The Respondent handed up a copy ledger account and a recent reconciliation together with a copy letter from the Law Society dated 31st January 2006 relating to the Respondent's application for a waiver.

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

The Tribunal Order that the Respondent, Andrew Jonathan Crossley of Merriman White Solicitors, 14 Tooks Court, London, EC4A 1LB, solicitor, do pay a fine of £1,000, 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 £3,348.75.

The facts are set out in paragraphs 1 to 5 hereunder:-

1. The Respondent, born in 1963, was admitted as a solicitor in 1991. At the material times he carried on in practice under the style of Crossleys Solicitors, Crossways, Wanborough Lane, Cranleigh, Surrey, GU6 7DT.
2. On 6th August 2003 the Respondent wrote to the Law Society to acknowledge that he had not delivered his Accountant's Report for the year ended 31st December 2002 and requesting an extension in time for the delivery of that Report together with a waiver of the requirement to put in any reports for 2003.
3. On 4th February 2004 an Adjudicator of the Law Society resolved not to grant the waiver requested or the extension of time. The Adjudicator "expected" the Respondent to deliver his Report for the year ended 31st December 2002 by 5th March 2004.
4. On 25th May 2004 the Review Panel of the Law Society considered the Respondent's request for a review of the Adjudicator's decision. The Panel resolved to vary the decision to the extent that it "expected" the Respondent within two months of notification of the decision (which took place by letter dated 3rd June 2004) to deliver to the Law Society either:-

"bank statements correspondence and other evidence sufficient to satisfy the Law Society that he had ceased to hold client money and has disposed of all client money properly; or

a cease to hold report from approved accountants and an Accountant's Report to cover the period from 1st January 2002 to the date of him ceasing to hold client money."
5. The Respondent did not comply with either of these requirements and as a consequence all these Reports became due.

The Submissions of the Applicant

6. The Respondent had not complied with the statutory requirement (and the rules made thereunder) to file Accountant's Reports with the Law Society.

The Submissions of the Respondent

7. The Respondent had practised as a solicitor continuously from his admission to the Roll in various firms. He set up his own practice of Crossleys Solicitors in September 1997. That practice continued, with a brief hiatus in 2001 when he joined another firm for a short period, until 16th November 2003 when he ceased trading and became a salaried partner in a large provincial practice based in Crawley, Sussex, where he remained until the beginning August 2004. He then with one partner set up a new practice called Merriman White. This practice was established on 10th August 2004 and was a successor practice to a previous firm also called Merriman White. Merriman White was a thriving and busy practice which employed about 20 staff. There were two full time people working in the accounts department.
8. The Respondent operated Crossleys Solicitors between 1997 and 2003 in a small way. For a lot of the time he worked completely alone until the final year of trading when he had one full-time paralegal assistant. He focused primarily on employment law and undertook some commercial litigation and company-commercial matters. Because of the nature of the work undertaken the use of client account was always minimal. For the final two or three years of trading as Crossleys Solicitors the number of transactions on client account were very few, about four or five in a whole year.
9. Because of the small number of transactions on client account the Respondent was at liberty to request a waiver of the Accountant's Reports. The application requesting a waiver was considered by the Law Society initially on 4th February 2004. The application was refused. The Respondent requested a review of that decision.
10. On 25th May 2004 the Respondent's request for a review was allowed in part. He was to be relieved of the obligation to file Accountant's Reports for the period concerned provided he delivered within two months (from the date of notification of the decision) bank statements, correspondence and other evidence to satisfy the Law Society that he had ceased to hold and had disposed of client money properly, or alternatively file a "cease to hold" Accountant's Report. The time to file the necessary paperwork was extended until 22nd September 2004.
11. The Respondent had been unable to provide the documentation required. Subsequent to 22nd September 2004 the Respondent had provided to the Law Society a bank statement showing that the account was clear and a corresponding client account ledger detailing the disposal of all monies contained in the account over a period of nearly two years. On 31st January 2006 the Law Society requested further information.
12. The Respondent had maintained continual contact with the Law Society throughout and had kept them informed of the difficulties he encountered and the reasons for the delay.

13. The Respondent's failure to deliver papers was because he had been unable to raise the money to pay the accountant who retained the papers. When the Respondent did raise the money it took the accountant some while to produce the papers as he was no longer practising and the Respondent's papers had been placed in storage. Once they were recovered the relevant paperwork was delivered to the Law Society. The Respondent had produced the relevant papers but had done so out of time.
14. Following an extended period of clinical depression in 1999 the Respondent suffered a stroke in January 2000. The effect of the stroke, which caused him to lose his sight altogether for a brief period, was that the Respondent could not work full-time for a period and as a consequence he quickly got into financial difficulties. He entered into an Individual Voluntary Arrangement in May 2002 and up until the middle of 2004 he continued to be in financial difficulty and had to struggle to meet various financial commitments.
15. The Respondent's current situation was vastly different from that when he was a sole practitioner. His financial situation had improved considerably. He had been able to clear the Individual Voluntary Arrangement by a final lump sum payment in December 2005. The Respondent retrieved all accounts papers from his previous accountant and had delivered a detailed ledger to the Law Society showing all receipts and payments. The Respondent remained ready and able to deal with the papers in whatever way that either the Law Society or the Tribunal directed. Nevertheless the Respondent maintained his view that the dealings he had in Crossleys Solicitors for the periods for which Accountant's Reports were required met the necessary criteria for consideration of a waiver and he had again applied for this. If the Law Society directed that a waiver be refused and if the Respondent were required to supply Accountant's Reports he would do so swiftly. He had the financial means to do so and he held all the necessary paperwork. If the request for a waiver were granted the Tribunal was urged to give due recognition of that fact.
16. Whilst he suffered difficulties the Respondent had not avoided the issue or failed to correspond with the Law Society. The Law Society had been considerate and co-operative and did afford a considerable concession in May 2004 to the Respondent which he was unable to fulfil owing to financial difficulties.
17. The firm of Merriman White was a busy commercial practice. That firm's accounts were run in a professional, methodical and meticulous manner and the management systems that the Respondent and his partner had implemented were comprehensive and thorough.
18. The difficulties suffered by the Respondent in the past, which stemmed from a significant illness, had fully receded and he was able to operate his current practice and deal with any accounting issues of his previous firm swiftly and accurately, whilst remaining hopeful that a waiver might be granted.

The Findings of the Tribunal

19. The Tribunal found the allegations to have been substantiated, indeed they were not contested.

Previous Findings of the Tribunal

20. At a hearing on 31st October 2002 the allegation that the Respondent had been guilty of conduct unbecoming a solicitor because he failed to file with the Law Society his Accountant's Reports for the periods ending 31st December 1999 and 31st December 2000 was substantiated.
21. In its written Findings dated 13th December 2002 the Tribunal said:-

“The Tribunal find the allegation to have been substantiated. The Respondent admitted that he had not filed Accountant's Reports as required by the Solicitors Act 1974 and the Rules made thereunder. The filing of such Accountant's Reports is of the utmost importance, enabling The Law Society to fulfil its regulatory functions. The Tribunal considered that the long delay in filing Accountant's Reports prevented the Respondent's professional body from performing its proper duties and therefore does amount to conduct unbecoming a solicitor.

The Tribunal has heard the mitigating circumstances put forward by the Respondent and accepts that the problems suffered by the Respondent with his health, his financial difficulties, and the disputes with accountants instructed by him go some way to explaining the delays. However, the Respondent himself has made it plain that the number of transactions taking place through his client account has been extremely small and the production of an Accountant's Report could not have been a matter of any complexity nor one consuming any great amount of time.

Because of the great importance attached to the punctual filing of Annual Accountant's Reports, the Tribunal could not allow the current failures on the part of the Respondent to continue indefinitely. For this reason, the Tribunal ordered that the Respondent be suspended from practice for an indefinite period to commence on the 31st January 2003 but confirmed that should he regularise his position and file his outstanding annual Accountant's Reports with The Law Society by that date then the sanction imposed upon him by the Tribunal would be that of a reprimand and not a suspension. It was right that the Respondent should pay the Applicant's costs and the Tribunal ordered that these be paid in the fixed sum of £1,250 plus VAT, a figure with which the Respondent agreed.”

(The Respondent did regularise his position and was reprimanded)

The Tribunal's Decision and its Reasons

22. The statutory requirement to file Accountant's Reports is important. The filing of such Report enables the Law Society to confirm to prospective clients that by placing their money with the solicitor concerned they are not thereby placing their often very large sums of money in jeopardy. In essence the failure of a solicitor to file Accountant's Reports prevents the Law Society from fulfilling its important regulatory function. The Tribunal has taken into account the difficulties from which

the Respondent suffered and accepts that his serious illness was a strong mitigating factor.

21. The fact remains that the outstanding issues have not been resolved. The Tribunal points out to the Respondent that those issues do require to be resolved and any failure on his part to achieve this will place him in continuing breach. The Tribunal considered it appropriate to impose upon the Respondent a modest financial sanction and ordered him to pay a fine of £1,000. The Respondent had agreed the Applicant's costs in the sum of £3,348.75. It was right that the Respondent be responsible for the Applicant's costs and the Tribunal ordered that he pay them fixed in the sum agreed.

DATED this 6th day of March 2006

on behalf of the Tribunal

L N Gilford
Chairman