

IN THE MATTER OF ROY PHILIP COWIE AND GARY PAUL JOSEPHS, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A. G. Ground (in the chair)
Miss N. Lucking
Mr. M. G. Taylor CBE

Date of Hearing: 21st February 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby solicitor and partner in the firm of Jameson and Hill, 72-74 Fore Street, Hertford, Hertfordshire SG14 1BY on 14th September 2007 that Roy Philip Cowie and Gary Paul Joseph of The Hub, 9 Bell Yard Mews, London SE1 3UY 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 Respondents were that they had been guilty of conduct unbecoming solicitors in each of the following particulars:-

- i. That contrary to Rule 32 Solicitors' Accounts Rules 1998 they failed to keep their accounting records properly written up.
- ii. Contrary to Section 2 of the Solicitors' Publicity Code 2001, being the principals in a partnership of 20 or fewer persons did fail to include a list of the partners on their letterhead.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 21st February 2008 when Stephen John Battersby appeared as the Applicant and the Respondents were represented by David Morgan solicitor and consultant to the firm of Radcliffes Le Brasseur, 5 Great College Street, Westminster, London SW1P 3SJ.

The evidence before the Tribunal included the admissions of the Respondents. A confirmation of a training course booking, a certificate of attendance on a training course and a bundle of client bank reconciliations were handed to the Tribunal during the hearing on behalf of the Respondents.

At the conclusion of the hearing the Tribunal made the following Orders:

The Tribunal ORDER that the respondent ROY PHILIP COWIE of The Hub, 9 Bell Yard Mews, London Bridge, London SE1 3UY solicitor, be REPRIMANDED and it further Orders that he be jointly and severally liable with the second respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,772.25

The Tribunal ORDER that the respondent GARY PAUL JOSEPHS of The Hub, 9 Bell Yard Mews, London Bridge, London SE1 3UY solicitor, be REPRIMANDED and it further Orders that he be jointly and severally liable with the first respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,772.25

The facts are set out in paragraphs 1 to 7 hereunder:-

1. Mr. Cowie (the First Respondent) born in 1962 was admitted as a solicitor in 1988. Mr. Josephs (the Second Respondent) born in 1973 was admitted as a solicitor in 2001. At the material times they practised together as the two partners in the firm of Nelsons at The Hub, 9 Bell Yard Mews, London SE1 3UY.
2. On 7th September 2006 a Senior Investigation Officer of the Solicitors Regulation Authority, Mr. D, commenced an inspection of the books of account and other documents of the Respondents' firm at their office. A copy of his resulting Report dated 4th October 2006 was before the Tribunal.
3. The Respondents explained to Mr. D that they had previously worked as Assistant Solicitors for a firm called Nelsons at Bloomsbury Square, London WC1A 2UA. Following the dissolution of this firm in November 2005, the Respondents moved to their present address and set up in partnership there keeping the name of Nelsons. The bulk of the work carried out in the practice was conveyancing.
4. When the Respondents commenced in partnership, they had opened new bank accounts designated 'Nelsons 2'. They still held accounts in respect of the old firm of Nelsons which had been dissolved in November 2005 and these were designated 'Nelsons 1'.
5. Mr. D was provided with a list of liabilities to clients and noted that for 'Nelsons 2' these were £3,922,050.13 and for 'Nelsons 1' £62,049.36. With regard to Nelsons 2, the cash available, after allowance for uncleared items, was £3,569,946.14. The liabilities to clients were £3,922,050.13 thus leading to a shortage of £352,103.99. With regard to 'Nelsons 1', the cash available was £544,366.91 with liabilities to

clients of £62,049.36. This led to a cash surplus of £482,317.55. The total liabilities to clients between the two accounts were therefore £3,984,099.49 with cash available of £4,114,313.05 - an overall cash surplus of £130,213.56. In view of this, Mr. D was not able to form any opinion as to whether the firm held sufficient funds to cover its liabilities to clients. The Respondents said that they had instructed their Accountants to locate the differences referred to and make the necessary adjustments to the books of account. The accountants confirmed this to Mr. D on 7th September 2006.

6. The Respondents were written to on 26th October 2006 when their explanation was sought for the state of affairs which had been found by Mr. D. They responded by way of a letter of 17th November 2006 with an attached note by the Practice Manager. They attributed the problems to various causes including:-

- Problems over the functioning of the CHAPS terminal software provided by Lloydlink.
- The drawing of cheques on 'Nelsons 1' account which should have been drawn on 'Nelsons 2' account by a temporary legal cashier.
- Staff shortages.
- Delay in setting up the 'Nelsons 2' account as a separate entity, which meant that entries for both Nelsons accounts had to be put into the old client account for the three week period.
- The failure of Lloydlink to give the firm a dedicated line.
- A burglary on the 14th December 2005 in which four accounts computers were stolen, including the Lloydlink computer.

The Respondents assured the SRA that they and their accounts department were working at remedying the deficiencies and that there had been no loss to any clients.

7. The letterhead on various letters which the Respondent sent during the investigation stated:

“A list of partners is available for inspection at our offices”

without either of the two partners being named. Since the coming into effect of the Solicitors Publicity Code 2001, any firm with less than 20 partners was obliged to name each of the partners individually on the letterhead and the Respondents were therefore in breach of the Code. After the breach was drawn to their attention they changed their notepaper.

The Submissions of the Applicant

8. The Respondents had admitted the breaches through their solicitor some time ago. They did not however admit that they had been guilty of conduct unbefitting solicitors.
9. There was no allegation of dishonesty against the Respondents. The Applicant accepted that some difficulties not of the Respondents' making had contributed to their problems but the keeping of accurate and reliable accounts was central to the running of a solicitor's practice and the accounts kept by the Respondents were not accurate and reliable at the date of the inspection.
10. At the time of the inspection the firm had been running for some ten months. The Respondents had not been partners in the old firm of Nelsons.
11. The client account of Nelsons 2 had had an apparent shortage and that of Nelsons 1 had a substantial surplus leading to an overall cash surplus. It was clearly an unsatisfactory situation that Mr. D had been unable to form an opinion as to whether the firm held sufficient funds to cover its liability. The responsibility had been on the Respondents as partners to make sure that the accounts were in order.
12. Allegation (ii) was a discrete allegation and was not at the most serious end of such allegations. The Applicant did not suggest that there was anything underhand or devious about the Respondents' behaviour but the Solicitors Publicity Code 2001 obliged firms with less than 20 partners to name them individually on their letterhead. The Respondents had therefore been in breach of the Code. To their credit after the breach had been drawn to their attention they had changed their letterhead as confirmed in their letter of 18th December 2007 to the Solicitors Regulation Authority.
13. The Applicant had seen the statements of the Respondents and was able to confirm that the Investigation Officer did not take issue with what was set out in those statements.

The Oral Evidence of Mr. Cowie

14. Mr. Cowie confirmed that his statement dated 21st February 2008 was true and correct to the best of his knowledge and belief.
15. By the date of the Respondents' letter dated 18th June 2007 to the Solicitors Regulation Authority the reconciliations were substantially complete. This was subsequently confirmed by the firm's reporting accountant in a letter dated 27th September 2007 to the Solicitors Regulation Authority. That letter stated:

“all of the reconciling items on the client account reconciliations from the period 31st January 2006 to 31st August 2007 have been properly adjusted in the firm's accounting system.”

This was absolutely correct. All the monies held on client account had been properly allocated to the individual clients as required. Reconciliations were now carried out on a daily and monthly basis.

16. The Tribunal was referred to the bundle of documents handed in on behalf of the Respondents which included reconciliation accounts dated 20th February 2008 for Nelson 1 client account and Nelson 2 client account both of which showed the client account reconciled with nil differences.
17. The First Respondent, as shown in the bundle, would be attending an Accounts Rules course on the 18th March 2008. He had however reacquainted himself with the Accounts Rules some time ago. He accepted with hindsight that it would have been wiser to have gone on a Solicitors Accounts Rules course before setting up in practice.
18. It was not satisfactory that Mr. D had been unable to tell if there was sufficient money held on client account but this had been addressed and dealt with and the accounts were reconciled daily. This had been the First Respondent's first experience as a principal.
19. The First Respondent was denying the allegation of conduct unbecoming a solicitor as the Respondents had not set out purposely to ignore the Solicitors Accounts Rules. It was unfortunate that due to an oversight on behalf of the Respondents and the set of unfortunate circumstances that mistakes had arisen. The Respondents had tried incredibly hard to put matters right. They accepted that mistakes had arisen and they had taken those mistakes on board and had learnt from them. They now dealt with the management of the accounts on a far better basis than they had done before.

The Oral Evidence of Mr. Josephs

20. The Second Respondent confirmed that his statement of the 21st February 2008 was true and accurate to the best of his knowledge and belief.
21. The Second Respondent adopted the First Respondent's written statement.
22. The Second Respondent had attended a course on the Solicitors Accounts Rules on the 16th May 2007 as shown by the bundle of documents. Like the First Respondent he had had no previous experience as a principal.
23. The Second Respondent was aware of the reconciliations dated 20th February 2008 handed in to the Tribunal.

Submissions on behalf of the Respondents

24. The Tribunal had before it the witness statements of the Respondents and was asked to take account of the matters set out in them.

Summary of the Matters set out in the Witness Statements

25. The Respondents had taken over the business of Nelsons when the three partners of Nelsons 1 had retired. Neither of the Respondents had had responsibility for the management of an office before. They inherited a substantial caseload and 18 staff.
26. In November 2005 a client account was set up for Nelsons 2 and the Respondents had also been passed control of the remaining balance in the Nelsons 1 account.
27. Between November 2005 and Christmas 2005 Nelsons 2 faced a number of problems caused by matters beyond the control of the Respondents.
28. As a busy conveyancing practice the Respondents were doing telegraphic transfers practically everyday and needed a reliable method of doing so. They had chosen Lloydlink which had previously been used by Nelsons 1, being a dedicated secure line which enabled practices to send telegraphic transfers automatically. Unfortunately the software was not installed correctly and problems were encountered transmitting and receiving telegraphic transfers for Nelsons 2 account. The software for the Nelsons 1 account did work and to alleviate the problems the Respondents had used the Nelsons 1 account to ensure that completions were carried out smoothly. When the firm moved to new premises in December 2005 they again suffered problems with Lloydlink and the Nelsons 2 account and it was discovered that the engineers had failed to install a dedicated line for Lloydlink.
29. On 14th December 2005 the premises were burgled and four of the accounts computers stolen including the Lloydlink computer. Reinstallation took three days. Although the computers were replaced immediately the Lloydlink system was only fully operational just before Christmas 2005.
30. All the events occurred during the first two months in practice. At the time the Respondents felt that their priority as a practice was to act in their clients' best interests and to ensure that their clients were able to complete their transactions and move into their new homes before Christmas. The sheer volume of business of the firm along with the Respondents' new responsibilities distracted them from ensuring full compliance with the Solicitors Accounts Rules and especially reconciliation of the client accounts.
31. The Respondents had inherited their accounts manager from Nelsons 1 where she had worked for many years without any problems as far as the Respondents were aware. They had every confidence in her ability but this had subsequently been shown to be rather naïve. The legal cashier had left the firm upon the dissolution of Nelsons 1 and it had come to light subsequently that the temporary cashier was drawing cheques on the wrong account which caused confusion in the ledgers.
32. The Respondents started to notice problems with the client account in around January 2006 and they contacted their accountant to assist in preparing reconciliations. The accountants were liaising with the accounts manager who was to implement their suggestions. She assured the Respondents that she could sort out the problems identified and address the reconciliations.

33. The Respondents had had no reason to doubt her ability to resolve the problem but with hindsight they realised it was inappropriate to rely on a staff member to ensure compliance and that they should have sought greater assistance from their accountant.
34. The Respondents had taken the problems with the accounting records very seriously and had employed their reporting accountant together with external accounts assistants and additional staff at a cost of over £116,000 to remedy the problems.
35. The former accounts manager had left by mutual agreement and a new accounts manager had been engaged. It had become clear that the former accounts manager was not up to the task required of her.
36. The following accounting procedures had been introduced:-
 - a. office monies were transferred from client accounts swiftly and well within the 14 day time period required.
 - b. reconciliations of client office and disbursement accounts were carried out daily.
 - c. at the end of every day all transfers between office and client accounts were signed by a partner and filed in date order.
 - d. all accounts were reconciled at the end of each month and produced to the partners for signature.
37. The Respondents understood the Solicitors Accounts Rules much better and were overseeing the accounts in much more detail to ensure compliance. They were no longer relying on staff members to do this.
38. They treated the issues identified in the present proceedings as very serious. They had done their best to respond promptly and fully to the concerns of the Solicitors Regulation Authority. No complaints had been received from clients about delayed payments or completion and there had been no allegation of missing funds.
39. The Respondents accepted that they had to bear the responsibility for their failure but asked the Tribunal to consider the matters set out in the statements as going some way towards explaining the circumstances.
40. In relation to allegation (ii) the Respondents had not realised that the headed paper had to carry their individual names and that only firms with over 20 partners could say that a list of partners was available for inspection. When it had been brought to their attention they had immediately corrected their letterhead.
41. Both Respondents offered their apologies to the Tribunal, the Solicitors Regulation Authority and the profession.

Oral Submissions on behalf of the Respondents

42. Breaches of the Accounts Rules were not necessarily conduct unbecoming a solicitor. Some regard had to be had for the attitude of the Respondents. In this instance it was clear from the Respondents' evidence that there was no question of their having a cavalier attitude.
43. They had not had sufficient knowledge and had accepted that it would have been better to attend courses before setting up their practice. They had had some unfortunate problems outside of their control. The Tribunal was asked to take these matters into account together with the fact that the Respondents had taken urgent steps to put things right at some considerable expense.
44. As the letter referred to at paragraph 15 above confirmed, the accounts were reconciled and everything was correctly allocated. The Respondents notified The Law Society of this in June 2007 and the accountants had confirmed it in September 2007.
45. The Respondents had a previously unblemished record.
46. The Tribunal was asked to consider the breaches as technical breaches which did not reflect a poor attitude on the part of the Respondents.
47. The letterhead had been corrected as soon as the error had been pointed out.
48. The Respondents recognised that they had made mistakes and apologised.
49. The Respondents had agreed the Applicant's costs.

The Findings of the Tribunal

50. The Respondents had admitted the breach of the Accounts Rules and the breach of the Solicitors Publicity Code but had denied that these breaches amounted to conduct unbecoming a solicitor. The Tribunal had listened carefully to the submissions of the parties and the matters put forward as mitigation by and on behalf of the Respondents. The Tribunal found the admitted breaches of the Rules substantiated but in all the circumstances did not find that the breaches amounted to conduct unbecoming a solicitor. The Rules in respect of which breaches had occurred were important but the Tribunal noted that they had occurred over a short period after the Respondents had first set up in practice as principals, and that circumstances beyond the Respondents' control had played a major part in the Accounts Rule breaches. The Respondents had corrected the breach of the Solicitors Publicity Code as soon as it had been brought to their attention and the Applicant had not put that allegation on the basis of there being any intent to mislead. The Respondents had taken steps within their practice to ensure that there would be no repetition of the breaches and to familiarise themselves fully with the Solicitors Accounts Rules to ensure future compliance.
51. Having not found that the Respondents had been guilty of conduct unbecoming a solicitor and taking into account all the circumstances set out in paragraph 50 above the Tribunal considered that the appropriate penalty was to reprimand the

Respondents and to order that they pay the Applicant's agreed costs. The Tribunal noted that a condition had been placed on the Practising Certificates of the Respondents that they file six-monthly Accountant's Reports and the Tribunal supported that condition for as long as The Law Society felt it was appropriate.

52. The Tribunal Ordered that:

The Tribunal ORDERED that the respondent ROY PHILIP COWIE of The Hub, 9 Bell Yard Mews, London Bridge, London SE1 3UY solicitor, be REPRIMANDED and it further Ordered that he be jointly and severally liable with the second respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,772.25

The Tribunal ORDERED that the respondent GARY PAUL JOSEPHS of The Hub, 9 Bell Yard Mews, London Bridge, London SE1 3UY solicitor, be REPRIMANDED and it further Ordered that he be jointly and severally liable with the first respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £2,772.25

Dated this 26th day of March 2008
On behalf of the Tribunal

A. G. Ground
Chairman