

## **LCRO 79/09 Hartlepool v Basildon: Failure to file appeal / refusal to act further unsatisfactory conduct**

Ms Hartlepool had retained Mr Basildon to act for her in relation to an application for supervised contact of her grandson. Ms Hartlepool was unsuccessful in her application and costs were awarded against her. Ms Hartlepool wished to appeal. Mr Basildon advised against this, but agreed that if she insisted he would undertake the appeal. As time passed Mr Basildon deferred filing the appeal giving a number of excuses including the fact Ms Hartlepool had expressed dissatisfaction with his conduct in the court below. Some months after the original hearing he refused to act further and was removed as solicitor on the record by the Court. Ms Hartlepool complained to the Law Society in respect of the refusal to act and also alleged that Mr Basildon had assured her of success and not warned her about costs. A Standards Committee did not uphold the complaint. Ms Hartlepool sought a review of that decision.

The LCRO found that the complaints that Mr Basildon had assured Ms Hartlepool of success were not established. However, the correspondence showed numerous communications of varying levels of formality which are consistent with the assertion that Mr Basildon indicated he was prepared to act on the appeal and intended to do so (albeit with some reluctance). It was noted that the question of whether or not a lawyer has been retained is to be determined objectively. In the present case Mr Basildon had indicated a willingness to undertake the appeal and Ms Hartlepool had instructed him to do so. There can be no doubt that in the present case a lawyer-client relationship existed. There is no need for any "formal" instructions for a retainer to come about.

Given the complaints of Ms Hartlepool in relation to the conduct of the hearing by Mr Basildon could have refused to act further entirely; (or until Ms Hartlepool had taken advice on the matter and was satisfied that she did not wish to pursue a claim against him). Alternatively he could have explained his position in respect of the matters raised to Ms Hartlepool and, providing she accepted his explanation as a satisfactory answer to the matters she raised, he could have continued to act. In failing to either resolve the complaints of Ms Hartlepool or unequivocally communicate that he would not act for her Mr Basildon has failed in his professional duty.

**Result:** The application for review is upheld and the decision of the Standards Committee was reversed. Further submissions sought on compensation, penalty and costs.