

IN THE MATTER OF PHILIP DOUGLASS and [*RESPONDENT 2*], solicitors

- AND -

KEITH COLTON, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mrs E Stanley  
Mr G Fisher

Date of Hearing: 27<sup>th</sup> 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 duly made on behalf of the Solicitors Regulation Authority by Iain George Miller of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF on 19 November 2008 that Philip Douglass of c/o Wembley, Middlesex, solicitor and [*Respondent 2*] of London, SW1, solicitor, and Keith Colton of c/o Wanstead, London E11, a solicitor's clerk 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 First Respondent Philip Douglass and [*Respondent 2*] were that:-

1. They participated in a number of transactions on behalf of clients that bore the hallmarks of mortgage fraud contrary to Practice Rule 1(a), (c) and (d) of the Solicitors Practice Rules 1990 ("the Rules");
2. They acted in a number of conveyancing transactions for both lender and borrower where a conflict of interest existed or arose contrary to 6(3)(a) of the Rules;

3. They acted in a number of conveyancing transactions for both buyer and seller without the written consent of both parties contrary to Rule 6(2)(i) and (ii) of the Rules;
4. [withdrawn];

The further allegations against Philip Douglass were that:

5. He acted in one or more conveyancing transactions for both lender and borrower on the grant of an institutional mortgage of land without informing the lender in writing that a member of his immediate family was a borrower or that he proposed to act for seller, buyer and lender in the same transaction in breach of 6(3)(b) of the Rules;
6. For the avoidance of doubt the allegations against Philip Douglass were made on the basis that his involvement in the transactions was dishonest.

The allegation against the Third Respondent, Keith Colton was that:

7. He, being a person who is or was employed or remunerated by a solicitor in connection with his practice, but not being himself a solicitor, had in the opinion of the SRA, occasioned or been a party to, with or without the connivance of the solicitor by whom he is or was employed or remunerated, an act or default in relation to that solicitor's practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice. It was specifically alleged that he participated in a number of transactions on behalf of clients that bore the hallmarks of mortgage fraud.

The application was heard at the Courtroom, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 27<sup>th</sup> October 2009 when Ian Miller appeared as the Applicant, Philip Douglass appeared and was represented by Mr Gregory Treverton-Jones QC, [*Respondent 2*] and Keith Colton also appeared and were both represented by Mr David Morgan.

At the beginning of the hearing the Applicant applied for leave to withdraw allegation 4. The Tribunal granted leave for allegation 4 to be withdrawn.

The evidence before the Tribunal included the admissions of the Respondents to all the allegations, save allegation 6 which was an allegation of dishonesty against Mr Douglass. The Tribunal also had before it a number of documents provided by the Respondents.

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

The Tribunal Orders that the Respondent, Philip Douglass of c/o Sudbury, Middlesex, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 27<sup>th</sup> day of October 2009 and it further Orders that he do pay 85 per cent of 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 Accountant of the Law Society.

The Tribunal Orders that [*Respondent 2*], of London, SW1, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay 10 per cent of the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed with the parties to include the costs of the Investigation Accountant of the Law Society.

Pursuant to Section 43(2) of the Solicitors Act 1974 (as amended), the Tribunal Orders that as from the 27<sup>th</sup> day of October 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Keith Colton c/o London E11, a person who is or was a clerk to a solicitor, and the Tribunal further Orders that he do pay 5 per cent of 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 Accountant of the Law Society.

**The facts are set out hereunder:-**

1. The First Respondent, Philip Douglass ("Mr Douglass"), born in 1953, was admitted as a solicitor on 1 July 1978. His name remained on the Roll.
2. The Second Respondent, [*Respondent 2*], born in 1966, was admitted as a solicitor on 2nd November 1998. His name remained on the Roll.
3. The Third Respondent, Keith Colton ("Mr Colton"), was an unadmitted clerk and a member of The Institute of Legal Executives ("ILEX").
4. At all material times the Respondents practised under the name of JW Mitchell Dodds & Co at 12 Northumberland Square, North Shields, Tyne & Wear, NE30 1PY, with further offices, under the name of Adamsons at 57-59 High Street East, Wallsend, Tyne & Wear NE28 8PQ and 106 Park View, Whitley Bay, Tyne & Wear, NE26 3QL. At the material times Mr Douglass was a partner at the firm and [*Respondent 2*] was an employee of the firm.
5. A Forensic Investigation Report ("the FI Report") dated 17<sup>th</sup> April 2007 was before the Tribunal. An investigation of JW Mitchell Dodds & Co had taken place regarding conveyancing work that the firm had undertaken. The firm acted in relation to a number of transactions that appeared to be fraudulent in nature.
6. The firm acted for a company called North East Property Buyers ("NEPB") which was a partnership consisting of two partners, GP and MF. In respect of NEPB the firm acted for both partners in their conveyancing transactions, a number of NEPB's employees and, in some instances, their own relatives and their employee's relatives.
7. In addition to being a partner in NEPB, GP was also a Director of another company called Newcastle Home Loans Limited ("NHL"), a branded lender for SPML.
8. In respect of a significant number of conveyancing transactions relating to the parties listed above the firm was instructed to act jointly for SPML (with NHL as the branded lender) to provide mortgage funds in relation to property purchases and re-mortgages.

9. On 19<sup>th</sup> May 2006 SPML wrote to the Senior Partner at Adamsons informing him that, following an audit of cases by the deeds department, it had come to SPML's attention that there were many matters which were completed between August 2005 and March 2006 where the purchase price and completion dates were shown incorrectly at the Land Registry. As a result the firm was suspended from the panel.
10. Mr Douglass explained in November 2006 to the SRA's Investigation Officer ("IO") that the transactions involving NEPB, the various parties linked to them, and NHL were dealt with by fee earners in the Adamson's office at Wallsend, namely [Respondent 2] and Keith Colton. Mr Douglass confirmed that he supervised [Respondent 2] and Mr Colton and that he was fully aware of how the transactions worked in general although he was not aware of every individual transaction *per se*. He informed the IO that he was a conveyancer well experienced in property transactions and also in mortgages. He confirmed that he was well aware of how the transactions were being undertaken in respect of NHL and NEPB and who the various clients were.
11. The firm acted in 59 transactions, details of which were provided to the Tribunal, where the re-mortgage of a property with SPML occurred simultaneously with the purchase of the property. The features of the transactions were as follows:
  - (a) they were all 'Buy to Let' transactions.
  - (b) the client was buying the property but was also re-mortgaging with SPML at the same time.
  - (c) a loan was transferred, principally from a ledger of NEPB, but also from a ledger of Mr & Mrs MF, representing the purchase price or the purchase price and associated costs.
  - (d) funds were received from SPML in respect of the re-mortgage usually on the day before completion of the purchase.
  - (e) following completion sufficient funds out of the SPML mortgage were utilised to repay the loan.
  - (f) the valuation of the property, being the basis of the loan from SPML, was significantly higher than the purchase price.
  - (g) the surplus funds were utilised to pay the associated costs of the purchase.
  - (h) the remaining surplus was paid, in most cases, to the client.
  - (i) They were all dealt with at the firm's Wallsend office.
12. Mr Douglass accepted that in these cases a mortgage advance significantly in excess of the purchase price was a material fact. When questioned why SPML was not notified about this Mr Douglass said "it had not crossed his mind."
13. Mr Colton and [Respondent 2] had conduct of these transactions and the Tribunal were provided with details of two transactions in particular.

2 A Terrace

14. Mr Colton had conduct of this matter and was acting for Mr P and SPML. Mr P was the husband of LP, a director of NHL. Mr Colton never met Mr P. The purchase price of the property was £200,000.00. SPML offered to provide a mortgage of £250,000.00 as the mortgage was a 'Buy to Let 85%' and was based on a valuation of £300,000.00. The Client ledger relating to Mr P detailed that mortgage funds of £250,000.00 were received on 27<sup>th</sup> February 2006. A completion statement on the client file from the seller's solicitors detailed that the balance required to complete the purchase amounted to £203,144.22.
15. On the client file was an unsigned fax instruction from NEPB for £203,144.22 to be transferred from the account of NEPB to the ledger of P. This amount was duly transferred by way of an inter-ledger transfer from NEPB to Mr P's ledger. There was no authority from Mr P regarding the inter-ledger transfer.
16. Mr Douglass acknowledged that NEPB were lending the money to Mr P to buy the property, in effect 'bridging the loan'. Mr Colton accepted that no written agreements were in place in respect of the private loan but contended that
 

"the purchasers were well aware that the monies for the purchase were being provided by NEPB and that the loan from NEPB would be repaid with the funds from SPML."
17. On 28<sup>th</sup> February £200,000.00 was remitted to the vendor's solicitors to complete the purchase and on the same date £203,144.22 was transferred back to the NEPB ledger from Mr P's ledger, leaving Mr P with £46,526.77 in his client ledger.

39 K Crescent

18. [*Respondent 2*] had conduct of this matter and was acting for Mrs W and the lender, SPML. Mrs W was the wife of PW, an accountant at NEPB. [*Respondent 2*] never met Mrs W. The purchase price of the property was £110,000.00. SPML offered to provide a mortgage of £144,500.00 as the mortgage was a 'Buy to Let 85%' and was based on a valuation of £170,000.00. The circumstances surrounding this transaction were similar to 2 A Terrace.
19. The Client ledger relating to Mrs W detailed that a transfer of £12,000.00 was made on 4<sup>th</sup> April 2006 from the ledger of NEPB (£11,000 of which was being used as a deposit on the transaction). There was an instruction on the client file dated 3<sup>rd</sup> April 2006 from GP and MF for the transfer to be made. There was subsequently a second transfer on the instructions from NEPB of £98,928.68 relating to the completion monies. [*Respondent 2*] confirmed that there were no written agreements in place in respect of the two private loans from NEPB in this transaction.
20. On the client file was an unsigned fax instruction from NEPB for £203,144.22 to be transferred from the accountant of NEPB to the ledger of GP. This amount was duly transferred by way of an inter-ledger transfer from NEPB to Mrs W's ledger. There was no authority from Mrs W in respect of any inter-ledger transfer.
21. On 12<sup>th</sup> April 2006 £144,500.00 was received from SPML on Mrs W's ledger and on the same day £99,000.00 (being the completion monies) was remitted to the vendors

solicitors to complete the purchase. On the same date £98,928.68 was transferred back to the NEPB ledger. Mrs W therefore held £34,500.00 in her client ledger plus an additional £12,000.00 from the original loan (which [*Respondent 2*] considered not to have been paid back in error).

#### 'Back- to-Back' Transactions

22. The firm acted in 26 'back-to-back' transactions on behalf of NEPB, Mrs GP and Mr MF. The Tribunal were provided with details of these. The features of the transactions were as follows:
- (a) "The selling price was significantly higher than the purchase price."
  - (b) They were all 'Buy to Let' transactions.
  - (c) The firm acted for both parties. The firm did not have the written authority from either of the clients that the firm could act for both parties. The firm did not inform SPML that they acted for the seller.
  - (d) The firm did not inform SPML that the transaction was a 'back-to-back' transaction even though SPML's 'Solicitor's General Instructions' required them to do so."

Two particular cases were:

#### 115 L Drive

23. Mr Colton had conduct of this matter and was acting for Ms M, an employee of NEPB, in respect of her purchase of 115 L Drive and also acting for SPML.
24. A 'purchase/remortgage instruction sheet' showed that Ms M was to buy the property from the vendors for a purchase price of £106,000 and then remortgage the same day. However her purchase did not proceed and instead she bought the property from NEPB for £150,000.00 with SPML providing a mortgage of £127,500.00.
25. The firm also acted for NEPB in their purchase of the property from the vendors at £106,000.00 and the subsequent sale to Ms M, on the same day, at a price of £150,000.00. [*Respondent 2*] had conduct of this part of the transaction. There was no written authority to act for both parties.
26. The IO queried why Ms M would have been prepared to originally pay £106,000.00 and then subsequently £150,000.00 for the property, an increase of 41.5%. Mr Douglass said he was not sure. Mr Colton and [*Respondent 2*], when asked whether they discussed with Ms M why she agreed to pay £44,000.00 more for the same property, admitted they had not discussed this.
27. The firm failed to confirm, under the terms of the mortgage offer, that the price stated in the mortgage offer was the same amount in the contract for sale, or that the applicant was not receiving any cash or non-cash incentives in relation to the purchase price or that the balance of the purchase monies would be provided in full by the applicant and would pass through the client bank account.

28. Although the balance of the purchase price, amounting to £23,385.72 did go through the firm's client bank account the funds were provided by NEPB. SPML were not informed that the seller had provided the balance for the purchaser to complete. Mr Colton explained that he did not notice the fact that the funds had come by way of bank draft from NEPB and that it was an oversight on his behalf and had it been spotted he would have reported it to SPML. The Certificate of Title completed by the firm confirmed that they were not acting for the seller when, in fact, they were.

122 C Wharf

29. Mr Colton had conduct of this matter and was acting for Ms J O'S, sister in law of MF, in respect of her purchase of 122 C Wharf from the vendor, Mrs H. Mr Colton was also acting for SPML who had agreed to lend Ms O'S £167,750.00 in respect of the purchase. Mr Douglass was acting for the vendors. One of the vendors was Mr Douglass's wife.
30. At the time of the mortgage offer Ms O'S was to buy the property for £140,000.00 and on 3 April 2006 the Certificate of Title was submitted by Mr Colton to SPML on the basis of Ms O'S's purchase which confirmed the purchase price of £140,000.00 and that the applicant was not receiving any sales incentive.
31. Prior to completion the firm received a fax from NEPB on 5 April 2006 informing them that they were now going to purchase the property from the vendor, and then sell it to Ms O'S for £195,000.00, £55,000.00 more than she was originally going to buy it for (a 39.3% increase).
32. The IO queried why Ms O'S would have been prepared originally to pay £140,000.00 and then subsequently pay £195,000.00 for the property. Mr Douglass said he did not know. [Respondent 2], when asked whether this was discussed considered that while he had no specific recollection of speaking to his client about this, he was certain that he would have done so.
33. The firm also acted for NEPB in their purchase of the property from the vendors for £140,000 and [Respondent 2] had conduct of the matter. Mr Colton and [Respondent 2] confirmed that they did not have written authority to act for both parties. Mr Douglass, whilst acknowledging that the firm may not have complied with the requirements of Practice Rule 6 emphasised that all parties would however have known exactly who was acting for who.
34. Following receipt of the fax the firm submitted a subsequent Certificate of Title on 10 April 2006 which stated in respect of 'Price stated in transfer' 'N/A Re-mortgage', however the covering letter confirmed the purchase price was £195,000.00 and also that the applicant was not receiving any sales incentive.
35. On 10 April 2006 the firm wrote to Ms O'S with an amended Transfer form for signature and an amended completion statement. This showed that the balance to complete amounted to £31,603.97, and requested a banker's draft for this amount prior to the revised completion date of 18 April 2006. This £31,603.97 was paid by NEPB. SPML was not informed that this was being paid by the Seller.
36. In a letter dated 16 April 2004 Mr Douglass wrote to SPML about the fact that the firm were acting for both buyer and seller in a transaction relating to NHL. He asked

whether in such cases, it would be sufficient to confirm in a letter from Mitchell Dodds when submitting the certificate of title that Adamsons were acting for the seller. On 15<sup>th</sup> June 2004 SPML responded

“I can confirm that the covering letter would give us no cause for concern. As long as you can confirm to us that would be no conflict of interest in the transactions then we would be happy for them to proceed.”

On 16 June 2004 Mr Douglass responded:

“You can rest assured that certainly there will be no conflict of interest and if any conflict arises we will withdraw immediately.”

37. In the transactions listed above there was no covering letter stating that the Respondents were acting for both buyer and seller. In the transactions listed above fee earners with conduct were both based at Adamsons in the Wallsend office (with Mr Douglass acting in one of the transactions).
38. On 18<sup>th</sup> August 2005 Mr Douglass became concerned about the rather unusual nature of bridge purchases and re-mortgage transactions that he had been instructed to work on by NEPB and in light of this concern wrote to SPML about whether he should raise queries with SPML rather than NHL. SPML responded on 15<sup>th</sup> September 2005 and confirmed that Mr Douglass should respond to NHL on all matters relating to offers and completions, where NHL have been the packager. The letter went on to state:

“The only exception to this would be to report a suspected fraud – where it was felt that Newcastle Home Loans might themselves be implicated – and in that (most unlikely) circumstance you should contact either me or the Compliance Department at our head office.”

None of the Respondents reported a suspected fraud.

39. On 5<sup>th</sup> December 2005 Mr Douglass wrote again to SPML enquiring whether, in back-to-back transactions, his firm could proceed without informing SPML, or did they need to inform SPML on each and every occasion. SPML responded on 16<sup>th</sup> December 2005 specifying that the firm could simply proceed without the need for informing them on each and every occasion.
40. Following on from the SRA’s visit on 9<sup>th</sup> March 2006 Mr Douglass wrote to SPML on 12<sup>th</sup> May 2006 informing them that the SRA had indicated that the firm should inform SPML when borrowers were purchasing a property with the aid of bridging finance, and then re-mortgaging with SPML subsequently using the re-mortgage monies to pay back the bridge loan. Mr Douglass went on to say that there were instances where the purchase price was considerably less than the valuation price given by the valuer and questioned whether SPML required the firm to inform them of the initial purchase price on each occasion. SPML replied that the firm should act in accordance with the Law Society’s interpretation of best practice.



### **Mr Philip Douglass's Application to Adjourn/Stay the Action**

41. Mr Treverton-Jones QC on behalf of Mr Douglass submitted an application for the proceedings against Mr Douglass to be adjourned or stayed. The basic facts were not disputed and nor was it disputed that there had been serious regulatory breaches. However, Mr Douglass disputed allegation 6 which was an allegation that he had been dishonest. He was in an invidious position in that there was a criminal investigation that was ongoing at the moment and whilst Mr Douglass was not presently regarded as a suspect, it was difficult to know whether his involvement would change as the criminal investigation progressed. Mr Douglass had been advised not to give evidence before the Tribunal and whilst he was not disrespecting the Tribunal or seeking to be difficult, he was simply following legal advice that had been given to him.
42. In addition, civil proceedings were taking place in the High Court and allegations of dishonesty had been made against Mr Douglass in those. He wished to explain his actions to the Tribunal but could not do so as he had been advised not to give any evidence. The Tribunal would have to make a decision on the case on less than perfect evidence. Mr Douglass had served a defence in those civil proceedings but it was unlikely the matter would be listed for a final hearing before June 2010. Any criminal trial was likely to be in October 2010.
43. Mr Douglass was not practising at the moment and did not have a practising certificate. Accordingly, he was not a risk to the public and there was no compelling or urgent public interest for a speedy hearing. Mr Douglass admitted the serious regulatory breaches and was aware these would affect his ability to practise. Even if he were to apply for a practising certificate, he was in no doubt it would probably be refused.
44. Mr Treverton-Jones QC submitted that the matter should be adjourned if the dishonesty allegation was proceeded with and that it was in the public interest that a full hearing of all matters should take place and Mr Douglass be granted the opportunity to put his case forward. The Tribunal were reminded that the test of dishonesty included a subjective element and that without hearing Mr Douglass's evidence, the Tribunal would not be able to decide whether that subjective test was satisfied. That was a fundamental difficulty with proceeding today.

### **The Submissions of the Applicant on Mr Douglass's Application to Adjourn/Stay the Action**

45. The Applicant reminded the Tribunal that the hearing had been listed at the parties' convenience and only recently Mr Douglass had applied to adjourn the action. No statements had been filed. In relation to the criminal proceedings, Mr Douglass had not even been arrested let alone charged and there was no prospect of when any potential criminal charges would be confirmed. There were no criminal charges at the moment.
46. In relation to the question of dishonesty, Mr Douglass was an established solicitor and the inference was that it was impossible he did not understand that what he was doing was improper. Nine people had been arrested in relation to the criminal proceedings but nobody had been charged. The civil action in which Mr Douglass was involved was an action against him from the valuers involved in the conveyancing transactions.

47. *[Respondent 2]* and Mr Colton wanted matters to be disposed of and the Applicant submitted it was in the public interest to dispose of this case without delay. The Tribunal were referred to the Solicitors Disciplinary Tribunal Practice Note dated 4<sup>th</sup> October 2002 on adjournments which clearly stated:

4) “The following reasons will not generally be regarded as providing justification for an adjournment;

(a) The existence of other proceedings

The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying facts as form the basis of the proceedings before the Tribunal and there is a genuine risk that the proceedings before the Tribunal may “muddy the waters of justice” so far as concerns the criminal proceedings. Proceedings which are not imminent will not usually meet this criterion. Civil proceedings are even less likely to do so.”

48. The Applicant referred the Tribunal to the case of R v The Solicitors Disciplinary Tribunal ex parte Gallagher (30<sup>th</sup> September 1991). In that case Lord Justice Parker had stated:

“It is perfectly plain in my view, that the Disciplinary Tribunal, if faced with a situation where, for example, they were about to make a finding and order a day or two before the criminal proceedings began, might well consider that to do so would muddy the waters. They might then say that they would not reach a conclusion until after the criminal proceedings had been disposed of, or they might simply reserve judgment, which they are entitled to do under the rules, pending the hearing of the criminal proceedings; in another case there might be a completely remote chance of the criminal proceedings being in any way prejudiced ... In my judgment, the criminal trial not being estimated to come on for hearing for at least a year, these matters are very remote.”

49. The Applicant submitted that the distinction between the case of Gallagher and the case before the Tribunal today was that in Gallagher there was no allegation of dishonesty. Furthermore, the case before the Tribunal today was nowhere near imminent proceedings which were referred to in the practice direction and in the case of Gallagher. It was not known when the criminal/civil proceedings were likely to be disposed of and it was likely this could take at least a year. The parallel proceedings were very abstract and there was no reason why the Tribunal could not proceed today. If Mr Douglass had an explanation for the conduct, then there was no reason why that explanation could not be provided to the Tribunal.

### **The Tribunal’s Decision on Mr Douglass’s Application to Adjourn/Stay the Action**

50. This was an application to adjourn proceedings so far as Mr Douglass was concerned. The Tribunal had considered carefully the skeleton argument submitted on behalf of Mr Douglass and had also listened to the submissions of the parties. The Tribunal had considered the practice direction of 4<sup>th</sup> October 2002 and the case of Gallagher to which it had been referred.

51. In the case of Gallagher dishonesty had not been alleged and if it was, the decision may have been different. The Tribunal did not consider the case of Gallagher assisted the Applicant.
52. The criminal investigation was open-ended. No charges had been brought against anyone so far and Mr Douglass may or may not be charged at some unknown future date. The Tribunal did not consider the criminal investigation was sufficient reason to adjourn the case.
53. As far as the civil proceedings were concerned, they were not imminent and may not be heard for a year or more. They were in that sense remote and as indicated in the Tribunal's practice direction, civil proceedings were even less likely to form the basis of any adjournment.
54. In all the circumstances, the Tribunal concluded that the Application for an adjournment, made at a very late stage in the proceedings must fail.

### **The Substantive Proceedings**

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

55. The Applicant confirmed all allegations were admitted by all the Respondents except the allegation of dishonesty against Mr Douglass which was denied. Mr Douglass was 56 years old and an experienced conveyancing solicitor. [*Respondent 2*] was 43 years old and although he was not admitted until 1998, he was an experienced conveyancing solicitor when he joined the firm in July 2005. Mr Colton had been a legal executive since 1981 and joined the firm in May 2000.
56. The Applicant submitted that in the mid 2000s for approximately 2-3 years, the firm carried out fraudulent mortgage transactions. The amounts involved were quite remarkable and the police were of the view that it was one of the largest mortgage frauds ever encountered. The firm were involved in 88 remortgage transactions and 26 back-to-back transactions. The transactions were a good example of why the banking crisis took place and what was going on in the property market at the time. It was a matter of history repeating itself as these transactions had boomed in the 1990s when Mr Douglass was practising and he would have known at that time of the warning cards, which should have made him more alert to these types of transactions. The Applicant submitted Mr Douglass had acted with "conscious impropriety".
57. The Tribunal were taken through a number of the transactions involved. In relation to 2 A Terrace, Mr Colton had conduct of this matter and had said in his witness statement before the Tribunal that some of the answers given by Mr Douglass to the IO were of concern to him. In particular, Mr Colton had never discussed the loan from NEPB with Mr P. However, Mr Douglass had informed the IO that the loan had been discussed. Mr Colton said he told Mr Douglass the loan had not been discussed.
58. Mr Douglass was supervising the 88 remortgages even though he did not have conduct of them. In relation to the back-to-back transactions, the Tribunal's attention was drawn to one particular case, 122 C Wharf. In that transaction the firm were acting for the vendor, the intermediary purchaser, the ultimate purchaser and the lender. Furthermore, the vendor was Mr Douglass's wife. The transaction was

extraordinary and the firm appeared to be acting for everybody despite the fact that there was a clear conflict of interest in acting for each party. The vendor would want to know if there was to be an immediate sub-sale at a higher price. Mr Douglass's wife was selling the property for £140,000.00 and she, or Mr Douglass, knew it was to be immediately sold on for £195,000 and that the lender was lending money on that valuation. The Applicant submitted it was not in the vendor's interest to sell for less than £195,000, if indeed the property was worth that much. Furthermore, the lender had not been informed of material facts. The Tribunal were provided with a schedule of 26 back-to-back transactions which showed that the same parties were involved in a number of transactions and in each case, the firm was acting for all of the parties to the transaction. The purchase price was much less than the selling price and in all the cases the ratio of the loan to purchase price was an average of 119%, in some cases much more.

59. The Tribunal's attention was drawn to SPML's standard instructions to solicitors which made it clear that they relied upon the solicitor to protect SPML and act in SPML's best interests at all times. Matters that must be reported to SPML included:-
- (a) if the borrower proposed to create a second or subsequent charge or mortgage or standard security or otherwise borrowed to finance part of the purchase price or in order to remortgage the property;
  - (b) if the solicitor was aware that the price paid or payable by the borrower differed significantly from that paid on previous dealings with the property within two years preceding the date of the solicitor's Report on Title;
  - (c) if the sale to the borrower was proceeding by way of sub-sale or was to be completed simultaneously with any other transaction involving the property. In such cases, full details were to be given to SPML of the parties, and the prices paid or payable in each transaction;
  - (d) in the case of a purchase, where the purchase price changed between the date of the application and the date of completion of the purchase.
60. Furthermore, the instructions made it clear that the list was not exhaustive and that the solicitor had a general duty to safeguard SPML's interests at all times and to protect it from fraud and misrepresentation. The instructions made it clear that the solicitor could not act for SPML if he/she or his/her practice were acting for the seller of the property. The Applicant submitted it was abundantly clear what the extent of the solicitors' duties were and the instructions were not remarkable when looked at in the context of standard lender instructions. Despite these instructions, Mr Douglass had written to SPML in April 2004 about the fact that the firm were acting for both the buyer and seller in a particular transaction and asking whether it would be sufficient to confirm this in a letter when submitting the Certificate of Title. Further correspondence had taken place between Mr Douglass and SPML and eventually in September 2005 SPML stated they had no policy on transactions such as a purchase of a property that was itself purchased less than 6 months ago as they treated this as an underwriting matter. However, when Mr Douglass replied to that letter in December 2005, he did not advise SPML that there was a difference in the purchase prices on back-to-back transactions and it appeared from the letter that the "back-to-back" transactions were for the same price. The Applicant submitted SPML were never

provided with the full story until March 2006 when Mr Douglass had written to SPML following a visit from the SRA.

61. The Applicant submitted that whilst no dishonesty was alleged against [*Respondent 2*] and Mr Colton, they had participated in a series of transactions that fundamentally damaged the reputation of the profession. They should have been more sceptical and enquiring particularly in instances where the facts were stark and clear. Mr Colton had indicated he would be severely restricted in practising if an order pursuant to Section 43(2) of the Solicitors Act 1974 were to be made. The Applicant submitted this was a regulatory order and the purpose was to ensure that those who were subject to it were regulated when employed by solicitors' practices in the future.
62. Regarding Mr Douglass, the Applicant referred the Tribunal to the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 which set down the objective and subjective test to be applied by the Tribunal. The Applicant submitted Mr Douglass's actions were dishonest by the standards of reasonable, ordinary and honest people. In relation to the subjective part of the test, the Applicant submitted Mr Douglass was clearly an experienced conveyancing solicitor who had been practising during the last mortgage crisis. He had a long established relationship with Mr P and knew he was undischarged bankrupt who was running a company through his wife, GP. Mr Douglass knew all the transactions involved employees or relatives of employees of NHL. He knew SPML's standard conditions were being breached and he did not draw the full facts to their attention when he wrote to them. He knew there was a conflict of interest and continued to act for all parties and the most stark example of this was the transaction involving 122 C Wharf where he acted for his own wife. The Applicant submitted it was difficult to find any honest explanation as to why Mr Douglass would act for his wife in a property which was subsequently sold immediately at a higher price.
63. If the Tribunal were not satisfied that Mr Douglass had acted dishonestly so as to be sure, the Applicant referred the Tribunal to the case of Bolton v The Law Society [1994] CA and submitted that Mr Douglass's standards had fallen well short of the required standards of integrity, probity and trustworthiness referred to in that case. There had been substantial mortgage fraud involving a number of transactions which were staggering and had caused substantial damage to the reputation of the profession.

#### **The Submissions of Mr Philip Douglass**

64. Mr Treverton Jones QC confirmed Mr Douglass did not call any evidence but did wish to confirm to the Tribunal that in May 2007 he did indeed marry AH who was the vendor of 122 C Wharf. However, this was after the transaction had taken place and she had not been his wife at the time.
65. Mr Treverton-Jones QC referred the Tribunal to 31 references concerning Mr Douglass's character and all the references confirmed he was an entirely honest and trustworthy individual and made it clear that he did not have the propensity to behave dishonestly.
66. Mr Douglass was 56 years old and had married his wife in 2007. Whilst the transactions looked dodgy on the face of them, and did resemble transactions from the 1990s when the last property crash took place due to lenders being defrauded, it was submitted that these transactions before the Tribunal were in an entirely different

category as the lender had been kept in the picture throughout. SPML had two employees who were based at NHL's premises and furthermore, Mr Douglass had written a chain of letters to SPML setting out the position and had received assurances that further details were not necessary. Mr Douglass had disclosed sufficient information to SPML at an early stage but they were not interested.

67. All these transactions had taken place at a time when lenders were falling over themselves to lend as much as they could as property prices were rising. Lenders had thought they were secure but in retrospect now looked stupid. They had learned nothing from the last property crash and had the same mindset again that properties would continue to increase in value. On the face of it the transactions did bear the hallmarks of mortgage fraud but the correspondence between Mr Douglass and SPML showed a very different picture.
68. Mr Treverton-Jones QC submitted that the burden of proving dishonesty was on the Applicant. The standard to be used was the criminal standard, which was very high and in light of the correspondence between Mr Douglass and SPML, dishonesty was not made out. The Tribunal were reminded that if they were in any doubt about the matter, they must give the benefit of the doubt to Mr Douglass. Mr Douglass had admitted all of the allegations save the allegation of dishonesty which, it was submitted was not made out.

#### **The Submissions of [Respondent 2] and Mr Keith Colton**

69. Mr Morgan on behalf of [Respondent 2] and Mr Colton referred the Tribunal to the witness statements from [Respondent 2] dated 9<sup>th</sup> October 2009 and from Mr Colton dated 27<sup>th</sup> October 2009 which were before the Tribunal.

#### **The Oral Evidence of [Respondent 2]**

70. [Respondent 2] took the oath and confirmed his statement dated 9<sup>th</sup> October 2009 was true and correct to the best of his knowledge and belief, save for one typing error which was corrected.
71. He was now working as a consultant with his father's firm on a self-employed basis. He confirmed he had never dealt with transactions such as these previously and had dealt with normal remortgages. He had asked Mr Douglass how these transactions worked and Mr Douglass had explained them to him and showed him how to deal with them. [Respondent 2] had asked Mr Douglass why the mortgage valuations were considerably higher than the purchase price and had been told by Mr Douglass that this was because people in financial difficulties were selling and NEPB were buying properties from the builders in bulk and thereby securing discounts. Mr Douglass had told him there was no need to report the bridging finance but [Respondent 2] had not been comfortable with this and instigated a letter to SPML asking whether bridging finance needed to be disclosed. He had got comfort from the replies when SPML confirmed they were happy with the situation.
72. [Respondent 2] confirmed he had been concerned by the fact that the same people were involved in a large number of transactions on similar terms and he had raised this with Mr Douglass as he could not understand how those employees could afford to buy the properties. Mr Douglass had told him that once these employees had purchased one property, there would be snowball transactions. At the time

*[Respondent 2]* did not think there was any problem as he had received assurances from the supervising partner and from SPML. He now realised that conflicts of interest were there.

73. *[Respondent 2]* confirmed he had read the mortgage fraud warning cards but did not think these organisations fell within those categories. They entertained at races, they had lots of clients and all their relatives/employees were involved so he did not think they fitted the profile of typical organisations involved in mortgage fraud. He had not reported to SPML as he only acted for the lender in back-to-back transactions and there was no need to report to SPML. He had letters from the lender and did not believe he was in breach of the Rules.

### **The Oral Evidence of Mr Colton**

74. Mr Colton took the oath and confirmed the contents of his statement dated 27 October 2009 were true and correct to the best of his knowledge and belief. He was currently employed as a laundry assistant and gave details of his income to the Tribunal. However the laundry was due to close on 31<sup>st</sup> October 2010 so it was likely that he would lose his job then. He wished to return to legal practice in conveyancing as he had not done any other work since he left school and had no skills in anything other than conveyancing. However the Law Society had made it very difficult for him to get another job and he was fortunate to have a job working in a laundry at the moment.
75. Mr Colton accepted on reflection that he should have been more sceptical and enquiring. If he were to be able to work as a conveyancer again, he felt he would be much better equipped to question any transactions and would not trust anybody again not even his own employer or client. He would look into everything very carefully. Mr Colton confirmed he had seen SPML's instructions to solicitors but he had understood that the letters which had passed between Mr Douglass and SPML overruled those instructions.
76. On cross-examination Mr Colton confirmed he had placed absolute trust in Mr Douglass and whenever he had asked Mr Douglass any questions, Mr Douglass had never given him the impression that anything untoward was taking place. Mr Colton had never dealt with these types of transactions previously and had never acted for all parties and did not raise concerns at the time.
77. Mr Colton confirmed that he had been practising for approximately 20 years by the time he joined the firm but he had never acted in a situation where there had been a conflict of interest before. It had been unfamiliar for him to act for all parties involved in the transaction but Mr Douglass usually arranged for different fee earners to represent different parties so Mr Colton did not have any concerns. He did understand conflicts of interests and would have raised any issues with the client and with the supervising partner. However as Mr Douglas had said the situation was okay, he had not thought there was any conflict. Furthermore, all the parties involved in the transaction were aware of what was going on and it was not unusual for purchasers and buyers to communicate with each other. He did not have any cause for concern.
78. Mr Colton accepted that he had acted on a number of remortgages transactions where the same parties were involved and substantial sums of money were paid to the client.

He had thought the properties were valued properly and that the clients were entitled to the money from the lender. It had never crossed his mind that he was doing anything wrong and whilst he had not raised the matter with Mr Douglass, Mr Douglass was well aware that money was being paid to clients.

79. On re-examination Mr Colton confirmed he had been present at fee earner meetings when the situation had been discussed generally and he had been given assurances that there were no problems. [*Respondent 2*] had raised questions at those meetings and the transactions had been discussed.

### **The Tribunal's Findings**

80. The Tribunal had listened carefully to the submissions made by the parties and had read and considered all the documents including the references. The Tribunal found allegations 1, 2, 3, 5 and 7 were all substantiated, indeed these had been admitted. The only allegation disputed was allegation 6 which was an allegation of dishonesty against Mr Douglass.
81. Mr Douglass had admitted very serious allegations of breaches of the Practice Rules and this had been recognised by Mr Treverton-Jones QC who also had to concede that those transactions bore all the hallmarks of mortgage fraud. There had been a complete disregard by Mr Douglass and his employees of the written instructions of SPML notwithstanding the correspondence relied upon by Mr Douglass. There had been a complete failure to recognise obvious conflicts of interest or to comply with the Practice Rules.
82. The transactions in question were part of a substantial mortgage fraud which was currently being investigated by the police. Some 88 remortgage transactions and 26 back-to-back transactions had taken place during the period in question by Mr Douglass and his firm.
83. The Tribunal had considered carefully the test for dishonesty laid down in the case of *Twinsectra Ltd v Yardley* and subsequently approved in the case of *Bolton v The Law Society*. The Tribunal had concluded that on the evidence presented there was no doubt that the conduct of Mr Douglass was dishonest by the standards of reasonable and honest people. However, the Tribunal had a difficulty with the second part of the test, whether Mr Douglass himself realised at the time that by those standards his conduct was dishonest. The test was stringent and a high standard of proof was required. The Tribunal had taken into account the overheated housing market at the time and the lax lending policies which drove the market. Accordingly, the Tribunal came to the conclusion that the second link of the test in *Twinsectra Ltd v Yardley* had not been made out to the Tribunal's satisfaction and that Mr Douglass must receive the benefit of any doubt. Accordingly the Tribunal did not find the allegation of dishonesty fully proved.

### **Costs**

84. The Applicant requested an order for his costs which came to £44,000. The Applicant accepted that there would be some reduction to the costs as the hearing had concluded in a shorter time than had been originally anticipated and he suggested a reduction of £1,000 to reflect that. The costs had been discussed with the Respondents but had not been agreed. The Applicant did not have any objection to the Tribunal assessing



those costs and apportioning them between the Respondents. The Applicant also submitted the Tribunal could order a fixed amount of a lesser sum and detailed assessment of the balance of costs.

85. Mr Treverton-Jones QC submitted that whilst Mr Douglass accepted some costs would have to be paid the figure submitted was enormous. The Respondents were no longer working at the same firm and had all gone their separate ways and therefore any order for costs would have to be divided between them. It was submitted that a figure of £30-35,000 would be a fair sum.
86. Mr Morgan on behalf of [*Respondent 2*] and Mr Colton submitted that huge issue was taken with the number of hours spent on this matter. The bundle of documents provided to the Tribunal was 200 pages yet the schedule referred to 60/70 hours being spent on the matter. Whilst it was accepted that not all documents had been exhibited, most of the work had been done by the Forensic Investigation Officer, and indeed the Rule 5 Statement had only been 15 pages long. [*Respondent 2*] and Mr Colton were not in any position to pay costs and did not object to a detailed assessment.

## **Mitigation**

### **The Mitigation of Mr Philip Douglass**

87. Mr Douglass apologised to the SRA and to the Tribunal for getting involved in this type of work. He accepted he should not have acted without enquiry and indeed was comforted by the enquiries he had made. The breaches were serious and were surprising as Mr Douglass was a decent ordinary middle aged man with a reasonably successful business who had found himself here today. In November 2003 his practice had merged with another firm and he had remained as a consultant for six months. Since then he had not practised and indeed, spent most of his time dealing with these and the criminal and civil proceedings.
88. Details of Mr Douglass's earnings were provided to the Tribunal. He also owned 40 properties with substantial equity but those properties, together with his income, which was a pension had all been subject to a freezing order. Mr Douglass was allowed £1,000 per week for living expenses and it was unlikely any costs order made by the Tribunal would be paid in full until all the various proceedings were concluded.
89. Mr Douglass was well regarded in the community, the Tribunal were reminded of the numerous references provided and Mr Douglas was profoundly grateful to the Tribunal for the decision they had made on dishonesty. He asked the Tribunal to be as lenient as possible and not shut the door in his face for a future legal career.

### **Mitigation of [*Respondent 2*] and Mr Colton**

90. Mr Morgan on behalf of [*Respondent 2*] and Mr Colton referred the Tribunal to the various character references provided and the witness statements of [.....] (*Respondent 2*'s father) and Vernon Usher. Both Respondents had been acting on the detailed instructions of Mr Douglass who was the Principal of the practice and a solicitor with considerable experience in conveyancing. They had acted under his supervision and he admitted he was fully aware of what they were doing.

91. *[Respondent 2]* was concerned as he had not dealt with these types of transactions before and he asked Mr Douglas to check the position with the lenders. Mr Colton wrote to NHL himself on 28<sup>th</sup> October 2005 informing them that the vendor of a property was purchasing the property for £77,500 and simultaneously selling it to the firm's client for £110,000. He received a response stating

“you may not need to confirm this as Phil has a letter on file from Mr W of SPML.”

This confirmed Mr Colton did raise queries when appropriate and was given assurances from his principal supervisor and from lenders. Both *[Respondent 2]* and Mr Colton also knew that SPML employees worked at the same office as NHL so were aware of everything that was going on.

92. It was submitted that these were inexperienced lawyers in this form of conveyancing and they were completely out of their depth. They had challenged their boss but had been given personal assurances from him as well as knowing he had written to the lenders for them.
93. In considering the costs the Tribunal was asked to apportion these and take regard of blame. Mr Douglass had set up the arrangement, he knew what was going on, he was the supervisor and should therefore pay the brunt of the costs. Furthermore, additional work would have been done on the dishonesty aspect as the charges against Mr Douglass were more serious.
94. The Tribunal were referred to the case of Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) which confirmed there were exceptional cases where, even if a solicitor was allowed to continue in practice, his income may be a relevant consideration both as to any costs sanction and in respect of any financial penalty that might be imposed. *[Respondent 2]* had already suffered a great deal as explained in his witness statement and the Tribunal were provided with details of his income and expenditure.
95. In relation to Mr Colton, if a Section 43 order were to be made, it was unlikely any employers would offer him a job if they required the consent of the Law Society and this would certainly result in a reduction of his salary. He had been in the legal profession for 20 years with no previous problems and details of his income and expenditure were also provided to the Tribunal.
96. Both Respondents apologised to the Tribunal for the damage caused to the reputation of the profession and confirmed they would be far more sceptical in the future. The Tribunal was asked to find a way of allowing both Respondents to continue working within a solicitor's practice.

### **The Tribunal's Decision**

97. The Tribunal had listened carefully to all the mitigation and considered the documents provided. The Tribunal was mindful that the reputation of the profession had been seriously damaged as a result of the Respondents' behaviour.
98. Dealing firstly with Mr Douglass, there had been very serious breaches in relation to large mortgage fraud and Mr Douglass had fallen well below the standards of what

was required by solicitors. The Tribunal had considered the case of Bolton v The Law Society in which Sir Thomas Bingham MR had made the following comments:-

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal ... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. “

These comments provided the backbone of what the Tribunal had to consider. Due to the size of the fraud and nature of transactions involved, the Tribunal very seriously considered the ultimate sanction in this case. The Tribunal were also mindful that Mr Douglass had appeared before the Tribunal previously although noted that appearance was in 1989 and related to an isolated incident.

99. Taking all the circumstances into account and considering the protection of the public, the Tribunal concluded the appropriate Order was to suspend Mr Douglass indefinitely to mark the seriousness of his failings. This would protect the public and it would be open to Mr Douglass in the future to apply to the Tribunal to lift that suspension should it be proper to do so but the Tribunal was of the view that an indefinite suspension order was appropriate today.
100. Turning to *[Respondent 2]*, he was an experienced solicitor who should have seen all the warning signs at the time. It was not enough to say that he was “not comfortable”. The letters written to the lenders by Mr Douglass on *[Respondent 2]*'s behalf did not accurately set out the full situation and instead only referred to one point. The lender was not told the full overall situation of each individual case and even taking into account the letters that were sent and the reassurances *[Respondent 2]* had sought, his failure as a solicitor was serious.
101. The Tribunal has considered the references provided and had taken into account the statement of means submitted by *[Respondent 2]*. In these particular circumstances, the Tribunal considered the appropriate sanction was a fine of £10,000.
102. Finally, in relation to Mr Colton, the Tribunal had considered the references provided. Notwithstanding these, the evidence given by Mr Colton to questions from the Tribunal were revealing. Mr Colton seemed to have little awareness of what he was doing and the consequences of it. He appeared to rely entirely on Mr Douglass without questioning, with the exception of one letter dated 28<sup>th</sup> October 2005 when he was reassured to an extent, however this did not excuse his failure as an experienced clerk and he should have recognised a situation that had all the hallmarks of mortgage fraud. In the circumstances, the Tribunal decided it was appropriate to make an order pursuant to Section 43(2) of the Solicitors Act 1974 (as amended).
103. In relation to the question of costs, given the amount involved, the Tribunal ordered these be subject to a detailed assessment and with Mr Douglass to pay 85%, *[Respondent 2]* to pay 10%, and Mr Colton to pay 5% of those costs after detailed assessment.

104. The Tribunal Ordered that the Respondent, Philip Douglass of c/o Sudbury, Middlesex, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 27<sup>th</sup> day of October 2009 and it further Ordered that he do pay 85 per cent of 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 Accountant of the Law Society.
105. The Tribunal Ordered that [*Respondent 2*] of London, SW1, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay 10 per cent of the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed with the parties to include the costs of the Investigation Accountant of the Law Society.
106. Pursuant to Section 43(2) of the Solicitors Act 1974 (as amended), the Tribunal Ordered that as from the 27<sup>th</sup> day of October 2009 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Keith Colton c/o London E11, a person who is or was a clerk to a solicitor, and the Tribunal further Ordered that he do pay 5 per cent of 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 Accountant of the Law Society.

Dated this 23<sup>rd</sup> day of April 2010  
On behalf of the Tribunal

D J Leverton  
Chairman