No. 10158-2008

IN THE MATTER OF THOMAS WILLIAM JOHN LOCO,
Solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr J P Davies
Mr P Wyatt

Date of Hearing: 11th February 2010

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of The Law Society by Jayne Willetts, solicitor advocate and partner in Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham B3 1AP on 10th December 2008 that an Order under Section 43 of the Solicitors Act 1974 (as amended) might be made by the Tribunal directing that as a date to be specified in such Order, no solicitor, recognised body or registered European lawyer should employ or remunerate Thomas William John Loco who is or was or employed or remunerated by Wolstenholmes Solicitors of 227 Finney Lane, Heald Green, Cheadle, Cheshire SK8 3QB except in accordance with permission in writing granted by The Law Society for such period or that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that he had been guilty of conduct of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor in that:

(i) he made payments from client account that were not authorised by clients;

(ii) he failed to complete the purchase of properties on behalf of clients and;

(iii) he failed to complete registrations of properties at the Land Registry.

The application was heard at the Courtroom, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 11 February 2010 when Jayne Willetts appeared as the Applicant and the Respondent did not appear and was not represented.

The Evidence before the Tribunal

The evidence before the Tribunal included the Rule 8 statement of the Applicant together with accompanying bundle and the evidence of the Senior Investigation Officer of the SRA, Miss Nicola Prue. Also before the Tribunal was a small bundle of correspondence from the Applicant to the Respondent and a letter from the Respondent to the Tribunal dated 8th February 2010 which requested an adjournment.

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

The Tribunal Order that as from 11th February 2010 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor, Thomas William John Loco;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice, the said Thomas William John Loco;

(iii) no recognised body shall employ or remunerate the said Thomas William John Loco;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Thomas William John Loco in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Thomas William John Loco to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Thomas William John Loco to have an interest in the body.

And the Tribunal further Orders that the said Thomas William John Loco do pay a contribution towards the costs of an incidental to this application and enquiry fixed in the sum of £8,000.

Preliminary Matter

The Applicant referred to the letter dated 8th February 2010 addressed to the Tribunal in which the Respondent requested an adjournment. She indicated that she was opposed to the application for an adjournment. The chronology of the matter was as follows:-

9th July 2009 – the Tribunal fixed a date of 8th October 2009 for a hearing and notified the Respondent of that date.

24th August 2009 – the Respondent applied for an adjournment on the grounds that he was awaiting the decision of an employment tribunal and any damages awarded by the Tribunal would be used to pay for legal representation in these proceedings. The request was put before the Chair of the Tribunal due to sit on 8th October 2009 and the application was refused.

2nd October 2009 – the Respondent wrote to the Tribunal informing it that he intended to defend the allegations made against him. He said that a hearing before an employment Tribunal was now due to take place in November 2009 and that he was awaiting the outcome of this so that he would have funds to instruct a solicitor to act for him in these proceedings. The SRA had agreed to this request for an adjournment on the basis that directions would be made in December 2009 and the case be listed for February 2010.

24th November 2009 the Applicant wrote to the Respondent informing him that the hearing was fixed for 11th February 2010 and suggesting directions. The letter had been sent by first class post and was not returned and the Respondent did not reply.

17th December 2009 – in a directions hearing before the Tribunal, the Tribunal made the following Order:-

(a) the Respondent file and serve his answer to the Rule 8 statement by 7 January 2010 such answer to:

  (i) set out his response/defence to the allegation;

  (ii) identify which, if any, facts in the statement are in dispute;

  (iii) identify which documents, if any, in JBW1 are challenged; and

  (iv) exhibit any documents upon which he intends to rely.

(b) The Respondent serve any additional witness statements upon which he intends to rely by 13 January 2010.

(c) If required the Applicant to serve any additional witness statements in response to the statement served by the Respondent by 27th January 2010.

18th December 2009 – the Applicant wrote to the Respondent with details of the directions.

21st January 2010 – a letter dated 18th January 2010 was received from the Respondent requesting an adjournment on the basis that he had still not heard from the employment tribunal. The chair of the Tribunal due to sit on 11th February 2010 had refused the application for an adjournment.

3rd February 2010 – the Applicant wrote to the Respondent to inform him that the application for the adjournment had been refused and that she would be proceeding on the basis that he was denying all of the matters. In that letter she reminded him that he had failed to comply with any of the directions imposed by the Tribunal on 17th December 2009.

8th February 2010 – the Respondent had written to the Tribunal requesting an adjournment of today's proceeding on the basis that he was still waiting to hear from the employment tribunal for a hearing date. He indicated in that letter that it was his intention to defend the allegations made against him.

In the Applicant's submission the Tribunal could be satisfied that the Respondent was aware of today's proceedings. She asked that the Tribunal refuse the Respondent's request for an

adjournment and deal with the matter before them today. This was the Respondent's fourth application to the Tribunal for an adjournment. He had been asked to set out his defence and none had been forthcoming, neither had any evidence ever been produced as to any proceedings before the Employment Tribunal. It was in the public interest that the matter be heard today. The Applicant referred the Tribunal to paragraph 4(d) of its own policy/practice note relating to adjournments dated 4th October 2002. In that paragraph it was said that the following would not generally be regarded as providing justification for an adjournment:

(d) inability to secure representation - the inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non-attendance of the Respondent.

The Applicant also said that it was right in these circumstances that she should say to the Tribunal that they should proceed with caution when proceeding in the absence of the Respondent. In that regard the Applicant handed out copies of the judgment in the case of *R v Anthony William Jones and Others [2001] EWCA Crim 168* and referred them to paragraph 22 of that judgment which numerated the principles which had guided the English courts in relation to the trial of a defendant in his absence. The Applicant also referred to the case of *Yusef v The Royal Pharmaceutical Society of Great Britain [2009] EWHC 867 (Admin)* in which those principles had been applied by a professional disciplinary tribunal.

The Tribunal retired to consider the matter. On their return they ruled that the matter should proceed in the Respondent's absence. The Respondent had applied for several adjournments of the proceedings and never produced any evidence to the Tribunal of the proceedings before the employment tribunal in which he was engaged and the outcome of which he was awaiting before engaging in these proceedings. Other than to apply for such adjournments the Respondent had not engaged in the process at all. The Tribunal had taken account of its own practice note and to the principles to be applied following *R v Jones and Others* and had decided not to grant the adjournment sought by the Respondent. The Tribunal could not subordinate its own timetable to that of another unrelated civil process in which the Respondent might be engaged of which it had no details. These were regulatory proceedings to make an order against a solicitor's clerk without which the SRA would have no control upon his employment. Without prejudging whether the Order should be made it was in the public interest that the matters should proceed today. The Tribunal would take care to ensure that any points to be made on behalf of the Respondent were brought out during the proceedings. The Applicant indicated that in that case she would proceed with caution.

The Facts are set out in paragraphs 1-22 hereunder

1. The Respondent is unadmitted and was employed as a managing clerk specialising in conveyancing work at Wolstenholmes Solicitors of 227 Finney Lane, Heald Green, Cheadle, Cheshire SK8 3QB from 1997 until January 2005.

2. A Senior Investigation Officer ("SIO") of the SRA commenced an inspection at Wolstenholmes LLP on 8th February 2007 and at Wolstenholmes on 26th February 2007. As a result she prepared a Forensic Investigation Report ("the FI Report") dated 30th May 2007.

3. The SIO identified that in December 2004 the Respondent was off work due to illness. His employment was terminated in January 2005 when it became apparent that he would not be returning to work.

4. The partners of Wolstenholmes stated that following the Respondent's departure from the firm they received a significant number of complaints from the Respondent's clients. The main areas of complaint were as follows:-

   (i) delay and lack of completion statements;

   (ii) sums were charged to ledgers without the clients' authorities;

   (iii) funds were advanced where purchases were not completed; and

   (iv) interest rates charged were noted by the partners as being very high in matters where the Respondent had acted for private mortgage lenders.

5. The partners further confirmed to the SIO that they investigated the complaints and personally made payments totalling £114,757.21 to rectify the problems caused by the Respondent.

6. The Respondent acted for Mr G and Mr C in numerous conveyancing transactions in 2003 and 2004. From printouts sent to their new solicitors the clients identified 13 payments totalling £18,745.21 from 11 client ledgers that were "unauthorised" by the clients. Mr G wrote on 27 June 2006 to Wolstenholmes requesting repayment of these sums.

7. The Respondent confirmed to the partners that the payments were made under client authorities and that they were mainly commissions for arranging finance due to an organisation called "Solutions". There were no client authorities on the files to support this explanation.

8. The address for Solutions was said to be that of the Respondent's brother-in-law Mr B. For 7 of the 13 payments the payee was shown to be HB who according to the partners was the Respondent's wife. The Respondent later confirmed in his letter dated 20 August 2007 that his wife was the broker on these transactions.

9. The partners refunded these payments totalling £18,745.21 to the clients.

10. Mr G and Mr C, further complained about the failure by the Respondent to complete registrations at the Land Registry which meant that subsequent sales were delayed and losses sustained.

11. The partners negotiated a payment to the clients of £19,500 in full and final settlement of the complaint. Wolstenholmes confirmed by letter dated 4th May 2005 that this sum had been forwarded to the solicitors then acting for Mr G and Mr C.

12. The Respondent acted on behalf of Mr T who was lending £36,000 in order to fund the purchase of 3 properties (£12,000 per property) by another client. The funds were

credited to client bank account on 13th February 2004 and the funds transferred to a general ledger. The Respondent confirmed his instructions to act by two letters to Mr T both dated 13th February 2004 and one letter dated 21st January 2004. Deposits for the properties were paid at auction but whilst notices to complete were served the transactions were never completed. The funds were not returned to Mr T.

13. Mr T obtained independent legal advice. His solicitors complained by letter dated 19th May 2005. Wolstenholmes wrote to the Respondent on 27th September 2005 seeking his assistance in connection with the complaints. After further investigation the partners repaid Mr T £64,512 being £36,000 plus interest plus Mr T's legal and accountancy fees in April 2006.

14. The Respondent acted on behalf of Mr C and his Company in lending funds for the purchase of properties. It was agreed that £12,000 would be lent to fund the purchase of a property at auction. The Respondent wrote to his client on 12th February 2004 confirming his instructions. The deposit was paid but the transaction was not completed. The funds were not returned to the client.

15. Mr C complained and provided a list of properties to Wolstenholmes which included this property. After further investigation the partners repaid £12,000 to Mr C on 9th September 2005.

16. By letter dated 20th June 2007 an SRA Caseworker forwarded to the Respondent relevant extracts from the FI Report and sought his explanation in respect of the issues raised in the Report.

17. The Respondent provided a detailed response by letter dated 20th August 2007.

18. By letter dated 28th December 2007 the Respondent provided further representations and comments.

19. The Caseworker responded by letter dated 7 January 2008.

The Sworn Oral Evidence of the Senior Investigation Officer, Ms Nicola Prue

20. The SIO confirmed the contents of the FIR dated 30th May 2007 as true. In particular she confirmed the details of the 13 payments ranging from £250 to £6,000 which were recorded as having been paid between 26 February 2004 and 17 November 2004 on 11 client ledgers in respect of the Respondent's matters which were "unauthorised". These payments totalled £18,745.21. Whilst an explanation had been requested from the Respondent it had not been provided. She also confirmed that she had reviewed 3 of the 6 files available in relation to these matters and on 2 of them there was no reference to any of the payments made and there was no completion statement on file. On one file there was a letter which mentioned an arrangement fee due to "Solutions" of £300 or 1% of the advance whichever is the greater. The client ledger account in respect of the property records a payment of £630 to HB on 20th August 2004 which is approximately 1% of an advance of £62,950 but there was no receipt of this advance recorded.

21. The SIO also described the failures to complete purchases of properties where clients had been recompensed by the partners to the sum of £64,512. This sum represented a sum advanced of £36,000 plus interest and legal and accountancy fees. On another matter which was also a failure to complete a purchase of property the client had been recompensed £12,000 by the partners.

22. In neither of these two cases was there any evidence that these monies had been taken for personal use by the Respondent. However there was no evidence that the monies had been used for the purposes for which they were intended.

The Submissions of the Applicant

23. The explanation offered by the Respondent for the fees charged was contained within his letter of 20th August 2007 written to the Solicitors Regulation Authority. In that letter at paragraph 25 he stated that:-

> "The fee charged represented 1% of the purchase price payable to the broker either directly from the private lender or the borrower's solicitor. The borrower was made aware of this payment and the purpose of this payment by both the broker and the private lender prior to any acquisition of any property. The broker would take all steps necessary to oversee the interest of the private lender. This included inspecting the property prior to the borrower acquiring the property, thereafter the borrower would compile a full schedule of works to be undertaken at the individual property. This schedule would be handed to the broker. Once the property was purchased the broker would visit the property on a regular basis to ensure the borrower was carrying out all necessary works to the property. The broker would report directly to the private lender, the broker would also liaise with the borrower and private lender as to releasing further tranches of money to the borrower of refurbishment monies. These monies were generally released in 3 stages directly to the borrower from the private lender. The borrowers were aware the broker was my wife. They had previously known her in property dealings. The insistence of a third party namely the broker was at the request of the private lenders. They did not have the time or opportunity to oversee matters and they wanted to ensure their financial interest in the individual properties, and the private lender required a third party to liaise between the broker and the lender. At no stage did the borrower object to this arrangement. They were aware of the arrangement which was documented in a loan agreement between the private lender and the borrower."

24. However, in the Applicant's submission it was a fact that there was no documentary evidence on any file that permission had been given for deductions by clients. There were no completion statements. Both the firm and their insurers had been happy that no authority had been given and recompense had been made.

25. The Applicant also pointed out other matters in the Respondent's letter to the SRA which were relevant including his viral illness in December 2004, the deterioration in his relationship with the developers and their failure to fulfil their duties under the agreement and his comment at paragraph 41 of his letter that:

> "if there is a suggestion of lack of registration at the Land Registry was an example then I would comment that all registration formalities were dealt with by my secretary and thereafter on instructions from the partners of the firm by junior members of staff. I cannot recall any delays which may give rise to a claim as mentioned."

26. The Respondent had written a further letter to the SRA on 28th December 2007 explaining that no unauthorised payments were ever made. He had also sought to explain why certain properties were not purchased. This was because the seller did not instruct a firm of solicitors to act on his behalf, he was not easily contactable and the Respondent was not in receipt of the transfer deeds on the date of completion, the Seller being uncontactable at that stage. He had then served upon the seller a notice to complete which he was obliged to do.

27. The Respondent had said in that same letter that he was unclear as to why payments by the partners had been made. He was however aware that the partners did not deal with the developer's conveyancing transactions when he resigned and that may have resulted in the delays which they experienced.

28. In summary, the Applicant referred the Tribunal to the explanation given by the Respondent contained in his two letters.

29. In the Applicant's submission there was sufficient evidence contained within the FI Report for the Tribunal to make a Section 43 order. Clients had been disadvantaged by the conduct of the Respondent and compensation had had to be paid by the partners. A Section 43 order was necessary in order to protect the public and the profession.

30. The Applicant applied for costs in the sum of £9,390.21. The schedule of costs had been served on the Respondent at his new address by letter dated 3rd February 2010.

The Findings of the Tribunal

31. The Tribunal found all of the 3 allegations contained in the Rule 8 statement to have been substantiated on the evidence presented to them. The Tribunal were satisfied beyond reasonable doubt that the Respondent had caused clients' money to be improperly used without their authority and his failures to complete purchases and Land Registry registrations made up a catalogue of failures to protect the interests of his clients. In this case the Respondent's failures resulted in the partners having to make an insurance claim which the insurers had found to be valid and had paid out amounts due to third parties. In addition there was evidence that relatives of the Respondent without transparent disclosure to clients had been involved in some of the client matters brought to the attention of the Tribunal giving rise to concerns about conflicts between the interests of the Respondent and such relatives and the interests of the client.

32. The Tribunal would make the Order sought. In regard to costs there was no evidence before the Tribunal of the Respondent's means although he had said in his letter that he was still unemployed and had no savings. Whilst he would not be able to work as clerk to a solicitor without the permission of The Law Society it may well be that he could find other forms of remunerative work. The Tribunal gave careful consideration to the

schedule of costs supplied by the Applicant and decided that the sum of £8000.00 would be a reasonable award for the costs applied for by the Applicant.

33. The Tribunal Ordered that as from 11th February 2001 except in accordance with Law Society permission:

(i) no solicitor shall employ or remunerate in connection with his practise as a solicitor Thomas William John Loco;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice, the said Thomas William John Loco;

(iii) no recognised body shall employ or remunerate the said Thomas William John Loco;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Thomas William John Loco in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Thomas William John Loco to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Thomas William John Loco to have an interest in the body.

And the Tribunal further Orders that the said Thomas William John Loco do pay a contribution towards the costs of an incidental to this application and enquiry fixed in the sum of £8,000.

Dated this 9th day of April 2010
On behalf of the Tribunal

A G Ground
Chairman