

IN THE MATTER OF JEAN FRANCIS-PASSLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Ground (in the chair)  
Mr R B Bamford  
Mr M G Taylor CBE DL

Date of Hearing: 23rd July 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 (SRA) by Gerald Malcolm Lynch of Cumberland House 24-28 Baxter Avenue Southend on Sea, Essex, SS2 6HZ on 20<sup>th</sup> January 2009 that Jean Francis-Passley solicitor 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 Respondent were that:

1. Contrary to the provisions of Rule 10.05 of the Solicitors Code of Conduct 2007, she failed or alternatively failed with reasonable expedition, to fulfil undertakings given in connection with conveyancing transactions.
2. In breach of the provisions of Rule 20.03 of the Solicitors Code of Conduct 2007 she failed to reply or to reply substantively and with reasonable expedition, to correspondence and enquiry addressed to her by other Solicitors and by the Solicitors Regulation Authority, or to operate in relation to the delivery and security of professional correspondence an adequate system.

By a supplementary statement dated 19<sup>th</sup> June 2009, further allegations against the Respondent were that:

3. She acted in breach of the Solicitors Accounts Rules 1998 (“SAR”) in that:
  - (a) Her books of account had not been written up since 7<sup>th</sup> March 2008 contrary to Rule 32 of the SAR.
  - (b) There was a cash shortage on client account of £8,972.08 which was not rectified by the Respondent contrary to Rule 22 of the SAR.
  - (c) Contrary to Rule 19 she allowed round sum transfers to be transferred from client to office account without evidence of bills delivered or written notification to the clients concerned.
  - (d) Contrary to Rule 15 (ix) she allowed her client account to be used as a banking facility.
4. In breach of Rule 3.01 (2)(b) of the Solicitors Code of Conduct 2007, she accepted a loan of £36,000.00 from a client who did not take independent legal advice and in circumstances where a conflict of interest arose.
5. She acted further in breach of undertaking contrary to the Solicitors Code of Conduct 2007 Rule 10.05.
6. Contrary to the provisions of Section 34 of the Solicitors Act 1974 she failed to file an Accountant’s Report covering the period from 29<sup>th</sup> December 2007 to 28<sup>th</sup> June 2008.
7. She acted in breach of Rule 1 of the Solicitors Code of Conduct 2007 in permitting or allowing struck off solicitors to conduct litigation under the style and title of her firm.

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

The Tribunal Orders that the Respondent, Jean Francis-Passley, solicitor, be Struck Off the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00 to include the costs of the Investigation Accountant of the Law Society.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 23<sup>rd</sup> July 2009 when Gerald Malcolm Lynch appeared as the Applicant and the Respondent did not appear and was not represented. The Forensic Investigation Department of the SRA on 10<sup>th</sup> November 2008 began an inspection of the books of account of A1 Solicitors Limited and their Report ("the FI Report") was before the Tribunal.

The Respondent's application for an adjournment

The Tribunal had before it a letter sent by fax to the Tribunal from the Respondent on 22<sup>nd</sup> July 2009. The letter requested an adjournment. The letter was read out in court and indicated the Respondent applied for an adjournment as she had been clinically depressed and was seeing a psychiatrist. The letter attached a doctor's certificate for the purposes of social security and statutory sick pay stating the Respondent should refrain from work for one month and giving the diagnosis causing the absence from work as “depression and anxiety”.

It was dated 21<sup>st</sup> July 2009. The Applicant opposed the adjournment. The Respondent had been suffering from depression and anxiety throughout these proceedings and had not contacted the Applicant or the SRA at all. On 19<sup>th</sup> May 2009 her firm was intervened, all proper notices had been served upon the Respondent and she had not replied to any correspondence. Details of the Applicant's costs had been sent to the Respondent on 16<sup>th</sup> July 2009 and indeed, she had referred this in the letter before the Tribunal. The Applicant submitted that an adjournment would be against the public interest particularly as the Respondent had not dealt with the proceedings at all and the allegations against her related to a gross dereliction of duty. The public interest would not be served if proceedings were adjourned and in any event, the sickness certificate provided by her GP was not a proper medical report containing a full and detailed diagnosis.

#### The Tribunal's decision on the application to adjourn

The Tribunal's practice note on adjournments dated 4<sup>th</sup> November 2002 clearly stated that any application for an adjournment on the grounds of ill health must be supported by a reasoned opinion of an appropriate medical advisor justifying why the person was unable to attend the Disciplinary Tribunal. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient. The Respondent's application for an adjournment received the day before the hearing followed the Respondent's failure to engage in these proceedings over the previous seven months. It did not provide the grounds for adjournment set out in the Tribunal's practice note. It was in the public interest that the case should proceed. On this basis, the Tribunal rejected the Respondent's application for an adjournment and ordered that the matter proceed in her absence.

#### **The facts are set out in paragraphs 1-16 hereunder:-**

1. The Respondent, aged 44 years was admitted as a solicitor on 1<sup>st</sup> September 1997. Her name remained on the Roll of Solicitors. At all material times she was the sole Director of the firm of A1 Solicitors Limited ("the firm") of Suite A Deneway House, 88-94 Darkes Lane, Potters Bar, Hertfordshire EN6 1AQ. The firm started in June 2007 and was intervened on 19<sup>th</sup> May 2009.

#### Allegation 1

2. The Respondent acted in relation to the sale of a flat at N Square, which had an outstanding mortgage to Halifax Plc, dated 18<sup>th</sup> January 2005. Messrs C & Co Solicitors were acting on behalf of the purchasers. The purchase was completed on 3<sup>rd</sup> December 2007. On 29<sup>th</sup> November 2007 the Respondent wrote to the purchaser's solicitors stating:

“(a) We will redeem the Mortgage in full.  
(b) We will clear the outstanding ground rent and service charge...”

3. This letter constituted a formal solicitor's undertaking upon which Messrs C & Co were entitled to and did rely in connection with the conveyancing transaction.
4. On 5<sup>th</sup> December 2007 C & Co, wrote to the Respondent seeking evidence of discharge of the Registered Charge to Halifax Plc. No response was received, and a further letter

was sent on 19<sup>th</sup> December 2007. Between 4<sup>th</sup> January 2008 and 6<sup>th</sup> February 2008 four further letters were sent requiring performance of the undertaking. On 6<sup>th</sup> February 2008 the Respondent replied apologising for the delay and saying that it was expected that the relevant evidence of discharge would be sent the following week.

5. On 11<sup>th</sup> February 2008 C & Co wrote to the Respondent stating that their clients had been advised that they had been billed for service charges prior to their ownership of the property. On 14<sup>th</sup> February 2008 C & Co told the Respondent that their application to register the ownership of the property had been cancelled pending receipt of evidence of the discharge of the Halifax mortgage. Similarly they awaited a copy of the receipted ground rent and service charge invoice. On 3<sup>rd</sup> March 2008 the Respondent apologised for the inability to provide the Notice of Discharge and asked for some further time. By 12<sup>th</sup> March 2008, the issues were still unresolved and C & Co complained to the SRA alleging breach of the undertakings. By 21<sup>st</sup> May 2008 the undertakings had still not been complied with. Evidence of discharge of the Mortgage in June 2008 was received direct from the Mortgagees but not from the Respondent. Discharge of the service charges was alleged to have been made in October 2008.

### Allegation 2

6. On 8<sup>th</sup> April 2008 the Authority passed the matter to Messrs Gordons LLP for investigation and Gordons wrote to the Respondent on 23<sup>rd</sup> April 2008 and again on 8<sup>th</sup> May 2008 requesting an explanation for failure to observe the undertakings. There was no response. The undertakings had still not been complied with by 21<sup>st</sup> May 2008.
7. On 23<sup>rd</sup> June 2008 the Authority sent a report (a copy of which was before the Tribunal) to the Respondent, detailing the above matters and seeking her further comments. No response was received until 27<sup>th</sup> October 2008 when the Respondent admitted delay and indicated there were inadequate facilities for the receipt and security of post.
8. The Tribunal were provided with details of another case where it was not clear whether an undertaking had been complied with and other letters from the Authority to the Respondent to which she had not replied, and, where she had replied after some time had passed, the information she gave was inadequate.

### Allegation 3

9. The Forensic Investigation Department of the SRA examined the Respondent's books of account and the FI Report dated 25<sup>th</sup> February 2009 was before the Tribunal. The following matters were dealt with in the report:
  - (a) The books of account were not in compliance with the SAR and no proper books and records had been maintained by the firm since 7<sup>th</sup> March 2008. Extensive payments and receipts in respect of client and bank account had taken place since 7<sup>th</sup> March 2008.
  - (b) There was a minimum cash shortage on client account totalling £8,972.08. The said sum was made up of a debit balance on client ledger account of £3,982.76, round sum transfers to office bank account in the sum of £4,850.00

and over transfers from client to office bank account in the sum of £139.00. There was no evidence of the existence of bills of costs or other written intimations regarding the round sum transfers.

- (c) Payments had been made to a company owned by Mr Michael Olaseinde previously employed at the firm who was struck off the Roll of Solicitors on 17<sup>th</sup> April 2008. There was no form of authority for the transfer of funds
  - (d) The sum of £75,236.00 was paid from client to office account which transfer the Respondent was unable to explain. A further payment of £2,000 was said to be with the authority of the client but evidence of this was not produced.
10. On 5<sup>th</sup> December 2008 PR, a client of the Respondent's firm wrote in complaint to the Legal Complaints Department ("LCD"). He had instructed the Respondent's firm to act in the sale of a property. Initially the struck off solicitor Olaseinde was acting but the matter was taken over by the Respondent. Completion had taken place in September 2008 and the client said that the matter proceeded by normal payment of a deposit with the balance on completion. When he received the completion statement this indicated that a sum totalling £51,967.00 had been deducted from the total receipt of £154,610.00. PR said he had no knowledge of this and had not authorised such a deduction. The deduction was apparently in respect of a bridging loan taken out by the purchaser.
11. On 23<sup>rd</sup> February, the Respondent wrote to the LCD saying that she had not been able to obtain full details but understood that there had been an agreement involving the client PR for an over-statement of the purchase price to facilitate mortgage facilities. PR denied any knowledge of any such arrangement and denied that any authority for deduction for the "bridging loan" from the moneys received on completion was in any way given by him. The Respondent failed to reply to letters from the Authority requesting an explanation.

#### Allegation 4

12. There were transfers from client to office bank account of some £36,000 which the Respondent said was a loan by a client, E. This client appeared to authorise the loan but at a meeting with the Respondent, the Respondent admitted that although she advised the client to seek independent legal advice, he had declined to do so. The Respondent had not repaid the loan.

#### Allegation 5

13. There was a further breach of an undertaking given in a conveyancing transaction. In a letter dated 4<sup>th</sup> April 2009 to the Authority the Respondent stated:
- (a) The books of account were not kept up to date and she had been let down by a bookkeeper.
  - (b) A client had not reimbursed money to the Practice.

- (c) Relevant copy bills had not been provided and it could not be confirmed that where relevant, bills had been sent to client.
  - (d) The client E would be repaid within fourteen days.
  - (e) She accepted she had allowed the firm to be used as a banking facility.
  - (f) The breach of undertaking was to be rectified. The breach was accepted.
14. On 14<sup>th</sup> April the Authority wrote again requesting documentation to prove rectification of matters referred to by the Respondent and compliance with the Undertaking. No further representation having been received from the Respondent, on 19<sup>th</sup> May 2009 her practice was intervened.

#### Allegation 6

15. The Respondent failed to file an Accountant's Report for the period 29<sup>th</sup> December 2007 to 28<sup>th</sup> June 2008. This should have been delivered by 9<sup>th</sup> October 2008. The Authority wrote to the Respondent about this several times but she did not respond.

#### Allegation 7

16. On 5<sup>th</sup> February 2009, A & Co Solicitors wrote to the Legal Complaints Service in relation to letters which had been received ostensibly from the Respondent's firm in litigation involving Mr Michael Olaseinde and Ms Ann Hemming. Mr Olaseinde had been struck off the Roll of Solicitors on 17<sup>th</sup> April 2008, and Ms Hemming suspended indefinitely on the same day. It appeared on the face of the letters that they were conducting litigation on their own behalf through the Respondent's firm. A & Co provided a letter from the Respondent dated 12<sup>th</sup> February 2009 saying that she had no knowledge of the letters or their contents and had no instructions from these clients. On 25<sup>th</sup> March 2009 the Authority wrote to the Respondent in relation to an apparent breach of Rule 1 of the Solicitors Code of Conduct 2007 insofar as the said struck off and suspended solicitors referred to were in a position to conduct litigation under the style and title of the Respondent's firm ostensibly without the knowledge of the Respondent. It was alleged that in allowing this situation to develop the Respondent had failed to uphold the proper administration of Justice and failed to act with integrity and had allowed her independence to be compromised. There was no response to this or further letters.

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

17. The Applicant said that there had been extensive correspondence sent to the Respondent which had been which had been totally ignored. The Respondent had abdicated from her responsibilities. The Applicant referred the Tribunal to a letter dated 27<sup>th</sup> October 2008 from the Respondent to the SRA which stated she had not received all the letters sent to her office as "there is a key to the front door which is sometimes locked and as there is no intercom post can be left on the door step which is on the main road". The Applicant submitted this was a very unsatisfactory manner of accepting post.

18. The Tribunal were referred to a letter dated 22<sup>nd</sup> December 2008 which had been sent to Messrs A & Co Solicitors by A1 Solicitors Ltd. The letter had been sent by fax and the fax number given of the sender of the letter was in fact a Spanish fax number. The letter stated A1 Solicitors Ltd reference to be as “Olaseinde/Hemming”. The Applicant submitted that this was evidence that the struck off solicitor, Michael Olaseinde and the suspended solicitor Ann Hemming were clearly still active and that this was sufficient evidence to confirm the Respondent was allowing these individuals to conduct litigation under the name of her practice. The Tribunal were referred to the Respondent’s letter to the SRA dated 4<sup>th</sup> April 2009. In that letter she had stated Mr Olaseinde was not an employee of the firm or an agent and that at the beginning of his association with A1 Solicitors Ltd he had informed the Respondent he had outstanding disciplinary issues but did not fully inform her of the detail. She confirmed there had been a complete breakdown in her relationship with him, and that he was now residing in Spain and was not communicating with her at all. She had not stated when Mr Olaseinde informed her of the disciplinary issues but her firm was set up in June 2007 prior to Mr Olaseinde being struck off in April 2008. The fax sent to A & Co Solicitors was dated 22<sup>nd</sup> December 2008 and was well after Mr Olaseinde was struck off.
19. The Applicant confirmed the Respondent’s firm existed for a short period of time, between formation in June 2007 and an intervention in May 2009. She clearly knew about the disciplinary issues of Mr Olaseinde but had not given a proper explanation claiming that she did not have knowledge of his position. She had not denied the allegation made by A & Co Solicitors and had not challenged any documents sent to her. The Applicant submitted the Tribunal could infer from this that she had allowed Mr Olaseinde and Ms Hemming to conduct litigation under the style of her firm. The Applicant submitted the situation was very unsatisfactory and the Tribunal could infer conscious impropriety from the evidence before it.
20. The Respondent had ignored correspondence from the SRA, her abdication of duty had been extensive and there were serious regulatory breaches.
21. The Applicant provided the Tribunal with a schedule of his costs in the total sum of £18,439.01 and confirmed this schedule had been served on the Respondent.

### **The Findings of the Tribunal**

22. The Tribunal had considered carefully the submissions of the Applicant and the documentary evidence before it. The Tribunal was satisfied that all the allegations, save for allegation 7, had been substantiated.
23. In relation to allegation 7 the Tribunal noted the Respondent’s firm had been set up in 2007 and that Mr Michael Olaseinde had been struck off in April 2008. The Applicant had referred the Tribunal to a letter dated 22<sup>nd</sup> December 2008 sent by fax from a Spanish fax machine to A & Co Solicitors on A1 Solicitors Ltd letterhead. The Tribunal was not satisfied that this was sufficient evidence that the Respondent knew Mr Olaseinde was conducting litigation under the style of her firm. In her letter to the SRA dated 4<sup>th</sup> April 2009 she made it clear he had not fully informed her of the disciplinary matters. She had also confirmed there had been a complete breakdown in her relationship with him and they were not communicating. The Tribunal further

noted from the FI Report that a report appeared to have been made by the Respondent to the Police on 24<sup>th</sup> December 2008 relating to the theft of a number of files from her office in March 2008 for which Mr Olaseinde had been alleged to be responsible. The Tribunal noted with concern that the letterhead used contained the Respondent's telephone numbers and therefore any recipient of that letter could have contacted the Respondent. However, the Tribunal was not satisfied that the Applicant had proved allegation 7 to the standard required nor in particular that the Respondent had permitted or allowed a struck off solicitor to conduct litigation under the style of her firm.

24. The allegations which had been found against the Respondent in aggregate constituted a gross dereliction of duty which could not be tolerated in a solicitor. This dereliction had been followed by a complete failure to engage in the resulting disciplinary process. This was a case where there had been serious breaches of the Solicitors Accounts Rules and the Respondent had abdicated her responsibilities as a solicitor in a number of instances: she had failed to comply with conveyancing undertakings which she had given and which third parties had relied upon; she had taken and failed to repay a loan from a client who had not taken independent legal advice prior to authorising the loan; she had shown a complete disregard for her regulatory body by not answering correspondence from them and, where correspondence was dealt with, explanations given were unsatisfactory or inconclusive; she had allowed a cash shortage to arise on client account which was not rectified; she had failed to provide evidence of bills delivered or written notification to clients to justify round sum transfers from client to office account. Clearly clients had suffered a result of the Respondent's misconduct.
25. The Respondent's gross dereliction of duty had brought the profession into disrepute and she was not fit to be a solicitor. The Tribunal ordered the Respondent be removed from the Roll of Solicitors.
26. In relation to the question of costs, the Tribunal considered the costs information provided by the Applicant and assessed the costs at £18,000.00 and ordered the Respondent to pay this amount.
27. The Tribunal Ordered that the Respondent, Jean Francis-Passley, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00 to include the costs of the Investigation Accountant of the Law Society.

Dated this 5<sup>th</sup> day of February 2010  
On behalf of the Tribunal

A G Ground  
Chairman