

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JEREMY STUART DENING, solicitor (First Respondent)

and

[SECOND RESPONDENT], solicitor (Second Respondent)

and

[THIRD RESPONDENT], solicitor (Third Respondent)

[NAMES REDACTED]

Upon the application of Stephen Battersby  
on behalf of the Solicitors Regulation Authority

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Mr. J. C. Chesterton (in the chair)

Mr. D. Green

Mrs L. McMahon-Hathway

Date of Hearing: 27th September 2010

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## **FINDINGS & DECISION**

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### **Appearances**

This matter came before the Tribunal on 27 September 2010 for a substantive hearing. Mr Stephen Battersby, the Applicant, appeared on behalf of the Solicitors Regulation Authority (“SRA”).

The Respondents appeared. Mr Denning was unrepresented. [SECOND RESPONDENT] was represented by Mr George Pulman QC, instructed by Macalister White LLP. [THIRD RESPONDENT] was represented by Mr David Barton, Solicitor Advocate.

The proceedings against the Respondents were commenced by way of an Application and supporting statement dated 4 February 2010.

### **Allegations**

It was alleged against all three Respondents that:

- (i) they have failed to keep their books of account properly written up contrary to Rule 32 Solicitors Accounts Rules 1998 (“SAR”);
- (ii) they have failed to take proper and adequate steps to guard against mortgage fraud contrary to Rule 1 of the Solicitors Practice Rules 1990 (“SPR”) and Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”).

It was further alleged against Mr Dening and [SECOND RESPONDENT] that:

- (iii) they have withdrawn monies from client account other than as permitted by Rule 22 SAR 1998;
- (iv) they have failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7 SAR;
- (v) they have used client monies for their own purposes contrary to Rule 22 SAR 1998 and Rules 1.02 and 1.06 of the SCC 2007;
- (vi) they continued to act in a situation where there was a conflict of interests contrary to Rule 3.01 SCC 2007;
- (vii) they failed to protect the interests of vulnerable clients contrary to Rules 1.04, 1.05 and 1.06 of the SCC 2007.

It was further alleged against Mr Dening and [THIRD RESPONDENT] that:

- (viii) they failed to ensure that material facts were reported to lender clients contrary to Rule 1 SPR 1990.

In a Supplementary Statement dated 16 August 2010, the Applicant submitted further evidence against [THIRD RESPONDENT] in relation to allegations (ii) and (viii). The Supplementary Statement did not make any additional allegations against [THIRD RESPONDENT] or either of the other Respondents.

### **Factual background**

1. Mr Dening, who was born in 1962, was admitted as a solicitor on 15 October 1987.
2. [SECOND RESPONDENT], who was born in 1967, was admitted as a solicitor on 1 November 1995.
3. Ms Carr, who was born in 1968, was admitted as a solicitor on 15 September 1997.
4. At the times material to the allegations, the Respondents were partners in the firm of Bell Dening, 12 Cliff Street, Ramsgate, Kent, CT11 9AS, which commenced on 1 March 2001. Initially, Mr Dening was in partnership with Mr CB, who does not form part of these proceedings. [THIRD RESPONDENT] joined the firm on 5 June 2005 and became a partner on 1 June 2006. She remained in that position until she left Bell Dening to join another local firm, R&A. [SECOND RESPONDENT] joined Bell Denning as a partner in 2007.

5. On 25 February 2009, an inspection of the books of account and other documents of Bell Denning took place. The allegations result from that inspection.

Allegation (i)

6. The most recent client account reconciliation covered the period ending 29 February 2008. A period of almost a year had therefore elapsed since the end of the period to which the last reconciliation related. This reconciliation was only completed in October 2008.
7. Examples of deficiencies in the way in which the accounting records were kept included:
  - (a) Failure to explain receipt of £10,799.77 from Property Services South East into the client ledger of Mr M on 27 June 2006.
  - (b) An incorrect entry made on the client ledger of Mr M on 28 June 2006 attributing a mortgage advance of £191,425.00 as having come from BM rather than GMAC-RFC Ltd.
  - (c) Failure to record any explanation for transferring £224.00 of client monies from Mr M's ledger to that of another client, Mr S, on 29 June 2006.
  - (d) Failure to provide any explanation for the receipt of funds from Property Services South East in the sum of £7,689.90 on 29 June 2006 into the client ledger of Mr and Mrs S.

Allegation (iii)

8. Because of the lack of proper accounting information, the investigator could not properly calculate the firm's liabilities to clients as at 31 December 2008. However, he identified that a minimum cash shortage of £340,415.74 existed at that date.
9. This shortage was caused by a combination of unallocated transfers from client to office account in the sum of £275,215.74, an improper transfer from client to office account in the sum of £45,200.00 and a client debit balance in the sum of £20,000.00.
10. The unallocated transfers from client to office account were made up of 51 payments varying in amount from £428.88 to £20,630.00 between 19 March and 31 December 2008. Such transfers continued to be made until 20 January 2009, leading to a total shortage of £289,724.44. This amount was replaced by payments made from office to client bank account between 23 and 27 February 2009. The Tribunal was told that Mr Denning, Mr CB and [SECOND RESPONDENT] replaced this amount from their own funds.

Allegation (iv)

11. The improper transfer of £45,200.00 was made on 20 June 2008 and related to stamp duty in connection with a transaction being carried out for Mr S and Mr C. In fact, no

such stamp duty payment was ever made, although it had been included on the bill. The amount wrongly remained in the firm's office account without being corrected from 20 June 2008 until 19 March 2009 when Mr Denning said that the firm would transfer it back into client account and pay interest due to the client.

12. The improper payment of £20,000.00 was made in connection with a transaction in which the firm had acted for Mr and Mrs R in a re-mortgage. Although the redemption figure in respect of the old mortgage was £113,646.82 on 29 November 2006, the firm paid the lenders £133,646.82. The relevant shortage was in continuous existence for over two years and four months at the date of the inspection, the firm having been unable to recover the monies from Mr and Mrs R to whom the overpayment had been sent by the lenders. The lack of client account reconciliation resulted in this overpayment not being detected by the firm.
13. Two accountants reports for the periods ending 28 February 2007 and 29 February 2008 revealed shortages and described the causes of those shortages, thereby drawing them to the attention of the partners who at that stage were Mr Denning and [SECOND RESPONDENT].

#### Allegation (v)

14. One effect of the firm making duplicated and unallocated payments to office account from client account was, on a number of occasions, to bring the office bank account to within its authorised overdraft limit when it would otherwise have exceeded it. The payment of £45,200.00 referred to previously also had the effect of reducing the firm's office account overdraft. Effectively, therefore, the firm was using clients' funds for its own purposes to subsidise the running of the business.

#### Allegations (ii) and (viii)

15. In around June 2006, the firm acted for the purchasers and lenders in connection with acquisitions of properties at Canal Wharf, Birmingham, in which [THIRD RESPONDENT] was the fee earner. There were five such transactions, two of which were examined in detail by the investigator.
16. Concerns arising out of the Canal Wharf transactions were:
  - (a) The discounts on the purchase price in excess of 5% have not been disclosed to lender clients;
  - (b) The deposits paid by third parties had not been disclosed to lender clients.
  - (c) Stamp Duty Land Tax had been paid on the gross price as opposed to the discounted price, thus misleading any person who sought access to this information as to the true price paid.
  - (d) The properties had been registered with incorrect purchase prices shown.

#### Allegations (ii) (vi) and (vii)

17. In late 2008 and early 2009 the firm acted for vendors of properties through the Gold Crest BMV Rebate Release Scheme (“the Scheme”). Concerns arising out of the use of the scheme were:
- (a) It involved potentially vulnerable vendors who were facing possession proceedings as a result of getting into mortgage arrears. There was therefore a risk that their interests could be prejudiced by them agreeing to sell at a price less than the true market value of their properties.
  - (b) It operated to remit some of the net proceeds to persons other than the vendor.
  - (c) The true price paid was misrepresented because of a rebate applied after completion of each transaction.
  - (d) The nature of the Scheme was one that was warned against in the Law Society Green Card warning on property fraud.
  - (e) Arnhem Knott LLP (“K”), a company in which Mr Dening and [SECOND RESPONDENT] both had an interest, was involved in and received benefit from the transactions.
18. The Respondents accepted that there had been breaches of the Solicitors Accounts Rules and it was emphasised that procedures had been put in place to avoid any repetition. Mr Dening accepted responsibility, as the Managing Partner dealing with finance, for the cash shortages and said that the breaches had been remedied.
19. Regarding the Scheme, Mr Dening said that as there was full transparency there was nothing to prevent the firm acting. However, [THIRD RESPONDENT] acknowledged that she had never made disclosure to the parties despite the requirements of the Scheme.
20. Mr Dening and [SECOND RESPONDENT] accepted that they were involved with AK [[SECOND RESPONDENT] only to the extent that he had been asked to provide funding) but denied that this put them in a conflict situation. Mr Dening said that because AK was lending money on a different property to the one being purchased, he had no personal interest in the relevant transactions and therefore there was no conflict.
21. With regard to the Canal Wharf transactions, [THIRD RESPONDENT] accepted that there had been failures to disclose material information to lender clients but this had been nothing more than negligence on her part. Mr Dening could not explain why matters were not reported to the lender clients and said that [THIRD RESPONDENT] had relied on advice from the Ethics Department regarding gifted deposits.

### **Witnesses**

22. The Tribunal heard evidence from Mr Sean Grehan, the SRA Investigation Officer.

### **Submissions**

23. Mr Dening admitted all of the allegations against him.

24. [SECOND RESPONDENT] initially denied all allegations against him. During the proceedings, and following discussion between Mr Battersby and Mr Pulman regarding the basis on which the case was put against [SECOND RESPONDENT], he indicated that he would admit allegations (i), (iii), (iv) and (v) on the basis of strict liability. The Tribunal agreed that this was a proper basis to proceed against [SECOND RESPONDENT] and took his limited culpability into account when determining whether it was appropriate to impose any sanction against him.
25. [THIRD RESPONDENT] admitted allegation (viii). At the beginning of the hearing, Mr Battersby invited the Tribunal to allow allegation (i) to be withdrawn against her. The Tribunal agreed to Mr Battersby's application. The Tribunal went on to consider the facts of allegation (ii) against [THIRD RESPONDENT] but, during the proceedings, it was agreed that it would not be necessary for the Tribunal to consider whether that allegation was substantiated against her. Therefore, the only allegation where it fell to the Tribunal to consider a sanction against [THIRD RESPONDENT] was allegation (viii).
26. In addition to the oral submissions made, and witness testimony given, at the hearing, the Tribunal reviewed all the documents submitted, which included:
- (a) the Application dated 4 February 2010 together with the supporting statement and documentation (pages 1-243);
  - (b) the Applicant's Supplementary Statement dated 16 August 2010 together with documentation;
  - (c) a letter from Mr Denning dated 27 September 2010;
  - (d) character references submitted on behalf of Mr Denning;
  - (e) a bundle of documents ("DV1") submitted on behalf of [SECOND RESPONDENT], which included his witness statement, various exhibits and other witness statements, and testimonials;
  - (f) character references submitted on behalf of Ms Carr;
  - (g) details of Ms Carr's income and expenditure.

### **Findings as to Fact and Law**

27. The Tribunal noted the positions of the three Respondents. The Tribunal found that the allegations against Mr Denning were proved. In relation to [SECOND RESPONDENT], the Tribunal found that allegations (i), (iii), (iv) and (v) were proved on the basis of strict liability. The remaining allegations against him were dismissed. In relation to Ms Carr, the Tribunal found that allegation (viii) was proved. The remaining allegations against her were dismissed.

### **Application for Costs**

28. Mr Battersby produced a Schedule of Costs in the sum of £34,017.46. Of this sum, forensic investigation costs accounted for £21,472.60 (and £7,734.88 arose from an investigation which only involved [THIRD RESPONDENT] at her new firm, in relation to which no allegations were substantiated). It was clear that the first Respondent bore the greatest liability for the costs.
29. Mr Dening accepted that he should bear the main responsibility for paying the costs. However, his financial circumstances meant that he would not have the means to discharge any order.
30. Mr Pulman invited the Tribunal to award costs in favour of [SECOND RESPONDENT] and produced a schedule showing the costs incurred by [SECOND RESPONDENT] in defending the action which amounted to £14,015.05. Mr Pulman argued that [SECOND RESPONDENT]'s culpability was at the very bottom end of the scale and he had already put in £85,000 of his own money when the extent of the firm's financial difficulties had become apparent.
31. Mr Barton, on behalf of Ms Carr, invited the Tribunal to make an order for costs which reflected the extent of Ms Carr's culpability. The majority of the costs arose from an investigation which did not result in any substantiated allegations against her.

### **Mitigation**

32. Mr Dening told the Tribunal that he held the position of solicitor in high regard. Others had said that he should not rule out the possibility of practising again in the future but, in his own mind, if he ever did it would not be in a management position.
33. He was very sorry that others, particularly [SECOND RESPONDENT], had become involved. He felt that he had let everyone down.
34. He cooperated fully with Mr Grehan during the investigation and maintained regular contact with Mr Battersby once the case was referred for possible disciplinary action.
35. Mr Dening explained that, once the shortfall in the accounts came to light, he called in his accountant to identify the extent of the problem. He sold a piece of land for £60,000 and borrowed a similar sum from friends. He also asked Mr CB and [SECOND RESPONDENT] to help pay off the shortfall. Mr Dening said that he had remortgaged his property the previous year and had put money into the business because of a shortfall then, and he believed that he had resolved the problem.
36. On behalf of [SECOND RESPONDENT], Mr Pulman invited the Tribunal to make no order. The [SECOND RESPONDENT]'s culpability was at the lowest end of the scale. He admitted the allegations on the basis of strict liability. Mr Pulman explained that [SECOND RESPONDENT] had used £85,000 of his own money to pay into the firm when the shortfall was discovered. This was the equivalent of 2½ times his net salary. Mr Pulman also drew the Tribunal's attention to [SECOND RESPONDENT]'s public service outside the law.

37. On behalf of Ms Carr, Mr Barton said that she was very worried about the outcome of the proceedings. She accepted at a very early stage that she should have reported material facts and was very contrite. The referral to the Tribunal had been borderline in her case and, at one stage, the possibility of an internal sanction had been raised. In all the circumstances, Mr Barton invited the Tribunal to consider dealing with Ms Carr's case by way of a reprimand.

### **Sanction and Reasons**

38. The Tribunal was impressed by Mr Dening's acceptance of responsibility and his candid acknowledgement of his personal failings. He has been in practice for 23 years and has no previous disciplinary findings against him. This is not a case involving allegations of dishonesty. However, it is a case which highlights the reckless manner in which he has run his practice over a number of years. He should have known that there were problems with the accounts. His conduct has resulted in considerable expense to himself and to his partners, and has put the public at risk. The Tribunal concluded that the pattern of reckless behaviour, putting others at risk, was so serious that the only appropriate sanction was to order that Mr Dening be struck off the Roll of Solicitors.
39. In relation to [SECOND RESPONDENT], the Tribunal considered that his breaches were at the lowest end of the scale and resulted from the strict liability which applied to him as a partner in the firm. Consequently, the Tribunal did not consider that it was necessary to make any order against him.
40. [THIRD RESPONDENT] was guilty of clerical, administrative errors. She admitted those errors at an early stage and was fully co-operative, open and candid. However, the Tribunal noted that the breaches occurred in areas of practice where the Law Society had given specific guidance to practitioners. Therefore, the Tribunal concluded that the level of seriousness of Ms Carr's breaches was properly marked by the imposition of a financial penalty.

### **Decision as to Costs**

41. The Tribunal agreed that the responsibility for a large proportion of the costs lay with Mr Dening. The Tribunal considered that it would be appropriate for him to be ordered to pay costs fixed in the sum of £20,000.00. However, bearing in mind his financial position, the Tribunal concluded that the award of costs should not be enforced without the permission of the Tribunal.
42. In relation to [SECOND RESPONDENT], the Tribunal did not agree with the representations made by Mr Pulman. The proceedings were properly brought against [SECOND RESPONDENT], even though the outcome was that no order was made. It was appropriate for him to pay a modest amount towards the costs and the Tribunal fixed this in the sum of £1,000.00.
43. In relation to Ms Carr, the Tribunal took into account the representations made by Mr Barton and considered the extent of her involvement. The Tribunal concluded that [THIRD RESPONDENT] should pay costs fixed in the sum of £2,100.00.



**Order**

44. The Tribunal Ordered that the Respondent, Jeremy Stuart Denning of 2 The Drive, Callis Court Road, Broadstairs, Kent CT10 3AN, solicitor, be Struck Off the Roll of Solicitors, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000, such costs not to be enforced without the permission of the Tribunal.
45. The Tribunal Ordered that the Second Respondent of, Kent CT10 solicitor, do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.
46. The Tribunal Ordered that the Third Respondent, of, Faversham, Kent, ME13, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,100.

Dated this 9<sup>th</sup> day of February 2011  
On behalf of the Tribunal

J C Chesterton  
Chairman