

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10745-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL HOLE

Respondent

Before:

Mr A G Gibson (in the chair)

Mr R Prigg

Mr S Hill

Date of Hearing: 3rd November 2011

Appearances

Ian Ryan, solicitor advocate, of Finers Stephens Innocent LLP, 179 Great Portland Street, London, W1W 5LS for the Applicant.

The Respondent, who was not present, was represented by Gareth Edwards, solicitor, of Crangle Edwards Solicitors, 15 Edge Lane, Stretford, Manchester, M32 8HN

JUDGMENT

Allegations

1. The allegations against the Respondent were as follows:
 - 1.1 That he acted in conveyancing transactions that had suspicious characteristics in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 (“SCC”);
 - 1.2 That he failed to act in the best interests of his client, Mrs G, in a conveyancing transaction in breach of Rule 1.04 of the SCC;
 - 1.3 That he fabricated documents and placed them on Mrs G’s file in breach of Rule 1.02 of the SCC;
 - 1.4 That he failed to disclose material information to his lender client in breach of Rule 1.04 of the SCC.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 11 May 2011;
- Rule 5 Statement dated 11 May 2011 with exhibit “IPR/1”;

Respondent:

- None.

Factual Background

3. The Respondent was born in 1968 and was admitted as a solicitor in 1995. His name remained on the Roll of Solicitors at the date of hearing. The Respondent did not have a current Practising Certificate.
4. At all material times the Respondent practised as a partner at Hewitts Solicitors (“the firm”) of 207 Newgate Street, Bishop Auckland, DL14 7EL.
5. On 9 November 2009 the Respondent and his partner Mr Tweddle informed the firm of a potential claim against the firm by Mrs G, a conveyancing client of the Respondent. The firm conducted an investigation and established that a number of documents had been placed on Mrs G’s matter file retrospectively and that Mrs G had little understanding of the transaction and was unsure of the sale price of her property.
6. The Respondent resigned from the partnership on 8 December 2009.
7. On 16 December 2009 the firm reported the Respondent’s conduct to the SRA.

8. An Investigation Officer of the SRA commenced an investigation on 8 February 2010 and produced a Report dated 1 September 2010 which, together with its appendices, was relied on by the Applicant.

Witnesses

9. None.

Findings of Fact and Law

10. **Allegation 1.1: That he acted in conveyancing transactions that had suspicious characteristics in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 (“SCC”).**

10.1 This allegation was admitted by the Respondent.

10.2 The Respondent, whose practice was primarily in conveyancing, acted in a number of transactions in which Mr SA and/or a business, SMPG, supplied bridging finance to the purchaser. The SRA’s Investigation Officer noted in the Report, which was unchallenged, that the Respondent had also acted for purchaser and lender in transactions involving Mr SA and/or SMPG and/or a further business, BT.

10.3 In relation to a number of these transactions the SRA’s Investigation Officer noted, and the Tribunal accepted, that the following suspicious characteristics had been present:

- In respect of sale matters, vendors did not receive the full proceeds of sale;
- In respect of purchase matters: the purchaser had utilised bridging finance; the purchaser contributed no funds to the purchase; the vendor repaid the purchaser’s bridging loan; and the vendor, purchaser and mortgage adviser were connected.
- In a matter in which the Respondent’s vendor client was Mrs G, the vendor did not receive the full proceeds of sale, the purchaser utilised bridging finance and contributed no funds to the purchase, and the vendor repaid the purchaser’s bridging loan and there was a connection between the vendor, purchaser and mortgage adviser. The matter of Mrs G also gave rise to other allegations, set out below.

10.4 Having reviewed the documents and noted the Respondent’s admission, the Tribunal was satisfied so that it was sure that this allegation had been proved.

11. **Allegation 1.2: That he failed to act in the best interests of his client, Mrs G, in a conveyancing transaction in breach of Rule 1.04 of the SCC.**

11.1 This allegation was admitted by the Respondent.

11.2 The Respondent acted for Mrs G in the sale of her property at 8 SC, Coppull to Mr HS in July 2008.

- 11.3 On 4 July 2008 the Respondent received a letter from Linskills, Mr HS's solicitors, referring to a purchase price of £110,000 for the property. On 7 July 2008 the Respondent wrote to Mrs G's mortgagees, requesting the mortgage redemption figure. It was noted that there was no written evidence on the file that Mrs G had given authority to the Respondent to obtain the redemption figure until 9 July 2008.
- 11.4 The purchaser and vendor's signatures on the Transfer form, Form TR1, on the Respondent's file, were witnessed by Mr GB. The form TR1 showed a consideration for the property of £110,000. The purchaser, Mr HS, was at the relevant time an owner and director of BMC Ltd, a mortgage consultants business. Mr GB was, until 15 May 2008, a member and director of BMC Ltd.
- 11.5 The Tribunal accepted the unchallenged evidence in the Forensic Investigation Report that Mr GB had advised Mrs G on her debt problems and that Mrs G understood that she was selling her home to Mr GB (on the understanding it would be rented back to her), rather than to Mr HS. The Tribunal further accepted the unchallenged evidence in the Forensic Investigation Report that the Respondent had no contact with Mrs G during the transaction and took instructions instead from Mr GB. On 18 July 2008 the Respondent received a fax from Mr GB enclosing a letter from Mrs G authorising the Respondent to pay the proceeds of sale to BMC Ltd. Thereafter, on 21 July 2008, £110,632.87 was credited to Mrs G's client ledger. However, the completion statement supplied to Mrs G, a copy of which was not on the Respondent's matter file, referred to a "sale price (less deductions)" of £76,000. During the course of the investigation the Respondent informed the Investigation Officer that in cases such as this the vendor agreed that the purchaser's bridging finance would be deducted from the proceeds of sale.
- 11.6 It was clear on the documents, and accepted by the Respondent, that the Respondent authorised payments totalling £73,560.07 to discharge Mrs G's mortgage and other debts. In addition the Respondent authorised payments of £23,229.75 to SMPG, £709 to SMPG as "fees" and £12,312.43 to BMC Ltd, which payment, although noted on the description as being "due to client" was clearly incorrect. The Tribunal noted that Mrs G herself received only £2,439.93 from the sale of her property, after the various deductions had been made.
- 11.7 The Tribunal noted a completion statement addressed to Mrs G, which showed the sale price (less deductions) as £76,000 whereas a completion statement, rather unusually addressed to BMC Ltd, showed receipts of something over £34,000 and various payments made, including a payment to BMC Ltd of £9,901.88 after repayment of the bridging loan and deduction of the vendor's and purchaser's fees. It was noted that the Land Registry records indicated that the sale completed on 23 July 2008 and that £110,000 was paid for the property.
- 11.8 On 30 November 2008 Mrs G, who had remained in the property as a tenant, wrote to the Respondent seeking assistance in obtaining a copy of her tenancy agreement. She also asked the Respondent to clarify the sale price of £76,000 quoted in the Completion Statement as she had understood that her property had been sold for between £110,000 and £120,000. Mrs G complained that she had received only £2,439.93 from the sale and requested an explanation for the apparent deduction of £34,000/£44,000 from the proceeds.

- 11.9 The Respondent made arrangements for Mr GB, whom he referred to as the landlord, to contact Mrs G but he did not address her questions concerning the sale price and deductions. The Respondent then received a letter from the CAB on behalf of Mrs G dated 4 December 2008 and in his response the Respondent informed the CAB that Mrs G had agreed a below the market value sale price of £77,000.
- 11.10 In subsequent correspondence with the Respondent, Mrs G complained that she had been swindled and explained that she had signed blank documents at Mr GB's request and that all details, including the purchase price of £77,000, had been filled in by Mr GB without her knowledge. On 22 December 2008 the Respondent emailed Mrs G and advised her to take up matters with the purchaser. On the same day the Respondent emailed Mr SA and asked for any documents signed by Mrs G confirming that deductions were to be made from the sale price. Mrs G wrote two further emails to the Respondent in connection with her complaint but did not receive a reply. On 26 March 2009 the Respondent informed Mr SA that he, the Respondent, had been reported to The Law Society by Mrs G. On 29 March 2009 Mr SA emailed the Respondent attaching a form, apparently signed by Mrs G, authorising a payment of £34,000 to BMC Ltd from the proceeds of sale as "up front rental and to clear debt". That document appeared to be dated 16 July 2009, that is to say three months after the date on which Mr SA sent the document to the Respondent and one year after the completion of the transaction. Mrs G informed the Investigation Officer that she could not recall signing the document but that the signature appeared to be hers.
- 11.11 On 17 May 2009 Mrs G wrote to the Respondent and complained about the service that she had received. The Respondent, in breach of his firm's procedures, paid £5,000 to Mrs G from his capital account at the firm in purported settlement of her claims.
- 11.12 It was clear to the Tribunal on the evidence presented that the Respondent had failed to act in Mrs G's best interests. Indeed, there was no evidence that he had taken instructions from her directly or had any contact with her (other than through third parties) prior to completion of the sale. He was clearly aware, from all of the circumstances, that Mrs G was a vulnerable client in that she was facing quite severe debt problems. It was for that reason that she had felt obliged to sell her home in order to clear her debts. In addition to failing to note or take any appropriate action in relation to the suspicious characteristics of the transaction (as dealt with under allegation 1.1 above), the Respondent had failed to advise her in relation to her dealings with SMPG and/or BMC Ltd, or even to confirm that her instructions were as presented to him by Mr GB.
- 11.13 The Respondent had wholly failed in his duties to Mrs G as a client. The Tribunal was satisfied so that it was sure that this allegation, which had been admitted by the Respondent, was proved.
12. **Allegation 1.3: That he fabricated documents and placed them on Mrs G's file in breach of Rule 1.02 of the SCC.**
- 12.1 This allegation was admitted by the Respondent, including the implied allegation that he had acted dishonestly.

- 12.2 This was the most serious of the allegations against the Respondent, given that it included an allegation of dishonesty.
- 12.3 The allegation had arisen because of material found in the course of an investigation carried out by the Respondent's former partners after Mrs G's complaint and potential claim came to light.
- 12.4 On and after 9 November 2009, when the Respondent informed the firm of a potential claim against the firm by Mrs G, an investigation was conducted by Brenda Davidson, one of the partners in the firm. Her unchallenged witness statement showed that a number of documents on Mrs G's client matter file had been created or modified after the date shown on the face of the document.
- 12.5 On 30 March 2009 the Respondent created a letter, purporting to be from him to Mrs G, dated 7 July 2008 and referring to "agreed deductions of £33,000 leaving a net sale price of £77,000". On 1 April 2009 the Respondent created a letter, apparently from the Respondent to Mrs G dated 17 July 2008 requesting authority from Mrs G to pay the net sale proceeds to BMC Ltd. Further, on 1 April 2009 the Respondent created an attendance note, purporting to record a conversation between himself and Mr GB on 17 July 2008 which referred to Mrs G remaining in the property as a tenant and to payment of the "surplus" to the purchaser for the purpose of carrying out refurbishment works.
- 12.6 In addition, the Tribunal noted a letter on the firm's electronic file, which did not appear on the paper file, which was created on 27 March 2009 but which purported to be a letter from the Respondent to Mrs G dated 27 March 2008.
- 12.7 The Tribunal noted that these documents were created on or shortly after 26 March 2009, the date that the Respondent informed Mr SA of Mrs G's complaint to The Law Society.
- 12.8 In addition, the Tribunal was satisfied that a number of further documents had been created or modified on 9 November 2009, the date on which the Respondent informed his partners of the potential claim by Mrs G. The Respondent had modified the client care letter to Mrs G dated 7 July 2008. The Respondent had further created a file note concerning the Respondent's purported telephone conversation with Mr SA on 18 July 2008. This note, apparently documenting an agreement with Mr SA that the purchaser's bridging finance amounting to £23,259.12 and fees of £709 would be paid by Mrs G was in fact created on 9 November 2009. Further, a version of a completion statement dated 23 July 2008 which referred to a sale price of £110,000 and which included provision for bridging finance and a payment of £9,872.50 to BMC Ltd, was also created on 9 November 2009.
- 12.9 When questioned about these documents by the Investigation Officer, the Respondent did not volunteer that these had been created retrospectively. When presented with the evidence of Mrs Davidson the Respondent confirmed that he created the documents after the event and placed them on the file. The Respondent agreed that he had been "less than frank" with the Investigation Officer.

- 12.10 Although the allegation had been admitted by the Respondent, the Tribunal considered the test for dishonesty as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal found that in creating or modifying documents after the date on which those documents appeared on their face to have been created, and in failing to acknowledge openly when questioned that he had created the documents retrospectively, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having noted that the documents were modified and/or created when the Respondent feared that his conduct was about to be investigated, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that creating the documents was a proper course, and he therefore knew that what he was doing was dishonest by those same standards. The Respondent had dishonestly fabricated documents in an attempt to deceive Mrs G, the firm and any third party that examined her file. Accordingly, the Tribunal was satisfied so that it was sure that this allegation had been proved, including the allegation of dishonesty.
13. **Allegation 1.4: That he failed to disclose materials information to his lender client in breach of Rule 1.04 of the SCC.**
- 13.1 This allegation was admitted by the Respondent. This allegation related to the sale and purchase of three properties. In all three matters the Respondent acted for the purchaser, Mr A, in linked transactions in which an unadmitted fee earner at the firm represented the vendor, CDP Ltd. The purchaser's mortgage adviser in all three matters was CDP Sales Lettings and Mortgages Ltd, a company which was owned and controlled by the directors of CDP (the vendor). Mr A, the purchaser, was the stepson of an owner and director of the CDP companies. Instructions recorded on the files relating to this matter indicate that Mr A lived at the registered address of the CDP companies. The Investigation Officer found no instructions from Mr A on the matter files and the only instructions on the matter came from a director of CDP.
- 13.2 Between 30 October 2008 and 8 December 2008 the firm received instructions to act for the lender, Birmingham Midshires, in the three transactions, in accordance with the Council of Mortgage Lenders' Handbook ("CML Handbook").
- 13.3 On 5 December 2008 the Respondent signed the Certificates of Title for all three properties.
- 13.4 The combined purchase price of the three properties amounted to £235,000 and the lender was to provide a total mortgage advance of £199,750. The purchaser was therefore required to contribute a total of £35,250 towards the transactions. On 11 December 2008 the firm received £42,145.25 from "SM" apparently as bridging finance for all three properties. This sum was credited to Mr A's ledger relating to the purchase of one of the properties. The Investigation Officer found completion statements relating to the sale of the three properties which indicated that deposits totalling £40,355 had been subtracted from the proceeds of sale paid to the vendor.
- 13.5 The Respondent signed a transfer form on 11 December 2008 authorising the transfer of £42,385 from "MH-CDP" to "SM" describing the payment as the "balance of bridging finance". This sum was debited from the vendor's ledger in relation to the sale of one of the properties.

- 13.6 The Respondent did not notify his lender client of a number of material facts which may have affected its decision to proceed with the proposed loan. Notification was required, amongst other things, by 5.1.2 and 5.9 of the CML Handbook. The Respondent failed to notify the lender that the purchaser had the benefit of a bridging loan and contributed no funds towards the purchase; that the vendor repaid the purchaser's bridging loan; that there was a connection between vendor, purchaser and mortgage adviser.
- 13.7 The Tribunal was satisfied that this allegation, which had been admitted by the Respondent, had been proved.

Previous Disciplinary Matters

14. None.

Mitigation

15. Mr Edwards, on behalf of the Respondent, made submissions which had been approved by the Respondent. The Respondent intended no discourtesy to the Tribunal but the cost and practicalities of attendance meant that he had decided not to attend.
16. It was confirmed that the Respondent formally admitted all of the allegations, including that of dishonesty contained within allegation 1.3. However, the Respondent wished to explain the background and circumstances in enough detail to "put the record straight".
17. At the relevant time, in 2008, the Respondent was a partner in a firm which then had 14 partners. The Tribunal was asked to take judicial notice of the difficult economic circumstances faced by many firms within the last few years and that sometimes the rapport a solicitor can have with a client can lead to too much reliance being placed on that relationship. It could be difficult for a solicitor when a good and productive relationship existed with a client to take a step back, particularly where similar transactions or issues had arisen in the past with no adverse consequences.
18. The Tribunal was invited to credit the Respondent with making total and prompt admissions to the allegations.
19. With regard to allegations 1.1, 1.2 and 1.4, the Tribunal was asked to note that at the time of these transactions the property market was booming with diverse lenders being very willing to lend. In such circumstances many solicitors would no doubt find, on a careful review of their files, that there had been some suspicious circumstances or matters which should be reported to lender clients which had perhaps not been considered significant at the time. Also, of course, the Respondent had been required by his partners to "pull his weight". When faced with such circumstances, the Respondent had unfortunately "fallen down" and not seen the problems which had arisen.
20. So far as the allegations concerning Mrs G's transaction was concerned, it was submitted that there was an additional pressure behind the transactions. Mrs G was

deeply in debt and was seeking a lifeline. She was stressed and it was suggested that she had therefore “badgered” the Respondent because of the pressure she was under. She had been a demanding and unhappy client to whom the Respondent could not devote the necessary time. The Respondent admitted that Mrs G’s best interests should have been more to the fore in the way he dealt with her transaction.

21. The Respondent accepted that his greatest failing was in the fabrication of documents. Many solicitors would experience the feeling of “heart-sink” when receiving a complaint by a client, but solicitors may react differently. The Respondent felt under pressure and the complaint had an unfortunate impact on him. His forgery and deception could not be condoned but it was submitted that even the best people can act foolishly at times: such actions do not necessarily make them bad people. It would be a rare solicitor, it was submitted, who would not be tempted to hide certain matters. With the help of good friends and patient colleagues with whom to discuss problems, appropriate action would be taken. It was submitted that the Respondent had been less fortunate and it was a matter of regret for him that he had not felt his partners able to offer support and help.
22. The Respondent’s payment of £5,000 to Mrs G had been, it was submitted, a genuine attempt to put matters right. The Respondent had consulted one of the partners, Mr Tweddle, who had suggested this way of disposing of the matter. The Respondent had, however, not adhered to his firm’s procedures when faced with a complaint and/or potential claim against the firm.
23. It had not been easy for the Respondent, a proud man, to admit that he had been dishonest within the meaning set out in the Twinsectra test. The Respondent had had no personal advantage through his acts of dishonesty. The only “theft” which had occurred was that by the Respondent of his own good name and reputation, through his foolish actions.
24. The Respondent, realising the extent of the problems he faced with regard to Mrs G, had had the courage to resign from the partnership forthwith but had made himself available to tie up any loose ends. This had avoided the need for his former partners to expel him from the partnership. The Respondent had offered to come off the Roll of Solicitors and had sought and obtained work outside the profession.
25. It was submitted that the Respondent had made it clear he would admit his wrongdoing in order to save time, effort and costs, and that he had co-operated quickly and fully with the investigation and proceedings.
26. The Tribunal was told that the Respondent had taken great pride in becoming a solicitor. He was described as being of “decent working class stock” and was not a graduate member of the profession. He had started work at 16 in an office, and through part-time study, and his own ability and commitment, had qualified as a legal executive and then as a solicitor. He had become a partner in the firm whilst still a young man. The Respondent had never lost the common touch, retaining his north-eastern accent, and speaking to clients in a straightforward way for which they were grateful.

27. When a career is brought to an end prematurely, the achievements of that individual can be dwarfed. It was submitted that it was sad that a man of the Respondent's temperament, ability and background, who had contributed much to the profession, should now see his career as a solicitor ended. The Respondent accepted with regret that that outcome would be fair and proper.
28. Mr Edwards thanked the Tribunal for taking the time to hear the mitigation. He appreciated that it would not affect the outcome but the Respondent wanted to leave the profession with some dignity.

Sanction

29. The Respondent had admitted, and the Tribunal had found, that the Respondent had acted in a dishonest way with regard to the fabrication of documents in order to "cover his tracks". He had wholly failed in his duty to Mrs G, and in addition had acted in conveyancing transactions with suspicious characteristics, and failed to report material matters to his lender clients.
30. The Tribunal had listened carefully to the mitigation put forward. Despite what was said in mitigation, it was clear to the Tribunal that the Respondent had made admissions to the Investigation Officer (in particular concerning his fabrication of documents) only when he was confronted with the clear evidence of his wrongdoing, rather than when he was given an opportunity to be frank. Not only had he had no regard to Mrs G's interests as his client, but he had then tried to improve his position when confronted with her complaint and potential claim.
31. The Tribunal was concerned that in mitigation it had been submitted that Mrs G had been a demanding client. The SRA's contrary evidence had been unchallenged. The client file had shown no direct contact between the Respondent and Mrs G, let alone that she had in any way been "badgering" him. The Respondent had produced no evidence to support the assertion which had been made on his behalf.
32. Even if Mrs G had been a demanding client, it was clear on all of the evidence presented, and on the Respondent's own submissions, that Mrs G was in a vulnerable position because of her debt problems. In such a situation a solicitor should take particular care to make sure that the client understands the transaction.
33. In all of the circumstances, and in particular because there had been an admission and finding of dishonesty, the appropriate and proportionate sanction was that the Respondent should be struck off the Roll of Solicitors.

Costs

34. The Applicant had prepared a Schedule of Costs, claiming costs in the region of £27,000. The Tribunal was told that the parties had agreed, subject to the Tribunal's approval, that the Respondent should pay costs fixed in the agreed sum of £23,000.
35. The Tribunal was told that the Respondent was engaged in a business and had, or would have, the means to pay the costs of £23,000. The Tribunal was told that the

Respondent expected to be able to pay half of the costs award within the next few weeks.

36. The Tribunal considered that the agreed costs of £23,000 were reasonable and that it was appropriate to order the Respondent to pay those costs.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, Michael Hole, 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 agreed sum of £23,000.00.

DATED this 28th day of November 2011
on behalf of the Tribunal

A G Gibson
Chairman