

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10819-2011

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

LIAM GERARD MCELEAVEY

Respondent

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Before:

Ms A Banks (in the chair)

Mr M Fanning

Mr R Slack

Date of Hearing: 8th February 2012

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**Appearances**

Jonathan Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

The Respondent did not appear and was not represented.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that:
  - 1.1 He failed to pay clients' money into client bank account and utilised clients' funds for his own benefit;
  - 1.2 He attempted to redeem a client's mortgage by personal cheque (Mr McEleavey's) which was not honoured;
  - 1.3 He failed to act in the best interests of a client(s);
  - 1.4 He improperly paid away funds held on behalf of a mortgagee client and/or failed to utilise such funds towards the purchase of the property for which the funds were intended.
2. Dishonesty was alleged against the Respondent in relation to:
  - 2.1 His utilisation and/or misappropriation of clients' funds; and
  - 2.2 The Respondent's improper utilisation of mortgage monies received into the firm's client bank account and utilised by the Respondent for purposes other than the purchase of the property in respect of which the monies were advanced.

## **Documents**

3. The Tribunal reviewed all of the documents submitted by the Applicant and Respondent, which included:

### Applicant

- Application dated 5 September 2011;
- Rule 8 Statement and exhibit bundle "JRG1" dated 5 September 2011;
- Statement of Costs dated 8 February 2012.

### Respondent

- None.

## **Preliminary Matter**

4. Mr Goodwin referred the Tribunal to the previous hearing on 2 November 2011 when an Order for substituted service had been made by the Tribunal. Mr Goodwin confirmed that he had made enquiries of the Institute of Legal Executives (ILEX) to trace the Respondent but this had not proved successful. He said that he had subsequently placed advertisements in The Times, The Law Society Gazette and the ILEX journal, notifying the Respondent of the proceedings before the Tribunal and the substantive hearing date.

5. Mr Goodwin submitted that the Tribunal could be satisfied that good service had been affected upon the Respondent and it was therefore appropriate to proceed in his absence.
6. The Tribunal said that it was satisfied as to service upon the Respondent and agreed that the substantive hearing could proceed in his absence.

### **Factual Background**

7. The Respondent was not a solicitor and had been employed as a conveyancing consultant by GL Limited, practising as G Solicitors between September 2006 and 13 February 2009.
8. The Forensic Investigation Unit of the Applicant had carried out an inspection of G Solicitors which commenced on 12 August 2009 and produced a Forensic Investigation (“FI”) Report dated 6 November 2009.
9. Two matters of concern had been exemplified in the Report:

#### Mr and Mrs W

10. The Respondent acted for Mr and Mrs W in the sale of their property and purchase of another. Completion had taken place on 16 November 2008.
11. Whilst the Respondent was absent on sick leave, Mr G had received a telephone call from Mrs W in or about February 2009 when she indicated that she had been contacted by her lender because the mortgage on the sold property had not been redeemed. Mr G had contacted the Halifax Building Society (“HBS”) and ascertained that the Respondent had attempted to redeem the mortgage with a personal cheque of his own which had not been honoured. The cheque, a copy of which was exhibited by the Applicant, was dated 6 February 2009 and was in the sum of £5048.08.
12. Mr G invited Mr and Mrs W to the firm’s office when they explained that the Respondent had contacted them on a Friday afternoon and asked for the sum of £1936.92 in cash to complete the transaction. Mr and Mrs W had provided to Mr G a receipt, a copy of which was exhibited by the Applicant, for the cash they had given to the Respondent. It was on the rear of one of the Respondent’s business cards and dated 17 January 2009.
13. There was no record of the funds having been received into the firm and no entries had been posted to the relevant client ledger accounts.

#### Mr M

14. The Respondent had acted for Mr M in his purchase. The Respondent had purportedly been the seller. Mr M had complained to the Legal Complaints Service (“LCS”) about the Respondent.

15. The matter file had not been available for review by the Investigation Officer (“IO”) and Mr G had explained that a number of the Respondent’s files could not be located following his departure from the firm.
16. The client ledger had shown payments to Mr M and unrelated third parties. The following payments had been made:
- The total sum of £10,699.29 was paid to Mr M;
  - The sum of £34,354.77 was paid by cheque to GMMHL which Mr G believed was a personal debt of the Respondent;
  - The sum of £6,250.00 was paid by cheque to CD, the Respondent’s partner;
  - The sum of £168,735.94 was a Fundsflow payment to Derbyshire Home Loans (“DHL”) who had loaned the funds for the Respondent’s purchase of the property;
  - The sum of £13,900.00 was a Fundsflow payment to RA W & Co Solicitors. The Respondent had worked at RA W & Co Solicitors prior to joining G Solicitors. Mr G said that Mr W was the Respondent’s Uncle.
17. By letter dated 15 December 2010 the Applicant wrote to the Respondent enclosing a copy of the Report and seeking his explanation. The letter was subsequently returned undelivered and a new address was identified.
18. By letter dated 8 March 2011 the Applicant wrote to the Respondent at the new address enclosing a copy of the Report and seeking his explanation. The letter was returned undelivered.
19. The matter was considered by an Authorised Officer of the Applicant on 23 May 2011 who resolved to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal for consideration as to the making of an Order pursuant to Section 43 (2) of the Solicitors Act 1974 (as amended).

#### **Witnesses**

20. None.

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

21. **Allegation 1.1. He failed to pay clients money into client bank account and utilised clients’ funds for his own benefit;**
- Allegation 1.2. He attempted to redeem a client’s mortgage by personal cheque (Mr McEleavey’s) which was not honoured;**
- Allegation 1.3. He failed to act in the best interests of a client(s);**

**Allegation 1.4. He improperly paid away funds held on behalf of a mortgagee client and/or failed to utilise such funds towards the purchase of the property for which the funds were intended.**

**Dishonesty was alleged against the Respondent in relation to:**

**Allegation 2.1. His utilisation and/or misappropriation of clients' funds; and**

**Allegation 2.2. The Respondent's improper utilisation of mortgage monies received into the firm's client bank account and utilised by the Respondent for purposes other than the purchase of the property in respect of which the monies were advanced.**

Submissions on behalf of the Applicant

21.1 Mr Goodwin referred the Tribunal to the Rule 8 Statement upon which he relied. He referred to the allegations against the Respondent and in relation to the allegation of dishonesty he submitted that the Tribunal needed to have regard to the combined test in Twinsectra v Yardley [2002] 2 All ER 377, as expressed by Lord Hutton:

“...before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest”.

21.2 Mr Goodwin said that the Respondent was not a solicitor and had been employed by GL Ltd, practising in the style of G Solicitors between September 2006 and 13 February 2009. Following a Forensic Investigation at the firm's offices an FI Report had been produced dated 6 November 2009. Mr Goodwin said that the FI Report had detailed two matters of concern:

Mr and Mrs W

21.3 The Respondent had acted for Mr and Mrs W in the sale of their property and the purchase of another. Completion had taken place on 16 November 2008.

21.4 Mr Goodwin said that while the Respondent had been absent on sick leave, Mr G of G Solicitors had received a telephone call from Mrs W in approximately February 2009. She indicated that she had been contacted by her lending bank because the mortgage on her property had not been redeemed. Mr G had then made contact with the HBS and ascertained that the Respondent had attempted to redeem the mortgage with a personal cheque of his own which had not been honoured. The cheque had been dated 6 February 2009 in the sum of £5048.08.

21.5 Mr Goodwin said that Mr G had invited Mr and Mrs W to the firm's office when they had explained to Mr G that the Respondent had contacted them on a Friday afternoon and had asked them for the sum of £1936.92 in cash to complete the transaction. Mr and Mrs W had provided a receipt to Mr G which had been given to them by the Respondent. Mr Goodwin said that the receipt was on the rear of one of the Respondent's business cards and was dated 17 January 2009. Mr Goodwin said that

there had been no record of those funds having been received into G Solicitors' client bank account and no entries had been posted to the relevant client ledger accounts.

- 21.6 Mr Goodwin said that the Respondent had failed to pay the sum of £1936.92 received from Mr and Mrs W into the firm's client bank account and had instead utilised same for his own benefit and/or had misappropriated the client's funds. Mr Goodwin submitted that the Respondent had improperly and dishonestly misappropriated the clients' funds and in acting as he had, the Respondent had failed to act with integrity, had failed to act in the best interests of his client and had behaved in a way which was likely to diminish the trust the public placed in him and the profession.

#### Mr M

- 21.7 Mr Goodwin said that the Respondent had acted for Mr M in his purchase. The Respondent had purportedly been the seller. Mr M had made a complaint about the Respondent to the Legal Complaints Service ("LCS").
- 21.8 Mr Goodwin said that the matter file had not been available for review by the IO and that Mr G had explained that a number of the Respondent's files could not be located following the Respondent's departure from the firm. Mr Goodwin said that the IO had, however, seen the LCS and E Solicitors (who had acted on behalf of Birmingham Midshires ("BM")) correspondence. This had included a letter dated 8 June 2009 from Mr G to E Solicitors which stated:

"I can confirm that Mr M is an associate of Mr McEleavey and that Mr McEleavey himself was the registered owner of 29 Birch Road, therefore acting on both sides of the transaction.

It would appear that there has been a deliberate and fraudulent act by both parties in that monies have been released to Mr M and the mortgage has not been redeemed".

- 21.9 Mr Goodwin said that a number of payments had been made as evidenced by the client ledger for Mr M as follows:
- £10,699.29 had been paid to Mr M;
  - £34,354.77 had been paid by cheque to GMMHL which Mr G believed had been a personal debt of the Respondent;
  - £6250 had been paid by cheque to CD, the Respondent's partner;
  - £168,735.94 had been a Fundsflow payment to DHL who had loaned the funds for the Respondent's purchase of the property;
  - £13,900.35 had been a Fundsflow payment to RA W & Co where the Respondent had worked prior to joining G Solicitors. Mr G had said that Mr W was the Respondent Uncle.
- 21.10 Mr Goodwin submitted that the Respondent had improperly and dishonestly misappropriated significant funds from his lender client and had paid the same away

for purposes other than that for which the lender believed the funds had been advanced. Mr Goodwin submitted that in acting as he had, the Respondent had failed to act with integrity, had failed to act in the best interests of his lender client, had failed to provide a good standard of service to his lender client and had behaved in a way which was likely to diminish the trust the public placed in him and the profession.

- 21.11 Mr Goodwin said that the Applicant had written to the Respondent on two occasions, namely 15 December 2010 and 8 March 2011, enclosing a copy of the FI Report and seeking the Respondent's explanation. Both letters had been returned undelivered which had ultimately led to the application for substituted service.
- 21.12 Mr Goodwin referred the Tribunal to the FI Report wherein it stated that on 28 September 2009, Mr G had informed the IO that the Respondent had been arrested on 24 September 2009. Mr G said that he had spoken to the police who had told him that the Respondent had admitted taking cash from clients and having undertaken mortgage fraud in conjunction with Mr M.
- 21.13 Mr Goodwin informed the Tribunal that Section 43 of the Solicitors Act 1974 (as amended) was a regulatory provision, designed to afford safeguards and exercise control when in any given case that was considered appropriate. Mr Goodwin submitted that this was not a punishment and should not be viewed as such. He submitted that it was a fundamental principle to maintain the reputation of the profession, in the interests of both the profession and the public, upon whom the profession relied. He said that the profession's most valuable asset was the collective reputation and confidence which it inspired, not only in respect of solicitors, but also in relation to those they employed, whether qualified or not.
- 21.14 Mr Goodwin invited the Tribunal to find the allegations proved against the Respondent, including dishonesty and submitted that the making of the Section 43 Order was appropriate.

#### Submissions of the Respondent

- 21.15 None.

#### Findings of the Tribunal

- 21.16 The Tribunal applied its usual standard of proof, namely the higher standard beyond reasonable doubt.
- 21.17 In relation to allegation 1.1, the Tribunal had regard to the documentary evidence which supported that the Respondent had failed to pay clients' money, namely that of Mr and Mrs W into the client bank account and had utilised client funds for his own benefit. There had been no record of the funds having been received by G Solicitors and no entries had been posted to the clients' ledger.
- 21.18 There was a receipt for the clients' money, signed by the Respondent and dated 17 January 2009. The signature on that receipt was indistinguishable from that on the Respondent's cheque, dated 6<sup>th</sup> February 2009, with which he had attempted to

redeem Mr & Mrs W's mortgage. The Tribunal was satisfied that the Respondent had received the clients' money but had not paid it into G Solicitors' client account, and had utilised those funds himself.

- 21.19 The Tribunal had regard to the list of payments in the case of Mr M. The Tribunal was satisfied that this had included a personal debt of the Respondent, monies paid to the Respondent's partner, monies paid to the Respondent's lender for the Respondent's purchase and monies paid to RA W & Co for whom the Respondent had previously worked and in relation to whom the Respondent appeared to have a family link.
- 21.20 The Tribunal was satisfied on the facts and on the documents that allegation 1.1 was proved.
- 21.21 In relation to allegation 1.2 the Tribunal also had regard to the Respondent's signature on the receipt and personal cheque of the Respondent as relied upon for allegation 1.1. The Tribunal was satisfied that the Respondent had attempted to redeem a client's mortgage, namely that of Mr and Mrs W, by personal cheque which had been dishonoured.
- 21.22 The Tribunal was satisfied on the facts and on the documents that allegation 1.2 was proved.
- 21.23 In relation to allegation 1.3, the Tribunal accepted that, on the facts and on the documents, the Respondent had failed to discharge the mortgage on Mr and Mrs W's property as a result of which the clients had been prejudiced.
- 21.24 In relation to Mr M, the Tribunal was satisfied that the Respondent appeared to have been involved in a mortgage fraud. It was evident that a number of payments had been made for the benefit of the Respondent and Mr M's BM mortgage had fallen into arrears which had resulted in them appointing E Solicitors to act on their behalf in recovering funds owed to them.
- 21.25 The Tribunal had further noted that the Derbyshire Building Society had commenced possession proceedings for repossession of the property having claimed that £40,000 was owed to them upon completion of the purchase by the Respondent and that the Respondent continued to rent the property out with tenants paying rent to him direct. The Tribunal accepted that the Respondent had not acted in the best interests of his clients.
- 21.26 The Tribunal was satisfied on the facts and on the documents that allegation 1.3 was proved.
- 21.27 In relation to allegation 1.4, the Tribunal accepted that the Respondent had improperly paid away funds held on behalf of the mortgagee client and that he had failed to utilise such funds towards the purchase of the property for which the funds had been intended. It was evident that completion monies had been dispersed in Mr M's case by virtue of various payments which had been made for the Respondent's benefit. The Tribunal noted that this had included CD, the Respondent's partner. The FI Report had referred to property searches which had been carried out and which had revealed that the property was still registered to the Respondent and his partner (Ms CD).



- 21.28 In the case of Mr and Mrs W, the Tribunal accepted that the Respondent had attempted to redeem the mortgage on their property with his own personal cheque and that he had taken receipt of £1936.92 in cash from the clients which had not then passed through G Solicitors' client account nor been paid towards discharge of their mortgage.
- 21.29 The Tribunal noted that there had been no challenge by the Respondent to the Rule 8 Statement or any of the exhibits including the FI Report.
- 21.30 The Tribunal was satisfied on the facts and on the documents that allegation 1.4 was proved.
- 21.31 Having regard to the allegation of dishonesty, the Tribunal was satisfied in relation to Mr and Mrs W and Mr M that the Respondent's overall conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.
- 21.32 The Respondent had been instructed to deal with Mr and Mrs W's sale and purchase and some three months after completion, Mr G had been contacted by Mrs W and advised that the clients' mortgage remained outstanding on the property they had sold.
- 21.33 The Tribunal accepted that upon Mr G having contacted the HBS, he had discovered that the Respondent had attempted to discharge Mr and Mrs W's outstanding mortgage with a personal cheque which had then been dishonoured. The Tribunal noted that nothing had been done by the Respondent to rectify that. The Respondent had requested further monies from the clients for which he had provided them with a receipt and those monies had never been recorded on the clients' ledger, nor paid into G Solicitors' client account. The Tribunal was satisfied that the Respondent had been aware that completion monies remained outstanding but he had made no attempt to discharge them and Mr G had had to do so in order to protect the clients' interests.
- 21.34 The Tribunal found that a reasonable and honest person would have considered that a professional man entrusted with clients' funds for a specific purpose who had failed to use those funds for that purpose and who had conducted himself as the Respondent had had thereby been dishonest.
- 21.35 In relation to Mr M, the Tribunal was satisfied that the Respondent had led the building society to believe that a transaction was taking place which had in fact never taken place. Funds had been received into G Solicitors which had then been dispersed to various beneficiaries and the property had remained in the ownership of the Respondent and his partner CD. The Tribunal was further satisfied that there had been a fraudulent element to the Respondent's conduct of the transaction.
- 21.36 The Tribunal was satisfied that any reasonable and honest person would have regarded the Respondent's conduct in the matter of Mr M as dishonest and that the Respondent knew that by dispersing the funds to unrelated parties without the transaction having actually taken place, he was acting dishonestly.

21.37 The Tribunal was satisfied on the facts and on the documents that allegations 2.1 and 2.2 were proved.

### **Previous Disciplinary Matters**

22. None.

### **Mitigation**

23. None.

### **Sanction**

24. The Tribunal had considered very carefully all of the evidence before it, including all of the documentation produced and relied upon by the Applicant. It noted that the Respondent had not engaged with the proceedings in any way, had not challenged any of the evidence and had not attended before the Tribunal at the substantive hearing in order to provide any explanation or mitigation for his conduct.

25. The Tribunal had found all of the allegations proved, including the allegations relating to the Respondent's dishonesty, proved to the required standard.

26. In all the circumstances, the Tribunal decided that it was appropriate for a Section 43 Order to be made against the Respondent. The Tribunal made clear that the Section 43 Order was not intended to be punitive in nature; it was a regulatory rather than a disciplinary order. A Section 43 Order did not preclude the Respondent from working for a solicitor, but in order to do so he would first have to obtain permission in advance from the Applicant.

### **Costs**

27. Mr Goodwin provided the Tribunal with a Statement of Costs and confirmed that he sought an order for costs as detailed in the Statement or such order as the Tribunal thought fit to make.

28. The Tribunal was satisfied that the proceedings had been properly brought by the Applicant and that the Statement of Costs had been served upon the Respondent. The Tribunal ordered that the Respondent do pay the total costs claimed by the Applicant in the sum of £12,929.78.

### **Statement of Full Order**

29. The Tribunal Ordered that as from 8th day of February 2012 except in accordance with Law Society permission:-

- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Liam Gerard McEleavey;
- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Liam Gerard McEleavey;
- (iii) no recognised body shall employ or remunerate the said Liam Gerard McEleavey;

- (iv) no manager or employee of a recognised body shall employ or remunerate the said Liam Gerard McEleavey in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Liam Gerard McEleavey to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Liam Gerard McEleavey to have an interest in the body;

And the Tribunal further Ordered that the said Liam Gerard McEleavey do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,929.78.

Dated this 15<sup>th</sup> day of February 2012  
On behalf of the Tribunal

Ms A Banks  
Chairman