

IN THE MATTER OF ANDREW ROBB CURRIE, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D J Leverton (in the Chair)

Mrs. E Stanley

Mr. M C Baughan

Date Of Hearing: 26th February 1998

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors by Geoffrey Williams of 36 West Bute Street, Cardiff on the 2nd August 1995 that Andrew Robb Currie of 34 Sumner Place, South Kensington, SW7 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.

At the opening of the hearing the applicant informed the Tribunal that he did not intend to proceed with the first two of the four allegations contained in his statement. The Tribunal agreed. The remaining two allegations are those set out below. The allegations were that the respondent had been guilty of conduct unbecoming a solicitor in each of the following respects, namely that he had:-

- (i) failed to disclose material information to clients;
- (ii) acted improperly in conflict of interest situations.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 26th February 1998 when Geoffrey Williams solicitor and partner in the firm of Messrs. Cartwrights Adams & Black of 36 West Bute Street, Cardiff appeared for the applicant and the respondent was represented by Patrick O'Callaghan, solicitor of O'Callaghan & Co., of 67 Upper Berkeley Street, London, W1.

The evidence before the Tribunal included the admissions of the respondent.

The Tribunal heard that, although the application had been made in 1995, the respondent had been charged with criminal offences relating to mortgage fraud. Four persons had been charged with related offences and one other together with the respondent, were solicitors. The non solicitor defendants were tried separately before the solicitor defendants. There had been some difficulty with that trial and the defendants had not been convicted. The Learned Judge had ruled that in the unusual circumstances which prevailed it would not be proper for the solicitor defendants to stand trial. The respondent and the other solicitor had not been acquitted. Despite a great deal of consideration being given to the matter and representations made to the Learned Judge the conclusion had been reached that the matter would have to remain as it stood and the solicitor defendants could not be acquitted. The Tribunal had in November 1995 agreed that the matter might stand adjourned pending the outcome of the respondent's criminal trial. The Tribunal had been notified of the somewhat unusual outcome of the criminal proceedings when the disciplinary proceedings had again been listed for hearing.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Andrew Robb Currie of c/o O'Callaghan & Co., 67 Upper Berkeley Street, London, W1H 7DH, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 26th day of February 1998 and they further ordered him to pay the costs of and incidental to the application and enquiry to be taxed by one of the Taxing Masters of the Supreme Court (to include the costs of the Investigation Accountant of the Law Society) unless agreed.

The facts are set out in paragraphs 1 to 11 hereunder.

1. The respondent, born in 1960, had been admitted as a solicitor in 1986. At the material times he practised as a solicitor in partnership under the style of Terence St. J. Millett at 34 Sumner Place, South Kensington, SW7 3NT.
2. Upon notice duly given to the respondent and his erstwhile partners an inspection of their books of account was carried out by the Investigation Accountant of the Law Society. The inspection began on the 1st August 1994 and the Investigation Accountant's report dated the 20th October 1994 was before the Tribunal.
3. The Investigation Accountant's report revealed that the respondent had acted for a number of clients who purchased properties from BD Ltd, WC Ltd and H Ltd. Those companies were related in that they had at least one director in common. The respondent also acted for the lending institution in connection with mortgage advances to those clients. In an appendix to his report the Investigation Accountant set out details of eleven conveyancing transactions in which it appeared that the respondent's behaviour had been less than proper. All of the relevant client files, with the exception

of one, were at the time of the inspection in the possession of the Metropolitan Police Fraud Squad.

4. The respondent had acted in each of the loan cases for a purchaser from one of the three companies referred to above who purchased with the assistance of a mortgage advance from a lending institution. Separate solicitors acted for the vendor company. In each case the vendor company agreed the value of an allowance to be made to the purchaser just before completion. When the Investigation Accountant queried the position the respondent told him that the allowances were incentives given by the vendor to first time buyers to cover a five per cent deposit, legal fees, Stamp Duty, Land Registry fees and other minor disbursements. The contracts for sale however, in connection with four of the transactions contained the following provision:-

"The seller will grant to the buyer an allowance on completion as contribution to the first twelve months' mortgage payments."

In reality the price paid for the property was calculated by reference to the net mortgage advance from which there was deducted a sum in respect of the purchasers' legal fees, disbursements and any additional incentive granted.

5. The respondent admitted that he did not inform his institutional mortgagee clients of those allowances. He had not informed his mortgagee clients of the nature of the transactions. Five of the eleven transactions represented contemporaneous "back to back" transactions with the vendors purchasing from mortgagees in possession.
6. The respondent agreed that he had not met with all of the purchasers. He also agreed that there was no written correspondence with the vendors' solicitors requesting details of their clients' purchases or seeking explanation for substantial price increases over that in the contemporaneous or prior purchase. The respondent agreed that it was unusual that none of the client files contained any written correspondence from the purchasing clients.
7. It appeared that the respondent had initially been approached by a firm of solicitors acting for the vendor companies when he was asked to undertake the conveyancing on behalf of purchasers at a standard conveyancing fee of £350 plus VAT per transaction. He had agreed.
8. The Tribunal does not intend to set out details of all of the conveyancing transactions referred to in the appendix to the report of the Law Society's Investigation Accountant. It sets out below details of one transaction which is by and large representative of the overall position.
9. The property concerned was at Embleton Road, London, SE13. The purchaser for whom the respondent acted was Mr W-O who purchased from BD Ltd for whom Messrs. Hamlin Slowe acted. BD Ltd purchased and sold the property to Mr W-O in a "back to back" transaction. The respondent made no enquiry about the original purchase price and did not give notice of that fact to the institutional lender concerned, Leeds Permanent Building Society. In fact BD Ltd had purchased the property for £45,000. The sale price to Mr W-O was £72,000. Both the purchase by BD Ltd and

the purchase by Mr W-O were completed on the 13th April 1993. The net advance from Leeds Permanent Building Society was £67,364. The total allowance made to Mr W-O was £2,400. In effect that reduced the purchase price to £69,600, the sum paid by the respondent to Messrs. Hamlin Slowe acting for BD Ltd.

10. In the matter of the Embleton Road property, Messrs. Hamlin Slowe acting for BD Ltd on the 6th April 1993 had written to the respondent stating, inter alia, "in accordance with our client's instructions the contract provides for a five percent deposit (which we understand will be paid to our client direct) and the contract provides for an allowance to be made to your client upon completion in respect of the purchaser's legal fees and stamp duty. We trust that you will ensure that these arrangements are disclosed to your client's mortgagees as appropriate." The respondent did not, despite that clear reminder, disclose the position to Leeds Permanent Building Society. The figures contained in the agreement (exchange of contracts and completion taking place simultaneously) were the purchase price of £72,000 and showed the deduction of a deposit of £3,600 leaving a balance of £68,400. The sum paid to Messrs. Hamlin Slowe was not the same as the balance of the purchase price shown in the contract. The report on title to Leeds Permanent Building Society prepared by the respondent showed the purchase price as £72,000. The respondent's firm's bill raised in connection with the conveyancing described the purchase price of the property as £69,600.
11. In some of the transactions, details of which were before the Tribunal, the effect of the allowance given to the purchasing client of the respondent was that the institutional lender had made an advance which exceeded one hundred percent of the stated purchase price. In some of the cases the lending institutions were very specific that any allowances to the purchase price or the existence of any sub sale should be notified to them. In the case of the Leeds Permanent Building Society the instructions were more general stating "by instructing you to act on our behalf we are relying upon your professional skill and expect you to advise us on any matters which might affect either the security or the decision to lend." The instructions to the solicitor often required the solicitor to ensure the purchase price was that stated in the offer of advance.

The Submissions of the Applicant

12. The allegations before the Tribunal arose from conveyancing transactions of which the respondent had conduct on behalf of purchasers. The failure to disclose material information to clients was in respect of his failure to disclose material information to institutional lending clients. The conflict of interest arose from the fact that the respondent acted for purchasers to whom allowances and other benefits had been granted which were matters in respect of which lending institutions were entitled to be informed. The respondent had not done so and in fact had acted both for borrower and lender when he was not in a position to do his best for both clients.
13. The eleven transactions, details of which had been set out in the appendix to the Investigation Accountant's report, had taken place between September 1992 and April 1993. All of them bore the hallmarks of mortgage fraud.

14. The Law Society had issued a "green card" warning on property fraud in March 1991. Its intention was to alert solicitors to the possibility of the existence of mortgage fraud and began by asking the questions "could you be involved or implicated?" and "could you be unwittingly assisting in a fraud?". One of the areas drawn to the attention of solicitors was the misrepresentation of the purchase price. Solicitors were advised to ensure that the true cash price actually to be paid was stated as the consideration both in the contract and transfer and was identical to the price shown in the mortgage instructions and in the report on title to the lender. Another factor which would alert a solicitor was when a deposit or any part of a purchase price had been paid direct to the seller or a deposit was the difference between the mortgage advance and the price paid. Adjustments to the purchase price particularly in high percentage mortgage cases or allowances off the purchase price, for example for works to be carried out, were matters to be checked carefully, as was the resale of the property at a substantial profit.
15. The respondent acted for purchasers who were buying from companies which were related to each other by at least one common factor whilst acting also for institutional clients lending to those purchasers.
16. It was understood that an assertion of the respondent was that the allowance granted by the vendor to the purchasing client was not calculated until the last moment. He was to say that he was unable to notify the lending institution because the figures were agreed at the last minute. The respondent did not in some cases comply with specific instructions to confirm that the actual purchase price was that anticipated by the lending institution. In any event a solicitor had a duty to notify his lending institutional client of such a material fact.
17. The applicant did not make an allegation that the respondent had been involved in mortgage fraud. The facts placed before the Tribunal, which had been admitted, represented very serious examples of conduct unbecoming a solicitor. The applicant put it at the highest end of the scale of seriousness. The transactions before the Tribunal had taken place over a period of seven months in circumstances which were highly suspicious. The respondent himself had agreed that he had been aware of the Law Society's guidance as well as the fact that in a number of cases he had received specific instructions from lending institutions with which he did not comply. The pattern which emerged was that in a number of conveyancing transactions the same vendors had been involved and the respondent had not told lending institutional clients facts which they in fact should have had. The lending clients were left in the dark. For instance the fact that certain transactions were to proceed on a "back to back" basis was highly relevant. In one particular case the vendor's solicitors reminded the respondent that he should make the position plain to his mortgagee clients. He did not do so.

The Submissions of the Respondent

18. The respondent was thirty eight years old. He had gained a degree in law and philosophy and had qualified as a solicitor. He served his articles with a firm with whom he remained as an assistant solicitor, subsequently being admitted as a partner. He dealt with conveyancing matters. The respondent had resigned from the firm at

the end of April 1995 to save the firm embarrassment from the then pending criminal proceedings and the disciplinary proceedings. The delay in the disciplinary proceedings, which had already been explained to the Tribunal, had been a difficult matter for the respondent. The respondent had acted for many first time buyers, indeed he had not had to deal with a stamp duty payment for a very long time because the value of the transactions with which he dealt fell below the stamp duty threshold.

19. He had been approached by a partner of Messrs. Berensons. He had been asked to act for purchasers from company clients of that firm who intended to set up an incentive scheme. A conveyancing flat fee of £350 per transaction was negotiated. The purchasers were to be introduced by the vendor's solicitors. One particular solicitor at Messrs. Berensons dealt with the sale of the properties and the position continued when he left Messrs. Berensons and began to practise with Messrs. Hamlin Slowe. He subsequently had given up conveyancing work which had been passed to other solicitors in the firm. The respondent had frequently been called into that firm to administer affidavits and indeed he had even introduced to the directors of the vendor companies.
20. It was right that it was often very difficult to calculate the precise amount of the allowance until the last moment as a number of lending institutions were in the habit of making small deductions from the mortgage advance and it was possible to "firm up" the figures only at the last minute.
21. The respondent accepted that it was right that he should have notified lenders of the matters of concern to them. However at the same time the Abbey National had included in its standard instructions a provision that builders' incentives of not more than five per cent of the purchase price need not be reported.
22. The respondent continued to practise within an environment which he knew. He had never come up against a fraudulent transaction although with hindsight he accepted that it was hard to understand why he had not become concerned. It had not occurred to him that the transactions should be questioned or made the subject of deeper investigation even though he was aware of the provisions of the Law Society's "mortgage fraud green card".
23. The respondent also pointed out that in one case where the vendor was buying and selling on immediately to his client purchaser within a short space of time, a copy of the lending institution's survey report had been passed to the respondent which indicated that substantial works were to be carried out. The respondent understood that the vendor company had access to carry out work before the completion of its own purchase. The respondent's mistake had been that in his judgment that represented an entirely normal situation. He took that view and had not given the institutional lending client the opportunity to make up its own mind.
24. In support of his judgment the respondent pointed out that there had been occasions where lenders specified in instructions that they were to be informed of back to back transactions and when so informed they ignored the information. In another case the respondent referred a matter of concern to a lending institution who in turn referred it to its own in house solicitor. A considerable period of time elapsed before the matter

was considered and the respondent suffered complaints from his client that the transaction was being held up. Eventually when pressed the lending institution told the respondent that it was relying upon his advice and he was to decide whether or not they were adversely affected. In another words the matter ultimately was left to his judgment.

25. When the respondent was first invited to accept purchasers from the vendor companies as clients, the initial transaction took place satisfactorily and the others followed somewhat automatically. Because of the satisfactory history of the earlier matters the respondent had cut corners because of the low fixed fee which had been agreed. It was accepted that documentation had been prepared by the respondent in a slovenly way. For instance financial statements prepared by the respondent did not reflect reality. Where his firm's computerised accounts system provided for alternatives to be entered, those alternatives were simply ignored. The template provided by the firm's computerised system simply had not made provision for an allowance to be made by a vendor to a purchaser upon completion and in order to include the figure the respondent had permitted the allowance to be described as "a deposit".
26. The respondent had been very embarrassed by all that had happened. He had resigned from his firm in 1995 and had not sought to renew his Practising Certificate. He had found it extremely difficult to obtain employment while the disciplinary proceedings remained pending. Because he had not enjoyed any income he had incurred considerable debt. He had been able to obtain some work assisting in a firm of licensed Conveyancers.
27. Although at the date of the hearing the respondent was thirty eight years of age, five years previously when the matters in question had taken place he was a relatively young and inexperienced solicitor.
27. The applicant had not put the matter to the Tribunal as one involving dishonesty. It was a matter for considerable regret that the respondent had not been acquitted of the criminal charges made against him but that was, as had been explained earlier, for technical reasons and although unsatisfactory the situation was not capable of remedy.

The Findings of the Tribunal

The Tribunal FOUND the allegations to have been substantiated, indeed they were not contested.

Reasons

The matter was not before the Tribunal as one of mortgage fraud but as a serious failure to recognise situations where conflicts of interest arose and where the respondent had failed to give material information to lending institutional clients. The respondent accepted that he was aware of the Law Society's advice to solicitors to avoid implication in mortgage fraud nevertheless he had unquestioningly accepted the eleven transactions details of which had been placed before the Tribunal all of which were out of the ordinary in a number of respects. He appeared to have adopted a "sausage machine" attitude to these transactions and allowed himself to be encouraged

in that by the fact that his purchaser clients had been introduced by another firm of solicitors and that a relatively low fixed fee had been negotiated for acting in connection with the purchase and for lending institutions. The respondent's paperwork had on his own admission been slovenly. The respondent had quite simply failed in his fundamental duty to place the interest of his client above any other considerations. The Tribunal consider that the respondent's failures were serious and served seriously to damage the good reputation of the solicitors' profession. They concluded that it was appropriate to order that he be suspended from practice for an indefinite period of time and further ordered him to pay the costs of and incidental to the application and enquiry to be taxed if not agreed.

DATED this 3rd day of April 1998

on behalf of the Tribunal



D J Leverton
Chairman

Findings filed with the
Law Society on the 15th
day of April 1998