

IN THE MATTER OF DAVID ADAMS, solicitors clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D J Leverton (in the Chair)  
Mr. A G Ground  
Mr. K J Griffin

Date Of Hearing: 7th October 1997

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## FINDINGS

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

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An application was duly made on behalf of the Law Society by Gerald Malcolm Lynch, solicitor of 24/28 Baxter Avenue, Southend on Sea, Essex on the 4th April 1997 that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, David Adams of Tyldesley, Manchester a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal should think right.

The allegation was that the respondent, having been a clerk to a solicitor, but not being a solicitor, had in the opinion of the Law Society occasioned or been a party to with or without the connivance of the solicitor to whom he was or had been a clerk, an act or default in relation to that solicitor's practice which involved conduct of such a nature that in the opinion of the Law Society it would be undesirable for him to be employed by a solicitor in connection with his or her practice.

The application was heard at the Court Room, No.60 Carey Street, London, WC2 on the 7th October 1997 when Gerald Malcolm Lynch solicitor and partner in the firm of Messrs. Drysdales of Cumberland House, 24/28, Baxter Avenue, Southend on Sea, appeared for the applicant and the respondent was represented by Mr. Del Fabbro of Counsel instructed by Messrs. Panone & Partners of Solicitors of 123 Deansgate, Manchester.

The evidence before the Tribunal included the oral evidence of the respondent and exhibit "DA1". The respondent resisted the application.

At the conclusion of the hearing the Tribunal ORDERED that as from the 7th October 1997 no solicitor should, except in accordance with permission writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor David Adams of , Tyldesley, Manchester, a person who was or had been a clerk to a solicitor and the Tribunal further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £535.00 inclusive (being 50% of the agreed fixed costs).

The facts are set out in paragraphs 1 to 4 hereafter.

1. The respondent who was not a solicitor was employed as a conveyancing clerk by Messrs Widdows Mason solicitors who had several offices in Greater Manchester. At the material time the respondent worked at the firm's Earlstown office. He had been employed by the firm for eleven years until he resigned at the end of October 1995.
2. The respondent was identified as the clerk involved in conveyancing transactions for numerous building societies in connection with their advances to mortgagor clients who were also represented by the firm. The respondent had conduct of those matters between 1991 and 1995 and conducted in excess of fifty transactions in a manner which the Investigation Accountant of the Law Society considered on the face of it constituted a possible breach of Practice Rule 1 of the Solicitors Practice Rules in that the best interests of the clients were not observed and also where a possible conflict of interest arose in acting for both the mortgagor client and the lending building society in the particular circumstances which had arisen.
3. All of the conveyancing matters involved a Mr L. The matters which caused particular concern to the Investigation Accountant were those where building society clients had not been informed of a deposit paid direct nor of allowances given on completion nor of sub-sales taking place immediately following purchase.
4. The Investigation Accountant's Report (dated the 30th November 1995) was before the Tribunal. The report recorded three matters causing concern by way of example.
5. In one matter reduction of the purchase price to less than the mortgage advance and a sub sale were not reported to the building society by the respondent. In the second matter involving Leeds Building Society, the "Notes for the Guidance of Panel Solicitors" required that the Society be told of any change in relevant details, for example purchase price or repayment of money. There was a discrepancy between the sale proceeds payable to the company here involved and the figure mentioned in the

contract. The respondent did not advise the building society client of the difference in figures. In a third case the building society required information on any sub sale. Although a sub sale existed, with transactions being completed on successive days, the building society was not advised of the position.

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

6. The respondent in conducting the transactions in respect of which complaint arose did not observe the requirements imposed by the building societies and in those circumstances did not act in the best interests of his building society clients which amounted to a breach of Rule 1 of the Solicitors Practice Rules. It was also questionable whether the respondent should have acted for both the mortgagor and the building society in the light of an apparent conflict of interest between that of the mortgagor client and the need to keep the building society client fully advised of the position.
7. At the material time, guidance had been issued by the Law Society in relation to mortgage fraud, and was available to the respondent who nonetheless was not alerted to potential problems.
8. Certain representations had been made in relation to the respondent's employers, Messrs. Widdows Mason, which were summarised as follows:-
  - (a) there had been no problem, with any cases other than those involving Mr L.
  - (b) the respondent had acted out of naivety rather than with any improper intent, There was no dishonesty on the part of the respondent. The respondent was a trusted and valued employee over a long period. The respondent had not responded to the Investigation Accountant's report as he felt that it was a record of fact as to what had happened and he did not seek to deny what had occurred. He had apologised to the firm for the errors and problems that he had caused.
9. It was not necessary in a section 43 Application to demonstrate dishonesty. Any undesirable conduct was sufficient. The respondent's naivety was surprising in the light of his experience. It had been demonstrated on more than one occasion that naivety short of dishonesty did not excuse breaches of the appropriate rules.
10. On the 7th August 1996 the Conduct Committee of the Adjudication and Appeals Committee of the Solicitors Complaints Bureau met to consider this matter and resolved that application for an Order under section 43 of the Solicitors Act 1974 be made.
11. In the applicant's submission, the activity of the respondent in connection with Mr L's instructions clearly indicted a serious breach of professional duty to the building societies concerned and it was appropriate in those circumstances that a section 43 Order be made.

### **The Submissions of the Respondent**

12. The respondent was employed by Messrs. Widdows Mason, solicitors, as an unqualified legal assistant for eleven years between 1984 and 1995. For the last six or seven years he was based at their Earlstown office, where he worked alone, with infrequent visits from a partner. All his practical legal training was received from the partners and other staff at Widdows Mason, primarily in the years before he was transferred to Earlstown. The respondent received little formal training, and in the main, "picked things up as he went along". He received no legal journals and no on-going training. He had in the early years taken two "ILEX" examinations - he had not gone on to achieve a formal qualification.
13. The respondent carried out routine conveyancing work in the manner in which he had been taught by his employers. (He also undertook some work in other fields). If he had a problem or a query, he would raise it with a partner at another office. For a number of years, the Earlstown office was open on a Saturday, between 9:00 am and 12 midday, and on those days a qualified member of staff would attend. Although the office was open because it operated a building society agency, that person had the opportunity to oversee the respondent's files, and consider incoming post. The Agency was closed in January 1995. In addition, the Earlstown office was manned when the respondent was away on holiday - he always took his full holiday entitlement. The respondent was isolated at the Earlstown office - he attended only about three or four meetings at the main Leigh office during the six years he was based at Earlstown. During this period the respondent also attended at the Lowton offices every Tuesday and Thursday afternoon, in the absence of the partner. When the partner there went on his annual leave, then the respondent would attend both offices every day to keep things running.
14. In the main, the conveyancing work handled by the respondent was of a routine nature and caused no problems. Where there was a problem, he had no hesitation in asking for assistance.
15. All the matters which had been referred to the Tribunal involved Mr L who the respondent had got to know professionally when that gentleman worked as a Financial Adviser for a firm of Estate Agents. Mr L approached the respondent and told him that he proposed to buy and sell properties by way of "back to back" transactions. As the respondent had never come across that type of transaction before, he approached a partner to "run it by him". He was advised that there were no objections to such transactions, provided that contracts for both properties were exchanged on the same date.
16. When the question of allowances came up, the respondent also cleared this with a partner before proceeding.
17. Mr L was the only property developer whom the respondent represented. He had had no previous experience of representing such clients. The partners were all fully aware that he acted for Mr L over the years as Mr L attended as a guest at periodic leisure activities organised by the firm. Mr L's property company was set up by a partner at Widdows Mason.

18. Unfortunately the respondent did not keep attendance notes of his conversations with partners. However, in about 1993/1994 a complaint was made by a Mr C who had been involved in two back to back transactions with Mr L. The respondent handed the letter of complaint to a partner. Although he was not specifically questioned about the matter by any of the partners, both files which had been archived, had been conducted in the same way as all the other transactions of Mr L. When the respondent later made enquiries about the outcome of the complaint, he was advised that there had been a correspondence, but that the matter had been satisfactorily concluded. No one ever raised with him a potential problem in the way he had conducted the cases or alerted him to the Law Society's warnings, even though the complaint was received after the Law Society guidelines on property fraud had been published. The respondent did not receive copies of these guidelines.
19. Following the complaint, and its satisfactory conclusion, the respondent continued to act for Mr L in the same manner as before.
20. All the accounts and computer print-outs relating to Mr L's transactions would have made it clear that these were back to back transactions. All accounts were independently checked by the accounts department at the firm's main office at Leigh. There was no suggestion that any discrepancy was ever found. Certainly the respondent made no personal gain.
21. The respondent was a respected and trusted member of staff at Widdows Mason. He had proved his capabilities over many years of employment. In part, the trust placed in him was based on the fact that Widdows Mason had been responsible for his training.
22. As a result of the investigation by the Solicitors Complaints Bureau, all the partners at Widdows Mason were found to have failed properly to supervise the respondent.
23. There had been no suggestion at any stage that the respondent had not acted totally honestly. The papers in the cases and the accounts fully and accurately reflected what occurred. He received no payments other than his normal salary from Widdows Mason.
24. The work the respondent carried out was done according to the training he received from Widdows Mason, and with the knowledge and authorisation of the partners. He specifically obtained authorisation to deal with back to back transactions, and allowances, and further, in any investigation of the two Mr C cases carried out by the partners, it was clear from the papers how those cases had been conducted by him. No problem was perceived, and he therefore continued to represent Mr L on the same basis as before.
25. The Tribunal were invited to take note of the comments made by Keith Freer, a partner at Widdows Mason, in his letter of the 17th January 1996. The letter was a response to the Investigating Accountant's Report. He stated "the firm takes the view that Mr Adams had acted naively in relation to these transactions but not dishonestly. In the circumstances we feel it would be inappropriate for an application to be made to the

Solicitors Disciplinary Tribunal pursuant to S.43(1)(b)". Those sentiments were further endorsed in a letter addressed by Mr Freer to the applicant.

26. There had been no criminal investigation into the activities of the respondent or of Mr L. No building society client had suffered loss.
27. As an unqualified conveyancing clerk, the respondent had an enormous amount of responsibility thrust upon him which, in the main, he carried competently and correctly. It was clear that there was a failure by the partnership properly to supervise the respondent, and that failure had been dealt with by the Solicitors Complaints Bureau.
28. Since leaving his employment with Widdows Mason, the respondent had been unable to work because of the effect these problems had upon him. He had gained some work later outside the solicitors' profession, but the income delivered therefrom was small. He had encountered financial difficulties. He hoped he might gain employment within the solicitors' profession. He considered that he would find it very difficult indeed to gain such employment if he was made subject to the Order sought.
29. The Tribunal was invited to give due weight to the respondent's exemplary record, complete honesty in respect of all transactions, his long record of exemplary employment within a solicitors firm, and refrain from making an order against him under S.43(b) Solicitors Act 1974.

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

The Tribunal FOUND the allegation to have been substantiated. The Tribunal was dismayed to learn that a clerk of many years experience believed it was acceptable to ignore the clear instructions of clients, in this case building societies. They accept that he was not dishonest but displayed an exceptional degree of naivety. It was because of those two aspects that the Tribunal considered it appropriate to make an order enabling the Law Society to control the future employment of the respondent within the solicitors' profession. The Tribunal recognise that the respondent's employers had not exercised an appropriate degree of supervision and the respondent and they could not entirely escape criticism for what had happened. In view of this the Tribunal ordered that the respondent should pay only one half of the applicant's fixed costs, but it was right that the respondent's future employment within the solicitors' profession should be controlled.

DATED this 19th day of November 1997

on behalf of the Tribunal



D J Leverton  
Chairman

*Findings filed with the  
Law Society on the 21<sup>st</sup>  
day of November 1997*