

IN THE MATTER OF DIPAKKUMAR GOPALDAS LAKHANI, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.C. Chesterton (in the chair)
Ms. T. Cullen
Mr. G. Fisher

Date of Hearing: 28th November 2002

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 ("OSS") by Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green, Solicitor Advocates of 2A Churchill Way, Cardiff, CF1 4DW on 18th April 2000 that Dipakkumar Gopaldas Lakhani solicitor of Stanmore, Middlesex, might be required to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thought right.

The allegations were that the Respondent had been guilty of conduct unbecoming a solicitor in each of the following respects namely:-

- (a) That he had failed to maintain properly written books of account contrary to Rule 11 Solicitors Accounts Rules 1991.
- (b) That he had permitted monies to be drawn from client account otherwise than in accordance with Rule 7 Solicitors Accounts Rules 1991 contrary to Rule 8 of the said Rules.

- (c) Withdrawn with the consent of the Tribunal.
- (d) Withdrawn with the consent of the Tribunal.
- (e) That he had failed to reply either promptly or at all to correspondence from clients, former clients and solicitors on behalf of such clients.
- (f) That he had failed to reply to correspondence from the Office for the Supervision of Solicitors (the "OSS") (formerly the Solicitors Complaints Bureau) either promptly substantively or at all.
- (g) Withdrawn with the consent of the Tribunal.
- (h) That he had given false and misleading information to a client in a letter.
- (i) That he had further failed to disclose material facts to a client.
- (j) That he had submitted Reports on Title which were false and misleading.
- (k) That he had created false correspondence and attendance notes.
- (l) That in the course of four conveyancing transactions he had been in breach of Practice Rule 1 (a), (c), (d) and (e) Solicitors' Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 28th November 2002 when Geoffrey Williams, solicitor and partner in the firm of Geoffrey Williams & Christopher Green, Solicitor Advocates of 2A Churchill Way, Cardiff, CF1 4DW appeared as the Applicant and Gavin Hamilton of Counsel represented the Respondent.

The evidence before the Tribunal included certain admissions made by the Respondent.

The Respondent admitted allegation (h). He admitted allegation (i) (in so far as the subject matter in support of that allegation related to a matter concerning TSB). The Respondent admitted allegations (j), (k) and (l). The parties agreed that those admissions related to the most serious allegations made against the Respondent and it was accepted that the Applicant put those allegations on the basis of the Respondent's dishonesty. The facts set out by Mr Williams in his statement were accepted by the Respondent.

With regard to the rest of the allegations, the situation was as follows:-

Allegation (a). The Respondent admitted this allegation as a Rule breach on the basis of his strict liability and on the basis that it was his partner who was culpable.

Allegation (b) was also admitted on the same basis as (a). The Respondent had not been at fault: his partner had been dishonest.

Allegations not proceeded with

The Applicant submitted to the Tribunal that a finding that allegations (e) and (f) had been substantiated would have no impact on the nature of the sanction to be imposed upon the Respondent. The Applicant asked that those allegations might be left to lie on the file on the basis that they were not to be restored without the leave of the Tribunal. The Respondent agreed to this course of action and the Tribunal consented thereto.

At the conclusion of the hearing the Tribunal ordered that the Respondent Dipakkumar Gopaldas Lakhani of Stanmore, Middlesex, solicitor be struck off the Roll of Solicitors and they further ordered that he do pay the costs of and incidental to the application and enquiry (to include the costs of the Investigation Accountant of The Law Society) to be subject to a detailed assessment if not agreed between the parties.

The facts are set out in paragraphs 1 to 23 hereunder: -

1. The Respondent (born in 1961) was admitted as a solicitor in 1986.
2. At all material times the Respondent carried on in practice as a solicitor as follows:-
 - (a) Between about 1st January 1989 and about 25th March 1996 in partnership under the styles of Richmonds at Premier House, 45 Ealing Road, Wembley, Middlesex, HA0 4BA and Richmond & Partners at Maple House, 47 Ealing Road, Wembley, Middlesex, HA0 4BA.
 - (b) From about 25th March 1996 until 26th March 1999 in partnership under the style of Francis & Francis at 775 Harrow Road, Wembley, Middlesex, HA0 2LW.
3. Upon notice duly given, an inspection of the books of account of Messrs Richmond & Partners was carried out by the Investigation Accountant of The Law Society. A copy of the Report of the Investigation Accountant dated 18th January 1995 was before the Tribunal. The Investigation Accountant's Report revealed that the Respondent had practised in partnership with Mr Richmond from 1st March 1993 and Mr Kurtha became a partner on 1st April 1994. They conducted a general practice, assisted by an unadmitted staff of two. They were not controlled trustees and the firm was regulated by The Law Society in the conduct of Investment Business.
4. On 13th December 1994 Mr Richmond resigned as a partner in the firm following the discovery that he had misappropriated clients' funds. He admitted this; the police had not been informed.
5. One set of books had been maintained in respect of both offices and it was not in compliance with the Solicitors' Accounts Rules 1991. It contained numerous false entries which Mr Richmond admitted he had instigated in order to conceal his misuse of clients' funds for his own personal benefit.
6. In view of the dishonest treatment of clients' money, the Investigation Accountant did not consider it practicable to attempt to calculate the partners' total liabilities to

clients but he was able to ascertain that a minimum shortage of £119,715.63 existed on client bank account as at 30th November 1994. Mr Richmond admitted that this was as a result of his improper use of clients' money for his own benefit.

7. The minimum cash shortage of £119,715.63 was partly rectified on 6th December 1994 by the receipt of £13,000 from Mr Richmond and £15,675.22 from the Respondent, said to have been from their personal resources.
8. The partners in the firm and Mr Richmond said that they were then unable to rectify the remaining minimum shortage of £91,040.41. The shortage was replaced in December 1995.
9. The Report went on to summarise a conveyancing transaction of which the Respondent had conduct in which certain questions were raised.
10. Upon further notice duly given a further inspection of the books of account of Messrs Richmond & Partners was carried out by the Monitoring & Investigation Unit (MIU) of the OSS. The Report upon the inspection dated 31st January 1996 was before the Tribunal. The Report confirmed the replacement of the cash shortage referred to in the earlier Report. The 1996 Report went on to express concerns about the nature of certain conveyancing transactions of which the Respondent had conduct.
11. Brief details of the conveyancing matters which caused concern to the Investigation Accountant are contained in paragraphs 16 to 19 (inclusive) hereunder.
12. The Respondent acted for Mr B in a property transaction which became abortive. Mr B then instructed the Respondent to issue civil proceedings on his behalf to recover his losses.
13. The Respondent wrote a letter to Mr B dated 6th January 1997 in the following terms:-

“... I refer to the above matter and your claim against him arising out of his failure to complete the lease of the above premises with you and prior to which you had carried out a substantial amount of work to the premises.

I confirm that proceedings were issued against him for the sum of £2500 in respect of materials and labour. The proceedings were served upon him at the above shop premises and he has so far failed to reply to the court summons.

I understand that he has let the shop to another person and I am not sure whether the court papers have come to his attention.

I am considering asking the court to enter judgment against him but there may be difficulty enforcing it as the only address which I have is the shop address.

I trust that this letter brings you up to date and I apologise for the delay in writing to you recently although I note that notification of my change of address was sent to you.”

The contents of this letter were untrue. No proceedings had been issued.

14. There were four conveyancing transactions in which the Respondent acted for TSB Bank plc ("TSB") in its capacity as mortgagee. He also acted for the borrowers who were purchasing properties.
15. In each of the four cases civil proceedings had been issued by TSB against the Respondent. He sought indemnity from SIF. Initially SIF reserved its position. A conference was held with Mr David Hodge of Queen's Counsel. The Respondent attended and was legally represented. Subsequent to the conference SIF declined to indemnify the Respondent on the ground that any loss arising out of each claim was attributable to dishonest or fraudulent acts or omissions on the part of the Respondent.

The purchase of 14 EQ Court

16. The initial vendor was Skipton Building Society as mortgagee in possession. The Society sold to Mr VK for £130,000. Completion was effected in August 1993. On the same day VK represented by Kumar & Co., solicitors, sold the property to a Mr S for £200,000. The Respondent acted for Mr S and TSB, which advanced £165,000 to Mr S by way of mortgage which was noteworthy because it was more than Mr VK was paying to acquire the property.

The purchase of 87 CG Gardens

17. Messrs G were selling this property to a Miss B for £135,000. Some three months earlier Messrs G had purchased the property for £92,500. Completion of Miss B's purchase was effected in July 1994. On the same day Miss B sold the property to Mr S for £151,000. Mr S was represented by Kumar & Co. Again on the same day Mr S sold to Mr VK for £230,000. The Respondent acted for Mr VK and TSB, which advanced £195,000 to Mr VK by way of mortgage. The advance was more than Mr S was paying to acquire the property.

The purchase of Flat 18, H Court

18. The initial vendor was selling the leasehold interest in the flat to Mr N for £42,000. On the same day Mr N was selling to Mr and Mrs P for £70,000. Exchange of contracts and completion took place on 31st October 1994. The Respondent acted for Mr and Mrs P and for TSB, which was advancing a mortgage in excess of the price being paid by Mr N.

The purchase of Flat 10, H Court

19. The initial vendor was selling the leasehold interest in the flat to Mr N for £42,000. On the same day Mr N was selling to Mr and Mrs Ps for £70,000. In this and the above transaction Mr N was represented by Messrs Singh & Garland-Wells, solicitors. Completion was effected in October 1994. The Respondent acted for Mr and Mrs Ps and TSB, which was advancing £66,500 by way of mortgage, a sum in excess of the price being paid by Mr N.

20. In each of the four cases the Respondent's file contained copies of letters to TSB purporting to notify what he regarded as the material facts ("letters of disclosure"). In each case TSB had confirmed that no such letters were received. In each case the Respondent submitted his Report on Title to TSB a very short time after the letter of disclosure had purportedly been sent to TSB. He did not refer to the material facts either in the Report on Title or in its covering letter.
21. The Respondent accepted that the copy of the disclosure letter on the Respondent's file was not a copy of the letter written at or about its purported date or at all. No original of such disclosure letter was ever sent to TSB.
22. The Tribunal had before it copies of what purported to be letters of disclosure. By way of example, the Tribunal here sets an out extract from the letter of disclosure relating to the property 4 EQ Court:-

“Further to our earlier telephone conversation, we write to confirm that this transaction is on the basis that the vendor is purchasing and selling simultaneously to the borrower and the vendor will therefore not be a registered proprietor upon completion, although we will of course ensure that all the relevant documents will be made available following completion to enable the vendor to be registered in the matter.

We do not know the price being paid by the vendor and we have not been able to ascertain the same, although having spoken to Mr S we understand that he is happy with the position and he therefore wishes to proceed.”

23. With regard to 18 H Court, an attendance note had been placed on the file in the Respondent's handwriting couched in the following terms:-

“With client on telephone. Going through deeds and documents with him, contract terms, lease terms, proposed dates for exchange and completion. Advised him that the transaction was by way of sub-sale. He said he knew about that and was happy with the price. He had carried out comparables with similar properties via various estate agents. I said I was concerned whether the bank was aware. I was obliged to notify them. He said branch where application submitted was aware and he had no objection to me writing to Head Office to advise them of sub-sale”.

The Submissions of the Applicant

24. With regard to the allegations relating to breaches of the Solicitors' Accounts Rules, it was the Respondent's position that primary culpability for the improper payments out of client account lay with Mr Richmond. The Respondent conceded that he was, however, his equity partner and that he had responsibility in conduct for the firm's compliance with the Solicitors' Accounts Rules 1991. A large minimum cash shortage on client account had been established. The Respondent and Mr Richmond replaced £28,675.22 three days before the Investigation Accountant's inspection began, but the balance of £91,040.41 remained. While efforts were made to seek reimbursement from the Solicitors Indemnity Fund Limited, the Respondent

continued to utilise the deficient client account in the day-to-day running of the practice. The shortage was not replaced until December 1995.

25. The Respondent had written an untrue and misleading letter to his former client, Mr B. That was a serious matter involving dishonesty on the part of the Respondent.
26. With regard to the four conveyancing transactions in which TSB was involved, the Respondent had a clear duty to communicate all material facts to his mortgagee client regardless of his instructions or assumptions. The issue of The Law Society's "Green Card" warning to the solicitors' profession about the possibility and/or the signs of mortgage fraud pre-dated the transactions in question.
27. The reality was that when TSB approached the Respondent seeking compensation for losses which it had incurred as a result of its participation in these transactions the Respondent placed "letters of disclosure" on his files and in one case made a false attendance note. The Respondent had asserted that these disclosure letters truthfully represented the position, namely that he had made disclosure to TSB, until shortly before the hearing when he admitted that he had dishonestly manufactured the letters at a date later than that appearing on the face of them in an endeavour to protect his own position. The Law Society had been put to a great deal of time and trouble employing a forensic expert who was able to ascertain that the false correspondence and attendance notes had been created subsequent to the dates which appeared on their face.
28. Even if the letters had been sent to TSB, which of course the Respondent had come to admit was not the case, the Respondent still had a duty again to refer to the material facts in his written Reports on Title. He did not do so. Further, even if the letters of disclosure had been sent to TSB, the Respondent should also have advised his lending institution client of the following facts:
 - (a) In the course of the purchase of 87 CG Gardens that Mr S was selling to Mr BK in a similar transaction to the recent purchase of 14 EQ Court in which Mr BK sold to Mr S and that the Respondent had acted in the earlier transaction;
 - (b) That in those two transactions the same solicitors acted for the vendor to the Respondent's purchaser clients, Mr BK and Mr S respectively;
 - (c) That in the two transactions in relation to the flats at H Court, the same firm of solicitors acted for the vendors to the Respondent's purchaser clients; and
 - (d) That in both of the transactions involving H Court the sub-seller to the Respondent's purchaser client was the same person, Mr N.
29. In each of the conveyancing transactions the Respondent failed to disclose material facts to TSB, created false correspondence and in one matter he created an attendance note in an attempt to assert such disclosure and misled TSB in Reports on Title submitted to it. As a result the Respondent had denied TSB the opportunity to make

an informed lending decision and had preferred the interests of his purchaser client over the interests of his lender client. The Respondent's behaviour in that respect had been dishonest and he had departed from the proper standard of work required of a solicitor.

30. There was no doubt that the Respondent had been guilty of clear inexcusable dishonesty. Whatever the circumstances or pressures upon a solicitor, no solicitor should behave in that way. The Respondent's conduct had been conduct unbefitting a solicitor of the most serious kind.

The Submissions of the Respondent

31. The Tribunal indicated to Mr Hamilton, representing the Respondent, that they accepted that the Respondent was not culpable but was rather strictly liable in connection with allegations (a) and (b). He therefore confined his submissions to the matters in which dishonesty had been alleged.
32. The Respondent should be given credit for his admissions, although he had made them somewhat late in the day.
33. The Applicant had alleged that the Respondent had created documents dishonestly and for a dishonest purpose. The reality was that the Respondent had created those documents in order to save face. It had not been his primary purpose to persuade the Solicitors Indemnity Fund that he was entitled to be indemnified. The Respondent's purpose had been to put the way in which he had conducted the conveyancing transactions involving TSB in a better light. The matters complained of before the Tribunal could not be said to have been aggravated by the Respondent seeking to achieve a personal benefit or benefit financially. The Respondent must have had every opportunity take clients' money, as did his partner, but he did not do so.
34. No client of the firm had suffered an uncompensated loss. The Solicitors Indemnity Fund had in fact indemnified the Respondent in respect of the actions of his partner.
35. The Respondent had written the letter to Mr B saying that proceedings had been issued when they had not. The Respondent had fobbed off Mr B with an untruth at a time when he had been subject to pressure of work and had been working very long hours including working most weekends.
36. The Respondent was a married man with no children. He was at the time of the hearing currently employed and his employer had attended the disciplinary hearing.
37. The Respondent had no criminal convictions. At the time of the hearing his earnings were modest and his wife had a modest income from her work as a receptionist for an unrelated law firm.
38. The Tribunal was invited to take into account the written references handed up in support of the Respondent which were of the highest calibre. They praised the Respondent and it was clear that he was held in high regard. The Respondent was a

hard working, diligent, competent solicitor who had not been involved in any consistent dishonest course of conduct.

39. In view of the good character of the Respondent, it was hoped that the Tribunal might consider the imposition of a sanction other than the ultimate sanction. If the Tribunal was minded to impose a sanction that would prevent the Respondent from practising it was hoped that the sanction would not come into force for a period of time that would enable the Respondent to make an orderly disposal of his client files. The Tribunal was invited to take the view that clients of the firm were members of the public and they were entitled to have their interests protected.

The Findings of the Tribunal

40. The Tribunal find all of the allegations save those withdrawn or left to lie on the file, to have been substantiated in so far as admissions had not been made. As indicated during the course of the hearing, the Tribunal recognises that the Respondent was strictly liable as he himself very properly accepted, for the breaches of the Solicitors' Accounts Rules although the real culpability lay with his former partner, Mr Richmond, who had dishonestly misappropriated client funds.
41. The matters which are of the greatest concern to the Tribunal are those relating to the conveyancing transactions in which the Respondent acted for TSB in its capacity as a mortgage lender. The Respondent had confirmed that he was fully aware of The Law Society's Green Card warning about the indicators of mortgage fraud and he was clearly aware of those matters which should properly be reported to a mortgage lender client. He had fallen down badly in his duty to his mortgage lender client in not passing to it material information. The most serious matter, which the Respondent admitted, was the fact that he had created documents, ex post facto, backdated and inserted on his file to make it look as if they had been sent to the client at an appropriate time in an attempt to cover up the Respondent's shortcomings. That was a very serious matter indeed and was demonstrative of blatant dishonesty on the part of the Respondent. The same might be said for the letter sent to the client confirming that proceedings had been commenced when that was not true.
42. The solicitors' profession requires its members to be persons of the utmost probity, integrity and trustworthiness. The Respondent has fallen so far short of those high standards that both in the interests of the public and in the interests of the maintenance of the good reputation of the solicitors' profession, it would not be right if he were allowed to remain a member of that profession.
43. The Tribunal ordered that the Respondent Dipakkumar Gopaldas Lakhani of Stanmore, Middlesex, solicitor be struck off the Roll of Solicitors and further ordered him to pay the costs of and incidental to the application and enquiry. The costs were to include the costs of the Investigation Accountant of The Law Society and for the avoidance of doubt the Tribunal wished to make it plain that it considers that the Respondent should also bear the costs incurred by the Applicant in obtaining the expert evidence from Dr Giles required to prove that the Respondent had created false documents in the absence of any admission by him. All such costs to be subject to a detailed assessment if not agreed between the parties.

DATED this 16th day of January 2003
on behalf of the Tribunal

J C Chesterton
Chairman