

IN THE MATTER OF ALLEN HUGH COTTELL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. W M Hartley (in the chair)
Mr. A N Spooner
Mr. G Fisher

Date of Hearing: 4th July 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 Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts, SG14 1BY on 23rd January 2002 that Allen Hugh Cottell solicitor of Langton Green, Tunbridge Wells, Kent, 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.

The allegations against the Respondent were that he had been guilty of conduct unbecoming a solicitor in each of the following particulars:-

- (i) he failed to disclose material information to a lender client in respect of conveyancing transactions;
- (ii) when acting for a purchaser and a lender client in conveyancing transactions he failed properly to investigate title;
- (iii) he provided misleading information to a firm of solicitors with whom he was seeking employment;
- (iv) he failed to respond to correspondence from the OSS;
- (v) he failed to deliver to The Law Society an accountant's report contrary to Rule 35 of the Solicitors Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th July 2002 when Stephen John Battersby solicitor and partner in the firm of Jameson & Hill of 72/74 Fore Street, Hertford, Herts, SG14 1BY appeared as the Applicant and the Respondent did not appear and was not represented.

At the conclusion of the hearing the Tribunal ordered that the Respondent Allen Hugh Cottell of Langton Green, Tunbridge Wells, Kent, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,769.50.

The facts are set out in paragraphs 1 to 11 hereunder: -

1. The Respondent, born in 1951, was admitted as a solicitor in 1979 and his name remained on the Roll of Solicitors.
2. At the material times the Respondent carried on practice on his own account under the style of Cottell & Co in Purley, Surrey. The Respondent was no longer practising as a solicitor.
3. In 1992 the Respondent acted for the purchasers in three conveyancing transactions involving different flats in the same development at Croydon. In each case he was also acting for the lender client, the Nationwide Building Society. In the case of Flats 11 and 19, completion took place on 24th April 1992 and for flat 5 the completion date was 1st May 1992.
4. The three transactions took place about a year after circulation by The Law Society of its warning card on mortgage fraud in March/April of 1991. In each transaction there were disturbing features which ought to have alerted the Respondent to the possibility of fraud in that:-
 - (i) the vendor (Mr W) was the same in each case;
 - (ii) Mr W was closely connected with the brokers who introduced the business to the Respondent in that he was employed by them. In at least two of the transactions (those involving flats 11 and 19) Mr W also organised the mortgages for the purchaser clients from the lender client.
 - (iii) in each case Mr W had himself only acquired the property from the developers (SGD Ltd) immediately before the sale on to the Respondent's respective clients - each transaction thereby being of a back to back nature;
 - (iv) in each case the price paid to SGD Ltd by Mr W was considerably less than the price paid by the Respondent's clients and significantly less than the amounts which they were borrowing from the lender client. The relevant details are as follows:-

	<u>Flat 11</u>	<u>Flat 19</u>	<u>Flat 5</u>
Price paid by Mr W	£90,784.00	£98,353.00	£94,568.00
Price paid by Respondent's clients	£119,950.00	£129,950.00	£124,950.00
Amount of loan	£113,500.00	£118,750.00	£115,887.00

- (v) in each case completion took place simultaneously with exchange of contracts;
- (vi) in relation to the transactions involving flats 11 and 19 the balance of the purchase price (£11,691.97 and £12,321.96 respectively) was sent by way of, in the words of the Respondent's letter to the vendors' solicitors, "a cheque

payable direct to your client as agreed with you on the telephone." It was unclear from the Respondent's files whether these amounts were drawn on personal cheques from the clients or the Respondent's own client account.

5. In none of the three cases did the Respondent satisfy himself as to the validity of the title of the vendor, Mr W, before the transaction took place.
6. In none of the cases did the Respondent notify the lender client as to the fact that it was a back to back transaction - instead, in each case, he signed a Report on Title confirming, inter alia, that any discrepancies had been reported in writing to the Building Society and that the title had been investigated and was good and marketable.
7. In respect of flat 5, the Building Society was not informed of a reduction in the purchase price from £124,950 to £122,000. This was relevant information which ought to have been conveyed to them as the lenders.
8. On 27th March 2000 the Respondent had a meeting with G solicitors of Croydon, Surrey with a view to becoming a part-time consultant with the firm. He informed them that to his knowledge there were no ongoing issues either involving the Solicitors Indemnity Fund ("SIF") or the OSS. This was untrue. Four days earlier the Respondent had attended a lengthy indemnity conference at the request of SIF concerning the matter referred to above. The Respondent thereafter was employed by G until October 2000 when they became aware of the situation.
9. The Respondent was written to by the OSS on 2nd October 2000 and asked to respond to the complaint from the SIF. His response was received by the OSS on 20th October 2000 and was before the Tribunal.
10. Subsequently the OSS wrote to the Respondent on 4th December 2000 seeking his explanation in respect of the complaint from G. He did not respond to this letter despite being asked to do so within ten days. A follow up letter was sent on 10th January 2001 and no reply was received to this.
11. The Respondent's accountant's report for the period ending 31st July 2000 should have been delivered to The Law Society by 1st January 2001. It was not so delivered and on 23rd July 2001 the Respondent was written to by The Law Society. He failed to respond to this letter and was written to again on 17th August and 9th October 2001 but no response was received. In view of this a Senior Officer of The Law Society authorised the referral of this matter to the Tribunal.

The Submissions of the Applicant

12. The Applicant had written to the Respondent at his home address asking him to notify the Applicant which facts were in dispute but had received no reply.
13. The Applicant had served upon the Respondent a Notice to Admit documents and a Civil Evidence Act Notice. The Applicant would rely on the documents.

14. Allegations (i) and (ii) showed, in the submission of the Applicant, serious misconduct on the part of the Respondent in relation to three conveyancing transactions in which the Respondent had acted for both purchaser and the lending institution.
15. SIF had pursued this matter on the basis that the Respondent had acted so negligently, even recklessly, as to create conditions where fraud could and indeed had flourished.
16. This had been a serious case of mortgage fraud. The purchasers had made no mortgage repayments to the lending institution; indeed the properties had been tenanted. The Respondent had acted in a way which had been detrimental to his lender clients. He had failed to provide information material to the lender and had failed to investigate title. Had he investigated title properly it was probable that the lending would not have gone ahead. There had been a grave dereliction of his duty by the Respondent. In the submission of the Applicant his conduct in relation to allegations (i) and (ii) was such that it amounted to reckless dishonesty in that no honest solicitor would have acted in this way.
17. In relation to allegation (iii) the Applicant submitted that this was a downright dishonest act which enabled the Respondent to gain gainful employment as a consultant to the firm of G solicitors, which employment he would not otherwise have gained. Four days before his interview with G solicitors the Respondent had attended the SIF conference. This was hardly something which the Respondent could have forgotten about so quickly. As could be seen from the notes of the interview made by G solicitors, a copy of which was before the Tribunal, the Respondent had lied.
18. In relation to allegation (iv) the Applicant was not aware of the Respondent having replied to the letters from the OSS of 4th December 2000 and 10th January 2001.

The Findings of the Tribunal

19. Having considered carefully the documentation before the Tribunal and the submissions of the Applicant the Tribunal found the allegations to have been proved. The Tribunal noted that in correspondence contained within the documents the Respondent had said that he had not been dishonest in relation to the mortgage fraud matters. He had also said that these matters had occurred a long time ago and that he could not therefore recall all details. The Tribunal accepted that these matters had occurred in 1992. This was however after the distribution of The Law Society's Green Card in relation to mortgage fraud. The Respondent's failure in his duties towards his lender client would, even in 1992, have demonstrated at best recklessness as regarded the interests of his lender client. There were clear features of possible mortgage fraud present in the conveyancing transactions. Applying the case of *Royal Brunei Airlines v Tan* the Tribunal found that the Respondent had been dishonest in relation to allegations (i) and (ii).
20. In relation to allegation (iii) the situation was clear cut. The Respondent had attended an interview with a potential employer and had lied in relation to the serious issue of whether there were any SIF or OSS matters ongoing. This was clearly dishonest.

21. Dishonesty, even dishonesty which had occurred some ten years ago and had then come to light later, was unacceptable from a member of the solicitor's profession. The Respondent's actions in 1992 were compounded by his clear dishonesty in relation to G solicitors in March 2000. Such conduct could not be tolerated within the profession. The public had to have absolute confidence in the honesty of solicitors. The appropriate penalty was the ultimate sanction.
22. The Tribunal therefore ordered that the Respondent Allen Hugh Cottell of Langton Green, Tunbridge Wells, Kent, solicitor be struck off the Roll of Solicitors and they further ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,769.50.

DATED this 9th day of September 2002

on behalf of the Tribunal

W M Hartley
Chairman