

IN THE MATTER OF RICHARD ANDREW DAVID PUGH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Ground (in the chair)
Mr R B Bamford
Mr D E Marlow

Date of Hearing: 8th April 2004

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 ("the OSS") by David Elwyn Barton solicitor advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE on 4th September 2003 that Richard Andrew David Pugh solicitor of Luttrell Avenue, London, SW15 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 unbefitting a solicitor in each of the following respects, namely:-

- (a) He made untrue statements to a client about the conduct of his case, thereby compromising or impairing his integrity, his good repute and that of the solicitors' profession, contrary to Rules 1(a) and (d) of the Solicitors' Practice Rules 1990. In relation to this allegation it was alleged that the Respondent was dishonest;
- (b) He created a document intending that it should have been relied upon by his client as a court order setting out terms of settlement, whereas the information conveyed on its

face was false, thereby compromising his integrity, good repute and that of the solicitors' profession contrary to Rule 1(a) and (d) of the said Rules. In relation to this allegation it was alleged that the Respondent was dishonest;

- (c) He failed to follow the guidance given in the Law Society's "Green Card" warning on property and mortgage fraud in conveyancing transactions thereby compromising or impairing his independence and integrity, his duty to act in the best interests of his client, his good repute and his proper standard of work, in each case contrary to Rule 1 of the said Rules. In relation to this allegation it was alleged that the Respondent was dishonest;
- (d) He acted in breach of the Solicitors Accounts Rules 1991 in that contrary to the provisions of Rules 7 and 8 of the said Rules (Rule 22 of the Solicitors Accounts Rules 1998) he drew from clients' account monies other than in accordance with the said Rules and utilized the same for his own benefit or for the benefit of others;
- (e) He failed to follow his clients' instructions and compromised or impaired his duty to act in their best interests, contrary to Rule 1(c) of the Solicitors' Practice Rules 1990;
- (f) He borrowed money from his clients without ensuring that they took independent legal advice, and took the loans where there existed a conflict between the interests of the Respondent and those of his clients;
- (g) He failed to deal with clients' instructions and correspondence in a timely fashion and thereby compromised or impaired his proper standard of work contrary to Rule 1(e) of the Solicitors' Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 8th April 2004 when David Elwyn Barton appeared as the Applicant and the Respondent appeared in person.

The evidence before the Tribunal included the admissions of the Respondent to allegations (d), (e), (f) and (g) and his admissions to allegations (a), (b) and (c) but his denial of dishonesty in respect of those three allegations. The Respondent gave oral evidence and submitted to the Tribunal during the hearing a copy of a letter dated 7th April 2004 from himself to the Applicant.

At the conclusion of the hearing the Tribunal made the following order:-

The Tribunal order that the Respondent Richard Andrew David Pugh of Luttrell Road, London, SW15 6PF solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.

The facts are set out in paragraphs 1 to 30 hereunder:-

1. The Respondent, born in 1950, was admitted as a solicitor in 1977 and his name remained on the Roll of Solicitors.

2. At all material times the Respondent was carrying on in practice in partnership in the firm of Ashok Patel and Co, 257 Balham High Road, London, SW17 7BD. The Respondent was not currently practising as a solicitor.
3. An investigation of the books of account and other documents of Ashok Patel and Co was commenced by a Senior Investigation Officer ("Mr G") of the OSS on 22nd March 2001. The resulting report dated 31st January 2002 was before the Tribunal.
4. Mr P, the Respondent's former partner in the firm of Ashok Patel and Co, informed Mr G that the Respondent had joined the firm in January 1996 and had become a partner six to nine months later. He had been dismissed from the practice on 14th February 2001. According to Mr P the dismissal occurred because of the Respondent's conduct in his dealings with a client by the name of Mr L, the fact that he had borrowed money from clients and his involvement in certain conveyancing transactions.
5. Mr G interviewed the Respondent at the office of his then new employers on 25th September 2001.
6. The report of 31st January 2002 dealt with the matters set out below.

Mr L

Allegations (a), (b), (d) and (e)

7. The Respondent acted for Mr L in a legally aided claim against his former accountant. The solicitors' firm of Berrymans Lace Mawer ("Berrymans") acted for the accountant, and the Respondent was engaged on behalf of his client in negotiations to settle the claim. The Respondent took over conduct of the case in about January 1996.
8. The Report showed the following sequence of events:-
 - (i) 23rd August 1999 - Berrymans offered £5,000;
 - (ii) 9th November 1999 - the Respondent wrote to Berrymans asking for an increase;
 - (iii) 9th November 1999 - the Respondent wrote to Mr L to say that Berrymans had increased the offer to £10,000. This was untrue.
 - (iv) 25th January 2000 - Berrymans repeated their offer of £5,000, although in letters dated 3rd March and 27th July 2000 they made further offers of £6,000 and £7,500 respectively;
 - (v) 16th November 2000 - Berrymans wrote to the Respondent to stand by their offer of £7,500;
 - (vi) 15th December 2000 - the Respondent wrote to Mr L in the terms of his letter at Appendix 1 of the Report saying that the case had been settled at £28,500.

This was untrue, and paragraphs 17, 18 and 19 of the Report contained the Respondent's admissions in this respect;

- (vii) 15th January 2001 - the Respondent sent Mr L two cheques, each for £2,500, said by him to be interim payments. The money had in fact been borrowed from other clients and this was confirmed at paragraphs 20, 21 and 22 of the report. The Respondent's admissions were at paragraph 24;
- (viii) 8th February 2001 - the Respondent sent Mr L the handwritten note at Appendix 2 of the Report. The note concluded with the words "I also enclose a copy of the order". The "order" enclosed was at Appendix 3. Although it was unstamped and as a consequence had no legal authority, it was presented to Mr L as an order and a document describing terms of settlement. On its face the document was false. In paragraph 28 of the Report, the Respondent admitted that he had sent Mr L the "bogus court order".

Conveyancing
Allegations (c) and (e)

- 9. The report detailed the Respondent's involvement in three conveyancing transactions. During his interview with Mr G about the transactions, the Respondent confirmed that he had previously seen The Law Society's Green Card on property fraud.
- 10. The three transactions involved two properties and were conducted by the Respondent between July 1999 and January 2000.
- 11. There was one individual who was common to all three transactions, namely Mr McV. At paragraph 34 of the Report, it was recorded that Mr McV was a local estate agent for whom the Respondent had conducted "a lot of work", and that he knew Mr McV well.
- 12. Each transaction had similar characteristics:-
 - (i) As well as acting for the buyers, the Respondent also acted for the lender;
 - (ii) The Respondent's dealings with the buyers were virtually non-existent. He dealt with Mr McV who, apart from the mortgage advances, financed the transactions. In the case of the second property, the Respondent admitted that the buyer, Mr M, might not have existed;
 - (iii) Mr McV actually bought the properties even though he was not the named buyer/borrower and the lenders' money was used to fund his purchases. The back to back nature of the transactions was not reported to the lenders;
 - (iv) The changing purchase price in between sales and purchases was not reported to the lender;
 - (v) The transactions took place close in time to each other;

Transaction 1

13. In this transaction the Respondent acted for the buyer of a flat in Salford Road, Streatham, Ms G and Bristol and West plc who were proposing to lend on mortgage.
14. Ms G was Mr McV's wife. Paragraph 33 of the Report recorded that the Respondent's correspondence was addressed exclusively to Mr McV. Mr G discovered that Mr McV paid the deposit on 16th July 1999, the date upon which contracts were exchanged.
15. According to the file the purchase price was £60,000. Bristol and West's instructions were in part set out in paragraph 37, and according to the file they believed the purchase price was £75,000.
16. The Respondent explained to Mr G that there was to be a sub sale but he did not know why and he did not report the fact of the sub sale or the difference in price to his lender client.
17. The transaction was completed on 14th September 1999.

Transactions 2 and 3

18. These transactions involved a property in Pathfield Road, Streatham and the Respondent acted for Mr M on his purchase, for Mr McV on his acquisition at the same time, and for Bristol and West as mortgagees.
19. In the first part of the transaction the Respondent acted for a client named Mr M, although in paragraph 15 of the Report the Respondent conceded that he wondered whether Mr M really existed. There was only one letter to Mr M dated 23rd August 1999. He was introduced to the Respondent by Mr McV and never met him. He knew nothing about him, other than he was said to be a friend of Mr McV's and lived in Ireland.
20. The sale agreement dated 14th December 1999 referred to a purchase price of £105,000. Mr M's deposit was paid by Mr McV. The Respondent could not explain this. Mr G recorded that the Respondent felt he must have been suspicious, but did not take any action to query it.
21. The Report indicated that the mortgage advance of £92,112.56 from Bristol and West plc was received not for Mr M but for Mr McV's purchase of the property which was being conducted by the Respondent at the same time. Completion of both transactions took place on 28th January 2000. Mr McV subsequently sold the property in November 2000. The Respondent acted on that.
22. The manner in which Mr M's purchase was conducted was such that he personally did not provide any funds. The deposit came from Mr McV and the mortgage advance also went to Mr McV.

23. The Report described the simultaneous acquisition of the property by Mr McV. The purchase price was £135,000 which was the purchase price referred to in the Offer of Loan from Bristol and West. The Respondent acted throughout for Bristol and West plc who were not informed of the true position relating to the purchase, or the changing sale price, and their funds were effectively misapplied. The Respondent failed to follow his client's instructions and failed to follow the warnings in the Green Card. He was asked about this at paragraph 67 of the Report. At paragraph 68 he acknowledged that he appeared to have helped Mr McV make a profit.

Borrowing
Allegation (f)

24. The Report concluded that the Respondent borrowed £26,000 from three clients. The Respondent approached each client. There was no evidence that the clients had been advised to take independent advice. The Respondent told Mr G that he had been frightened of approaching his bank in case they refused a loan and also confirmed that he did not want this to affect his credit rating.

Delay
Allegation (g)

25. The Report described three examples where the Respondent delayed in registering the title of purchases and mortgagees. The failures constituted a breach of instructions, and failing to act in clients' best interests.
26. On 13th May 2002 the OSS wrote to the Respondent requesting his explanation concerning the matters raised in the Report and described above.
27. He was asked to submit his written explanation within 14 days, but did not do so. He did contact the OSS by telephone on 15th May to ask for extra time, and his time for answering was extended to 12th June.
28. The Respondent spoke again with the OSS on the telephone on 1st July when he was asked to submit his response by the following Monday. He did not do so and on 9th August the OSS informed the Respondent that the matter was being sent for formal adjudication.
29. On 22nd August the Respondent spoke again with the OSS and was informed that his written response to the letter of 13th May had to be received by 2nd September. No written response was received by that date.
30. On 11th November 2002 the OSS wrote to the Respondent to inform him that his conduct had been referred to the Tribunal. By his letter dated 23rd November 2002 the Respondent requested a review of this decision. On 23rd February 2003 the Review Panel considered the Respondent's review application and dismissed it.

The Submissions of the Applicant

31. The Respondent had admitted all the facts and had admitted the allegations save that he denied any dishonesty.
32. In the matter of Mr L the Respondent had lied to his client about the progress of the negligence claim. The Respondent knew when he wrote to Mr L to say that Berrymans had increased the offer to £10,000 that this was untrue. In his letter to Mr L of 15th December 2000 the Respondent had written:-

“I refer to our recent telephone conversations and am pleased to report that this matter is now settled and the settlement figure is £28,500 together with costs to be taxed if not agreed.”

This was a blatant untruth. The offer at that time was at a figure which did not remotely approach £28,500.

33. The purported order sent by the Respondent to Mr L on 8th February 2001 had been falsely created by the Respondent but it was presented to Mr L as a document which he should take as a court order and indeed it was described as such in the covering letter. This went well beyond anything which could be described as inadvertent.
34. The Respondent had misled his client in a positive way. The client had come to learn the real position in due course. The Respondent's conduct was objectively dishonest and it was submitted that having applied his mind to creating the false order the Respondent must subjectively have known that his conduct was dishonest. No rational explanation had been put forward by the Respondent.
35. In relation to the conveyancing matters it was submitted that the Respondent behaved dishonestly. No honest or competent solicitor could have failed to see that the transactions almost certainly involved the perpetration of a fraud on the institutional lenders. Furthermore the Respondent had given such a wholly inadequate explanation for his conduct that it could not be attributed to mere error or poor judgement.
36. The borrowing from clients was professionally improper. The purposes for which borrowed monies were used suggested that the Respondent was in financial difficulties and this aggravated the misconduct. One of the loans had been taken to pay an income tax bill. There was plainly a conflict of interest.
37. Allegation (g) arose from a straightforward failure to comply with instructions in a timely fashion.

The Oral Evidence of the Respondent

38. The Respondent accepted the facts as set out in relation to Mr L. The Respondent had been a litigator in his previous firm and had thought that he could achieve a settlement for L. The Respondent admitted misleading Mr L but said he had acted with the best of intentions. Matters then got worse. Mr L was phoning the Respondent every day.

The Respondent had got matters completely wrong. He had kept on pressing Berrymans in the belief that he would get a much higher figure.

39. The Respondent had borrowed money from other clients to pay Mr L but had their consent.
40. The Respondent accepted that he had lied to Mr L but he had had no intention of being dishonest towards him, indeed he liked him. The Respondent accepted that he had been foolish and wrong.
41. In relation to the conveyancing matters the Respondent said that Mr McV, a local estate agent, was “pushy and sharp”. The Respondent was the only conveyancer in the office and he had been pushed by Mr McV. The Respondent had been naïve and incredibly busy.
42. The Respondent had not thought the matter through nor looked into it properly and now thought he had been negligent. He had however made no financial gain. If he had been dishonest he would have wanted to gain something from the transactions. He had been stupid and foolish but negligent rather than dishonest.
43. At the time, the firm was growing and the Respondent had been the person managing the office and doing everything.
44. In relation to the loans the Respondent had known the clients quite well. The Respondent had been at the time in dispute with the firm he had previously left and also had tax bills. The Respondent had asked the clients rather than the bank as he thought the bank would decline. In fact the bank had later agreed to a loan. There had been no dishonesty in relation to the loans although the Respondent now understood from the Applicant that he should have told the clients to get independent advice.
45. Allegation (g) was admitted and the Respondent apologised.
46. **In cross examination** the Respondent accepted that solicitors were expected to be honest and also that at the time of the events before the Tribunal he had been an experienced solicitor.
47. In relation to the matter of Mr L the Respondent had had many telephone calls with Berrymans and had mentioned the figure of £20,000 upon which Berrymans had said they would take instructions. The Respondent had genuinely thought that he could achieve £19,000 or £20,000 for Mr L but had accepted that he had been wrong to write the letter of 9th November 1999 and could not deny that what he had written was a lie. He accepted that he must have understood when he was writing the letter that it was an untruth.
48. In relation to the purported order the Respondent had thought he would be able to get a better offer for Mr L who was “on his back”. The Respondent had been silly and stupid. The Respondent accepted that he would have dictated the order and thought that he must have done this in the hope of achieving a settlement. At the time of dictating the order he had thought that he would now have to achieve a settlement or

else he would be in trouble. He accepted that what he had written was a lie but said that there was a fine line between dishonesty and lying. Mr L had been desperate and hard up. The Respondent had thought that he would be able to get £21,000 from the other side and he would provide the balance. That was why he had made the “interim” payment.

49. The Respondent had wondered many times since why he had written what he had. He did not want to practise as a solicitor any more. He did not consider that a solicitor should be allowed to do what he had done.
50. In relation to Mr McV the Respondent said that he knew Mr McV well and that he supplied the firm with around ten transactions per month but was not one of the major agents sending work to the firm.
51. The Respondent had thought that Mr M was a relation of Mr McV and that Mr McV would get the documentation signed for him. The Respondent could not remember when he had realised that something might have been wrong in relation to Mr M. Mr McV would just say “get things done”. He had probably told the Respondent to do it and the Respondent had.
52. The Respondent accepted that he must have known that Ms G was Mr McV’s wife as he had written to Mr McV in relation to the transaction. Mr McV was the sort of person who would say that he would deal with the matter for his wife.
53. The Respondent had been familiar with the Green Card. He should have known better and he was aware of his duties to the lender. He could not explain why he had not informed the lender of the characteristics of the transactions.
54. The Respondent read to the Tribunal a statement in which he apologised for his mistakes and any disrepute he had brought the profession. He said that at no time had he intentionally acted dishonestly but had been naïve and had not taken the care and attention that he should have done. He had carried the burden of guilt for two years. The Respondent gave the Tribunal details of recent health problems.
55. The Respondent had informed The Law Society that he did not wish to renew his Practising Certificate. He asked the Tribunal to allow him voluntarily to remove his name from the Roll.
56. The Respondent gave details of his family circumstances. He wished to provide for his family but it would be more difficult to find work if he had been struck off the Roll. The Respondent said that he had ruined his life and had to face the consequences but did not want to ruin the lives of his family. There would be a severe impact on his family if he was struck off the Roll.

The Findings of the Tribunal

57. The Respondent had admitted the facts and had admitted allegations (d) to (g). The Respondent had admitted allegations (a) to (c) save that he denied dishonesty. The Applicant had specifically alleged dishonesty in relation to allegations (a) to (c). In

considering dishonesty the Tribunal had considered carefully the documentation, the submissions of the Applicant and the Respondent's oral evidence. The Respondent had described himself as being foolish and naïve and, in the case of the conveyancing matters, negligent rather than dishonest. In relation to the matter of Mr L the Respondent had attempted to persuade the Tribunal that there was a distinction between lying, to which he admitted, and dishonest intent. The Respondent had accepted that he had consciously lied to Mr L in his letter of 9th November 1999 and that he had consciously drawn up a purported court order which was false and presented it to Mr L as a real order describing terms of settlement. The Respondent had described himself as being pressed by his client and said he had written what he had because the client was "on his back". In the view of the Tribunal this was a clear cut case of conscious dishonest conduct by the Respondent. He had accepted that he must have understood when writing the documents that they were untrue. The Tribunal was satisfied to the high standard of proof required that allegations (a) and (b) were proved and that the Respondent had been dishonest.

58. In relation to the conveyancing matters the Respondent had accepted that he had at the relevant time been an experienced solicitor who was aware of the Law Society's Green Card. He had admitted that he had at some time had suspicions regarding the existence of Mr M. Again the Respondent had described himself as being under pressure, in this case from Mr McV, and indeed had said in evidence that Mr McV had probably said "do it" so the Respondent had done so. The Respondent had admitted being aware of his duties to his lender clients and had said he could not explain why he had not informed them of the particular characteristics of the transactions. In the view of the Tribunal in the absence of any persuasive explanation the Respondent's conduct must have been consciously dishonest. The Tribunal did not accept the Respondent's assertion that he had been negligent rather than dishonest. The Tribunal accepted the submission of the Applicant that no honest or competent solicitor could have failed to see that the transactions almost certainly involved the perpetration of a fraud on the institutional lenders. The Tribunal was satisfied to the high standard of proof required that allegation (c) was proved and that the Respondent's conduct had been dishonest.

Previous appearance before the Tribunal on 5th October 1995

59. On 5th October 1995 the following allegations were substantiated against the Respondent, namely that he had:-
- (i) acted in respect of a matter in a manner where a conflict of interest did arise or might have arisen;
 - (ii) contrary to Practice Rule 1 of the Solicitors Practice Rules failed to ensure that the clients' best interests were protected;
 - (iii) by virtue of each and all of the aforementioned had been guilty of conduct unbecoming a solicitor.
60. The Tribunal on that occasion found a further allegation involving deceitful conduct not to have been substantiated but the Tribunal considered it extraordinary that the

Respondent had found himself in the position which he did. His conduct had been stupid, ill-considered and demonstrated extraordinary bad judgement but that did not amount to deceit. The Respondent had, to his credit, admitted allegations (i), (ii) and (iii), that he had acted in a matter where a conflict of interest arose and that he had contrary to Practice Rule 1 of the Solicitors Practice Rules failed to ensure that his client's best interests were protected. There was no doubt that his actions amounted to conduct unbecoming a solicitor. The Respondent was fortunate that the sale of the Respondent's house enabled sufficient money to be generated to discharge all of the mortgages secured on the property. The Tribunal was relieved to find that no financial loss was sustained by any of the mortgagees and in particular by Citibank (with whose instructions the Respondent had not complied). Having found himself in the unfortunate situation which he did, the Respondent should have passed the file to another member of the firm and should have ensured that letters and other communications addressed to Citibank clearly revealed the situation and it may well have been appropriate to advise them of their right to seek advice from another firm of solicitors. The Respondent's treatment of Citibank was unacceptable. The Respondent was redeemed by the fact that he appeared to be well intentioned.

61. Any solicitor who accepted instructions from a lender when he himself was the borrower had to think very hard indeed before accepting such instructions. The Tribunal noted that it was a common practice for lending institutions to instruct an independent firm to act when a solicitor was himself a borrower. Alternatively a lending institution might require a different partner in the firm to have conduct of the transaction. The Tribunal wished to make it very plain indeed that it regarded it as a serious breach of Practice Rule 1 and a clear example of conflict of interest if the borrowing partner undertook the work himself and in particular if he completed and submitted the Report on Title.
62. In order to mark its strong disapproval of the Respondent's behaviour the Tribunal ordered on 5th October 1995 that the Respondent pay a fine of £3,500.

Hearing on 8th April 2004

63. The Tribunal had found all the allegations substantiated against the Respondent and had had found that his conduct had been dishonest. It was not appropriate for the Tribunal to consider the Respondent's request for permission to withdraw his name from the Roll of Solicitors voluntarily. The duty of the Tribunal was to reach a finding on the evidence before it and to make the order which it considered to be appropriate. This was a clear case of dishonest conduct by a solicitor and the Respondent himself, even though he had denied dishonesty, had said that his conduct in lying to Mr L was such that he should not be allowed to practise as a solicitor in the future. Dishonest conduct by a solicitor damaged the reputation of the profession in the eyes of the public. For the sake of that reputation and for the protection of the public it was appropriate that the Respondent's name be struck off the Roll of Solicitors.

68. The Tribunal made the following order:-

The Tribunal order that the Respondent Richard Andrew David Pugh of Luttrell Road, London, SW15 solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.

Dated this 25th day of May 2004
on behalf of the Tribunal

A G Ground
Chairman