

IN THE MATTER OF MOHAMMED OMAR DEANE and MOHAMMED ZAFAR
IQBAL, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr A G Gibson (in the chair)
Mr P Haworth
Lady Bonham Carter

Date of Hearing: 4th October 2005

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Hertfordshire SG14 1BY, on 21st February 2005 that Mohammed Zafar Iqbal and Mohammed Omar Deane (solicitors), respectively of Dean Bank Drive, Rochdale and Thornham, Rochdale, 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 thinks right.

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

- (i) That contrary to Rule 32 of the Solicitors Accounts Rules 1998 they failed to keep accounting records properly written up.
- (ii) That they withdrew monies from client account otherwise than in accordance with the provisions of Rule 22 of the Solicitors Accounts Rules 1998.
- (iii) That they made cash withdrawals from client account without the authority required by Rule 23 of the Solicitors Accounts Rules 1998.

- (iv) That they failed to comply with the provisions of Solicitors Practice Rule 6 in respect of conveyancing transactions.
- (v) That they failed to disclose material information to lender clients in conveyancing transactions.
- (vi) That they breached Solicitors' Practice Rule 1 in that they had a relationship with Mr SF, an introducer of conveyancing business, which was likely to compromise or impair their independence or integrity, their duty to act in the best interests of their clients, their good repute or that of the solicitors' profession and their proper standard of work.
- (vii) That they failed to follow the guidance given by The Law Society regarding property fraud.
- (viii) That they failed to comply with the provisions of Solicitors Practice Rule 15.
- (ix) That they failed to comply with the provisions of the Solicitors Introduction and Referrals Code 1990.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th October 2005 when Stephen John Battersby appeared as the Applicant. Neither of the Respondents appeared and neither of them was represented.

The evidence before the Tribunal included the oral evidence of Mr Wallbank, a Law Society Investigation Officer.

At the conclusion of the hearing the Tribunal made the following orders:

The Tribunal ORDER that the Respondent, Mohammed Omar Deane of Thornham, Rochdale, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,062.75 (on a joint and several basis).

The Tribunal ORDER that the Respondent, Mohammed Zafar Iqbal of Dean Bank Drive, Rochdale, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,062.75 (on a joint and several basis).

The facts are set out in paragraphs 1 to 14 hereunder:-

1. Mohammed Zafar Iqbal (Mr Iqbal) was born in 1954 and admitted as a solicitor in November 1999. Mohammed Omar Deane (Mr Deane) was born in 1967 and admitted as a solicitor in December 2000. The Respondents were brothers.
2. From November 2002 until The Law Society's intervention on 15th September 2004 the Respondents practised together as Dale Solicitors at 38 Church Stile, Rochdale OL16 1QE. A second office of the firm was opened at 534 Stockport Road, Manchester M12 4JJ on 21st November 2003. Mr Iqbal worked mainly from the

Manchester office and Mr Deane worked from the Rochdale office. From 1st May 2001 until 31st October 2003 Mr Iqbal had been a partner in the firm of UK Legal Services at 239 Dickenson Road, Manchester. Mr Deane had been involved in that firm from 1st May 2001 until 17th October 2002 as a consultant and then as an assistant solicitor for a short time until 6th November 2002.

3. On 20th January 2004 a Law Society Investigation Officer (the IO) commenced an inspection of the Respondents' books of account and other documents. His first visit lasted until 22nd January and thereafter he made further visits on 28th January, 11th – 13th February, 2nd & 3rd March, 5th March, 21st & 22nd April and 1st & 2nd June 2004. On 23rd June 2004 there was a meeting with the Respondents. At various times during the inspection the IO was accompanied by Mr SH, a Senior Investigation Officer, who was also present at the final meeting on 23rd June 2004. The IO's written report dated 30th July 2004 was before the Tribunal.
4. The inspection revealed that the books of account kept by the Respondents were not in accordance with the Solicitors Accounts Rules. Because of the unsatisfactory state of the accounting records it was not possible for the level of client liabilities to be calculated. No client account bank reconciliation had been undertaken in respect of the Manchester office which had opened some two months before the inspection. Only two client account bank reconciliations had been prepared at the Rochdale office since it opened in November 2002. The two reconciliations which had been carried out did not comply with the requirements of the Solicitors Accounts Rules. The IO reported upon other breaches of the Solicitors Accounts Rules in the way the books of account were kept. When the IO paid a further visit to the firm from 11th – 13th February 2004 he found that the accounting records remained in an unsatisfactory state even though the Respondents claimed to have brought them up to date. The Respondents were given further opportunity to remedy matters but in his visits of March, April and June of 2004 the IO found that some improvements had been made but many of the original problems still persisted.
5. Although it was difficult for the IO to calculate a precise figure because of the chaotic state of the accounting records, he was able to establish that there was a minimum cash shortage of £20,996.03 on funds available to meet the liabilities to clients. This shortage was caused by a combination of debit balances (over payments and over transfers) and improper payments from client account. A further shortage of monies available to meet client liabilities in the sum of £1,121.00 had arisen after the inspection date.
6. The IO noted that between 28th August 2003 and 31st December 2003 twenty-six cash payments ranging in value from £30 to £15,000 and totalling £37,872.09 had been made from the firm's client bank account. Since then, he noted, numerous further cash payments appeared to have been made. The IO was unable to find any proper written authorisations for these withdrawals.
7. The IO discovered numerous conveyancing transactions in which Dale Solicitors ostensibly acted for one set of clients and UK Legal Services acted for the other side. Mr Iqbal was one of the two partners of UK Legal Services (the other being a Registered Foreign Lawyer) and there was a potential breach of Practice Rule 6. An analysis of the files revealed that Dale Solicitors had often undertaken the work on

behalf of the UK Legal Services' clients as well as their own client and the lender client. In his oral evidence the IO said that letters had been addressed to clients of UK Legal Services on Dale Solicitors' headed paper and vice versa. It was significant where lending clients were addressed on Dale Solicitors' letterhead as some lenders would not have been prepared to instruct UK Legal Services as only one partner in that firm was a solicitor.

8. After Mr Iqbal ceased to be a partner in UK Legal Services in November 2003, Dale Solicitors opened a second office at Manchester from which Mr Iqbal worked. Between December 2003 and May 2004 the practice was involved in 10 conveyancing transactions in which it acted for purchaser, vendor and lender. The IO had been unable to locate written consent from either vendor or purchaser, where appropriate, in accordance with Practice Rule 6(2)(a)(i).
9. In many cases the Respondents' practice did not have full control over the stated purchase price, either because deposits were paid direct or because the actual purchase price was less than that stated on the purchaser's client file. The lower price was in some instances revealed on the vendor client's file. The IO set out examples of matters where this situation arose in his report. The position had not been reported to the lender clients.
10. The Respondents' firm had acted in three conveyancing transactions involving a client called Mr AA. The first transaction (the sale of a property in Bridge Street) the client matter file was in the name of Mr AA. The contract documentation stated that the vendor was Ms UP. In a second matter the same Ms UP was shown as being the purchaser. Mr Deane agreed that the instructions had come from Mr AA. The contract documentation stated that the purchaser was Mr SKA. Mr Deane said that the reason for this was that Mr AA was in the process of obtaining a mortgage on another property and he thought that if he were shown as the proprietor of any other property it could affect his mortgage eligibility. The Respondents were under a duty to notify the lender client of this information.
11. The IO had concerns about the Respondents' relationship with Mr SF. Mr SF was a mortgage broker who had connection with a firm of estate agents and traded as a property developer. He introduced numerous conveyancing transactions to the Respondents, many of which were characterised by misrepresentation of the purchase price, changes in the purchase price and deposits paid directly by the purchaser. The Respondents had undertaken work on behalf of Mr SF free of charge and had made payments of large sums of cash to him without obtaining adequate authorisations or receipts. Mr SF made a personal loan to Mr Deane in May 2003. The IO raised a query with Mr Deane as to whether the monies were Mr SF's to lend. Mr Deane subsequently produced what purported to be a handwritten note from Mr SF. In another matter involving property at Westend Lane, Mr SF was the client of the firm as the purchaser and the firm also acted for the vendor Mrs G and the lender RBS. The lender had not been informed that the practice was also acting for vendor and purchaser. One of the disbursements paid by the vendor was an estate agents' fee of £650 to the firm with which Mr SF was connected. The practice had not provided any advice to the vendor about this payment.

12. The matters solicitors were warned about in The Law Society's warning card, entitled "Property Fraud II", included misrepresentation of the purchase price, a deposit or any part of the purchase price being paid direct, changes in the purchase price and stated that the solicitor should check that the true purchase price is shown in all documentation.
13. The IO ascertained from Mr Deane that there were five main introducers of business. The firm had not complied with the requirements of the Introduction and Referral Code in that they were unable to produce records of agreements for the introduction of work and evidence that six monthly reviews had been carried out. The Respondents denied that business had actually been introduced to the practice.
14. The Law Society wrote to each Respondent on 19th August 2004 seeking his explanation for what had taken place. The response of both Respondents was dated 6th September 2004 in which the Respondents claimed not to have believed that they were acting improperly.

The Submissions of the Applicant

15. It had not been possible to calculate the level of client liabilities at the date of the IO's inspection because of the poor state of the accounting records. Numerous client ledger accounts were in debit. There was a minimum cash shortage in the sum of £20,996.03 at the inspection date of 31st December 2003. A further cash shortage of £1,121 arose after the inspection date. There had been numerous breaches of the Solicitors Accounts Rules.
16. Improper payments had been made from client bank account in favour of Mr Deane.
17. The Respondents had not had due regard for The Law Society's guidance in relation to property fraud.
18. The Respondents had not complied with Practice Rule 6 relating to conflict of interest in conveyancing property selling and mortgage related services.
19. Cash payments made from client bank account had not been properly authorised or recorded.
20. The Respondents had not complied with the provisions of the Solicitors Introduction and Referrals Code.
21. The relationship between the Respondents and Mr SF was such as to bring them into breach of Solicitors Practice Rule 1.
22. The Applicant confirmed that he had written to the Respondents prior to the hearing making it plain that he would put allegations (iv), (v), (vi) and (vii) as matters of dishonesty. He did put those allegations as representing dishonesty on the part of the Respondents.

The Submissions of the Respondents (a summary of the Respondents' letter dated 6th September 2004 addressed to the Head of the Investigation and Enforcement of the Compliance Directorate of The Law Society)

23. The Respondents accepted that at the initial inspection their firm's books of account were not fully in compliance with the Solicitors Accounts Rules 1998. This had been owing to pressure of work. They had implemented a computerised accounts system which was kept up to date on a regular basis by a bookkeeper. Reconciliations were carried out in accordance with the relevant rules.
24. The Respondents did not agree the amount of the minimum cash shortfall established by the IO, but they had rectified the shortfall of £11,801.04, with which they agreed.
25. The Respondents confirmed that they were aware of The Law Society's warning about property and mortgage fraud. The clients of Dale Solicitors were always sent client care letters. The Respondents considered that there might have been a few rare files where client care letters were sent to clients but copies were not retained on the file. All new clients were now provided with a client care letter and a copy kept on the file.
26. The Respondents accepted that they had acted for more than one client in some conveyancing transactions. It had not been the Respondents' intention to mislead clients or lenders in any way. Where payments had been made direct the Respondents asked their clients to confirm that the balance of purchase price was paid direct to the seller. The Respondents had become more prudent with regard to direct deposits and had come to ensure that all deposit monies passed through their client account and they were in full control of the purchase monies. Differences in purchase price in a matter involving Mr SF were explained by the fact that Mr SF had developed the property.
27. The Respondents did not believe that in any matter of which they had conduct there was a conflict or significant risk of conflict otherwise they would have declined to act for the parties. In future they would so decline.
28. The Respondents understood that as long as two separate solicitors within the firm acted independently of the vendor and the purchaser/ lender then Rule 6 was not breached.
29. The Respondents had ceased to make any cash payments to clients because of inconvenience. Any payments in cash had been made in compliance with the Solicitors Practice Rules and written authorities had been placed on the requisite files.
30. The Respondents had no agreements relating to the introduction of work. All clients recommended to them by estate agents or mortgage brokers were clients who had contacted the Respondents' firm and they had acted for them independently without any payment by way of a referral fee. There was no relationship between Mr Deane and Mr SF.

31. Payments made in cash to Mr SF were explained fully to the IO and the Respondents had provided written consents from the client. Dale Solicitors had not been bankers for Mr SF.
32. It was accepted that Mr SF had not been charged legal fees in two conveyancing matters, that was a gesture of goodwill on the Respondents' half and nothing more.

The Findings of the Tribunal

33. The Tribunal found all of the allegations to have been substantiated.

The Tribunal's decision and its reasons

34. The Tribunal concluded that the Respondents' books of account were in a shambolic state. It is fundamental to the practice of a solicitor that he keeps proper up to date books of account fully in accordance with the Solicitors Accounts Rules in order to demonstrate that he has handled clients' money fairly and properly and has in every respect exercised a proper stewardship over those monies. The Respondents' failure to achieve full compliance with the requirements of the Solicitors Accounts Rules was a serious matter. Not only did it appear that the Respondents' recording of financial transactions was chaotic, a picture emerged of muddle and arrangements which did not comply with the Solicitors Accounts Rules.
35. It appeared to the Tribunal that the Respondents' approach was one of expediency rather than of any settled intention to be fully compliant with the regulatory requirements of practice. Those regulatory requirements are in place to protect the members of the public who are clients of a solicitor. It is for this reason that a failure to comply with all regulatory requirements fully and properly has to be regarded by the Tribunal as an extremely serious matter.
36. The Applicant told the Tribunal that prior to the hearing he had written to the Respondents to point out that he did put allegations (iv), (v), (vi) and (vii) as allegations involving dishonesty. The Tribunal was entirely satisfied that the Respondents' breach of practice Rule 6, their failure to disclose material information to lender clients in conveyancing transactions and their relationship with an introducer of conveyancing business and their failure to pay any regard to the guidance given by The Law Society to prevent solicitors from becoming involved in transactions involving property fraud all did amount to dishonesty.
37. Whilst the Tribunal is not on the evidence before it able to find that the Respondents set out with the intention of behaving dishonestly, the Tribunal applied the test in Twinsectra v Yardley and is of the view that any solicitor would regard the Respondents' activities as dishonest and the Respondents themselves, as solicitors, must have been fully aware that that was the position.
38. The Tribunal considered that the catalogue of breaches was very serious and having made a finding of dishonesty concluded that it was appropriate in respect of each of the Respondents to order that he be struck off the Roll of solicitors such order being made to protect the public and the good reputation of the solicitors' profession.

39. It was right that the Respondents should pay the costs of and incidental to the application and enquiry. The Tribunal accepted the figure provided by the Applicant of £10,062.75, which was inclusive of legal costs, the costs of the IO and VAT, and ordered that the Respondents should pay those costs in such fixed sum, their liability for payment to be joint and several.

DATED this day of November 2005
on behalf of the Tribunal

A G Gibson
Chairman