

IN THE MATTER OF CHRISTOPHER ROBERT FULLER,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr J N Barnecutt
Mr J Jackson

Date of Hearing: 28th February 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Jonathan Richard Goodwin, solicitor and partner in the firm of Jonathan Goodwin Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT on 9th August 2005 that an order be made by the Tribunal directing that, as from a date specified in the order, no solicitor should except with the permission of the Law Society for such period and subject to such conditions as the Law Society might think fit to specify in the permission employ or remunerate in connection with the practice of a solicitor Christopher Robert Fuller of Sunning Common, Reading, a person who was or had been a clerk to a solicitor within the meaning of the Solicitors Act 1974 or that such order might be made as the Tribunal should think right.

The allegations against the Respondent, Mr Fuller, who was not a solicitor, were that he had been guilty of conduct of such a nature that in the opinion of the Law Society it was undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor in that:-

- (i) He acted in a conflict of interest situation;
- (ii) He made a secret profit;
- (iii) He acted in a way that was misleading and/or took unfair advantage of his clients;
- (iv) He failed to advise his client(s) to seek independent advice.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Jonathan Richard Goodwin appeared as the Applicant and the Respondent appeared in person. The evidence before the Tribunal included the admissions of the Respondent of allegations (i) and (iv). Mr A Page, Mrs D Page, Mrs C Page-Kirby and the Respondent gave oral evidence. At the hearing Mr Fuller handed up a note dated 16th December 1998 and copy contract dated 18th February 1999. Mr Fuller accepted that in respect of the admitted allegations (i) and (iv) it would be right that the Tribunal make an order pursuant to Section 43 of the Solicitors Act 1974 in respect of him. He was concerned that there should not be a finding made against him either that he made a secret profit or acted in a way that was misleading or took unfair advantage of his clients.

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

The Tribunal Orders that as from 28th day of February 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Christopher Robert Fuller of Sunning Common, Reading, a person who is or was a clerk to a solicitor, and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,000 inclusive.

(The Tribunal has drawn the Order in the most recent statutory form incorporating amendments to the original form of the Order provided under Section 43 of the Solicitors Act 1974.)

The background and the admitted allegations

1. Mr Fuller, who was not a solicitor, was employed by Hewetts Solicitors of 55 - 57 London Street, Reading, Berkshire, RG1 4PS. Mr Fuller retired from that firm on or about 30th April 2003.
2. Mr Fuller had acted for the Page family for a number of years. He had prepared wills for Mr A Page's father and mother.
3. Mr P's father Mr AW Page died on 31st December 1997. Mr Fuller had drawn his will and was instructed to act in the administration of the estate, although Mr AT Page, who was the sole surviving executor, challenged the validity of the will and there was a dispute between Mr A Page and his brother.

4. Mr A Page withdrew instructions from Hewetts in about June 1999 and appointed another firm to advise him. That firm was disinstructed in about October 2000, when new solicitors were retained.
5. The dispute between Mr A Page and his brother was resolved by way of a deed of family arrangement dated 19th February 2001.
6. It was disputed that Mr AW Page's will reflected his intentions, and consideration was given to the possible negligence of Mr Fuller in that respect.
7. Mr Fuller continued to act for Mr A Page and in the administration of the estate of AW Page deceased notwithstanding Mr A Page's challenge that the will as drawn did not express his late father's wishes.
8. Once the validity of the will had been challenged the interests of the firm of Hewetts conflicted with those of Mr A Page and Mr Fuller should have advised Mr A Page to seek independent legal advice and he should have ceased to act. Mr Fuller accepted that his conduct in that matter fell short of what was required but he had explained that he was confident that Mr AW Page's will did express his true wishes and had been drawn in accordance with his instructions.

The disputed allegations

9. Mr Fuller was continuing to act in the administration of the estate of the late AW Page when Exnine Developments entered into an agreement with Sahana Homes Limited on 17th February 1999 relating to two properties, one of which was the property of the late AW Page which formed part of his estate.
10. Exnine Developments (and Exnine Developments Limited of which he was sole director) was a separate business of Mr Fuller. The agreement of 17th February 1999 took the form of a letter addressed by Sahana Enterprises Limited to Mr Fuller in the following terms:-

"17th February 1999

Dear Chris

RE: (SITE 1)
(SITE 2) [the property of the late Mr AW Page]

Further to our recent meetings, I would confirm the terms agreed between Sahana Enterprises Limited and Exnine as follows:-

- 1 Sahana has made an unconditional offer as follows via the Estate Agents of £190,000.00 to buy site 2 as it stands, which I understand has been accepted and legal matters are proceeding.
- 2 Once the purchase of site 2 has been completed, Sahana hereby irrevocably agree to pay the sum of £5,000.00 to Mr Tony Page for a three month option on site 1 to purchase site 1 at its market value plus 15%.

- 3 In the event that Sahana obtain Planning Permission for three dwellings on site 2, then we confirm a joint venture profit of £6,000.00 will be paid to Exnine Developments, in the event that Sahana obtain Planning Permission for four units, this joint venture profit will be £10,000.00.
- 4 Sahana acknowledge the introduction of these two site via Exnine Developments and confirm that the introduction fees will be paid at a rate of £5,000.00 in respect of each dwelling unit, for which Planning Consent is granted on sites 1 and 2. Such payment to be paid to Exnine Developments within twenty-eight days of the grant of such Planning Permission.
- 5 Exnine Developments/C.R. Fuller, agree to assist with the revised access arrangements off Hunters Chase, with regards to the negotiations with Higgs and Hill/Swan Hill Homes.
- 6 In the event that Sahana are required to pay Swan Hill Homes/Higgs and Hill any money in respect of the arrangements for access off Hunters Chase, the overall fees payable to Exnine Developments for introduction of the site under paragraph 4 above shall be reduced by 10% of any sum payable to Swan Hill Homes/Higgs and Hill. This reduction of the Exnine fees shall only take place if the sum payable referred to above exceeds £5,000.00.
- 7 If Sahana sells the land before Planning Permission is obtained then we agree to pay Exnine Developments the sum of £10,000.00 within 28 days of completion.
- 8 If Sahana fail to obtain Planning Permission and sell the site on we agree to pay Exnine Development 25% of the Nett profit within 28 Days of completion.

Signed for and on behalf of Sahana Enterprises Limited.”

11. It was Mr A Page’s evidence that Sahana Homes purchased his late father’s property for the price of £190,000. At the hearing Mr Fuller produced a copy of the contract showing that the contract for sale and purchase was entered into on 18th February 1999. The purchase price was £190,000 and the date fixed for completion was 12th March 1999. The contract had been signed by Hewetts Solicitors for and authorised by the seller. The sellers were Mr A Page and Mrs C Page-Kirby.
12. In his evidence Mr A Page said that Mr Fuller appointed the estate agent to market his late father’s home. He had since been advised by two other independent estate agents that the real value of the site was closer to £350,000.
13. At the time of the sale Mr A Page had not been aware that Mr Fuller or Exnine Developments had entered into an agreement with Sahana Homes. Another developer had expressed an interest in purchasing the property for development. Mr Fuller

advised Mr Page not to pursue that interest. Mr Page had since discovered that another interested developer had been turned away.

14. Mr Page had been aware that Sahana Homes were the purchasers but he had been unaware that Mr Fuller was to make any money from the sale save for routine legal fees.
15. About the same time as the sale of the late AW Page's property, Mr A Page entered into an agreement with Sahana Homes, through Mr Fuller, whereby Sahana Homes paid £5,000 to him for an option to purchase his own property (site 1 in the 17th February 1999 letter) should he decide to sell.
16. Mr Fuller had advised that there was some provision within the sale contract to Sahana Homes that if they were granted planning permission for more than three properties to be built, then there might be a "bonus" payment to the estate. Subsequently three properties had been built on the land.
17. It was Mr A Page's evidence that at no time did Mr Fuller make any representation orally or in writing that he was connected with Exnine Developments, nor that he or Exnine Developments had entered into an agreement with Sahana Homes that secured the payment of money to him. Mr A Page first learned of the existence of Exnine Developments when he received a letter dated 5th December 2002 on that company's notepaper enclosing a cheque for £6,000. Mr A Page did not understand why the cheque had been sent, nor to what it related. Mr A Page wrote to Mr Fuller on 22nd December 2002 querying the payment and indicating that he was unaware of any sum due to him, save for the payment of £5,000 in relation to the option on his own property.
18. Mr A Page's property shared a boundary with his late father's property, and upon hearing of the possible redevelopment on the adjoining property, Mr A Page told Mr Fuller of his concern that the new development might affect the value of his own property. Mr Fuller had explained that the only way to handle such a situation would be for Mr A Page to purchase his late father's property and control the development. Mr Fuller said he was unsure that such an approach would be possible without including Mr A Page's brother as Mr A Page would be profiting by developing the site and there would be an argument that the late Mr AW Page's estate had a claim on any profit. Mr A Page had not been able to pursue that course as the necessary funds were not available. Ways to raise funds were considered but Mr Fuller had suggested that a delay caused by fundraising would not be acceptable to the estate and any profit would have to be shared with Mr A Page's brother.
19. Mr A Page was in no doubt that Mr Fuller had never indicated to him that he was to receive any fees from his involvement in the matter other than the normal legal fees. Mr Fuller did not show Mr A Page any correspondence or agreement entered into between himself and Exnine Developments and Sahana Enterprises.
20. Mr A Page first knew about any agreement or payment to Mr Fuller or Exnine Developments when he received the letter dated 5th December 2002 enclosing the cheque for £6,000.

21. Mrs Page, wife of Mr A Page, said she had had a particularly close contact with her husband's affairs owing to his medical condition. She confirmed her husband's evidence.
22. Mrs Page-Kirby, daughter of Mr and Mrs Page, had known Mr Fuller as the family solicitor. Mr and Mrs Page had not attended a meeting with Mr Fuller without Mrs Page-Kirby being present.
23. Mrs Page-Kirby first learned of Exnine Developments when the letter of 5th December 2002 enclosing a cheque for £6,000 arrived.
24. Mrs Page-Kirby confirmed the evidence of her father. She said that Mr Fuller had advised Mr A Page that the highest offer for his late father's property had been made by Sahana and recommended Mr A Page to proceed with the sale.
25. Mr Fuller had not at any meeting mentioned his receiving a consultancy fee or any other payment.
26. When these matters were put to Mr Fuller by the Law Society in a letter, he had responded on 6th December 2002 and 17th March 2003 saying that he had known the Page family for many years and his professional relationship with the Page family had been long-standing and was of a close and personal nature.
27. Mr Fuller said that property was his field of expertise and he had on a number of occasions discussed with Mr A Page the possibility of development of his land and that formerly owned by his father.
28. Mr Fuller had been aware of a rift between Mr A Page and his brother.
29. The estate agent instructed in the sale of the late Mr AW Page's house had been known to Mr Fuller for about 20 years but he had no direct connection with that estate agency.
30. Sahana Homes Limited was a company known to Mr Fuller. It was owned by a local chartered surveyor for whom Mr Fuller had acted in the past. Mr Fuller from his knowledge had been able to confirm the integrity of that company to Mr A Page. The marketing of the property of the late Mr AW Page had been left entirely to the reputable estate agents instructed. All offers made during the marketing process had been referred to Mr and Mrs A Page.
31. Mr Fuller said that he had pointed out to Mr A Page that there was a real potential for development gain on the property. He suggested that he and his brother might discuss the possibility of Mr A Page buying out his brother's share of the property to realise the development potential himself.
32. Mr Fuller's file and appointments diary confirmed a long and detailed meeting which took place on 30th October 1998 at the home of Mr A Page when his wife and Mrs Page-Kirby were present. Mr Fuller said the purpose of that meeting was fully to explore the property's development potential. The question of raising funds to buy out Mr A Page's brother's share was also considered. Mr A Page was reminded by Mr Fuller of the obligations and duties he had as his father's executor.

33. Mr Fuller said that in November 1998 he received a letter from the estate agent enclosing details of an offer from a developer. It was considerably in excess of other offers received. That offer was communicated to Mr A Page. It was Mr Fuller's recollection that he was then contacted directly by Sahana Homes to discuss their possible acquisition of the property. Because the owner of that company was a former client of Mr Fuller and was known to him he was happy to discuss the matter with him. Mr Fuller's records indicated that he had a meeting on 11th December 1998 with Mr and Mrs AJ Page and Mrs Page-Kirby where the topic for discussion would have been the terms of their acceptance of the offer from Sahana. Both offers made had been for a price in excess of the market value of the property because each prospective buyer recognised the property's development potential. Mr Fuller explained to the Pages that there was in existence a problem relating to access which might have prevented further development.
34. Mr Fuller said that when explaining this problem to the Page family he had been asked by Sahana Homes in his capacity as Exnine Developments to assist them with continued and future negotiations dealing with the access issues. Mr Fuller said he made it clear to the Page family that Exnine Developments would be receiving consultancy fees in respect of those matters. He believed they would have asked him how much those fees were but as they had not been fully negotiated Mr Fuller could not have given them specific figures. He said he would have given them an indication.
35. Mr Fuller said that at the meeting the possibility of the development of Mr A Page's property was considered, including the possibility of Sahana Homes taking an option over that property. The Page family had requested that in the event of Sahana improving the development potential that some sort of "overage" was to be paid. Mr Fuller agreed that he would negotiate those matters with Sahana. Mr Fuller again reminded Mr A Page of his duties and obligations as an executor. Mr Fuller said it had been agreed in principle that should he be able to negotiate a suitable "overage" payment with Sahana then he would include that within his fee structure with Sahana and would subsequently, if any "overage" became payable, share that with the Page family on terms to be agreed.
36. Mr Fuller said that he met with the owner of Sahana at Mr Fuller's home on 16th December 1998. It was agreed that Sahana would take an option on Mr A Page's property in consideration of the sum of £5,000 and that a further "overage" arrangement payable to Mr A Page would be agreed on the basis that if three units were achieved on the site £6,000 would be paid and if four units were achieved £10,000 would be paid. If payments had to be made to deal with access problems then the "overage" payments and Exnine's own fees would be reduced pro rata. Mr Fuller said he conveyed all of that information by telephone to Mrs Page-Kirby. The Page family found the proposals acceptable.
37. At the hearing Mr Fuller produced a handwritten note of the meeting which had taken place with Sahana which was in the following form:-

"Meeting CK [*owner of Sahana*] 16/12/98 - 'Slades Wood'

Re: [property at K Road]

A.

CRF: Proposal	1) Contract price	190,000.00
	2) Tony Page (on comp) [Mr A Page]	5,000.00
	3) " " (on planning)	
	3 units +	6,000.00
	4 units +	10,000.00

Give full consideration to a scheme including 248B. (Submit 2 schemes if appropriate 1. re "262" or 2. '262' & '248B')

B.

Exnine received £5,000.00 for unit consented* payable 28 days after planning granted.

* on 262 and 248B.

Exnine/CRF will still pursue "Hunters Chase" (12 feet wide) access from Higgs and Hill"

38. The owner of Sahana had provided a witness statement confirming the position.
39. In due course the option agreement had been entered into for which £5,000 was paid to Mr A Page.
40. Subsequently Sahana did obtain planning permission but they had to make a substantial payment for access arrangements and the fee structure was reduced.
41. Mr Fuller received the reduced payment from Sahana which included a reduced payment for the Page family of approximately £2,300. Mr Fuller in his letter to the Law Society confirmed that he had not at that stage paid the money to the Page family, explaining that it was due to the emotional upset following Mr A Page's disinstruction of Hewetts as his solicitors. It seemed inappropriate to Mr Fuller to approach the Page family at that time. Those monies had been placed on deposit. Mr Fuller had been prompted by the situation which had arisen to write to Mr A Page with the cheque for the original reduced fees plus interest giving an explanation and apology for the delay in making the payment.
42. In his later letter of 17th March 2003 Mr Fuller said that when he re-read the letter addressed to him by Sahana Homes he had come to realise that the formula for reducing payment did not apply to the money that was due to the Pages. £6,000 was due to them. Mr Fuller had not realised that at the time of writing his first letter to the Law Society. He was able to confirm in his letter of 17th March 2003 that the payment of £6,000 had been made in full together with appropriate interest to the firm of solicitors handling the late Mr AW Page's estate. Such a payment had initially

been made to Mr A Page on 6th December 2002 but when the cheque was returned to Mr Fuller by Mr A Page Mr Fuller paid it to the estate solicitors.

43. In his oral evidence Mr Fuller said that what he had said in his letters to the Law Society was true but he accepted that he might not have referred to himself to the Pages as “Exnine Developments”. He had however always made it clear to all of his clients that he had property interests. If he did not refer to Exnine Developments when speaking to the Pages he would have used an expression like “I am wearing my property hat”.
44. Also in his oral evidence Mr Fuller said that there had been a background of grievance between Mr Page and his brother and Mr A Page and his wife and daughter had intended to cut out the brother from a share in the “overage”. They had to that extent devised a fraudulent scheme. Mr Fuller when asked if he was prepared to be a party to such a scheme said that he was trying to help Mr A Page and his family. There was no documentary evidence because Mr A Page’s family would not have wished him to write to them in those terms. Mr Fuller accepted that he had not put this matter to Mr A Page or his family members when they were giving evidence and he had not put it in correspondence. He said it was right that he should put this evidence before the Tribunal because it was the truth. Mr Fuller said he had allowed himself to be sucked into the scheme. Mr Fuller said he had not explained the true situation before because he had tried to protect Mr A Page and his family, but he had to disclose it in his evidence before the Tribunal as he had appeared in order to protect his reputation. If he had made that disclosure earlier it would have been a catastrophe for Mr A Page and his family. Mr Fuller said that he had agreed the terms with Sahana on the instructions of Mr A Page and family.
45. Mr Fuller said that he had not discussed the level of his remuneration with Mr A Page and family but they all knew that he was going to be paid for his input.
46. Mr Fuller denied that he had only written to Mr A Page sending him money when he thought what he had done would be discovered.

The Submissions of the Applicant

47. Section 43 of the Solicitors Act 1974 (as amended) was a regulatory provision designed to afford safeguards and exercise control when in any given case that was considered appropriate. It was not a punishment and should not be viewed as such. The fundamental principle involved was the maintenance of the good reputation of the solicitor’s profession in the interests of both the profession and the public. The solicitor’s profession’s most valuable asset was its collective reputation and the confidence which that inspired not only in respect of solicitors but also in respect of those employed by its members, whether such persons were qualified or not.
48. Mr Fuller had admitted allegations (i) and (iv) and he was to be given credit for that. Mr Fuller had also accepted that it was right that the Section 43 order sought should be made in respect of him with regard to those two admitted allegations.
49. Mr Fuller asserted that he explained to Mr A Page and family that he had been asked by Sahana Homes in his capacity as Exnine Developments to assist with negotiations dealing with issues relating to access which would have an impact upon the

properties' development potential. He also asserted that he made it clear to Mr A Page and family that Exnine Developments would be receiving consultancy fees in respect of those matters. He suggested that he would have given Mr A Page and family some idea as to the level of those fees. Mr A Page and family denied that that was the case.

50. It was the Applicant's case that Mr Fuller had entered into the arrangement with Sahana without the knowledge of Mr A Page or any member of his family and in that respect any payment made to him amounted to a secret profit. In furthering his own interests in that way he misled and took unfair advantage of his clients.

The Submissions of Mr Fuller

51. Mr Fuller had appeared in person before the Tribunal for the sole purpose of disclosing the truth. If he had made a secret profit, and the figure alleged was not a significant one having regard to Mr Fuller's substantial business interests, he would not have exposed himself by appearing before the Tribunal. His appearance having regard to the long-standing personal and professional relationship which he had with Mr A Page and his family had caused the experience for Mr Fuller to be both emotional and traumatic.
52. Mr Fuller had told the truth. With regard to the payment of "overage" Mr Fuller accepted that he had perhaps acted stupidly. He had tried to assist Mr A Page and family at what was for them a very difficult time. He had come to regret what he had done with the benefit of hindsight.
53. Mr Fuller accepted that he had not disclosed to Mr A Page and family precise figures for the sums that he was to receive but he had not been able to do so because he had not been able to quantify them. He said he had agreed to restructure his own fee arrangements in order to help them. Mr Fuller said he had told Mr A Page and family that their fraudulent scheme to keep an unpopular brother out of money to which he was properly entitled was not the right thing to do.
54. Mr Fuller had attended before the Tribunal to tell the truth and that was exactly what he had done.

The Tribunal's Findings of Fact

55. The Tribunal believed the evidence of Mr and Mrs A Page and Mrs Page-Kirby. The Tribunal found each of them to be honest witnesses and noted in particular that when Mr A Page received an unexpected cheque from Mr Fuller he immediately returned it. The Tribunal did not believe Mr Fuller. Not only did he give a different version of events to the Law Society in his letters of 6th December 2002 and 17th March 2003, but in his oral evidence he accused Mr A Page and family of colluding fraudulently to keep another member of their family from money to which he was entitled. Mr Fuller gave that account to the Tribunal having not made any mention of it in lengthy letters of explanation delivered to the Law Society. He did not put that accusation to Mr A Page or any member of his family when he had the opportunity to do so at the hearing. The Tribunal also considers the suggestion that Mr A Page and his family sought fraudulently to deprive Mr A Page's brother of money to which he was entitled, when the whole amount involved was only £6,000 and the brother's share of

that would not have been a hugely significant sum having regard to the value of the late Mr AW Page's estate, to be absurd. It was a story concocted by Mr Fuller for the purpose of the Tribunal hearing. It was contrary to Mr Fuller's evidence that he had known Mr A Page over many years both as an adviser and a friend.

The Tribunal's Findings

56. Because the Tribunal did not believe Mr Fuller's evidence and did believe the evidence of Mr and Mrs A Page and that of Mrs Page-Kirby the Tribunal finds the disputed allegations (ii) and (iii) to have been substantiated.

The Tribunal's Decision and its Reasons

57. The Tribunal had listened carefully to all of the oral evidence and considered the written evidence placed before it together with the submissions made.
58. Having seen Mr Fuller give evidence and the three members of the Page family give evidence, the Tribunal preferred the evidence of the members of the Page family. Their evidence was largely unchallenged and where it was in conflict with that of Mr Fuller the Tribunal had no difficulty in preferring the evidence of the members of the Page family. The suggestion that Mr Fuller colluded in a fraudulent arrangement with the Page family to deny Mr A Page's brother a proper share in the monies in their late father's estate was as startling as it was unlikely. Prior to the hearing Mr Fuller had made no mention of this assertion.
59. The Tribunal was not satisfied on the evidence that Mr Fuller did tell the Page family about his personal interest in their property transaction, nor did he tell them about the fees that he stood to gain which amounted to a secret profit. He did not tell the Pages that his property business Exnine had been involved with Sahana Homes.
60. On Mr Fuller's own account he had enjoyed a long-standing personal and professional relationship with the Page family and his failure to disclose his own business interests and potential financial benefits that he would derive from a property transaction in which Mr A Page was a party not only misled his clients but also took an unfair advantage of them because they trusted and relied upon him and he took advantage of that for his own benefit.
61. Such behaviour on the part of a person employed by a solicitor was inappropriate is not to be tolerated. It could serve only to damage the good reputation of the solicitors' profession. The Tribunal made the order sought pursuant to Section 43 of the Solicitors Act 1974 and also ordered that the Respondent Mr Fuller pay the costs of and incidental to the application and enquiry fixed in the sum of £13,000.

Dated this 24th day of April 2006
On behalf of the Tribunal

D J Leverton
Chairman