

IN THE MATTER OF EILEEN MAUDE,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Gibson (in the chair)  
Mr A Gaynor-Smith  
Mrs S Gordon

Date of Hearing: 18th April 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was made on behalf of the Law Society by Stuart Roger Turner, solicitor and partner in the firm of Lonsdale's Solicitors, 5 Fishersgate Court, Fishersgate, Preston, PR1 8QF on 2nd September 2005 that an order be made by the Tribunal directing that as from a date to be specified in such order no solicitor should, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice of a solicitor Eileen Maude of Drighlington, Bradford, West Yorkshire, a person who was or had been clerk to a solicitor or that such other order might be made as the Tribunal should think right.

It was alleged that the Respondent had been guilty of conduct unbecoming in any or all of the following circumstances, namely that the Respondent had in the opinion of the Law Society, occasioned or been a party to, with or without the connivance of the solicitors by whom she was or had been employed or remunerated, an act or default in relation to that solicitors' practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her to be employed or remunerated by a person in connection with his or her practice in that:

- 1) She acted where there was a conflict of interest between her own interests and those of her client and/or failed to act in her client's best interests;
- 2) She misled another firm of solicitors and their building society client, by representing that vacant possession would be given on completion of the sale of a property when she knew or should have known that it was not being sold with vacant possession and in doing so acted dishonestly;
- 3) She created and used an alias to conceal her identity when conducting transactions to further her own interests above those of her clients and in so doing acted dishonestly;
- 4) She deliberately removed and destroyed files and documents belonging to her employers without their knowledge or consent.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Stuart Turner appeared as the Applicant and the Respondent was represented by David Barton, solicitor advocate of 5 Romney Place, Maidstone, Kent, ME15 6LE. On the date of the hearing the oral evidence had been concluded and the Applicant had concluded his case. The case had run late into the day and with the agreement of the parties the Tribunal confirmed that it would consider written submissions made on behalf of the Respondent, such written submissions to be submitted to the Tribunal's office within 14 days of the date of the hearing. The Tribunal would consider those written submissions and reach a decision which would be notified to the parties in writing following deliberations in chambers unless the Tribunal considered that it was necessary to reconvene for a continuation of the hearing.

The Respondent's representative submitted written submissions with his two letters of 25th April 2006 received in the Tribunal's office on 26th April 2006.

The Respondent denied allegations 4.1, 4.2 and 4.3 but admitted 4.4.

The evidence before the Tribunal included the oral evidence of Emma Clough and the oral evidence of the Respondent.

At the opening of the hearing the Tribunal expressed concern about the delay in bringing the matter before the Tribunal. It pointed out that the letter of complaint made initially to the Law Society was made in August of 2001.

It was the Applicant's submission that the delay would not prevent the Respondent from having a fair trial. For the Respondent it was accepted that the time requirements of Article 6 of the European Convention on Human Rights was probably not infringed. The matter had however been hanging over the Respondent's head. She had taken up a new job in June of 2001 and was supported by her current employers. The Tribunal would be able in due course to take account of the passage of time in reaching its conclusion.

At the conclusion of the hearing and after receiving written submissions from the Respondent's representative the Tribunal made the following order:-

That as from 1st July 2006 no solicitor should, except in accordance with permission in writing granted by the Law Society for such a period and subject to such conditions as the Society might think fit to specify in the permission employ or remunerate in connection with the practice of a solicitor Eileen Maude of Drighlington, Bradford, West Yorkshire, and that she do pay one third of the costs of and incidental to the application and enquiry to be subject to detailed assessment if not agreed between the parties.

### **The Applicant's case**

1. At the material times the Respondent was employed by Brearleys Solicitors at Batley, West Yorkshire.
2. Brearleys had received on 11th April 2001 a letter before action from solicitors representing Leeds and Holbeck Building Society. In that letter the Building Society's solicitors claimed loss on their client's part as a result of the actions of the Respondent.
3. Those actions were that in March/April 1999 the Respondent acted for Mrs LL in the sale of her property. The Respondent opened two files at Brearleys solicitors, both under the alias "Stephen Heaton"; one dealing with the purchase by "Stephen Heaton" of the property from Mrs LL for £25,000 and the other dealing with the sale of the property by "Stephen Heaton" to a Mr L for £36,000, later reduced following a valuation to £32,000. "Stephen Heaton" was an alias used by the Respondent.
4. The contract and transfer were prepared by the Respondent to show a direct sale from Mrs LL, the vendor, to Mr L as the purchaser at £32,000.
5. The Respondent was aware that the purchaser was purchasing the property with the aid of a mortgage.
6. The contract stated that vacant possession would be given on completion when in fact Mrs LL's son, Mr S, remained in the property as a tenant. The Respondent was aware that Mr S lived in the property.
7. After Brearleys received the letter from Leeds & Holbeck Building Society's solicitors they conducted their own investigation which disclosed amongst other things that the payment of a "direct deposit" of £1,600 was not recorded in the firm's ledgers and that two payments from the proceeds of sale (£4,648.87 and £241.13) had been made to "Halifax plc" which Brearleys concluded were payments made into an account under the control of the Respondent.
8. Brearleys also discovered that, in the knowledge of their investigation into her conduct, the Respondent removed files from archives in both her own name and that of "Stephen Heaton" and destroyed some files without the firm's consent. She subsequently signed a letter of indemnity addressed to Brearleys, who by that time were her former employers, confirming this fact.
9. The resignation letter signed by the Respondent took the following form:-

“Dear Sirs

I wish to resign from my post at Brearleys with immediate effect.

I understand and agree that my resignation is on the following terms.

During the next five years from today:-

I will not practise as a conveyancer or in any other kind of legal work on my own account or as an employee of another within a radius of five miles from Brearleys’ offices at Batley and/or Birstall or as an employee of another who has an office within that radius whether or not I am at any time employed at that office.

I will not act for any clients or former clients of Brearleys (which includes those clients of Wells and Hill/Lister Ryan which became clients of Brearleys on the takeover) nor will I procure those clients to be represented by another. Should there be any doubt as to whether a person is a client of Brearleys I shall refer the matter to Brearleys for them to check their records before agreeing or allowing another to act.

I consider the terms of these restrictions to be fair and reasonable in the circumstances of my resignation but understand and accept that if a court is asked at any time to consider the question of their reasonableness it may vary them to what it considers to be fair and reasonable.

Dated 19th April 2001

[signed]

Eileen Maude

To:  
The Partners  
Brearleys Solicitors  
10 Market Place  
Birstall  
WF17 9EL”

10. Brearleys’ original files created by the Respondent showed that Mr L’s solicitors were told or were led to believe that a deposit of £1,600 had been paid directly to Brearleys by Mr L. In particular a letter of 25th March 1999 referred to the Respondent confirming in a telephone conversation that the deposit of £1,600 had been received directly from the purchaser, Mr L. In fact the deposit was not paid to Brearleys as was shown by the ledger.
11. The Respondent opened a file in the name of “Stephen Heaton” having completed a database form in which it was said she entered a false address and confirmed by “ticking the conflict box” that there was no conflict. The Respondent had agreed that

“Stephen Heaton” was an alias used by her when carrying out conveyancing transactions on her own behalf.

12. The sellers’ property information form signed by the vendor referred to her son and two others as being tenants of the property. The form was sent by the Respondent to the purchaser’s solicitors on 31st January 1999. Contracts were exchanged on the day of completion, 26th March 1999. The contract provided that vacant possession would be given on completion and the requisitions on title signed by Brearleys also specifically confirmed that vacant possession would be given at 12 noon on the day of completion.
13. During the transaction the Respondent in correspondence with the purchaser’s solicitors said that she was obtaining instructions from her client, for example when considering the revised reduced offer of £32,000.
14. After completion had taken place the Respondent billed “Stephen Heaton” for £400 plus VAT for acting on the purchase and sale.
15. Mrs L received net proceeds of £4,337.53 from the sale once her existing mortgage of £20,662.47 had been discharged. This equated to the sale price by Mrs L to “Stephen Heaton” of £25,000. A further £4,889.80 was paid to Halifax plc on 1st April 1999.
16. On 2nd April 2003 the Law Society wrote to the Respondent requesting her explanation in respect of this matter and her comments on a further six files inspected by the Law Society which had been opened by the Respondent in the name of “Stephen Heaton”. She replied on 5th May 2003 and Brearleys were given the opportunity of responding to its contents and did so on 18th July 2003.
17. One of the partners of Brearleys, Ms Clough, gave oral evidence. She confirmed that the Respondent had admitted to the partners of Brearleys that she had destroyed files. She told the partners that “Stephen Heaton” was her alias and she had used an alias in order to avoid the payment of tax.
18. The Respondent had agreed to pay the sum claimed by Leeds & Holbeck of £5,871 and to pay its legal costs of £6,000. She would also have to pay the costs of the solicitors instructed by the Building Society.
19. The Respondent had admitted that she used the alias Stephen Heaton. The sale by Mrs L had been agreed at £25,000 and the ultimate purchaser had agreed to pay £32,000. It was a back-to-back transaction. The Respondent had in effect bought and sold the property on the same day and had made a profit. There was a conflict of interest between her duties to the vendor and the Respondent’s own interest. The evidence was that the Respondent had acted in her own interest.

### **The Respondent’s case**

20. The Respondent gave oral evidence. She conceded that she should have asked or consulted with her employers with regard to the transaction in question. That was the limit of her admission and it was her submission that such conduct did not deserve the imposition of a section 43 Order.

21. The first allegation asserted a conflict of interest between the Respondent's own interests and those of her client. It further alleged a failure to act in the client's best interests. It was not clarified whether they were alternatives. It was assumed that both were alleged.
22. This allegation had been denied as it stands. The Respondent freely admitted acting where there was a conflict between the interests of Mrs W and the client Mrs L. It was the Applicant's submission that the Respondent was the true purchaser.
23. There was no contemporaneous note of what the Respondent was alleged to have said to the three partners who presided over her resignation on 18th and 19th April 2001. Ms Clough acknowledged that the passing of time made recollection difficult for her.
24. The Respondent explained that she did have dealings in property. She had acted for Mrs W, who dealt in property, on a number of occasions. She was not in business with Mrs W. The Respondent had bought property, improved it and sold it on. She did not make much money as she completed the improvements to too high a standard. A senior partner at Brearleys was fully aware of this, and of the fact that the Respondent had used an alias in some of her dealings. At his request she had ceased the use of the alias.
25. With regard to the transaction upon which the allegations were founded, the Respondent had placed an advertisement seeking tenants in a local newspaper. Mrs L responded asking if the advertiser bought property and if she might be interested in Mrs L's own property. The Respondent had not been interested in buying the property but had explained that she worked for a firm of solicitors and would be happy to undertake the conveyancing in such a transaction, should a buyer be found. She had suggested that Mrs L should telephone Mrs W to discuss her desire to sell her property. Mrs W had used the alias "Stephen Heaton" in the past in connection with property dealings.
26. Quite a long time later either Mrs L or Mrs W contacted the Respondent. Mrs L had agreed to sell her property to Mrs W for £25,000. Mrs W acted as a property finder and whatever profit she made on a sale she would keep.
27. Mrs L asked the Respondent to act for her while she was at Brearleys. The Respondent had not been involved in the transaction as purchaser and she had never intended to buy Mrs L's property. The Respondent derived no financial benefit from the transaction.
28. The Respondent opened a file at Brearleys. She created a database form. Her reference to "Stephen Heaton" and the description "self employed" referred to Mrs W who used that name on occasions when she purchased property.
29. The Respondent acted for Mrs L as the seller and for Mrs W as the buyer. She accepted that she had been wrong in doing that.
30. The agreement had been that Mrs L would be paid £25,000 for her property and that Mrs W would sell the property on. Mrs W arranged the sale of the property for

£32,000. Mrs L had been fully aware of the onward sale price. Each party to the transaction was getting what he or she wanted. Mrs L's mortgage was paid off and she was paid the surplus representing her equity in the property.

31. The Respondent did not remember details of the £1,600 deposit said to have been paid direct. The Respondent had made a manuscript note on the file confirming that a £1,600 deposit had been paid. That money had not been paid to the Respondent: she accepted that if it had been paid to Brearleys it would have been paid into client account and it was not. It was feasible that payment of the deposit had been made direct by the ultimate purchaser either to Mrs L or Mrs W. Mrs W was often in the office and she might have picked up a cheque.
32. There was no actual conflict of interest between Mrs L and Mrs W, but the Respondent accepted that there was the potential for a conflict.
33. The purchase money was received on completion. Mrs L's mortgage was discharged, conveyancing fees and disbursements were paid, Mrs L received the balance due to her and payments were made to Mrs W's account at the Halifax. The Halifax account was not one over which the Respondent had control.
34. The Respondent had no connection with the ultimate purchaser who was represented by his own solicitors. The Respondent understood that the tenants who had been in the property (who were relatives of Mrs L) would move out in time for completion. She had not misled anyone about the availability of vacant possession.
35. The Respondent only learned that the tenant had remained in possession when the ultimate purchaser called at the office because he had not received the keys to the property. The ultimate purchaser indicated that he had allowed the tenants to remain in possession temporarily.
36. The Respondent denied telling the Brearleys partners that she used an alias to avoid taxation. The use of another name could not provide any tax advantage. The Respondent denied that she had removed any papers from the file.
37. The Respondent had been and remained a clerk to a solicitor. She was employed by Brearleys until her resignation on 19th April 2001. She had been employed by her current employers entirely to their satisfaction since 11th June 2001 without the need for the regulation provided by Section 43.
38. The Tribunal has discretion whether or not to make the order sought. The question was "Is it necessary in the interests of the public and the profession for an order to be made which regulates the Respondent's employment making it a requirement that any current or prospective employer obtains written permission?" The Respondent had worked for her current firm for almost five years and that the making of an order would have consequences for that relationship. At the very least the relationship would be disrupted. At worst it would be terminated. The Law Society might refuse consent, even after this length of satisfactory employment.
39. Two issues for determination arose out of the wording of the section:-

- a. First, the Tribunal had to find that at least one of the four allegations satisfied the test contained in section 43(1)(b) of the Solicitors Act 1974. The “act or default” complained of must be one that might form the basis of an “application or complaint” against the employing solicitor.

It was conceded that there was no argument on this in relation to the first three allegations, but it was submitted that this test was not satisfied in respect of the fourth allegation. If a partner in Brearleys had destroyed files in the manner alleged it was submitted that such action could not of itself lead to an application to the Tribunal against whichever partner had acted in this way.

- b. Second, if all or any such allegations were found proved, the Tribunal might make an order. It was not obliged to. It could take account of a variety of factors in determining how to exercise its discretion.
40. One of those factors was delay. At the opening of the Applicant’s case the Tribunal expressed the view that it had taken very much too long to bring this application before it.
41. The Respondent conceded that although the reasonable time requirement contained in Article 6 of the European Convention on Human Rights had not been infringed the passage of time was nonetheless very significant.
42. The conveyancing transaction forming the basis of this application was completed in March 1999, over seven years ago.
43. The Respondent “resigned” from Brearleys on 19th April 2001 having been pressurised to do so (according to the Respondent) after threats from the partners of notification to the Law Society and the police. The resignation process was commenced by her former employers only the day before she was required to sign the resignation letter, with the hearing before the Tribunal taking place on the fifth anniversary of her departure.
44. Brearleys did not report the Respondent to the Law Society until their letter dated 24th August 2001, despite their view that the Respondent had been guilty of acts of dishonesty involving client money and the conduct of a dishonest and improper conveyancing transaction. Brearleys had investigated the matter on 18th and 19th April 2001 and had all the information they needed to make a report then. The Respondent was reported by Brearleys after she started work for another local firm of solicitors.
45. The Law Society resolved to refer the case to the Tribunal on 1st October 2003, two years after Brearleys’ letter.
46. Proceedings were commenced in the Tribunal on 2nd September 2005, a further two years later.
47. The Applicant submitted to the Tribunal in opening that there was no prejudice to the Respondent by virtue of delay. Whilst it was conceded that the passage of time would probably not have rendered the trial unfair, it was widely recognised that delay of this



magnitude caused or brought about its own prejudice. The matter had been hanging over the Respondent's head for five years. Her life had moved on and yet she had faced the prospect of being dragged back. The evidence, such as it was, had been available from April 2001. Nothing had been presented to the Tribunal which was not available from the outset. The allegations had always been of the most serious kind. The Respondent had responded to the Law Society when required in a timely fashion. She had conducted herself properly throughout.

### **The Submissions of the Respondent**

48. The way in which the Respondent conducted herself vis a vis the Law Society and the support she had from her current employers was an indication of the credit and the weight which should be placed on her evidence.
49. The letter of complaint from Brearleys was not sent to the Respondent by the Law Society until 2nd April 2003. Eighteen months after the event was too long. It was not a difficult enquiry for The Law Society to conduct. She replied promptly and fully. The Law Society had been guilty of great delay and now sought to regulate the Respondent. If regulation were necessary it should have been pursued timeously.
50. In short the Respondent had laboured in the knowledge that at some stage a Tribunal might hear an application against her that could lead to the termination of her employment, notwithstanding its longevity. That did amount to prejudice.
51. Whatever findings the Tribunal might make it was invited to take the view that no regulatory order was necessary.
52. It was for the Applicant to satisfy the Tribunal that the Respondent was guilty of the allegations. It was not for the Respondent to prove that she was not guilty. The Applicant had to establish his dishonesty allegations to the criminal standard so that the Tribunal was satisfied beyond a reasonable doubt that the Respondent had been dishonest. The criminal standard accordingly applied to allegations 2 and 3, and it was submitted that the civil standard applied to allegations 1 and 4.
53. The test for dishonesty was set out in Twinsectra -v- Yardley and Others [2002] UKHL 12. The Tribunal had to be satisfied both as to the objective and subjective elements. A dishonest state of mind had to be proved.
54. Fact had to be scrupulously separated from belief. The witness who was a partner of Brearleys was obviously prejudiced against the Respondent. The Respondent's fate had been sealed as far as Brearleys were concerned before 18th April 2001: she was told to sign the compromise documents or the police would be informed. If the Respondent had perpetrated a fraud the police should have been involved immediately, as should the Law Society. The Brearleys partner was not a reliable witness. She was too free with her opinions and assumptions. She and her partners were highly prejudiced against the Respondent. The oral evidence given was unbalanced.
55. The evidence on which the Applicant relied was not good enough to establish guilt. It was not good enough to establish dishonesty. As far as Brearleys were concerned the

Respondent was guilty from the moment they saw the letter from the solicitors to Leeds & Holbeck Building Society which arrived after she had joined another firm of solicitors.

56. The remainder of the first allegation amounted to an allegation that the Respondent did not tell the seller that the ultimate purchaser was buying at £32,000 rather than £25,000. The seller signed the transfer and the contract with the £32,000 price stated. The seller wanted to receive £25,000 and she was not concerned with how much Mrs W received as a “finder’s fee”. The absence of attendance notes was an acknowledged concern. Mrs L had not been called to give evidence.
57. In her oral evidence the Respondent explained that she believed the occupants would vacate the property. The buyer and the building society were represented by other solicitors. For this allegation to be proved, the Tribunal had to be satisfied beyond reasonable doubt that the Respondent intended to convey deliberate untruths to the buyers’ solicitors and lender with intent to mislead them. There was no evidence to satisfy either limb of the Twinsectra test on this allegation of dishonesty.
58. The Respondent accepted that certain property transactions (but not this one) were conducted on her own account using an alias. It was not done to conceal her identity from her employers. The senior partner knew about this. The allegation did not assert from whom she sought to conceal her identity. The allegations referred to the conduct of “transactions”, using the word in the plural. The word “clients” was also used in the plural, and so this allegation appeared on its face significantly to extend matters beyond the transaction details of which were before the Tribunal.
59. The Respondent had identified the bundle of transaction files that she removed from Brearleys. All the transactions so identified were her own. She accepted she should have asked for permission, but it was submitted that her actions did not support the gravamen of the fourth allegation. She had sent the list of transaction files to the Applicant in October 2005.
60. The Respondent had been advised to meet the claim and the costs of Leeds & Holbeck Building Society as a commercially expedient way of disposing with the matter. She had not admitted liability. She had had to remortgage her home to raise the necessary money.
61. In summary the Respondent accepted that she made errors of judgment and practical errors in relation to the conduct of the specified transaction. That did not equate to dishonesty or guilt as to the remainder of the allegations.
62. The Respondent had been pressured to sign a restrictive agreement only to ensure she did not go to a rival firm. That was the partners of Brearleys priority. The failure contemporaneously to record alleged admissions flawed the evidence in support of the Law Society case. There was no explanation for the delay in reporting what was suggested to be serious misconduct.
63. The Respondent had been able to work entirely satisfactorily with a well-regarded firm of West Yorkshire solicitors for the last five years. The members of this firm

spoke highly of her and the image they presented of her did not sit squarely with the image presented to the Tribunal by the Law Society.

### **The Findings of the Tribunal**

64. In relation to allegation 4.1 the Tribunal find the allegation made out. In breach of the Practice Rules the Respondent acted for both the buyer and for the seller and she created an alias to conceal that fact. She was acting for herself in the purchase and for herself in the sale and in view of the fact that there was a reduction in the purchase price there was certainly a conflict of interest between the Respondent and the buyer.
65. As to allegation 4.2 the Tribunal is prepared to accept that when the Respondent represented to the buyer's solicitors that vacant possession would be given upon completion of the sale of the property she believed that to be true and accordingly the Tribunal finds the allegation not made.
66. As to allegation 4.3 the Respondent gave evidence to say that she used an alias to conceal her identity and it would follow that she had an intention to deceive her employers. The Respondent gave evidence to say that one of the partners in the firm knew of such a practice but no evidence was called to support that statement. The Tribunal finds the allegation made out and that in acting as she did the Respondent did act dishonestly.
67. As to allegation 4.4 the Respondent admitted this allegation and the Tribunal is mindful that should any employee choose to remove and destroy files belonging to her employer that must be considered grounds upon which an order regulating the employment of a clerk can be made.
68. The Tribunal were troubled by the fact that this case was brought to the Tribunal some five years after the conduct complained of. The Respondent had had this matter hanging over her head for all that time. The references produced by the Respondent were however in glowing terms and it appeared that her current employers were aware of these proceedings and were being strongly supportive of her. There were effective means of supervision in place and the Respondent had worked with them for some five years without complaint. Her supervising partner spoke of her level of conformance being "by any measure exceptional". He went on to say that he had no reason to question her integrity or standards and did not have any concerns about her continuing in a similar capacity at his firm.
69. In deciding to make the order under Section 43 the Tribunal has had regard for the seriousness of the allegations set out against the Respondent but has also concluded that if these proceedings had been promptly brought and an order been made, the Respondent would have been likely to succeed in an application made now for the order to be lifted. Her rehabilitation was complete and apparently exceptional. The Tribunal would in these circumstances recommend the Law Society to grant consent to the Respondent's continued employment in the firm of Chadwick Lawrence.
70. To mark the unacceptable delay in bringing these proceedings the Tribunal orders the Respondent to pay one third of the Applicant's costs of and incidental to this application.

Dated this 1<sup>st</sup> day of July 2006  
on behalf of the Tribunal

A G Gibson  
Chairman