

IN THE MATTER OF STEPHEN TIMOTHY JAMES SMITH, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J R C Clitheroe (in the chair)
Mr S N Jones
Mrs C Pickering

Date of Hearing: 18th July 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 Stephen John Battersby, solicitor and partner in the firm of Jameson & Hill, 72-74 Fore Street, Hertford, SG14 1BY on 6th March 2006 that Stephen Timothy James Smith, solicitor of Moor Park Road, Manchester, should appear before the Tribunal to answer the allegations contained in the statement which accompanied the application and that the Tribunal should make such order as it thought fit.

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

- (i) That he provided misleading information to a purchaser client in a conveyancing transaction;
- (ii) That he provided misleading information to a mortgage lender in a conveyancing transaction;
- (iii) That he provided misleading information to the Inland Revenue in a conveyancing transaction;

- (iv) That he failed to respond to correspondence from the Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 18th July 2006 when Stephen John Battersby appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent.

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

The Tribunal Orders that the Respondent Stephen Timothy James Smith, of Moor Park Road, Manchester, 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 £1,493.55.

The facts are set out in paragraphs 1 to 13 hereunder:-

1. The Respondent, born in 1968, was admitted as a solicitor in 1992 and his name remained on the Roll of Solicitors. At the material time the Respondent was employed by Messrs Nelsons of Pennine House, 8 Stanford Street, Nottingham. As a result of the matters set out below he was summarily dismissed by Nelsons on 10th March 2003. He was not currently employed as a solicitor and did not hold a current Practising Certificate.
2. In May 2002 the Respondent received instructions from Mr B in relation to his purchase of a residential property in Greetham. The title to the property was partly registered land and partly unregistered and it would have been expected practice for the Respondent to have made searches at the Land Registry and the Land Charges Register prior to completion.
3. On 14th May 2002 Mr B wrote to the Respondent sending him a cheque for £135 for search fees. Although the ledger account showed that on 16th May 2002 £95 was paid out for a local Land Charges search, there was no record of payment of any fees before completion either for Land Registry or Land Charges searches. Exchange and completion took place simultaneously on 25th September 2002.
4. Mr B was concerned to know whether there was anything in the deeds to prevent development of the garden to the property and wrote to the Respondent on 1st October 2002 asking for copies of the transfer deed and main deed. Although the vendor's solicitors submitted the executed form TR1 to the Respondent on 10th October 2002 there was no record on the file that the Respondent had submitted an application to the Land Registry to register Mr B's title, there being no draft application, no copy of any application, no covering letter to the Land Registry and no acknowledgment from the Land Registry. Although a cheque for Land Registry fees had been drawn on 13th December 2002 this was not cashed and was cancelled on 28th February 2003.
5. The allegation that the Respondent misled his client was based on a letter which the sent to Mr B on 9th January 2003 in which he stated:-

“with apologies for the delay I can now confirm that the Land Registry have indicated to me that they hope to have the registered title deeds to me very shortly showing the entire extent of the land registered in your name.

In the meantime I enclose the plans that were utilised in connection with your purchase for your reference. I have asked the Land Registry, if at all possible to combine the two titles that you bought on to one plan for the sake of simplicity”.

The letter misled the client into believing that the correct procedures had been carried out in relation to his transaction, which was not the case.

6. In view of the problem encountered, other employees of Nelsons became involved in attempts to rectify matters and registration was eventually completed on 21st March 2003.
7. In September 2002 the Respondent was acting for Mr and Mrs C in connection with their purchase of a property at East Langton. He also acted for the C&G Building Society who were providing a mortgage to Mr and Mrs C.
8. On 4th September 2002 the Respondent wrote to the vendor’s solicitors with requisitions on title and stated “we hope to let you have a draft transfer later today although this may be impossible. However we will let you have this as quickly as possible”. However there was no reference on the file thereafter to the Respondent having sent a draft transfer or engrossment of the transfer to the vendor’s solicitors and nothing to suggest that an executed transfer was sent by them to the Respondent while he was dealing with the transaction.
9. Completion took place on 5th September 2002 but there was no evidence on the file to show that the Respondent had carried out the requisite searches at the Land Registry or the Land Charges Register to protect the interests of his clients before completion and indeed no payments for such searches were shown on the ledger.
10. On 16th December 2002 the Respondent wrote to the Inland Revenue Stamping Office stating:-

“We enclose herewith our cheque for £11,850 being the duty payable upon transfer which recently completed. The document is presently with the vendor’s solicitors for execution and we hope to let you have the same for the appropriate duty to be impressed thereon very shortly.

Perhaps you would acknowledge and let us know your reference in this matter.”

This was not true as the transfer was not with the vendor’s solicitors for execution.

11. On 9th December 2002 the C&G wrote to the Respondent enquiring as to the present situation with the transaction, in view of the fact that the mortgage funds had been

issued three months previously. On 18th December 2002 the Respondent wrote to the C&G stating:-

“We refer to your letter of 9th December 2002 and apologise for our delay in responding.

The Title to this property is presently being registered at HM Land Registry although it is somewhat complicated, being an amalgam of previously registered Titles.

We expect the Registration to be with us sometime early in the New Year and will let you have the copy deeds as soon as we are able”.

This was untrue and misleading as far as the C&G were concerned.

In view of the situation with the transaction, other employees of Nelsons were called upon to deal with the matter, the transfer was executed and was sent to the Inland Revenue for stamping on 19th March 2003. Eventually registration was completed on 22nd April 2003 and the title documents were sent to the C&G on 20th May 2003.

12. When the partners at Nelsons had the difficulties described above drawn to their attention, they instigated disciplinary proceedings in respect of the Respondent. There was a meeting on 4th March 2003, the minutes of which were before the Tribunal, followed by another meeting on 10th March. At this second meeting the Respondent was told that his employment was being terminated with immediate effect because of gross misconduct. He did not seek to appeal, nor did he take any proceedings against the firm in the Employment Tribunal.
13. Nelsons reported the matter to the Law Society under cover of a letter dated 30th July 2003. The Law Society wrote to the Respondent on 3rd June 2004 seeking his explanation for what had happened. They expected to hear from him by 23rd June 2004 but no response was received and a reminder was sent on 8th July 2004 asking for a response within seven days. Again, no response was received and further letters were sent to the Respondent on 23rd August and 4th October 2004. On 7th March 2005, having heard nothing at all from the Respondent in response to their letters, the Law Society wrote to him again and on 14th November 2005 his conduct was considered by an Adjudicator who decided to refer it to the Tribunal.

The Submissions of the Applicant

14. The Respondent had admitted the allegations in his acknowledgment letter to the Tribunal of 4th April 2006 stating that he did not intend to practise again.
15. As set out in his Rule 4 statement the Applicant was alleging dishonesty in relation to allegations (i) to (iii).
16. The Applicant also referred the Tribunal to the regrettable delay on the part of the Law Society between July 2003 and June 2004 before the Respondent's explanation was sought.

17. The effect of the Respondent's conduct on Mr B was illustrated by his letter of 2nd March 2003 expressing his urgent need to know whether there was anything to prevent development in his garden area.
18. In the matter of Mr and Mrs C the Respondent had on two occasions in 2002 sent out letters which were patently misleading.
19. The Applicant accepted that there had been no lasting loss to clients but they had been anxious and distressed.
20. The Applicant could not dispute the Respondent's comments about his health in his letter of 4th April 2006. The Applicant also accepted that there had been no gain to the Respondent from his conduct other than buying time. Nevertheless the Respondent had tried to mislead others by asserting that he had done something which he had not done. The letters were clearly written and contained lies. Those lies, in the submission of the Applicant, amounted to dishonest conduct.

The Submissions of the Respondent

21. The Respondent's submissions were set out in his letter to the Tribunal of 4th April 2006. He asked that his attendance be excused and apologised for all inconvenience caused by his actions and any embarrassment caused to the profession.
22. He said he did not intend ever to practise again and was glad to be no longer involved with the profession.
23. He said that at the time of the conduct giving rise to the proceedings he was under extreme stress with his mental health failing badly. He said that following treatment for his mental health his life was now back on track.

The Findings of the Tribunal

24. The Respondent had admitted the allegations in the Rule 4 statement and the Tribunal noted that dishonesty had been pleaded in the Rule 4 statement. The Tribunal noted that the Respondent had been under pressure and also noted his references to his mental health problems although no evidence had been put forward to support his comments in that regard. The Tribunal was nevertheless satisfied, applying the tests in Twinsectra -v- Yardley and Others [2002] UKHL 12, that the evidence supported a finding of dishonesty. The Respondent had knowingly and on more than one occasion written letters in the course of his practice as a solicitor which contained lies. He had not put forward any detailed evidence or persuasive mitigation which could persuade the Tribunal that his actions were not dishonest. In all the circumstances the Tribunal was satisfied that the allegations were substantiated and that the Respondent's conduct had been dishonest. While the Tribunal accepted that this was not a matter of criminal dishonesty, it was clear that clients had been distressed by what had occurred and that the reputation of the profession had suffered. Other members of Messrs Nelsons had worked to put matters right and fortunately there had been no loss to clients, but this did not lessen the Respondent's culpability. The Tribunal was satisfied that the Respondent should not be allowed to remain as a

member of the profession. It was also right that the Respondent pay the Applicant's costs.

25. The Tribunal made the following Order:-

The Tribunal Orders that the Respondent Stephen Timothy James Smith, of Moor Park Road, Manchester, 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 £1,493.55.

Dated this 18th day of August 2006
On behalf of the Tribunal

J R C Clitheroe
Chairman