

IN THE MATTER OF ALUM ZEB KHAN KHATTAK and  
[*RESPONDENT 2 – NAME REDACTED*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mrs K Todner  
Mrs C Pickering

Date of Hearing: 24th October 2006

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Law Society by Robert Simon Roscoe, solicitor and partner in the firm of Victor Lissack Roscoe & Coleman Solicitors of 70 Marylebone Lane, London, W1U 2PQ on 5th April 2006 that Mr Alum Zeb Khan Khattak, also known as Alum Zeb Khan, solicitor of Caffrey & Co Solicitors of Raees Building, 796 Washwood Heath Road, Ward End, Birmingham, B8 2JL and that Mr Jehan Zeb Khan Khattak, solicitor, also of Caffrey & Co might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

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

1. The allegations against the Respondents Alum Zeb Khan Khattak and *RESPONDENT 2* were first that they each had been guilty of conduct unbecoming a solicitor in each of the following particulars, namely:-

- (a) They failed to act in the best interests of and/or with independence or integrity towards their client Mr W in relation to his sale of property at 233 Cotterills Lane in breach of Rules 1 and 6, Solicitors Practice Rules 1990.
  - (b) They failed to act in the best interests of and/or with independence or integrity towards their client Mr O'D in relation to his sale of property at 341 Cherrywood Road in breach of Rules 1 and 6, Solicitors Practice Rules 1990.
  - (c) They failed to act in the best interests of their clients in relation to 'Right to buy' purchases in breach of Rules 1 and 6, Solicitors Practice Rules 1990.
  - (d) They failed to maintain the good repute of the solicitor or the solicitors' profession in relation to the acquisition by the First Respondent and/or his wife of properties sold by clients of the firm in breach of Rules 1 and 6, Solicitors Practice Rules 1990.
  - (e) They failed to avoid conflicts of interests in conveyancing and mortgage related services in respect of their client, Southern Pacific Mortgage Limited and contrary to instructions received from them in breach of Rules 1 and 6, Solicitors Practice Rules 1990.
  - (f) They failed to supervise properly or at all non-qualified staff engaged on the Respondents' business in relation to conveyancing work in breach of Practice Rule 13 Solicitors Practice Rules 1990.
  - (g) The First Respondent failed to comply with or delayed compliance with conditions imposed under Section 13A(2)[a] of the Solicitors Act 1974 (as amended) on his Practising Certificate in respect of year 2004-2005 in breach of Rule 1 of the Solicitors Practice Rules 1990 and the Solicitors Act 1974 (as amended).
  - (h) The Second Respondent failed to comply with or delayed compliance with conditions imposed under Section 13A(2)[a] of the Solicitors Act 1974 (as amended) on his Practising Certificate in respect of year 2004-2005 in breach of Rule 1 of the Solicitors Practice Rules 1990 and the Solicitors Act 1974 (as amended).
2. The Respondents failed to comply with the Solicitors Accounts Rules 1998 in each of the following particulars, namely:-
- (a) They paid client monies into office account in breach of Rule 15 of the Solicitors Accounts Rules 1998.
  - (b) That in respect of conveyancing matters they made payments out of client account in excess of monies held and in breach of Rule 22 of the Solicitors Accounts Rules 1998.
  - (c) They failed to account for interest to clients promptly or at all in respect of monies held in client account in breach of Rule 24 of the Solicitors Accounts Rules 1998.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 24th October 2006 when Robert Simon Roscoe appeared as the Applicant and the Respondents appeared in person.

The evidence before the Tribunal included the admissions of both Respondents.

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

The Tribunal Orders that the Respondent Alum Zeb Khan Khattak of Caffrey & Co, Raees Building, 796 Washwood Heath Road, Ward End, Birmingham, B8 2JL, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 24th day of October 2006 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500 inclusive.

The Tribunal Orders that the Respondent *RESPONDENT 2* of Caffrey & Co, Raees Building, 796 Washwood Heath Road, Ward End, Birmingham, B8 2JL, solicitor, do pay a fine of £4,000, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,500 inclusive.

**The facts are set out in paragraphs 1 to 22 hereunder:-**

1. Alum Zeb Khan Khattak, the First Respondent, was born in 1970 and was admitted as a solicitor on 15th July 1998. His name remained on the Roll of Solicitors.
2. *RESPONDENT 2*, the Second Respondent, was born in 1964 and was admitted as a solicitor on 1st November 1999. His name remained on the Roll of Solicitors.
3. The Respondents, brothers, were at the material time in partnership as Caffrey & Co Solicitors of 506 Alum Rock Road, Birmingham and at 516 Coventry Road, Small Heath, Birmingham and subsequently at Raees Building, 796 Washwood Heath Road, Ward End, Birmingham.
4. On 4th August 2003 the Law Society's Investigation Officer (the IO) attended the Respondents' practice to inspect their books of account and other documents.
5. The IO's Report dated 12th December 2003 was before the Tribunal. That Report revealed the matters set out in paragraphs 6 to 22.
6. The First Respondent had acted for Mr W in his sale of a residential property. Two successive buyers had offered £39,000 but failed to complete. The sale was completed on 2nd November 2001 but the identity of the purchaser was not shown either on the Respondents' file for Mr W, nor in the copy documents contained therein.
7. The First Respondent explained to the IO that he had purchased the property himself for £37,500 with the assistance of a mortgage from Southern Pacific Mortgage Limited ("SPML"). The First Respondent was unable to produce his purchase file. Neither Respondent was able to show that Mr W had been aware that the First Respondent was the purchaser or if he had been advised that there was a conflict of

interest and that he could or should seek independent legal advice. At the hearing the Respondents produced a letter from Arden Independent Estate Agents of 1st September 2006 confirming the transaction was above-board and that Mr W had been aware of the situation, namely that the purchaser was the wife of the acting solicitor.

8. SPML in their "Solicitors General Instructions" required "That the Solicitor may not act for SPML if he or she or his or her practice is acting for the seller of the property". In this transaction the Respondents acted for the buyer, the seller and SPML. Neither Respondent was able to show that SPML had been aware that the First Respondent was the purchaser or that it had been advised that there was a conflict of interest. There was no copy available of the certificate of title, sent by the firm to the mortgagee. The First Respondent accepted that the certificate would have contained the clause "neither any principal nor any other solicitor in the practice giving his certificate nor any spouse, child, parent, brother or sister of such a person is interested in the property (whether alone or jointly with any other) as mortgagor". The First Respondent had not considered that there was any conflict of interest.
9. In April 2001 the Respondents' firm acted for the First Respondent in his purchase of a property for £33,500 in the name AZ Khan. The firm also acted for the First Respondent's mortgagee, SPML, who advanced him £27,602.50. The certificate of title, signed by the Second Respondent on 23rd March 2001, also contained the clause set out in the previous paragraph. The Respondents were not able to show that SPML had been made aware that the First Respondent was the purchaser or had been advised that there was a conflict of interest. The Respondents produced written confirmation that the SPML mortgage had been redeemed.
10. The firm acted for the First Respondent in connection with his purchase of a residential property which was completed on 2nd November 2001. The First Respondent secured a mortgage from SPML. In this transaction the Respondents acted for the buyer and SPML. The Respondents could not show that SPML was aware that the First Respondent was the purchaser or if either client had been advised that there was a conflict of interest. There was no copy available of the certificate of title sent by the firm to SPML. The certificate would have contained the previously mentioned clause.
11. In connection with this purchase SPML advanced £25,001 which was incorrectly lodged in the Respondents' office account on 2nd November 2001. Completion monies of £35,001 were paid out of client account when no funds were properly held there and the resulting deficit was not rectified until 9th November 2001.
12. In May 2003 the First Respondent had acted for Mr O'D in his sale of a residential property to a Mrs Hameeda Begum, the wife of the First Respondent, who was represented by another firm of solicitors. The Respondents could not demonstrate that their client vendor Mr O'D was aware that the First Respondent's wife was the purchaser or whether they had advised him that there was a conflict of interest and that he could or should seek independent legal advice. The First Respondent did not think that there had been a conflict of interest.
13. In connection with this matter the Respondents made a £21,011.38 CHAPS payment out of client account on 21st May 2003 when no funds were properly held there. The resulting deficit was not rectified until the following day.

14. In April 2003 the firm acted for a Mr Mc in connection with his purchase of a property. The firm also acted for the mortgagees, Cheltenham & Gloucester plc, which advanced a loan of £328,500 based on a purchase price of £365,000. The actual purchase price was £361,500. The Respondents' file did not show that the Respondents had notified Cheltenham & Gloucester plc of the price variation nor by the time of the IO's visit had the title deeds been sent to the mortgagees. The Respondents produced a copy of the transfer deed to demonstrate that the stamp duty had been paid.
15. In 2002 the firm acted for two separate clients (Ms A and Mr A) both of whom had applied to purchase property from Birmingham City Council under the "Right to Buy" Scheme. Both matters were dealt with by an unadmitted fee-earner, Mr MA.
16. In respect of Ms A's purchase the firm was unable to locate and disclose the original client file. Despite having received a mortgage advance from Halifax plc in December 2002 the money had been allocated to another ledger and completion had never taken place. As a result, and following the failure of the firm to respond to notices to complete, Birmingham City Council cancelled the purchase procedure. Both Ms A and Halifax plc had been under the impression that the purchase had been completed. Ms A had made monthly mortgage repayments during the period and had not paid rent. In correspondence with Halifax plc the Respondents omitted to notify it that completion had not taken place.
17. In respect of Mr A's purchase the firm was unable to locate and disclose the original client file. The firm had been unable to complete the purchase and the £17,640 mortgage advance was returned to Future Mortgages, although without any interest being paid for the period 21st June 2002 to 24th October 2002 during which the money was held. Completion had not taken place because Mr A had failed to respond to a second notice to complete and the local authority had cancelled the transaction on 22nd June 2002.
18. The IO noted that in over 700 client matters, despite the client files having been closed the Respondents had failed to close the corresponding client account ledgers. Monies remained on those ledgers and no steps had been taken to calculate interest due to clients on such sums or to return those monies to the clients. In his Report the IO cited a number of failures by the firm where work was not properly carried out by either of the Respondents or their unadmitted staff. The Respondents handed up their written responses to a number of matters raised by the IO. An unadmitted member of staff had had conduct of a number of matters in respect of which complaint had been made.
19. On 17th June 2005 an Adjudicator of the Law Society imposed conditions on the First Respondent's Practising Certificate for the then current year 2004-2005. The conditions were notified to the First Respondent by letter dated 20th June 2005. The First Respondent did not comply with the conditions imposed and such failure was drawn to his attention by letter dated 11th November 2005.
20. On 17th June 2005 the Law Society Adjudicator imposed conditions on the Second Respondent's Practising Certificate for the then current year 2004-2005. The conditions were notified to the Second Respondent by letter dated 20th June 2005.

The Second Respondent did not comply with the conditions imposed and such failure was notified to the Second Respondent by letter dated 11th November 2005.

21. These conditions restricted the Respondents' ability to practise as solicitors to working in employment only.
22. The Law Society had received submissions dated 11th November 2005 and 2nd December 2005 from Mr Auran Zeb Khattak, the Respondents' brother who had been a partner at the firm since 1st March 2005, on behalf of both Respondents.

### **The Submissions of the Applicant**

23. The Respondents admitted the allegations. One matter which might be at issue was the handling of mortgage advance money when received. If that money has been paid to the firm in respect of one of the partners' own borrowings, it is not that solicitor's own money but at that stage remains money belonging to the lender and as such should be paid into client account.

### **The First Respondent's Plea in Mitigation**

24. The First Respondent had trained with Mr Caffrey at the firm of Caffrey & Co. Upon qualification he became a junior partner. He did not have many dealings with the day to day running of the practice.
25. The First Respondent and Mr Caffrey had found themselves before the Tribunal on another occasion. Mr Caffrey was suspended for one year from 16th December 2003.
26. Subsequently the First Respondent took over the firm and his brother, the Second Respondent, joined as a partner. They improved the practice and resolved all the accounting issues left behind by Mr Caffrey.
27. A number of the accounting breaches were historical and related to the firm of Caffreys before the Respondents had taken it over. The Respondents had suffered an arson attack at their offices and it had been necessary to try to reconstruct a number of their records.
28. The Respondents did not spare any expense and employed staff to ensure the smooth running of the firm and compliance with the Solicitors Accounts Rules. At one point the firm had 21 employees.
29. The firm was approached by Mr M Ali, and they employed him as a case worker. That gentleman had been responsible for a number of breaches. The First Respondent accepted that he had made the mistake of employing a man he could not control.
30. The First Respondent accepted that he made some mistakes. On the previous occasion when he came before the Tribunal, he was young, he did not have control of the firm. On this occasion he accepted that he was to blame, but his faults lay in failing to supervise staff.
31. No amount of supervision would prevent a member of staff from concealing matters. The First Respondent had even reported Mr Ali to the Police.

32. There had been a couple of matters where the First Respondent acted for his wife, the First Respondent accepted that there was a condition attached to the mortgagees' certificate of title requiring disclosure of the fact that the buyer was related to the conveyancer, this was overlooked. When that matter was pointed out to the First Respondent he immediately redeemed those mortgages.
33. The only real outstanding issue was the fact that there were balances on client account ledgers which had not been closed. As soon as he was advised of the error, work was immediately commenced to rectify the problem.
34. The First Respondent stopped working at Caffrey & Co from 28th February 2005. He had had no involvement with the firm since then. His name remained on the letterhead as a consultant only so that the goodwill of the practice would not be lost with the new partnership. The First Respondent had not practised since that date. He was finding it extremely difficult to cope with unemployment.
35. The First Respondent was 36 years of age, a married man, with three children and his wife was expecting their fourth child in May 2007. The First Respondent's wife earned approximately £1,000 per month and they were finding it difficult to survive. The larger part of their income was taken up with mortgage payments.
36. The First Respondent was an upstanding member of the community and had given much to charitable causes and the community itself whilst in employment.
37. The First Respondent had not been dishonest in dealing with clients' monies and asked that he be given credit for this. He had given full and frank responses to all letters sent to him by the Law Society and had been cooperative throughout.
38. The First Respondent's unemployment from February 2005 had been in itself a significant punishment. He recognised the importance of holding a Practising Certificate and the importance of supervising employees.
39. The Tribunal was invited to consider the imposition of a sanction that would not interfere with the First Respondent's ability to practise so he might maintain his family and pay the mortgage. He had not been working since 28th February 2005, this had been punishment in itself. The First Respondent hoped that the Tribunal would consider the imposition of a financial sanction.
40. The First Respondent offered his apology to the Tribunal for what had occurred.

### **The Second Respondent's Plea in Mitigation**

41. The Second Respondent was nearly 43 years of age. He qualified as a solicitor in 2000. He was married with seven children.
42. He worked hard to qualify, studying part time and working full time as a taxi driver to make ends meet and pay for his courses. Having completed professional examinations, he found it very difficult to secure a training position. He worked on a voluntary basis for some two years to obtain experience.

43. Having obtained experience, the Second Respondent had been offered a position at Caffrey & Co, where he completed his training contract. Mr Caffrey decided to retire. The Respondents decided to take over the practice, where they worked hard to build it up. Prior to that the Second Respondent had had very little experience of managing a practice but he did his best to try to keep up with procedures and the necessary regulations.
44. A junior caseworker employed to assist in general case management proved not to be an honest man. He did not meet professional standards and did his best to hide things from the Respondents.
45. The Respondents found their legal careers in ruins because of this employee.
46. The Second Respondent specialised in immigration law and did not get closely involved with conveyancing. The majority of the problems highlighted in the IO's Report related to conveyancing.
47. As a partner the Second Respondent accepted full responsibility for what had happened, but invited the Tribunal to recognise that he had very little involvement in the major breaches.
48. There had been no dishonesty on the part of either Respondent in this whole affair.
49. The Second Respondent was an upstanding member of the community and always carried out work for the community, a lot of the time without remuneration.
50. Upon receipt of the letter from the Law Society imposing conditions on his Practising Certificate the Second Respondent was devastated because he had worked so hard to qualify and to get to where he was. The Second Respondent had suffered so much because of what had happened at Caffrey & Co. He had suffered financially and emotionally but worst of all his health had deteriorated. He had developed stomach ulcers and could not cope any longer. At best the Second Respondent expected only to be able to work as a solicitor on a part time basis. Currently he had no source of income. Five of his seven children were dependent upon him. Two were about to be married at considerable expense to their father.
51. The Second Respondent had learned a lesson and hoped in all the circumstances that any sanction imposed would not interfere with his ability to practise as a solicitor.
52. The Second Respondent apologised to the Tribunal for what had occurred.

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

53. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested.

### **Previous Findings in Respect of the First Respondent**

54. At a hearing on 16th December 2003 the Tribunal found the following allegations to have been substantiated against the First Respondent (together with his co-respondent Patrick Joseph Caffrey). The allegations were that the then respondents had:-



- (g) Failed to carry out reconciliations of their clients ledger accounts contrary to the provisions of Rule 11(5) of the Solicitors Accounts Rules 1991, Rule 32 (7) of the said Rules;
  - (h) Failed to keep properly written up books of account contrary to Rules 11(1) and (2) of the said 1991 Rules (Rule 32 of the 1998 Rules);
  - (i) Contrary to the provisions of Rules 7 and 8 of the Solicitors Accounts Rules 1991 (Rule 22 of the 1998 Rules) they withdrew money from client account other than as permitted by the said Rules;
  - (j) They had been guilty of conduct unbecoming a solicitor.
55. In 2003 the Tribunal noted that (the First Respondent) had to answer fewer allegations than Mr Caffrey. The Tribunal found three allegations relating to breaches of the Solicitors Accounts Rules to have been substantiated and concluded that such breaches did amount to conduct unbecoming a solicitor.
56. The Tribunal went on to say:-
- “77. The Tribunal took into account the submissions of Mr Khattak. With regard to the question of conduct unbecoming a solicitor, a great deal of time had passed since Lord Denning’s definition of conduct unbecoming and the Tribunal preferred to rely upon Cordery on Solicitors in which it is said “There is no all-embracing definition of what constitutes professional misconduct and sets out the view that professional misconduct which the Tribunal and the Judges from time to time regard it to be. It expresses the view that it may be inappropriate to attempt a definition of “conduct unbecoming a solicitor” and it is for this reason that the Tribunal made its finding.
78. Mr Khattak has in any event been found guilty of breaches of statutory rules and finding that he has been guilty of conduct unbecoming a solicitor has not materially affected the sanction which the Tribunal seeks to impose. The Tribunal accepted that Mr Khattak had gained in experience. As a partner in a firm of solicitors he has a wide range of obligations and responsibilities both to his clients and to the solicitors’ profession. Having heard Mr Khattak give evidence the Tribunal was not entirely convinced that even today he understands fully the obligations that go with managing a solicitor’s practice or the need for full compliance with the Solicitors Accounts Rules. The Tribunal trusts that Mr Khattak will acknowledge that clients are entitled to be able to trust their solicitor “to the ends of the earth”.
79. Having given careful consideration to the facts and the mitigating circumstances the Tribunal concluded that it could mark Mr Khattak’s failures with a fine of £3,000 in respect of each of the three allegations relating to breaches of the Solicitors Accounts Rules, making a total fine of £9,000.
80. Mr Khattak had agreed a figure for costs with the Applicant and the Tribunal further ordered that he should pay the Applicant’s costs in the agreed fixed sum (which included the costs of the ICO).

81. Despite being told that the Respondent had engaged a chartered accountant to advise and assist with his firm's bookkeeping arrangements the Tribunal expressed concern that Mr Khattak did not have a full understanding of his professional obligations and recommended that The Law Society give further consideration as to whether Mr Khattak should be subject to a form of supervision and/or whether his accountant's reports should be filed more frequently than once a year, for instance on a quarterly basis."

### **The Tribunal's Decision and its Reasons**

57. The Tribunal was dismayed to find that the First Respondent was appearing before them on a second occasion. It had found a number of allegations to have been substantiated against both Respondents.
58. Both Respondents had failed to comply with the important Solicitors Accounts Rules which were in place to protect members of the public and to ensure that monies lodged with solicitors were treated fairly and honestly and were not placed at risk.
59. In the main the First Respondent, had handled a number of conveyancing transactions as if he were not a solicitor, apparently without any regard for his position as a solicitor. In some of those transactions he had a personal involvement which had not been declared to the parties and, indeed, certificates of title had been completed on behalf of the firm certifying that there was no such personal involvement.
60. The Law Society had taken steps to impose conditions on the Respondents' Practising Certificates, in particular limiting their ability to practise as solicitors to employment only. The Respondents had continued to practise in contravention of that condition.
61. It was accepted that some of the matters before the Tribunal had occurred before the previous Tribunal hearing in respect of the First Respondent. The Tribunal noted that a substantial fine had been imposed upon the First Respondent in 2003. If the matters that were before the Tribunal in 2006 had also been considered by the earlier Tribunal the Tribunal considers that it would have been likely that the Tribunal would have been minded to interfere with his ability to practise. That Tribunal did, of course, express considerable doubt about the First Respondent's recognition of his professional duties.
62. In view of the fact that the First Respondent had already had allegations substantiated against him on an earlier occasion and the seriousness of the subject matter of the allegations before this division of the Tribunal, the Tribunal concluded that it was both appropriate and proportionate that the First Respondent be suspended from practice for an indefinite period.
63. The Tribunal recognises, of course, that it would be open to the First Respondent to apply to have the period of suspension determined. Whilst the Tribunal does not seek to bind a future division of the Tribunal, it considers it likely that any such application would not receive favourable consideration unless the First Respondent were able to demonstrate his full comprehension of the Solicitors Accounts Rules and professional conduct rules with which a solicitor must comply when in practice.

64. The Tribunal noted that all of the allegations had been found to have been substantiated against the Second Respondent but recognised that he had not worked in the practice on a full time basis owing to his ill-health and, but, of course, he had been held out as a full partner and could not, as he himself recognised, avoid liability.
65. The Tribunal considered that the appropriate sanction to be imposed upon the Second Respondent which marked his letter degree of culpability was that of a fine of £4,000.
66. The Applicant sought the costs of and incidental to the application and enquiry in the sum of £15,000. The Respondents had agreed not only the quantum but also had agreed to be responsible for one half each. In view of that agreement the Tribunal ordered that each of the Respondents pay the Applicant's costs fixed in the sum of £7,500 inclusive.

Dated this 15th day of December 2006

On behalf of the Tribunal

D J Leverton  
Chairman