

IN THE MATTER OF BENJAMIN JAMES HARVEY, solicitor &
GRAHAM MORGAN, solicitor's clerk

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)

Mr D Potts

Lady Maxwell-Hyslop

Date of Hearing: 9th August 2007

FINDINGS

**(And Order that a direction by a Law Society Adjudicator in respect
of Mr Harvey be treated for the purposes of enforcement
as if it were an Order of the High Court)**

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Gerald Malcolm Lynch, solicitor and consultant with Drysdales of Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ on 21st November 2006 that Benjamin James Harvey of Penllergaer, Swansea, West Glamorgan 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 fit.

The Law Society also sought an Order that in respect of a client, T, an award for inadequate professional services might be the subject of enforcement in the High Court.

On 13th February 2007 Gerald Malcolm Lynch made application on behalf of The Law Society that an Order be made by the Tribunal directing that as from the date specified in such Order no Solicitor Registered European Lawyer or Incorporated Solicitor's Practice 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 his or her practice as a Solicitor, Registered European Lawyer or member, director or share owner of an Incorporated Solicitor's Practice, the person with respect to whom the Order is made or that such other Order might be made as the Tribunal should think right.

The parties agreed and the Tribunal consented to these two matters being heard together. The allegations made against Mr Harvey had originally been made against another in addition but it had come to light that that gentleman had been dealt with by The Law Society internally and with the consent of the Tribunal proceedings against him before the Tribunal were discontinued.

Certain of the allegations made against Mr Harvey in the Rule 4 Statement had also been dealt with by The Law Society internally. The Tribunal agreed to the amendment of the allegations in the Rule 4 statement and they are set out below in the amended form.

The allegations were that the Respondent:-

- (A) (i) Withdrawn
- (ii) Failed under Rule 7 to remedy breaches of the Solicitors Accounts Rules promptly upon discovery
- (iii) Withdrawn
- (iv) Withdrawn
- (v) Withdrawn
- (vi) Withdrawn
- (B) (i) Not proceeded with
- (ii) Not proceeded with
- (iii) He failed in his duty to notify to indemnity insurers of a claim or possible claim in negligence and further failed to require the client to take independent advice in regard thereto
- (iv) In breach of principle 30/04 of the Guide to the Conduct of Solicitors and he failed to deal promptly and substantively with correspondence from The Law Society
- (v) He failed to honour undertakings given either personally or by staff
- (vi) He failed to exercise any reasonable or adequate supervision over staff
- (vii) He failed to carry out clients' instructions diligently and promptly

The allegations made against Mr Morgan were:-

1. That he failed to observe the terms of undertakings given by him in the course of his practice as a conveyancer.
2. He failed timeously to deal with the completion and registration of conveyancing matters.
3. He failed to respond to correspondence and enquiries addressed to him by other solicitors.
4. Failed to carry out clients' instructions diligently and promptly.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 9th August 2007 when Gerald Malcolm Lynch appeared as the Applicant and Mr Morgan was represented by Robert F. Ashton Solicitor of Hacking Ashton Solicitors.

The evidence before the Tribunal included the fact that Civil Evidence Act and Notices under the Tribunal's rules of procedure had been served upon Mr Harvey. Mr Morgan gave oral evidence - he resisted an Order pursuant to Section 43 of the Solicitors Act 1974 being made in respect of him.

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

The Tribunal Orders that the Respondent Benjamin James Harvey of Penllergaer, Swansea, West Glamorgan, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 9th day of August 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,836.43.

The Tribunal Orders that as from the 12th day of October 2007 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 Graham Morgan, of Gnoll Park Road, Neath, a person who is or was a clerk to a solicitor and the Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00 inclusive.

The Tribunal hereby Orders that the decision of The Law Society's Adjudicator dated 28th October 2005 in respect of inadequate professional services provided by Mr Harvey in respect of his client Mr T be treated for the purposes of enforcement as if it were an Order of the High Court.

The facts are set out in paragraphs 1 - 40 hereunder:

1. At the date of the application Mr Harvey was 36 years of age and had been admitted as a solicitor in 1997. He had been suspended from practice by virtue of his bankruptcy and was not working within the solicitors' profession. His name remained on the Roll of solicitors.
2. At the material times Mr Harvey practised as a sole practitioner under the style of Benjamin Harvey & Partners. He had previously practised in partnership.
3. On 8th January 2004 an officer of the Forensic Investigation Department of the Law Society (The FIO) undertook an inspection of the books of Benjamin J Harvey & Partners Commencing on 18th November 2003. That firm was the successor to earlier practices in which Mr Harvey had been a partner.
4. On 6th November 2001 the practice changed its name to Benjamin J Harvey & Partners and Mr Harvey became the sole equity partner after a number of fee earners had left the practice. From 6th December 2002 Mr Harvey was assisted by Mr Morgan, a Licensed Conveyancer.
5. The FIO established that the practice's books of account were not in compliance with the Solicitors Accounts Rules, but these matters were dealt with by The Law Society "in house".
6. The FIO had been unable to determine what the balance of the minimum cash shortage found by the IO in the sum of £9,202.04 represented. The firm's accountants were unable to assist. The firm's Accountant's Report for the year ended 30th September 2002 reported a shortage.
7. Mr Harvey had explained that errors had been inherited. The accountants had taken several months in attempts to reconcile bank accounts, but the accounts had been put in order when Mr Harvey wrote to The Law Society on 26th April 2004.
8. On 27th and 28th April 2004 a monitoring visit by the Practice Standards Department of the Law Society was undertaken at Mr Harvey's firm. A number of matters requiring attention were identified. The Law Society required Mr Harvey to advise when he had undertaken the recommended remedial action.
9. On the 18th June 2004 The Law Society wrote to Mr Harvey pointing out that The Law Society's records indicated that he practised in partnership. On 30th June 2004 a letter was sent to Mr Harvey seeking further information on the position and the circumstances in which Mr M had withdrawn money from client account.
10. On 6th July 2004 the Practice Standards Department wrote to Mr Harvey seeking his response on the monitoring visit.
11. On 19th July 2004 The Law Society wrote to Mr Harvey referring to the report which had been prepared which was to go for adjudication.

12. On 27th July the Practice Standards Department wrote again to Mr Harvey requesting a response.
13. On 26th August 2004 a further letter was sent by The Law Society to Mr Harvey saying that no response had been received and one was required within 14 days.
14. On 9th November 2004 The Law Society wrote again to Mr Harvey relating to his failure to deal adequately with his response to the Practice Standards Report.
15. On 4th January 2005 it was resolved that Mr Harvey's failure to respond to the Practice Standards Report should be included in the existing referral to the Tribunal.
16. On 28th April 2004 Messrs Douglas-Jones Mercer Solicitors wrote to The Law Society in connection with their client L, for whom Mr Harvey had previously acted. Mr Harvey had sought to take advantage of L by entering into an agreement to settle her negligence claim and subsequently had failed to honour that agreement. He had also failed to honour a professional obligation or undertaking to comply with the terms of the agreement. He had not required L to take independent advice. Because of the Respondent's failure a County Court Judgment had been obtained against L who had been ordered to pay costs. Negligence by Mr Harvey was alleged by the complainant firm.
17. Negotiations led to an agreement that Mr Harvey's firm would pay £10,000 inclusive of costs, £5,000 to be paid on or before 19th December 2003 and the balance on or before 16th January 2004. The second instalment was not paid when agreed. Mr Harvey had said this was because of "extreme financial hardship". By letter of 23rd April Mr Harvey said that he was sending a cheque for the balance of £5,000 but it did not arrive.
18. On 24th August 2004 The Law Society wrote to Mr Harvey seeking explanation for L's complaint when attention was drawn to the appropriate rules of conduct. There was no response and a further letter was sent on 27th September 2004 requiring a reply within eight days. There was no reply.
19. On 20th October 2004 Messrs Roger E L Thomas & Co., Solicitors wrote to The Law Society in complaint against Mr Harvey's firm, which had given an undertaking to redeem a charge in favour of Bristol & West plc. There had been delay in delivering the title deeds and the undertaking had not been observed. On 5th April 2005 The Law Society wrote to Mr Harvey for explanation. Questions were posed in relation to the alleged breach of undertaking and the supervision of staff. In the absence of a response a further letter was sent on 26th April requiring a reply within eight days. No response had been received.
20. On 28th February 2005 (dated erroneously 2004) the Forensic Investigation Department of The Law Society reported upon an inspection of Mr Harvey's books. He had recently been adjudged bankrupt and had notified The Law Society on 3rd February 2005, when his Practising Certificate had been suspended.
21. As at the 8th February 2005 Mr Harvey's books of account had been in compliance with the Solicitors Accounts Rules in all respects.

22. It was noted that several client ledgers contained credit balances and some of these ledgers had been inactive since May 2003. On several conveyancing files registrations remained outstanding and there appeared to be serious delays.
23. On 10th March 2005 The Law Society wrote to Mr Harvey to draw his attention to the report, to principles 3/06 and 3/07 in relation to staff supervision and requesting explanation within fourteen days.
24. The work had in large degree been under the control of Mr Morgan to whom The Law Society wrote on 23rd March for explanation. On 24th March Mr Morgan responded pleading oversight on his part and agreeing that there was outstanding work. He acknowledged he was responsible for the conveyancing matters concerned on 22nd April 2005. Messrs Arnolds, Solicitors of Swansea, instructed by Mr Morgan wrote on his behalf.
25. Following Mr Harvey's bankruptcy The Law Society intervened into his practice. The Intervening Solicitors were Messrs John Collins and Partners of Swansea. On 27th May 2005 they wrote to The Law Society about the work carried out by Mr Morgan and matters which had caused them concern. Those concerns included file opening formalities, failure to attend to post completion matters, failure to observe undertakings, and conflict of interest. The letter was accompanied by extensive file notes relating to the various matters and these were before the Tribunal at the hearing.
26. On the 29th September 2003, Messrs Agnew Vos, Solicitors, wrote to The Law Society to complain about Mr Harvey. The complaint of breach of undertaking in respect of a conveyancing matter, which had been under the control of Mr Morgan. There had been extreme delay, but compliance with the undertaking had been confirmed by telephone on 21st November.
27. On 20th January 2004 The Law Society wrote to Mr Harvey in relation to this complaint drawing to his attention his duties under principle 18 of the Guide to Professional Conduct. Mr Harvey had replied on 5th February 2005. In a telephone call on 12th March 2005 Mr Morgan confirmed that action had been taken to deliver outstanding documents to the complainant firm on 17th October and 4th November 2004.
28. On 5th April 2004 The Law Society wrote again to Mr Harvey in relation to the Agnew Vos complaint, seeking information on the position of Mr Morgan and on his supervision. No response was received. On 25th May a letter requiring response within eight days was sent. Reply was received from Mr Harvey on 4th June confirming that he had employed Mr Morgan, a Licensed Conveyancer, since June 2003 and that all incoming post was viewed by himself as principal, as were all new instructions. He said file reviews were carried out fortnightly and spot checks were carried out. Undertakings were monitored. There had been difficulty in completion.
29. The Law Society wrote again on 21st June 2004 in relation to breach of undertaking and the failings of Mr Morgan. In the absence of response a further letter was sent on 9th July requiring a response within eight days

30. On 21st September 2004 Agnew Vos confirmed that registration had now been dealt with.
31. On 3rd February 2005 The Law Society wrote to Mr Harvey in relation to a complaint from Mr M. There had been failure to act competently in relation to instructions and delay. There was also failure to respond to communication. The client complained that he had been led to believe a summons in the Court had been lodged when this was not the case.
32. On 6th June 2005 The Law Society wrote to Mr Morgan's solicitors, Arnolds, about the information received from the intervening agents and enclosing details. Any further representations on behalf of Mr Morgan were requested within fourteen days. The intervening agents' concerns were also made known to Mr Harvey by letter of 6th June. There was no response from Arnolds to whom a further letter was sent on 21st June together with a letter to their client. Arnolds referred to their response of 16th June.
33. Messrs Arnolds' letter was sent for comment to the intervening solicitors. Arnolds wished to investigate the files which were the subject of complaint. Appointments made to inspect those files were not kept. The Law Society on 7th September wrote to Arnolds to query the position.
34. On 13th September, the Intervening solicitors wrote to The Law Society in relation to two further matters under the control of Mr Morgan. In one matter the conveyancing transaction was completed without an undertaking from the seller's solicitors to discharge an equitable charge, in the second matter an unsigned contract had been used in the sale of a property. Messrs Arnolds indicated that they had an appointment to inspect the files by letter of 16th September. On 22nd September The Law Society requested response to the allegations made, but by 12th October Messrs Arnolds had not attended to inspect the files.
35. On 20th June 2005 George Wimpey through its legal office complained to The Law Society. It alleged that there was breach of undertaking by Mr Harvey in relation to a conveyancing transaction under the control of Mr Morgan. On 12th October 2005 The Law Society wrote to Mr Harvey for explanation drawing his attention to principle 18 of the Guide to Professional Conduct and to principle 3 in relation to supervision of staff. Mr Harvey did not reply. The Law Society wrote again on 28th October 2005 and 9th January 2006 requiring response within eight days. A further letter was sent on 18th January.
36. Having considered a complaint by Mr T an Adjudicator of The Law Society on 28th October 2005 directed Mr Harvey to pay compensation of £150.00 within seven days. There was a supplemental direction that he pay costs of £728.00. The compensation was not paid. The Law Society wrote on 22nd November and 7th December. No response was received.
37. A Forensic Investigation Officer of the Law Society (the FIO) conducted an inspection of the books of account of Messrs Arnolds who had employed Mr Morgan subsequent to his employment by Mr Harvey.

38. The FIO's report dated 15th December 2006 was before the Tribunal. The FIO noted that Arnolds handled a number of conveyancing matters, often acting for lenders as well as purchasers where registration of title at HM Land Registry had been seriously delayed. Delays were as long as thirteen months. In three cases title had yet to be registered one year after completion.
39. The senior partner of Arnolds acknowledged that the firm had a problem with some conveyancing matters. The problems were a consequence of the firm's Licenced Conveyancer, Mr Morgan, taking on more work than he could handle. Problems had, with the addition of extra staff, been resolved.
40. On 12th January 2007, The Law Society wrote to Mr Morgan in relation to these allegations seeking explanation. A response was required within 14 days. No response had been received.

The Submissions of the Applicant

41. The facts were not in dispute. Mr Morgan resisted the application that a Section 43 Order should be made in respect of him. Such an Order was regulatory in its nature and was not punitive. Mr Morgan had demonstrated considerable failures in many cases not only of breaches of undertaking but also where there had been inordinate delays. In those circumstances it was appropriate for The Law Society to maintain control over his employment within the solicitors' and other regulated legal professions.
42. Mr Morgan's current employers had indicated a desire to continue to employ him even if consent was to be necessary. The Applicant was not able to give an indication of The Law Society's view on this.
43. The Applicant accepted that there had been delays on the part of The Law Society in bringing the matters before the Tribunal. The Law Society had had a number of complaints over a period of time and it had waited (in accordance with the principle in the case of Gilchrist) to bring all of the matters before the Tribunal together. As had been accepted by the European Court of Human Rights time would be needed to bring cases of complexity. In this matter there had been extensive allegations involving misconduct over a long period. Full investigation and resolution had been completed by The Law Society only in January of 2006. Difficulties had arisen in the light of the Respondents' failures to reply to correspondence addressed to them.
44. There was no prejudice to the Respondents owing to the delay because the subject matter of the allegations was heavily documented and all evidence was readily available. It was accepted that the Tribunal could take the delay into account when dealing with the question of sanction or costs. It was in the interests of the solicitors' profession and of the public that the Tribunal should deal with the matters placed before it.

The Submissions of Mr Harvey

45. Mr Harvey did not make any submissions

The submissions of Mr Morgan

46. Mr Morgan was 57 years of age. When he was 16 he commenced employment as a junior clerk in a local authority legal department. After obtaining the local government clerical examination he was promoted to legal assistant. During his time in local government his duties were varied and included general conveyancing. In 1988 he qualified as a Licensed Conveyancer at his first attempt. He had since ceased to be a member of that body.
47. In 1989 Mr Morgan discussed employment with a firm of solicitors in Swansea and joined that firm later that year. He remained there for about ten years.
48. In about 1999 he was approached by another firm which he joined and remained for two years.
49. He was then approached by Mr Harvey to join his firm, Mr Morgan accepted Mr Harvey's offer.
50. Until the time Mr Morgan joined Mr Harvey there had been no complaints about his work.
51. Since 1989 Mr Morgan had established his own connections with local estate agents, developers and financial consultants. He had a "following" of clients.
52. Mr Harvey had informed Mr Morgan that there was another conveyancer employed by his firm, who in turn had a large workload. The intention had been that Mr Morgan and the other conveyancer would work together. In fact the other conveyancer left and Mr Morgan inherited his substantial workload in addition to his own.
53. The large volume of conveyancing files affected Mr Morgan's health. He often had to work at weekends which affected his family life. Mr Harvey was aware of the pressure Mr Morgan was under but did not provide any assistance. Mr Morgan was largely unsupervised. Conveyancing was by far the largest income provider for the firm.
54. Mr Morgan believed that the failure to provide assistance arose because Mr Harvey was in financial difficulties, and that might have added to the pressures Mr Morgan was under.
55. Mr Morgan acknowledged that, because of the pressure of work he was under, for the first time in his professional career he began to make mistakes and matters were not dealt with in the way he would have wished.
56. It was correct that in one instance Mr Morgan acted for both parties to a transaction but he believed that he was entitled to do so as both were existing clients of the firm,
57. Following Mr Harvey's bankruptcy and the closure of his firm in February 2005, at their request, Mr Morgan joined the firm of Arnolds. He took with him the majority of the matters he had been dealing with at Benjamin J Harvey & Partners. He was

again under very substantial pressure and acknowledged that as a result he continued to make mistakes, in particular in relation to dealing with registrations and complying with undertakings. Arnolds agreed to represent him in relation to the investigation by the Law Society but had not done so appropriately.

58. At the end of January 2007 Mr Morgan left Arnolds to join Benson Watkins Solicitors, again at their request. On this occasion, recognising the pressure of work he had been under and the effect that it had had both on his health and the quality of his work, Mr Morgan took only a few of his existing matters with him. It was also agreed with the partners at Benson Watkins that the volume of his work would be limited to an acceptable level where matters could be dealt with efficiently and in order to ensure that all procedures were carried out correctly. At Benson Watkins Mr Morgan was supervised more closely than he had been at any of his previous firms and a computerised diary system was maintained to ensure that all undertakings and deadlines were honoured and met.
59. David Watkins, the senior partner at Benson Watkins had been informed of the application under Section 43 of the Solicitors Act and the circumstances leading to that application being made. Mr Watkins had confirmed that notwithstanding the application the firm was prepared to continue to employ Mr Morgan and that, in the event of an Order being made, they would apply to the Law Society for consent to do so.
60. Mr Morgan apologised to the Tribunal and to The Law Society for not replying to correspondence. At the time, bearing in mind the effect this was having on his health, he had been guilty of “burying his head in the sand”. He recognised that this was unacceptable.
61. Mr Morgan was a married man. His was the main source of income for himself and his wife who was in part-time employment. If Mr Morgan were unable to continue in his work he would be unable to make the mortgage payments on the family home which would result in extreme hardship particularly in the case of his wife who was an innocent party. Mr and Mrs Morgan supported their youngest son by paying a mortgage on the property in which he resided whilst he was training. Mr Morgan, at his age, would find it difficult to obtain alternative employment.
62. The Tribunal was invited not to make the Order sought as Mr Morgan’s workload was now at an acceptable level and he was closely supervised. Alternatively, if the Tribunal decided to make the Order, it was invited to delay its coming into effect to allow Mr Morgan’s employers the opportunity to apply for permission to employ him before the Order is effective.

The Findings of the Tribunal

63. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
64. With regard to Mr Harvey, he appeared to have allowed matters to spiral out of control. He had not fulfilled a number of important professional obligations and, indeed, appeared simply to have abdicated his responsibilities as a solicitor. The

Tribunal noted that Mr Harvey had not totally ignored correspondence addressed to him by The Law Society but his responses had been sparse and inadequate. The Tribunal had been made aware of Mr Harvey's financial difficulties and accepts that this was clearly a factor in what went on. At the time of the hearing Mr Harvey's Practising Certificate remained suspended owing to his bankruptcy.

65. In all of the circumstances the Tribunal concluded that it would be appropriate to order that Mr Harvey be suspended from practice indefinitely. It was also right that the direction made by The Law Society's adjudicator in respect of the client, Mr T, should be treated for the purposes of enforcement as if it were an Order of the High Court.
66. With regard to Mr Morgan the Tribunal accepts that before joining Mr Harvey he had been an entirely satisfactory conveyancer both when working in local government and in solicitors' practices. The Tribunal also accepts that Mr Morgan's failures were for the main part caused by lack of support from his employer and a considerable pressure of work. However, Mr Morgan was, at the time when his workload became unmanageable, an experienced conveyancer and was qualified as a licensed conveyancer. He should not have attempted to continue to handle conveyancing matters in the knowledge that he could not give a proper service and knowing that undertakings were not being met and post completion work was not being completed timeously.
67. Punctilious compliance with undertakings is a crucial part of the conveyancing procedure and any failure to discharge undertakings given by a solicitor's practice was extremely serious. The consequences to clients of failures to register within time limits laid down puts those clients at considerable risk of inconvenience and also the possibility of financial loss.
68. The Tribunal has taken into account Mr Morgan's explanations and the fact that he did recognise that he could not continue to carry an unacceptably burdensome workload and that he now has a manageable workload, is working entirely satisfactorily and his appropriate supervision with his current employers. Nevertheless the Tribunal considered it appropriate that The Law Society should maintain a control over Mr Morgan's future work within the solicitors' profession so as to ensure that he continued to be employed in situations where he was not going to be subjected to enormous pressures and he was fully and properly supervised. The Tribunal concluded that it would be both proportionate and appropriate in order to protect the public and maintain the good reputation of the solicitors' profession to make an Order pursuant to Section 43 of The Solicitors Act 1974 in respect of Mr Morgan.
69. The Tribunal had been made aware that Mr Morgan's current employers wished to seek the permission of The Law Society to continue to employ him and in order to enable that firm to make an application and at the same time continue to employ Mr Morgan until the outcome of the application was known the Tribunal ordered that the Section 43 Order should not come into force until 12th October 2007.
70. With regard to the question of costs it was right that the Respondents should pay the costs of and incidental to the application and enquiry conducted by The Law Society.

Because of the fact that a number of matters originally before the Tribunal were discovered to have been dealt with in-house by The Law Society and some of the various Law Society inspections and reports were no longer relevant and the fact that the two individual cases of Mr Harvey and Mr Morgan had been heard together the Tribunal concluded that it would be both appropriate and proportionate to order Mr Harvey to pay costs fixed in the sum of £6,836.43 and for Mr Morgan to pay costs fixed in the sum of £1,500.00.

Dated this 19th day of October 2007

On behalf of the Tribunal

J P Davies
Chairman