

IN THE MATTER OF MUBEEN KASHMIRI and MAHENDRA CHANDMAL JAIN,
solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr R Nicholas
Mrs V Murray-Chandra

Date of Hearing: 7th August 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Law Society by Margaret Eleanor Bromley, then of TLT Solicitors One Redcliff Street, Bristol, BS1 6TP but at the date of the hearing of Bevan Brittan Solicitors on 7th February 2007 that Mubeen Kashmiri of 169 Plashet Road, Upton Park, London, E13 0QZ (now of Brick Lane, London, E1) and Mahendra Chandmal Jain of M A Road, Andheri (West), 40058 Bombay (Mumbai), India 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 against both Respondents were that:

1. They failed to comply with the Solicitors Accounts Rules 1998 in that:
 - (i) They failed to keep the accounting records properly written up in breach of Rule 32;
 - (ii) They failed to carry out bank reconciliations at least once every five weeks in breach of Rule 32(7);
 - (iii) They paid client money in to office account contrary to Rule 15;

- (iv) They withdrew money from client account in excess of the money held on behalf of that client, in breach of Rule 22(5);
 - (v) They withdrew money from client account other than in accordance with Rule 22(1);
 - (vi) They failed to remedy the breaches of the Rules promptly on discovery, in breach of Rule 7.
2. In the alternative they had been guilty of conduct unbecoming a solicitor, in that they held out Mr Jain as a partner of the practice, when he was not a partner.
3. In respect of Ms Kashmiri alone, she had been guilty of conduct unbecoming a solicitor in that:
- (i) She misappropriated client funds for her own purposes (for the avoidance of doubt this was an allegation of dishonesty);
 - (ii) She demanded the sum of £450 in respect of her costs from Mrs H who was not a client;
 - (iii) She wrote a letter dated 7th September 2004 to Mrs H in terms which were inappropriate and threatening;
 - (iv) In the course of a telephone conversation she made threats to Mrs H to the effect that Mrs H would be in trouble and she knew people who would cause her trouble;
 - (v) She failed to comply with the Solicitors Publicity Code 2001 in that the firm's notepaper did not at all times show the practice address and the names of all partners;
 - (vi) She failed to ensure that the practice was properly supervised and managed in breach of Practice Rule 13.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 7th August 2007 when Margaret Eleanor Bromley appeared as the Applicant and Ms Kashmiri appeared in person. Mr Jain did not appear and was not represented.

The evidence before the Tribunal included the oral evidence of Ms Kashmiri and her formal admissions of all allegations save that she denied allegation 1(vi). Allegation 2 was partly admitted and partly denied. Allegations 3(i) and (ii) were denied. Allegation 3(iii) was admitted on the basis that the letter Ms Kashmiri wrote was inappropriate but she denied that the letter was threatening. Allegation 3(iv) was denied. Allegation 3(v) was admitted to the extent that the names of the partners in the firm did not appear on the letterhead. Allegation 3(vi) was also admitted. Civil Evidence Act Notices and notices under the Tribunal's Rules of Procedure had been served on both Respondents and no counter-notice had been served on the Applicant. Ms Kashmiri gave evidence although she did not take an oath. She answered questions put to her by Ms Bromley.

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

The Tribunal Orders that the Respondent Mubeen Kashmiri of Brick Lane, London, E1, solicitor, be struck off the Roll of Solicitors and it further Orders that she 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 Mahendra Chandmal Jain of M A Road, Andheri (West), 40058 Bombay (Mumbai), India, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 7th 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 £7,500 inclusive.

The facts are set out in paragraphs 1 to 46 hereunder:

1. Ms Kashmiri, born in 1971, was admitted as a solicitor in 2000 and her name remained on the Roll of Solicitors.
2. Mr Jain, born in 1955, was admitted as a solicitor in 1989 and his name remained on the Roll of Solicitors.
3. At all material times the Respondents held themselves out as practising in partnership under the style of Halimax Solicitors at 169 Plashet Road, Upton Park, London E13 0QZ. In fact, Mr Jain resided permanently in India and had never in any way acted as a partner of the firm.
4. The Law Society intervened into the firm on 18th October 2006.
5. An inspection of the books of account and other documents of the Respondents by a Forensic Investigation Officer of the Law Society (the FIO) commenced on 13th June 2006. His report dated 18th July 2006 was before the Tribunal.
6. On 30th November 2004 a monitoring visit had been carried out by the Law Society. In the course of that visit the firm was unable to produce any individual client ledgers.
7. The FIO interviewed the Respondents' bookkeeper, Mr G, who provided various computer printouts.
8. Mr G stated that the only accounting entries he had undertaken on the individual accounts of clients' ledgers had been those appearing on the client and office bank account statements from May 2004 to 6th January 2006. The clients' ledger was incomplete from at least 6th January 2006.
9. Mr G also stated that he had not entered any bills of costs on individual client ledger accounts.
10. In a meeting with the FIO Ms Kashmiri commented that she could not confirm the accuracy of the listing of client ledger balances as at 6th January 2006, nor the accuracy of the client bank account reconciliation at the same date. She accepted that it had been her mistake not to maintain proper books and records and she accepted

that numerous bills of costs had not been entered in individual accounts in the client ledger.

11. In a letter to the Law Society dated 23rd September 2006. Ms Kashmiri stated that she agreed that “our account where [sic] not up to date when investigation officers visited our office”.
12. In a letter to the Law Society dated 11th October 2006, Ms Kashmiri stated that her accounts were now up to date and stated that she personally made sure that all client bank account entries were recorded regularly.
13. The intervention agent instructed by the Law Society found that the accounts were written up to April 2006 and no entries had been made in the client ledgers since that date.
14. The only client bank account reconciliations produced to the FIO were those dated 30th April 2005, 30th April 2006, 2nd June 2006 and 6th January 2006. Mr G told the FIO that he had only prepared client bank account reconciliations on those dates and not prepared them at least five-weekly, as required by the Solicitors Accounts Rules.
15. In her letter dated 23rd September Ms Kashmiri, in response to an enquiry by the Law Society stated “I know I was the person responsible to make sure that our accountant prepare and maintain proper books of records. We once again apologise and not able commit [sic] as I am an inexperienced person and now I have changed my accountant as I am not happy with them”.
16. In her letter of 11th October 2006 Ms Kashmiri stated that she now did client account reconciliations each month.
17. The Intervention Agent found this not to be the case. He found no evidence of bank reconciliations since April 2006.
18. The FIO identified 18 credit balances totalling £15,905.22 on the office columns of the client ledger accounts. These arose, in part, as a result of client money being paid into office account.
19. In the case of Mr and Mrs P, for whom the Respondents acted on a purchase, the clients made payments on 18th June 2004 of £350; on 21st October 2004 of £500 and on 18th November 2004 of £1,500. All of these were paid into office account.
20. The Respondents acted for Mrs H in a property matter. She made the following payments which were paid into office account: on 13th October 2004 a payment of £761 and on 14th October 2004, £350.
21. The Respondents were instructed by Mr P in an immigration matter. On 6th April 2004 Mr P made a payment of £100 which was paid in to office account.
22. From his examination of the accounting records produced to him, the FIO identified four overdrawn client ledger accounts. The total overdrawn was £3,971.

23. The FIO identified three round sum transfers, the first made on 27th October 2004 of £1,000; the second on 5th January 2005 of £1,500 and one made on 24th February 2005 of £1,000. These transfers had not been charged to any individual client's ledger account. Ms Kashmiri told the FIO that she had made these transfers to sustain her office account: she had not raised any bills of costs or notified any individual clients of these transfers. She also stated that "there may well be other transfers - all of which need to be reconciled and rectified".
24. In her letter to the Law Society dated 23rd September 2006, Ms Kashmiri stated "I informed our clients in the beginning that half money would be transferred from client account to office account as we need to pay our bills/survive".
25. In her oral evidence Ms Kashmiri said she had raised bills but her accountant had not done his job properly. She accepted she had transferred three amounts before delivering a written bill. She said she had made a mistake. She had not been able to put the matter right because of the intervention. Many of the breaches of the Solicitors Accounts Rules established by the FIO had been in existence for many months. They had not been rectified. At the time she was inexperienced and she had not known what to do. She did not know how to raise a bill. She considered that where she was working for a fixed fee, the money paid by the client ought to go to office account. She had had no experience of keeping accounts.
26. Ms Kashmiri said that she had not been dishonest. She had not been stealing clients' money. She had run the office on a bank overdraft. She had transferred only two or three amounts to office account without raising a bill. The FIO had explained to Ms Kashmiri that she might not make transfers for costs from client to office account without first raising a bill.
27. Ms Kashmiri explained that she always paid money received from clients into office account as she conducted immigration matters only on a fixed fee basis. She considered this to be acceptable even though she had not undertaken any work on behalf of the client.
28. Ms Kashmiri said that she accepted that she had done wrong. Her accountant had not dealt with matters properly and she acknowledged that she had taken money that belonged to clients.
29. At a meeting held on 13th June 2006 with the FIO, Ms Kashmiri said that Mr Jain became a partner in May 2004 but since that date he had permanently resided in India and had only attended the firm during a three to four week period in early 2005.
30. At a meeting on 15th June 2006, Ms Kashmiri confirmed that Mr Jain had not resided or worked in the United Kingdom, nor had he attended the firm in any way whatsoever, undertaken any work for, or on behalf of, the firm, acted in any way as a partner, drawn any remuneration from the firm or had any interest in the firm.
31. The firm's letterhead named Mr Jain as a partner. A letter from Ms Kashmiri to the Law Society dated 19th June 2006 showed Ms Kashmiri as Principal.

32. A letter from Ms Kashmiri to the Law Society dated 27th May 2005 named the partners as Ms Kashmiri and Mr Jain.
33. In a letter dated 23rd September 2006 to the Law Society, Ms Kashmiri stated that she had known Mr Jain since he was a junior and that when she opened her firm, "I wanted to do conveyancing and I came to know that you needed a partner. I asked Mr Jain is he willing to work with me in London and he agreed. I told him to first inform the Law Society and prepared an agreement which he did and I accepted it".
34. She enclosed a copy of the agreement signed by Ms Kashmiri and Mr Jain. It was headed "Agreement of Employment" and described Mr Jain as working as a salaried partner. Any remuneration would consist of 50% of fees for clients he introduced and 40% of fees for matters he handled. It stated that Mr Jain would not claim any profit from the firm or any share in the profit.
35. In a letter from Mr Jain dated 20th September 2006 he stated that he had known Ms Kashmiri for quite some time and that he was grateful to her for an opportunity of working with her as partner without any consideration and, "I agreed to work with Halimax Solicitors as a partner from May 2004". He went on to state that due to his mother's ill-health he had been unable to join Halimax Solicitors.
36. Ms Kashmiri informed the FIO that in his application for a Practising Certificate for 2003/2004, Mr Jain had completed only sections 1 and 10 of the form and she had completed the other sections. This included section 2 which described Mr Jain as a partner in the firm.
37. In her oral evidence Ms Kashmiri said that Mr Jain had helped her when she was in India. She had agreed to take him into partnership if the Law Society had agreed. She had admitted him as a partner. He was a partner. Mr Jain had attended at the firm for three to four weeks.
38. On 14th September 2004 Mrs H wrote to the Law Society complaining about Ms Kashmiri. She stated that Ms Kashmiri acted for Mrs S, an employee of Mrs H, in connection with obtaining a work permit. Mrs H had received a letter from Halimax Solicitors dated 7th September 2004 in which Ms Kashmiri had demanded the sum of £450 from Mrs H towards legal costs. The letter also threatened to report Mrs H to the appropriate authority and to the court for what she said was a violation of the Human Rights Act and the Employment Act.
39. Mrs H stated that in a subsequent telephone call, Mrs Kashmiri had made further threats that Mrs H "would be in trouble" and that she (Mrs Kashmiri) "knew people who would cause her trouble".
40. The Law Society wrote to Mrs Kashmiri on 15th April 2005 raising these matters. She replied by letter dated 27th April 2005. She confirmed she had written the letter to Mrs H. She confirmed that she had asked Mrs H to pay legal costs. She stated "I am sure Mrs H is receiving public funding, and it is a moral obligation of an employer to contribute for employee work permit applications". With that letter Mrs Kashmiri enclosed a cheque for £400 payable to Mrs S and said they would refund her another cheque of £400 "after confirmation that Mr T is her husband name".

41. In her oral evidence Ms Kashmiri said she had never spoken to Mrs H. Her husband had kept telephoning Ms Kashmiri and he had used inappropriate language. Mrs H had not disclosed the fact that she was legally qualified. Her husband had not known how to deal with a woman from an ethnic minority who was alone and had nobody to support her. Ms Kashmiri had asked for £450 from Mrs H “to shut her up”. Mrs H had not been Ms Kashmiri’s client. Mrs H had an over-inflated opinion and Mrs Kashmiri had not known what to do.
42. Ms Kashmiri agreed that the terms of the letter she wrote to Mrs H were inappropriate: she had wanted to stop Mrs H’s husband from making intimidatory telephone calls. Mrs H had been trying to damage Ms Kashmiri, in her words, “to fix me up”.
43. Ms Kashmiri’s letter dated 7th September 2004 did not show the names of all partners of the firm, but stated “on request Partner’s name will be provided”. The Law Society in their letter dated 15th April 2005 raised this with Ms Kashmiri. In her reply dated 27th April 2005, Ms Kashmiri admitted that the partners’ names were not on the headed paper. She said that they put it on when typing the letters. She went on to say that she would always make sure that “we do not repeat this mistake again”.
44. The letter of 27th April 2005 contained neither the name of the firm, its address, nor a list of the partners. This was raised with Ms Kashmiri in a letter from the Law Society dated 17th May 2005. In her reply, dated 27th May 2005, Ms Kashmiri admitted that the letter had not been on headed paper and apologised. In her oral evidence she said she agreed that the names of the partners in a firm must appear on its letterhead and that she had been wrong to omit them, but the firm’s address did appear. She had omitted the partners' names in an attempt to stop people telephoning her.
45. In the course of her correspondence with the Law Society in connection with the complaint by Mrs H, Ms Kashmiri stated that a lady used to attend her office for work experience and that she gave her Mrs S’s file to work on. Ms Kashmiri went on to state that she asked this lady to prepare the complete draft of the form in good faith. She stated “since it was a rough draft, I trust on her work, I had given her an opportunity to gain experiences, I believe when we were junior, we all have lots of mistake and learn a lesson from that mistake, we delivered the full draft of work permit application”.
46. In a letter dated 17th May 2005, the Law Society raised the issue of failure to supervise with Ms Kashmiri. They requested details including what practices were in place for supervision at the firm and what supervision and assistance the lady actually had. Ms Kashmiri replied by letter dated 27th May 2005. She stated that as it was only a draft in pencil “I did not look into it, moreover I learnt from this mistake and started checking every letter”. She went on to say the lady did not have any experience in immigration matters and that “since that incident, I am personally supervising all work myself”. In response to the question “Did you see post that she sent out?”, Ms Kashmiri said “I do not remember”. She went on to say that since it was a draft, she did not check it. In her oral evidence Ms Kashmiri accepted that she had failed properly to supervise.

The submissions of the Applicant

47. The allegations against the Respondents related to serious matters. In particular Ms Kashmiri had demonstrated a complete failure to understand the Solicitors Accounts Rules. The Applicant had made an allegation that Ms Kashmiri had been dishonest.

The submissions of Ms Kashmiri

48. Ms Kashmiri had opened her practice on 15th March 2004. Because she recognised her own lack of experience she kept an accountant to write up the books of account. He visited the office regularly to do this. That gentleman had apologised for the fact that the books of account were not written up to date. Ms Kashmiri had apologised for this failure. Ms Kashmiri's Accountant's Report had been filed with the Law Society on time.
49. Ms Kashmiri admitted allegations 1(ii), (iii), (iv), (v) and (vi) and apologised for her shortcomings in these respects. Ms Kashmiri had no money when she opened her practice and she had been grateful to the bank for agreeing an overdraft in order to give her a chance. She had only a few pounds to keep her going. Ms Kashmiri said she did not know about raising bills of costs and transferring monies from client to office account in payment. With regard to the fact that she had made round sum transfers from client to office account, the Respondent had not known what to do. With regard to the three round sum transfers referred to by the Applicant, the Respondent said she had raised a bill but her accountant had not known what to do. She did accept that she had made the three round sum transfers without raising a bill.
50. Ms Kashmiri had apologised for misunderstanding and/or confusion on her part relating to Mr Jain's being held out as a partner. Mr Jain had helped Ms Kashmiri when she had been in India. Mr Jain had a speech problem. He had qualified in the United Kingdom. When he came to know that Ms Kashmiri was in London he asked her if it were possible for him to be a partner. Ms Kashmiri indicated that he could if the Law Society agreed. Ms Kashmiri admitted him as a partner in the firm. He was a partner. Mr Jain had attended at the firm's offices for some three to four weeks. He had taken no other part in the business. He had not been a signatory on the accounts and he did not undertake any professional work. He was for the most part in Mumbai. He did not supervise at all. He knew nothing of what was going on.
51. Ms Kashmiri noted that the allegation that she had misappropriated clients' funds was put as one of dishonesty. She denied that she had been dishonest and had given her explanations.
52. With regard to allegation 2(ii), Ms Kashmiri said she had never spoken to Mrs H but Mrs H's husband kept telephoning her. He had telephoned on a number of occasions and had used inappropriate language. Mrs H had not disclosed the fact that she had legal professional qualifications. Mrs H's husband had not known how to deal with a woman from an ethnic minority. Ms Kashmiri said she was alone and had no-one to support her. She had asked for £450 from Mrs H in order to "shut her up". She didn't know what else to do.

53. With regard to the letter written to Mrs H, Ms Kashmiri agreed that it was inappropriate. She had wanted to stop Mrs H's husband from his continual phone calls. She did not agree that the letter was threatening.
54. The suggestion that Ms Kashmiri had warned Mrs H that she would be in trouble and that Ms Kashmiri "knew people" was a story constructed to damage Ms Kashmiri's name and reputation. In her own words Ms Kashmiri said "Mrs H was trying to fix me up". She pointed out that in the letter written by Mrs H to Ms Kashmiri dated 8th September no mention was made of any threats. What Mrs H had written in her letter of 14th September was absolutely wrong and absolutely false. Mrs H had made a big fuss. The nub of the matter was that Ms Kashmiri had been intimidated by Mrs H and in particular her husband.
55. Ms Kashmiri accepted that the names of the principals in the firm must appear on the firm's letterhead. It was her mistake that they did not so appear.
56. Ms Kashmiri admitted the alleged failure to supervise.

The Findings of The Tribunal

57. The Tribunal found all of the admitted allegations to have been substantiated.
58. In relation to the allegations that had been denied, the Tribunal found allegation 1(vi) to have been substantiated against both Respondents. The Tribunal also found allegation 2 to have been substantiated. The reality was that the partnership between Mr Jain and Ms Kashmiri was in fact a sham. Mr Jain remained in India, save for a period of four weeks when he had been in the UK, and he had no interest in and played no part in Ms Kashmiri's firm. Partnership in a firm of solicitors carried with it responsibilities and burdens and cannot be a bare partnership where such burdens and obligations are not to be met by a partner who is held out as such.
59. In effect Ms Kashmiri admitted that she had misappropriated clients' funds for her own purposes. Because the Tribunal accepted Ms Kashmiri's explanation that she did not know what she was doing and made mistakes, the Tribunal concluded that in this respect Ms Kashmiri had not been dishonest.
60. With regard to allegation 3(iii), Ms Kashmiri accepted that the terms of her letter were inappropriate but she did not accept that they were threatening, particularly in the light of the fact that the recipient was herself a qualified lawyer. The Tribunal found that the terms of the letter were inappropriate and might well have been threatening if written to somebody who was not au fait with legal processes.
61. With regard to allegation 3(iv), which Ms Kashmiri had denied, the Tribunal did not find this to have been substantiated. The allegation was that during the course of the conversation Ms Kashmiri made threats to Mrs H. The Applicant had adduced no evidence in support of that allegation.
62. The Tribunal having found allegations substantiated against Mr Jain concluded that he had accepted the title of a partner in a solicitors' firm and was held out as such and therefore could not escape liability for non-compliance with the Solicitors Accounts

Rules. He had appeared to accept his position as a partner without giving any consideration to the burdens and responsibilities that such a position brought with it. In all of the circumstances the Tribunal concluded that it would be both appropriate and proportionate to order that Mr Jain be suspended from practice as a solicitor for an indefinite period of time.

63. The Tribunal had found a number of allegations to have been substantiated against Ms Kashmiri and had heard her give evidence, the nub of which was that she was an ethnic minority woman on her own without support and she had no experience of solicitors' accounts and was not aware of the provisions of the Solicitors Accounts Rules.
64. The Tribunal considered that Ms Kashmiri was a qualified solicitor and should she wish to practise in England and Wales she might not expect to be treated differently from any other practitioner. Again because Ms Kashmiri was qualified, she should have been fully aware of all of the rules and regulations relating to practice as a solicitor and in particular should have been fully conversant with the Solicitors Accounts Rules. She explained her breaches of those rules by lack of experience and lack of knowledge. It was foolhardy and reckless in the extreme for a solicitor to set up in practice with a view to practising on her own without being fully conversant with all of the up to date requirements of practice as a solicitor.
65. The Tribunal concluded that Ms Kashmiri was not fitted to be a solicitor and in order to protect the public and good reputation of the solicitors' profession the Tribunal considered it both appropriate and proportionate that she be struck off the Roll of Solicitors. The Tribunal further ordered that the Respondents should bear responsibility for the costs of and incidental to the application and enquiry and ordered that the Respondents pay the costs of and incidental to the application and enquiry fixed in the sum of £7,500 on a joint and several basis.

DATED this 16th day of October 2007
on behalf of the Tribunal

W M Hartley
Chairman