

IN THE MATTER OF CHRISTOPHER JOHN THORLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J N Barnecutt (in the chair)
Mr D J. Leverton
Mrs C Pickering

Date of Hearing: 16th October 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 Iain George Miller, solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4M 7RF on 13 March 2007 that Christopher John Thorley of Austhorpe Lane, Leeds, solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that:-

1. He entered into an arrangement with a Mr A in relation to Cavendish Legal Services solicitors which no solicitor ought properly to have entered into as it was contrary to 1(a) and (b) of the Solicitors Practice Rules ("Practice Rules").
2. He failed to maintain proper books of account contrary to Rule 32 of the Solicitors' Accounts Rules 1998 ("the SARs").
3. He failed to carry out client reconciliations on at least a five weekly basis since the firm had commenced practising on 20 June 2005 contrary to Rule 32(7) of the SARs.
4. His firm failed to disclose material facts to mortgagee clients and third parties and as a result failed to act in the best interests of its clients in breach of Rule 1(c) of the Practice Rules.

5. He failed to ensure that an employee of the practice, Mrs P was adequately and/or properly supervised contrary to Practice Rule 13.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 16 October 2007 when Iain George Miller appeared as the Applicant and the Respondent was represented by Nick Peterkin, solicitor.

The evidence before the Tribunal included an indication that the Respondent denied the allegations, the oral evidence of Mr S J Wallbank, a Senior Investigation Officer of The Law Society and the oral evidence of the Respondent.

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

The Tribunal Orders that the respondent, Christopher John Thorley of Austhorpe Lane, Leeds, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 16th day of October 2007 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,600.00 inclusive.

The facts are set out in paragraphs 1 - 30 hereunder:-

1. The Respondent, born in 1952, was admitted as a solicitor in 1981 and his name remained on the Roll of solicitors. At the material times the Respondent practised under the name of Cavendish Legal Services, solicitors, at 500 Leeds Road, Bradford, West Yorkshire. The firm's letterhead indicated that at certain times the firm was a partnership between him and a Ms I. The existence of such a partnership was in dispute. The Law Society had not brought disciplinary proceedings against Ms I as her involvement was on any analysis peripheral to the allegations currently before the Tribunal.
2. The allegations arose from the findings of Law Society Investigation Officers following an inspection of the books of account of Cavendish Legal Services, solicitors. The inspection began on 20 September 2005. Two SIOs, one of whom was Mr Wallbank, attended at the firm's offices. They produced a written report dated 26 September 2005 which was before the Tribunal. The report revealed the following matters:-
3. In or about June 2005, the Respondent entered into an oral agreement with Mr A whom he understood to be a property developer, who wanted to set up a legal practice together with Mrs P, an unadmitted clerk.
4. The Respondent agreed to do this within Cavendish Legal Services Solicitors ("Cavendish"). Mr A invested £40,000.00 into Cavendish which occupied premises leased by Mr A personally. Mr A paid Cavendish's salaries and overheads. The Respondent had no involvement in this and, for example, did not know how much Mrs P was paid. It was believed by the Respondent that any profit made by Cavendish would be shared amongst the then partners of Cavendish and the sums invested by Mr A would be repaid. The Respondent conducted no checks in respect of Mr A or Mrs P. The Respondent's position was that they had been introduced to him by a respectable firm of recruitment consultants. Mrs P became responsible for

monitoring the books and records of Cavendish in addition to her role as a conveyancing fee earner.

5. Client and office bank accounts were opened on Cavendish's behalf at Barclays Bank plc in July 2005. These accounts were closed by Barclays on 30 August 2005. The bank regarded Mr A as the customer. The Barclays accounts required the joint signatures of the Respondent and Mrs P. The Respondent opened new accounts with HSBC plc, Bradford on 22 September 2005.
6. The Respondent did not know what happened to the closing balances on the Barclays Bank accounts and he was unaware whether the firm was currently holding any client funds. The Respondent had not seen any ledgers of the firm. He did not know who had the cheque books and paying in books.
7. The SIOs reported that 53 files had been uplifted during the investigation, twenty three of which related to new or on-going conveyancing matters. Eleven files related to other matters. Four files had been retrieved from a previous employer of Mrs P which contained no evidence of authority from the clients concerned to transfer the files. The SIOs noted that nine conveyancing files related to Mr A's own transactions. In matters that had recently been completed or were due to be completed, there had been a failure to inform lender clients or third parties of material facts. By way of example the transactions relating to Mr A's purchase of 43 W Drive, of 11 H Walk and 90 A Road were cited.

43 W Drive

8. The Land Registry's office copy entries dated 28 July 2005 showed that since 17 July 1998 the vendor, Mr R, had been the registered owner and there was a first charge secured on the property in favour of Abbey National plc. There was no correspondence from the vendor or his legal representatives.
9. On 28 July 2005 Ross & Craig, solicitors, acting on behalf of First Property Finance plc ("the Lender") had written to Cavendish in connection with Mr A's mortgage advance, expressing their requirements. On 3 August 2005 Cavendish provided an undertaking to meet them.
10. That same day Ross & Craig solicitors wrote to Cavendish requesting confirmation that the contracts had been exchanged and queried why pre-contract enquiries had not been raised.
11. On 4 August 2005 Cavendish confirmed that contracts had been exchanged and the requisitions on title would follow. There was no evidence of such requisitions on the file.
12. On 5 August 2005 Mr A signed a loan agreement and legal charge for a bridging loan for three months of £63,000.00. This was witnessed by the Respondent.
13. No client account ledgers were available for inspection by the SIOs but the client account bank statement dated 9 August 2005 showed that the sum of £57,541.13 had been received from Ross & Craig solicitors. The latest bank statement available in

respect of this matter was dated 11 August 2005 and showed a balance on client bank account of £11,216.30. There was no correspondence in the file relating to the completion of the matter or correspondence relating to the transfer of client funds.

14. On 12 September 2005 the Lender wrote to Cavendish advising that Mr A wished to redeem the loan, but due to the three month minimum period this could not be done until 9 November 2005.
15. As at 22 September 2005 the Land Registry records showed that 43 W Drive was still registered in the name of Mr R and the legal charge in favour of Abbey National plc remained outstanding.

11 H Walk

16. Cavendish acted also for the London Mortgage Company.
17. The Land Registry office copy entries dated 18 August 2005 showed that Mr A purchased 11 H Walk on 22 November 2004 for the sum of £335,000.00 and there was a registered charge secured on the property in favour of Cheval Bridging Finance Limited.
18. An offer of advance of £208,000 dated 22 August 2005 to Mr A from London Mortgage Company was copied to the firm. The purpose of the advance was to assist with "the purchase of the property" at the price of £335,000.00.
19. The certificate of title dated 12 August 2005 signed by the Respondent confirmed the purchase price to be £335,000.00. A letter from the firm to London Mortgage Company dated 22 August 2005 confirmed there would be vacant possession on completion.
20. There was no information on the file to identify whether the transaction was completed. There were no accounting records to verify the transaction. There was no evidence that London Mortgage Company had been advised by Cavendish that Mr A was already registered as the owner of 11 H Walk.

90 A Road

21. The price of £350,000 had been agreed with the vendor, Mr H. The proposed completion date was 22 July 2005. On 11 July 2005 BBW solicitors acting for Mr H sent the signed contract to Cavendish.
22. There was a copy on the file of a letter from BBW solicitors to Igroup Mortgages Limited ("Igroup") dated 8 July 2005 confirming that completion would take place on 22 July 2005 and that the purchase price was £350,000.00. The letter went on to say "Kindly confirm that the eviction will not be enforced on 11 July." The letter contained a signed authority from Mr H for Igroup to talk to Cavendish in respect of his mortgage account.
23. On 13 July 2005 Cavendish wrote to the Land Registry requesting a copy of the lease dated 3 April 1998 stating that it acted for Mr H.

24. Mr A was provided with a bridging loan to purchase 90 A Road from First Finance Property ("the Lender") for three months in the sum of £175,000.00 to be secured by a charge over the property.
25. On 3 August 2005 Cavendish provided an undertaking to Ross & Craig solicitors (acting for the Lender) to effect completion, forward the executed form TR1 and form DS1 within 21 days of completion. There was no evidence on the file that the firm had complied with this undertaking.
26. On 28 July 2005 the sum of £164,339.63 was received from the Lender. The SIOs were unable to locate a client ledger but noted the following payments from the client bank account which took place on that same date

PP	£24,000.00
Mr A	£91,578.80
Transfer to office a/c	£760.00
Igroup	£8,884.69

27. There was no known link between Mr PP and this transaction. There were no client matter files relating to him. Documents found in Cavendish's offices indicated that Mr A had previously agreed to lend £18,200.00 to Mr PP in April 2005 and this was due to be repaid on 3 April 2006.
28. On 12 September 2005 the Lender wrote to Cavendish stating that Mr A wished to redeem the loan on 90 A Road. The earliest date on which the loan could be redeemed was 28 October 2005, owing to a three month fixed period.
29. On 13 September 2005 Igroup wrote to Cavendish with a redemption statement in respect of Mr H's outstanding mortgage. That redemption statement indicated that on 29 July 2005 the sum of £8,884.69 was received by Igroup.
30. There was no information on file to identify whether the purchase was completed, whether Cavendish fulfilled the undertaking provided to Ross & Craig solicitors on 3 August 2005 or to explain why BBW solicitors had not dealt with the redemption of Mr H's mortgage or why his mortgage had not been fully redeemed when the Lender provided the funds on 28 July 2005.

The Submissions of the Applicant

31. It was apparent from the nature of the three example transactions that Mr A and Mrs P used Cavendish for transactions that bore the hallmarks of mortgage fraud. That was only possible because the Respondent was willing to lend his status as a solicitor in the following circumstances.
- (a) He did not make any investigation of the background of Mr A or Mrs P
- (b) He failed properly to consider whether it was appropriate to enter into a relationship with Mr A whereby Mr A provided the capital of the business and the premises and was responsible for paying staff. There was no written

agreement as to the terms of the arrangement or the sharing of profits. The arrangement appeared to have no financial benefit for Mr A.

- (c) The Respondent had no knowledge of the books of account of the firm or its bank accounts and he delegated the keeping of the books to Mrs P.

32. The conveyancing transactions exemplified had been conducted by Mrs P. Allegations 4 and 5 reflected the failure of the Respondent to exercise any proper supervision of her which led to the failure to disclose material facts to lender clients.
33. The allegations were made on the basis that the Respondent's conduct was capable of being characterised as "conscious impropriety" (or dishonest) absent a satisfactory explanation. In any event he clearly displayed a reckless disregard of his responsibilities as a solicitor.

The Submissions of the Respondent

34. Prior to setting up Cavendish the Respondent had undertaken locum work, but there had been a downturn in conveyancing reflected by the reduced availability of his locum work.
35. The arrangement with Mr A was that he would provide the initial finance for the setting up of a legal practice. That finance was to be repaid in full when the practice was self-financing. It had been agreed that Mr A would have no control or influence in the practice. Mr A had invested some £40,000.00. A business plan had been drawn up and it was anticipated that Cavendish would achieve an annual gross fee turnover in the region of £500,000 based upon the amount of work that Mr A expected to be able to bring to the firm.
36. A computerised accounts system had been purchased for the benefit of the practice. The package included training and the trainer had suggested that as an interim step all transactions could be recorded by the relevant fee earner on the file until there were enough files and transactions to render inputting the movements of money of any training value.
37. Cavendish Legal Services had been in existence for only 12 weeks which led to the initial difficulties. It was unclear when the firm's first financial transaction took place.
38. Prior to 20 September 2005 there was no reason to believe that there was any impropriety or wrongdoing. The Respondent had been under the impression that he opened and saw all the post received by the firm. It transpired that that had not been the case. He had tried to elicit information from Mrs P as to the detailed conduct of her files but she avoided his questions and was totally uncooperative. The Respondent had reported the matter to the police in November/December 2005 .
39. The Respondent had spoken to Mrs P daily asking if she had any problems with which she needed assistance or guidance. The Respondent specifically requested confirmation that all matters were in order before signing any documents or bank transfers. At this early stage in the development of Cavendish Legal Services he could not have done more.

40. The Respondent had been, in about June 2005, approached by a representative of a reputable firm of recruitment consultants on behalf of Mr A. He was informed that there was an opportunity to set up a solicitor's conveyancing practice which would initially be funded by Mr A but he would have no control either direct or indirect in the practice. The Respondent requested a written agreement but this had not been forthcoming. This had become the cause of a separate legal action against the recruitment consultants.
41. The question of references for Mr A and Mrs P never arose. A C.V. had been provided for Mrs P and a glowing endorsement supplied by the recruitment consultants. It transpired that references taken up by Mrs P's previous employer proved to be totally inaccurate. Mrs P had volunteered to monitor the accounts records. The Respondent had no reason at that stage to question her motives or bona fides. Mr A had not been a party to the Barclays Bank mandate. Mrs P was a signatory to the account and this was because the Respondent required the protection of a joint signatory.
42. The account with HSBC required the signature of any two of the three partners of Cavendish.
43. The Respondent did not have in his possession any relevant bank statements and was unable to answer the SIOs' questions accurately. He did not wish to mislead.
44. On the date of the SIOs' visit the Respondent had been unable to locate the cheque book, the paying in book and the bank statements. He knew where they should have been but they had been removed. He later found out that a secretary had spoken to Mrs P on her mobile phone. Mrs P instructed the secretary to remove and retain all relevant bank documents. These documents were later shredded without the Respondent's knowledge or consent.
45. The four files retrieved from a previous employer of Mrs P were not the concern of Cavendish Legal Services. These files clearly were the result of Mrs P acting on a frolic of her own and no formal instructions were obtained by Cavendish Legal Services.
46. The three conveyancing transactions exemplified by the SIOs where Mr A was expressed to be the purchaser had all been referred to the police.
47. It was apparent that Mrs P and Mr A were involved in a conspiracy to defraud. Their activities commenced at another firm of solicitors in Bradford, they moved to a firm of solicitors in Sheffield, followed by a firm in Bradford and finally they moved to Cavendish Legal Services. All of the firms suffered losses from client account. Mr and Mrs P's course of conduct had nothing to do with the Respondent. The activities of Mrs P would have been discovered and become apparent once a file audit system had been in place. This would have been in place during October 2005. The Respondent did not know or have grounds to suspect that anything was untoward.
48. The Respondent took issue with the allegation of dishonesty. He had suffered severe financial hardship as a result of this matter. He had been unable to work and had been tainted with fraud. He faced total destruction both personally and professionally. The

Law Society had been aware of the activities of Mrs P in 2003. They knew that she was still following a corrupt course in early 2005. The Law Society knew about Mrs P and yet it made no attempt to inform the Respondent of the potential dangers of having her in the office. The Respondent felt the conduct of The Law Society amounted to a course of entrapment and breach of his human rights.

49. The Respondent had not been dishonest. He had been neither careless nor negligent.
50. The Respondent had been the victim of fraudsters, having placed his reliance on a reputable firm of employment consultants and having been severely disadvantaged by a failure by The Law Society to warn him about a dishonest clerk. He himself had not acted with conscious impropriety nor had he been reckless. The Respondent regretted what had happened. He had been a solicitor for many years. He regretted that his misfortune might have served to bring his profession into disrepute.

The Findings of the Tribunal

51. The Tribunal found all of the allegations to have been substantiated. The arrangement which he negotiated with Mr A was an improper one. Cavendish Legal Services was the Respondent's firm (or his together with partners) and he had a duty to the public to ensure that their affairs were being handled competently and honestly and in accordance with the rules relating to the professional conduct of solicitors. The Tribunal does not accept the Respondent's explanation that Mr A was merely financing the practice. His matters were being conducted by the practice and the Tribunal concluded that in respect of those matters where apparently Mrs P was the fee earner, the Respondent adopted a wholly inappropriate laissez faire attitude.
52. That laissez faire attitude marked a failure on the part of the Respondent to recognise and fulfil his responsibility as a solicitor employer. He apparently allowed an unadmitted clerk, not previously known to him, to undertake client work without any responsible level of supervision at a time when he had no personal experience of that clerk's capabilities. He had allowed her a free rein without having conducted any background checks. The Tribunal rejected the Respondent's assertion that he had relied upon a reputable firm of recruitment consultants because a representative of that firm had introduced him to Mr A and to Mrs P. However respectable an introduction of a client or a member of staff might be, it remains the solicitor's responsibility to ensure that the client's relationship with the firm, the nature of his work and the handling of his work by an unadmitted clerk was handled appropriately and all information relating to the client work was properly recorded. The Respondent's attitude and his failures left him wide open to fraud.
53. The Tribunal considered that the Respondent had had serious allegations established against him. In the manner in which he set up the practice of Cavendish Legal Services he was grossly irresponsible. The circumstances in which he created the practice were unusual. He was wrong to place himself under the financial control of Mr A and to have done so without making any enquiry about this gentleman. The Tribunal would have expected any reasonable solicitor closely to supervise an unadmitted clerk for at least the first three to six months of her employment.

54. The Tribunal concluded that the Respondent had shown a reckless disregard for his responsibility to his clients, he had placed the public at grave risk and had brought his profession into disrepute.
55. The Tribunal had given close consideration to imposing the ultimate sanction upon the Respondent.
56. The Tribunal concluded that the Respondent had not been dishonest but he had been foolish in the extreme and had allowed himself to be duped by one if not two fraudsters.
57. The Tribunal decided that an appropriate and proportionate sanction would be to impose an indefinite period of suspension upon the Respondent to run from the date of the hearing.
58. It was right that the Respondent should pay the Applicant's costs including the costs of the SIO. Having considered the figures handed in by the Applicant the Tribunal considered that it would be appropriate summarily to fix those costs in order to save further time and expense. It fixed the costs at £7,600.00 inclusive.

Dated this 3rd day of December 2007
On behalf of the Tribunal

J N Barnecutt
Chairman