No. 9694-2007

IN THE MATTER OF BRIAN JOHN FRANCIS DUNLEAVY and
AZEEM MAQSUD AHMED, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr K W Duncan (in the chair)
Mrs E Stanley
Ms A. Arya

Date of Hearing: 24th & 25th April 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Peter Harland Cadman solicitor and partner in the firm of Russell-Cooke of 8 Bedford Row, London WC1R 4BX on 19th March 2007 that Brian John Francis Dunleavy and Azeem Maqsud Ahmed, solicitors, of Argyle Chambers, 2 St Martin's Row, Albany Road, Roath, Cardiff, CF24 3RP 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 allegations were that the Respondents had been guilty of conduct unbefitting a solicitor in each of the following particulars namely:-

(a) That the books of account had not been properly written up in breach of Solicitors Accounts Rules.

(b) That the books of account were not produced for inspection.

(c) That clients' funds were utilised for the benefits of other clients.

(d) That the Respondents failed to notify their building society clients of relevant information in connection with conveyancing transactions.

(e) This allegation was withdrawn by the Applicant with the agreement of the Respondents and the consent of the Tribunal.

(f) That the Respondents transferred monies from client account to office account other than as permitted by Rule 22.

(g) The Respondents utilised clients' funds for their own purposes.

(h) That the Respondents provided false information to clients that was misleading.

(i) That the Respondents failed to make full and proper disclosure to their insurers in connection with their professional indemnity insurance applications.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 24th and 25th April 2008 when Peter Harland Cadman appeared as the Applicant, Mr Dunleavy was represented by Andrew Thomas of Counsel and Mr Ahmed appeared in person.

The evidence before the Tribunal included the Respondents' admissions of allegations (a), (b) and (c). Miss Yousif, Mr Norton, Mr Dunleavy and Mr Ahmed gave oral evidence.

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

The Tribunal Orders that the Respondent, Brian John Francis Dunleavy of 2 St Martin`s Row, Argyle Chambers, Albany Road, Roath, Cardiff, CF24 3RP, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of the Law Society's investigation accountant fixed in the sum of £9,500.00 and the Applicant's costs of and incidental to the application and enquiry to be subject to a detailed assessment unless agreed bewteen the parties.

The Tribunal Orders that the Respondent, Azeem Maqsud Ahmed of 2 St Martin`s Row, Argyle Chambers, Albany Road, Roath, Cardiff, CF24 3RP, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of the Law Society's investigation accountant fixed in the sum of £9,500.00 and the Applicant's costs of and incidental to the application and enquiry to be subject to a detailed assessment unless agreed bewteen the parties.

The agreed facts are set out in paragraphs 1 - 84 hereunder:-

1. Mr Dunleavy, born in 1951, was admitted as a solicitor in 1980. Mr Ahmed, born in 1973, was admitted as a solicitor in 2001. The names of both Respondents remained on the Roll of Solicitors. At all material times the Respondents practised in partnership at Argyle Chambers, 2 St Martin's Row, Albany Road, Roath, Cardiff. The partnership was established in May 2001 under the style of Dunleavy & Co but was renamed AMA Law from February 2005.

2. A chronology of events

(i) An inspection of the Respondents' firm by a Forensic Investigation Officer ("the IO") of The Law Society commenced on 19th September 2005. The IO's Report was dated 31st October 2005.

(ii) Correspondence between The Law Society and the Respondents 11th November 2005 to 21 November 2005.

(iii) Further IO's inspection commenced 23rd May 2006. IO's Report dated 28th June 2006.

(iv) Correspondence between The Law Society and Respondents 14th July 2006 to 3rd November 2006.

(v) The Respondents were referred to the Tribunal on 8th November 2006.

(vi) An IO's inspection commenced on 4 December 2006. The IO's Report was dated 29th January 2007.

3. The IO's Reports were before the Tribunal.

4. Allegation (a) - that the books of account had not been properly written up and Allegation (b) - that the books of account were not produced for inspection.

5. A previous IO's inspection in May 2002 led to the provision of an "on site certificate", detailing minor breaches of the Solicitors Accounts Rules. Mr Dunleavy then acknowledged that:-

> "Accounting records were not up to date at the start of the inspection but were brought up to date within 2 days. Office account had not been completely written up in accounting records".
>
> "I confirm that each of these items have been discussed with me and I agree to take action to correct the breaches listed. I understand that failure to carry out such corrective action as agreed may result in disciplinary action as a matter of conduct."

6. The Respondents were put on notice of the next inspection by letter of 12th September 2005. The inspection took place starting on 19th September 2005. During the inspection the Respondents were told that the same problems that had been brought to their attention at the previous inspection were still occurring. Mr Ahmed confirmed that the Respondents would be taking responsibility for the books of accounts in the future. The IO's Report dated 31st October 2005 pointed out that the books of account were not in compliance with the Solicitors Accounts Rules.

7. At the commencement of the inspection no up to date accounts were produced.

8. The reconciliation as at 31st August 2005 was produced on the third day of the inspection and it was not compliant with Rule 32(7) of the Solicitors Accounts Rules.

The IO reported that there were discrepancies between the list of liabilities to clients and the balances shown on the ledgers. 179 live client ledger accounts were produced but 170 had no transactions recorded on the office side of the ledger.

9. The Respondents were given 3 weeks notice of a further inspection which began on 23rd May 2006. The IO's Report was dated 28th June 2006.

Allegation (c) - that clients' funds were utilised for the benefit of other clients.

10. The Report dated 31st October 2005 set out the following details relating to a minimum cash shortage in the case of the client, Mr Q. On the commencement of the inspection, the Respondents informed the IOs that there was a debit balance of £10,708.75 on the client ledger of Mr Q. Mr Ahmed stated that this was due to an error in recording a receipt twice on the ledger. A review of this matter revealed that Mr Ahmed had acted for Mr Q in connection with his purchase of a restaurant.

11. Information on the file indicated that Mr Q was, initially, to be assisted in his purchase by way of a mortgage advance from Barclays Bank plc, but he eventually completed his purchase without mortgage finance.

12. The entries on the client ledger produced in respect of this matter were not recorded chronologically. At 28th June 2005 two credit entries were made for the same amount of £21,038.55 both with the description "ex client", when only one was supported by the receipt of funds.

13. An amended extract of the ledger, as prepared by an IO, without the duplicate receipt of £21,038.55 and with the entries recorded chronologically, is set out below:-

Date	Description	Debit	Client account credit	Balance
Balance brought forward				£59,361.45
27 Jun 05	Ex client		£9,600.00	£68,961.45
28 Jun 05	Ex client		£21,038.55	£90,000.00
28 Jun 05	Chivers & Jordan (Part Payment)	£80,000.00		£10,000.00
28 Jun 05	Ex client		£900.00	£10,900.00
29 Jun 05	Ex client		£16,100.00	£27,000.00
30 Jun 05	Ex client		£4,000.00	£31,000.00
30 Jun 05	Chivers & Jordan (Part Payment) TT	£45,000.00		-£14,000.00
30 Jun 05	Ex client		£1,000.00	-£13,000.00
01 Jul 05	Returned cheque	£6,038.55		-£19,038.55
04 Jul 05	Represented cheque		£6,038.55	-£13,000.00
06 Jul 05	Ex client		£6,000.00	-£7,000.00
06 Jul 05	Ex client		£1,000.00	-£6,000.00
07 Jul 05	Completion monies to Chivers	£15,000.00		-£21,000.00
15 Jul 05	Ex client		£3,291.25	-£17,708.75
02 Sep 05	Ex client		£2,000.00	-£15,708.75

17 Sep 05	Ex client	£5,000.00	-£10,708.75
20 Sep 05	Rectification	£10,708.75	NIL

14. Mr Ahmed said that he had made the second entry in respect of the credit of £21,038.55 in error and as a result the firm had in error over-paid Mr Q.

15. From the extracted and corrected ledger it could be seen that a debit balance of £14,000 was created on 30th June 2005 as the result of a payment of £45,000 to the vendor's solicitors when the firm held only £31,000 on behalf of Mr Q. The debit fluctuated, reaching a maximum of £21,000 by 7th July 2005, before being finally rectified on 20 September 2005.

16. Mr Ahmed said that the funds to clear the debit entry had been obtained from office account, his credit card and from the office manager, Mr Ali. Mr Ahmed stated that the debit had not been cleared earlier as the client did not have sufficient funds to make any repayment.

The evidence relating to the disputed allegations is set out in paragraphs 17 to 83 hereunder

Allegation (d) - that the Respondents failed to notify their building society clients of information relevant to conveyancing transactions

17. This allegation related to two conveyancing transactions:-

(i) D Street, reported in the IO's Report of 31st October 2005; and
(ii) C Gardens, reported in the IO's Report of 28th June 2006.

18. In the matter of D Street, Mr Ahmed acted for Mr U, the buyer, Mr Q, the seller and Mr U's mortgage lender, Birmingham Midshires.

19. The agreed mortgage advance was £153,000.00. The property had been valued by the lenders on 24 March 2005 at £180,000.00.

20. On 27th May 2005, Mr Dunleavy signed a certificate of title for the lender confirming that the purchase price stated in the transfer was £195,000.00. The certificate also stated:-

> "We, the conveyancers named above, give the Certificate of Title set out in the Appendix to Rule 6(3) of the Solicitor's Practice Rules 1990 as if the same were set out in full, subject to the limitation contained in it."

21. Mr U's title and his mortgage with Birmingham Midshires was subsequently registered at HM Land Registry. The Office Copy entries dated 21st June 2005 stated "(21.06.2005) The price stated to have been paid on 3 June 2005 was £195,000."

22. Mr U's file contained a copy of his Stamp Duty Land Tax Return where question 10 was "What is the total consideration in money, or money's worth, including any VAT

actually payable for the transaction notified?", which was completed with the answer, "£195,000.00."

23. Mr U's client ledger in relation to his purchase was extracted by the IO as follows:-

	Date	Description	Debit	Client side credit	Balance
1	01 Jun 05	Advance BM		£152,951.00	£152,951.00
2	01 Jun 05	BM Cash Back		£300.00	£153,251.00
3	03 Jun 05	From L/L 828		£29,084.00	£182,335.00
4	03 Jun 05	Completion monies To L/L 855	£180,000.00		£2,335.00
5	03 Jun 05	IR	£1,950.00		£385.00
6	03 Jun 05	LR	£150.00		£235.00
7	03 Jun 05	Trs Costs	£200.00		£35.00
8	03 Jun 05	Trs VAT	£35.00		£0.00

24. The only funds provided by Mr U for his purchase of the property was the mortgage advance of £152,951.00.

25. The credit for £29,084.00 at item 3 was an inter-ledger transfer from the vendor, Mr Q from funds held on his ledger relating to the purchase of the restaurant. The debit at item 4 was a transfer to Mr Q's ledger for the sale of D Street. The sum of £22,994.05 was transferred on 3rd June 2005 from Mr Q's ledger relating to the sale of D Street to Mr Q's purchase of restaurant ledger, in effect repaying to Mr Q part of the original £29,084.00 taken from that ledger to complete the sale by him of D Street.

26. At the interview with the IO on 22nd September 2005, Mr Ahmed was asked to explain why the transfer document and Stamp Duty Land Tax Return showed a purchase price of £195,000.00, when it appeared that only £180,000.00 was actually paid on completion, and £29,084.00 of this was Mr Q's own funds. Mr Ahmed explained that Mr U had lent Mr Q some money in the past. Mr Q was repaying funds to Mr U which Mr U was using to purchase the property from Mr Q. Mr Ahmed said that the property was valued £180,000.00. The Respondents had been unable to explain why they reported to the Land Registry, the Inland Revenue and the lender that the purchase price was £195,000.00.

27. The file did not record any correspondence with the lender about the difference in the purchase price or the fact that £29,084.00 of the purchase price was provided by the vendor.

28. In his oral evidence Mr Ahmed said that he acted for the seller; he had not acted for Birmingham Midshires, who had said that the price was either £180,000.00 or £195,000.00. Mr Dunleavy had sent a fax to Birmingham Midshires to establish exactly what was the purchase price. Mr Ahmed said that initially the price had been £195,000.00 but the valuation did not stack up. Mr Q had been buying his restaurant and needed money. He was threatened with the repossession of his house and he wished to buy the restaurant. The money came from Mr U. Mr Ahmed said that the transaction did seem to him to be rather strange. The mortgage broker involved said

that if the mortgage offer changed to £180,000 it would not affect Birmingham Midshires. The broker had rung the head office of Birmingham Midshires who said that it did not matter. The actual purchase price did not matter to Mr Ahmed's clients. £15,000 was paid separately: it was all Mr U's money anyway. Mr Ahmed accepted that Birmingham Midshires were the firm's clients, Mr Dunleavy had acted for them.

29. The firm acted for Mr B in the purchase of three new properties. Mortgage funding was provided by GMAC-RFC Ltd for whom the firm also acted. The purchase arrangements were as follows:-

Property	Gross Price	Discount	Deposit Incentive (*)	Consideration Paid	Advance	Surplus of Advance Over Consideration
Plot 53	£137,500	£20,625	£,875	£10,230.64	£23,190	£2,959.36
Plot 57	£138,500	£20,775	£,925	£11,030.64	£23,190	£2,159.36
Plot 62	£129,500	£19,425	£6,475	£103,830.64	£115,180	£11,349.36

(* 5% of purchase price)

30. The lender's instructions permitted the receipt of a deposit and/or incentive up to a maximum of 5% and stated that the offer was invalid if a deposit/incentive totalling more than 5% of the purchase price was involved. In connection with each advance, the lender was advised in writing of the 5% deposit incentive. The certificate of title was signed by Mr Ahmed on 26th June 2006.

31. In each advance transaction the offer documents were based on the gross price. Stamp Duty Land Tax was paid on the basis of the gross price and Land Registry records showed the gross price as the consideration for the transfers.

32. The IO had pointed out that the total advances received by the client exceeded the total consideration for the purchases by more than £36,000 and that the lender appeared unaware of that position. The Respondents had agreed that the lenders should have been notified that the advances exceeded the actual purchase cost.

Allegation (f) - that the Respondents transferred monies from client account to office account other than as permitted by Rule 22 of the Solicitors Accounts Rules 1998.
Allegation (g) - the Respondents utilised clients' funds for their own purposes.
Allegation (h) - the Respondents gave false information to clients

33. The IO's Report dated 29th January 2007 identified 11 transactions where small credit balances on client account had been transferred to office account by way of transfers as "disbursements".

34. In the matter of clients Mr and Mrs R the client account ledger showed completion and a transfer of costs on 28th September 2006. The bill of costs contained the item "disbursements, postage, telephone, fax £50.00".

35. As at 28th September 2006 there was a credit balance of £260.75.

36. On 13th November 2006 the firm paid the Land Registry fee of £220.00. On the same date there was an entry "Transfer disbursements" transferring the balance of £40.75 to office account. When asked about this by the IO Mr Ahmed said:-

> "Well basically that's just if, I mean for any additional work that we might have, yeah, we transfer any like if its like £40 we usually do a bill....But I think we transferred it as a disbursements...because it was just extra work, its like admin work...it's for additional work that's involved in the file...maybe we should do a bill for additional work."

The following copy bill was produced by the Respondents:-

> "L/C 1398
>
> VAT No: 850 8903 13
>
> Mr & Mrs M R
> Cardiff
>
> 11th December 2006
>
> re: Purchase of [property at] Cardiff
>
> | | |
> |---|---|
> | To our additional legal fees in relation to the purchase of the above property including post completion work | £34.68 |
> | VAT thereon | 6.07 |
> | | £40.75 |
>
> Please note: Please ignore the bill showing a transfer of disbursements of £40.75 we sent to you on the 13th November 2006. This was incorrect as it should have shown a VAT element as this was our profit costs. This does dot [sic] make any difference to you, and we confirm that all fees and disbursements have been paid and no further amount is needed. We have accounted for the VAT amount direct with the Inland Revenue.
>
> We apologise for any inconvenience caused."

37. In the course of reviewing a number of conveyancing matter files, the IO identified that the Respondents' letters to clients confirming their instructions were in the form, "This firm's charges will be £------ + VAT. The disbursements, which will have to be paid, will be as follows..." Generally included in the relevant disbursements were:-

a) "Postage/Faxes/Deed Release £50.00" and, where relevant,
b) "SDLT Fee + VAT £50.00"

"SDLT" was understood to be an abbreviation for "Stamp Duty Land Tax".

38. Completion statements provided to clients also included these items, where relevant, under the heading "Disbursements".

39. Where relevant, the bills of costs delivered to clients generally included the narrative, "To our legal fees in relation to...including SDLT fee". Where this narrative was used, the fee was £50.00 greater than the fees appearing in the client care letter.

40. The bills of costs delivered to clients also typically included "Postages/Faxes £50.00" or "Sundries/Postage £50.00" under the heading "Disbursements".

41. The Respondents had explained to the IO that in addition to searches, they also considered postage, telephone and fax costs as disbursements. They accepted the IO's advice that this was an incorrect approach although Mr Dunleavy said that for a number of years he had believed that this was part of a service provided to the client and consequently subject to VAT but that the firm's accountants had advised to the contrary. Mr Dunleavy repeated this assertion in his oral evidence and produced a copy bill from the early 1970s in which a charge was made for general disbursements "postages telephones etc."

42. In the matter of Ms K, following completion and the transfer of costs there remained a credit balance on client account of £448.75. On 8th September 2006 Land Registry fees were paid of £420.00. The full amount of the credit balance had been transferred to office account as "disbursements". The record of Mr Ahmed's interview with the IO recorded him as saying:-

> "That is what I am saying it is a disbursement for extra work done on the file because basically there are transfers... it is a disbursement for extra work done...basically it should be a bill, it should be a new bill rather than a disbursements...we should do a bill instead of transferring to a disbursement."

The Respondents had produced a bill of costs that had not been produced at the time of inspection. There was no evidence on the file that the disbursement bill document had ever been sent to the clients.

43. The firm acted for Mr B in the purchase of a property at a price of £185,000. Mortgage funding was provided by GMAC-RFC Ltd. The firm acted for both parties. The contract allowed for a 5% deposit allowance of £9,250.00 and an allowance for Stamp Duty Land tax of £1,850.00.

44. The lender's instructions permitted the receipt of a deposit and/or incentive up to a maximum of 5% and stated that the offer was invalid if a deposit/incentive totalling more than 5% of the purchase price was involved. The lender was advised in writing of the 5% deposit incentive but not the SDLT allowance. The certificate of title was signed by Mr Ahmed on 13th June 2006.

45. The completion statement provided by the seller's solicitors included the allowance for SDLT, resulting in a balance required to complete of £173,900.00. The firm paid £175,750.00, representing an over payment of £1,850.00.

46. On 8 December 2006, the Respondents suggested that because the allowance for SDLT had not been retained, there had not been such an incentive. The IO pointed out that this allowance was clearly set out in the completion statement and because of an oversight, an overpayment had arisen.

47. The client ledger showed that at 14th August 2006 the Respondents had in client account £220 from the clients to pay the Land Registry. The Land Registry fee was paid on 14th August 2006. On 15th September 2006 a £70.00 refund was received. £70 was transferred to office account as "additional disbursements from the client's funds to the Respondents' funds" on 27th October 2006.

48. At interview with the IO Mr Ahmed said:-

> "Again that is what I'm saying, again it should have been transferred as a bill...it is not that much but it covers our administrative costs post-completion basically - when a file's still open it costs us money...that is what I mean we couldn't bill that client, we can't bill it, but if we, you know, have any money left over, £10, £20 we're going to transfer that as a disbursement because of all the phone calls, letters that you have written."

49. The Respondents had produced two bills of costs, one for disbursements, "telephones/faxes/telephone calls and bank charges" of £70.00 dated 27th October 2006 and a bill drawn as follows:-

> "L/C 1268
>
> VAT No: 850 8903 13
>
> Ms B
> London
>
> 11th December 2006
>
> re: Purchase of [property at] Camberely
>
> | | |
> |---|---|
> | To our additional legal fees in relation to the purchase of the above property including post completion work | £59.57 |
> | VAT thereon | £10.43 |
> | | £70.00 |
>
> Please note: Please ignore the bill showing a transfer of disbursements of £70.00 we sent to you on the 27th October 2006. This was incorrect as it should have shown a VAT element as this was our profit costs. This does dot [sic] make any difference to you, and we confirm that all fees and disbursements have been paid and no further amount is needed. We have accounted for the VAT amount direct with the Inland Revenue.
>
> We apologise for any inconvenience caused."

50. In his oral evidence Mr Ahmed said that he took full responsibility for the firm's accounts as Mr Dunleavy was not good with figures. Mr Ahmed dealt with all internal and external transfers. Mr Ahmed was responsible for writing up the books. This task formerly had been undertaken by accountants who did not do a satisfactory job. A bookkeeper had since been engaged.

51. Mr Ahmed explained that there often was extra work to be undertaken after completion which had not been anticipated or quoted for in the client care letter, for example if the stamp office was slow in returning documents, or wanted additional information, the firm's policy was not to bill for that additional work unless it had money in hand. The original quotation provided to the client always explained that the client would be told if additional work proved to be necessary.

52. When the Respondents attended the earlier adjourned hearing they had brought with them the clients in respect of whom additional bills had been drawn each of whom would give evidence of the fact that they had been notified of the bills. The Respondents had not felt able to inconvenience these people again for the purposes of giving evidence when the substantive hearing did take place in April 2008. The bills were sent to the clients without a covering letter. Each bill had been stamped with a "paid" stamp. Mr Ahmed explained that the firm's mainly ethnic minority clients did not like letters.

53. The Respondents accepted that it had been a serious omission on their part that they did not keep written attendance notes on the clients' files upon which they could rely to support their oral evidence.

54. In his oral evidence Mr Dunleavy said that he had not personally acted for Mr B. This transfer was for additional disbursements but he had spoken with Mr B who had told him to keep the money and "have a meal." This was not recorded in writing.

55. In the matter of the client, Mr A, the ledger card recorded that at 17th July 2006 a credit balance of £58.75 remained on client account. This credit balance was transferred from the client account to the office account on 16th October 2006 as a "disbursement". Completion had taken place on 19th May 2006.

56. During his interview Mr Ahmed said:-

> "We should actually do an additional bill. That's what, you know, we, instead of transferring it as a disbursement for additional work, because we do have additional work...if you have a look at our files post-registration, once they complete those files lie there for six, seven months...then we can't go back to the client and say we have done this additional work which we didn't anticipate and we are going to have to bill you now because they just don't know what that's about."

57. The Respondents had produced a statement from the client in which he confirmed he was fully aware of the transfer.

58. The Respondents had produced bills of 26th October 2006 for disbursements and of 11th December 2006 for fees, the latter containing the same narrative as that in Mr B's bill to the effect that the earlier bill should be ignored.

59. In his oral evidence Mr Dunleavy said at first that the disbursement bill represented a "tidying up exercise". He said he was not the author of the replacement bill. He said that the bill was not in the firm's bill book as it was probably drawn up during the IO's inspection. Subsequently Mr Dunleavy said that the sum of £58.75 remaining as

a credit on the client ledger represented a notice fee that should have been paid to the management company. He accepted that this sum should not have been transferred as a disbursement. He said that when the notice fee was paid it would have been paid out of office account, describing this as "mitigation".

60. Mr Dunleavy said that Mr A said he did not want the money and that Mr Dunleavy should “take the girls out”.

61. A Miss G had been employed by the Respondents. She was a trainee solicitor. She had handled the case of the client Mr B, with whom she had a connection. Miss G had subsequently joined another firm of solicitors but had been suspended by that firm.

62. Mr Ahmed explained that Mr A had been a difficult client who was related to the firm’s practice manager. Mr Ahmed had lent him money. Mr Ahmed said he should have prepared an additional bill.

63. With regard to the Respondents’ clients, Mr and Mrs P, completion had taken place on 12th April 2006. There remained a credit balance of £58.75 held on client account. This was transferred from client account to office account as “disbursements” on 26th October 2006. The Respondents produced a disbursement invoice of 26th October 2006 and a profit costs invoice of 11th December 2006 which replaced the earlier bill.

64. Mr Ahmed explained that the original bill drawn for this client had been incorrect. The firm had quoted costs of £900 plus VAT but had transferred only £850.00. Mr Dunleavy confirmed that he had signed the report on title in this case but he had not had conduct of the matter.

65. With regard to the client, Mr N, the work undertaken in April 2006 on this file involved an abortive purchase. £21.84 remained on client account. That credit balance was transferred to office account as disbursements on 26th October 2006. At interview Mr Ahmed said:-

> “...but that’s what I’m saying, we transferring it disbursements [sic] because there’s been telephone calls, there’s been letters written on that file...this is a bill rather than a disbursement.”

66. The Respondents produced a disbursement bill dated 26th October 2006 and fee bill dated 11 December 2006. Mr Dunleavy confirmed that this was his case. It was a “stale file” on which he had done much work. He had authorised the transfer. Mr Ahmed confirmed that Mr Dunleavy had conduct of this case. He said that the firm did not usually charge for abortive conveyancing matters. In this case the sum charged should have been much greater.

67. In connection with the client, Mr C, completion took place in September 2005. A credit balance of £35.00 on client account was transferred to office account on 10th November 2006.

68. The Respondents produced a written statement from the client. Mr Ahmed explained that the client had been undercharged for Land Registry fees. £35.00 had been transferred but the firm had to pay the Land Registry fee shortfall.

69. In the matter of Mrs M there remained on client account a credit balance of £72.75. On 26th October 2006 the Respondents transferred that sum from client account to office account as "disbursements".

70. At the interview with the IO Mr Ahmed said:-

> "Our clients are very funny. I mean you send them a bill and it upsets them, you know, upsets them, a second bill...The client just expects to pay what they were told at the start and not any more".

71. The Respondents produced a disbursement bill dated 26th October 2006 and a replacement fee bill dated 11th December 2006 with the same explanatory narrative as before. In oral evidence Mr Dunleavy said the matter had not been his. Mr Ahmed said there should have been an additional bill as the property was leasehold and additional work had been undertaken in negotiations with the management company. The bill was justified. He said that clients became upset if they received a further bill.

72. Mr J's matter was completed in March 2006. At the time of that completion there was a £10.00 credit on client account. On 4th April 2006 £9.25 was transferred from client account to office account as "notice fees". On 26th October 2006 the balance of 75p was transferred from client account to office account as "disbursements".

73. At his interview with the IO Mr Ahmed said:-

> "I mean we could have done a bill, but, you know we probably transferred that it [sic] as disbursement, 75p."

74. The Respondents produced a written statement from Mr J suggesting that he was aware of the transfer, although it was the Applicant's case that this was not so. In his oral evidence Mr Ahmed said that this was Mr Dunleavy's matter.

75. Mr Ahmed confirmed that he personally made all transfers. He said that Mr J traded next door to the firm. Mr Dunleavy said that the credit balance represented an unpaid notice fee to the landlord. The landlord had indicated that he did not require formal notice of the transaction. When the client had been told of the position he said that Mr Dunleavy should "have a drink on me."

76. Mr M's matter had been completed in January 2006. £58.75 had been transferred from client account to office account in October 2006 as "disbursements".

77. The Respondents had now produced their bills, a disbursement bill dated 26th October 2006 and profit costs bill dated 11th December 2006 bearing the same narrative as in previous cases. In his oral evidence Mr Dunleavy said that he did not handle this matter. Mr Ahmed explained that there had been a mistake on the original bill. The charge should have been £900.00 but a bill for £850.00 had been sent.

78. In the matters of Mr A and Mr Ah the transfers did not clear outstanding credit balances. In Mr A's matter £58.00 had been transferred as "disbursements" where the Respondents had produced no bills of costs to justify the same. They produced a correcting bill dated 11th December 2006 in the following form:-

> "L/C 1491
> VAT No: 850 8903 13
>
> Mr A
> Cardiff
>
> 11th December 2006
>
> re: Purchase of [property at] Cardiff
>
> | | |
> |---|---|
> | To our legal fees in relation to the purchase of the above property including post completion work | £532.12 |
> | VAT thereon | 93.12 |
> | | £625.24 |
> | Disbursements | |
> | OS1R | £6.00 |
> | Bankruptcy | 2.00 |
> | Total Due | £633.24 |
>
> Please note: Please ignore the bill showing £633.24 we sent to you on the 20th November 2006. This was incorrect as it should have shown a VAT element as this was our profit costs. This does dot [sic] make any difference to you, and we confirm that all fees and disbursements have been paid and no further amount is needed. We have accounted for the VAT amount direct with the Inland Revenue.
>
> We apologise for any inconvenience caused."

79. In the case of Mr Ah, completion took place on 27th September 2006. £198.00 had been transferred as "disbursements" at the time the bill was rendered. No disbursements were referred to on the bill or in the completion statement. A correcting bill dated 11th December 2006 had been produced by the Respondents in a form similar to that in Mr A's matter. Mr Ahmed said that there had been a mistake and the Respondents had mixed up what was a fee and what was a disbursement.

Professional Indemnity Insurance
Allegation (i) - that the Respondents failed to make full and proper disclosure to their insurers in connection with their professional indemnity insurance applications.

80. An application form for professional indemnity insurance had been signed by Mr Ahmed and dated 4th October 2006.
81. Specific questions had not been answered fully and openly.

82. The firm failed to disclose:-

a. The fact that there had already been two inspections of the firm's books of account.

b. The fact that the firm was already on notice that there was about to be a third inspection.

c. The fact that a decision had already been made to refer the conduct of the Respondents to the Tribunal.

d. The fact that The Law Society had already considered intervening in the practice.

83. In his oral evidence Mr Ahmed accepted that he had ticked a "No" box when he should have ticked the "Yes" box. He also accepted that the matters set out at a. to d. above should have been formally notified to the insurers and that there was a continuing duty to make full disclosure of all adverse facts relating to the Respondents and/or their firm. He explained that the insurers, who continued to be the firm's insurers, had in fact been fully aware of all of the circumstances.

The Submissions of the Applicant

84. The Respondents admitted allegations (a) (b) and (c).

85. The Respondents had not called any of their witnesses and they were not therefore available to the Applicant for cross examination. The statements of the witnesses which had been placed before the Tribunal had not been accepted by the Applicant. They stood as untested evidence and the Tribunal was invited not to give them any weight.

86. Between May of 2002 and May of 2006, despite accountancy deficiencies having been specifically drawn to the attention of the Respondents, their books of account remained continuously in breach of the requirements of the Solicitors Accounts Rules.

87. In the matter of Mr Q there had been difficulties with regard to this client matter which should have put the Respondents on particular notice. A cheque from the lay client had been dishonoured and in his statement the lay client had confirmed that both he and the Respondents were aware of the under funding of the client account within a week of the date of completion. The client ledger became overdrawn following the actions of the Respondents in July 2005. There was, of course, the inevitable result that where there was an overdrawing on the ledger account of one client other clients' funds had been used to complete the purchase of the client who was short of funds. The deficit on client account was not rectified until 20th September 2005, the day after the FIO began an inspection.

88. With regard to the failure to notify institutional lending clients of salient matters, the facts in these matters spoke for themselves. In the matter of D Street on each of the three purchases the actual amount transferred to the vendor was in excess of the mortgage advance made. From the surplus of £39,468.08 on the ledger of Mr B

showed a transfer of £22,780.00 to the ledger of Mr Bw. The lenders should have been notified that the advance was in excess of the purchase price. The lender should also have been notified that the "profit" element was being transferred to another of the firm's clients.

89. The Tribunal had before it detailed information relating to the transfers of small credit balances from client account to office account. The transfers which were said to relate to disbursements, telephone/fax, telephone calls and bank charges appeared already to be covered in the £50 disbursement included in the Respondents' bills. The Respondents appeared to accept that the transfer of unidentified non-specific disbursements was incorrect and had attempted to put matters right by producing additional profit costs bills. These additional bills had been dated 11th December 2006 a date after the Respondents had been interviewed by the IO. Mr Dunleavy had told the Tribunal that the firm had conducted a "tidying up" exercise about every three months. By way of an example, in the matter of Mr B the completion statement showed a Stamp Duty Land Tax fee of £50.00 plus VAT as a disbursement when it was really part of the bill. Both the completion statement and the bill showed a £50.00 charge for postages etc. as a disbursement.

90. The Respondents' explanations for the transfers of the small credit balances proved to be inconsistent. Both where transfers had been made to bring the balance on the client ledger to nil and where transfers had been made in respect of "disbursements" all of the transfers had been in breach of the Solicitors Accounts Rules as no proper bill of costs had been rendered to the client. The Respondents had shown a total disregard of their obligations as custodians of client funds. The sums held in client account were monies to which the firm was not entitled and their transfer could be viewed by the Tribunal as being dishonest. In the submission of the Applicant there was no honest explanation for all of the transfers.

91. Where sums of money were transferred in relation to "disbursements" clients would have considered that those items were payments that the firm had actually made on their behalf when that was not the case. Careful explanation had been made to the profession that such unspecified matters relating to a firm's overheads could not properly be called disbursements and it had been indicated that to deal with sums of money on that basis amounted to "cheating the client".

92. With regard to failures to notify lending institutions of salient facts, The Law Society had provided guidance to solicitors, the individual lenders set out their requirements in their instructions to solicitors and the Council of Mortgage Lenders Handbook made it very plain what matters should be referred to lending institutions prior to their making the mortgage advance. The Respondents appeared to have paid no heed to any of these matters.

93. During the course of his evidence Mr Ahmed accepted that he had not made a full and proper disclosure to the firm's indemnity insurers although it was noted that it was his case that the insurers were in fact already aware of all such matters.

The Submissions of the Respondents

Submissions made on behalf of Mr Dunleavy

94. Mr Dunleavy admitted allegations (a) (b) and (c). It was accepted that during the course of his evidence he had in effect also admitted allegations (d) and (f).

95. With regard to allegation (g) namely that client funds had been utilised for the purposes of other clients, that resulted from the shortfall on client account in the matter of Mr Q and that client account was put at risk. It was accepted that if there had been a run on client account there would be insufficient money to meet all of the liabilities to clients. The matter was however put right and was described as a "self inflicted wound" caused by poor bookkeeping.

96. It was accepted that allegation (g) also encompassed the transfers of small credit balances.

97. With regard to allegation (h) it was not accepted that the Respondents provided misleading or false information to clients. All was made plain to clients but it was accepted that the Respondents had not complied with the rules or with what amounted or what was recognised as good practice.

98. Transfers of small client balances had not amounted to taking clients' funds for the Respondents' own purposes as they had justified why those monies were due to them in each and every case.

99. With regard to allegation (i) it was denied that there had been a failure to make a full and proper disclosure to the firm's indemnity insurers. There had been no evidence before the Tribunal that the insurer had sought to refuse cover or make a huge increase in the indemnity premium. The Respondents had not been invited to go elsewhere for their insurance cover. The indemnity insurance had been renewed with the same insurer since and no problems had arisen. Mr Dunleavy had said that there had been mistakes but the insurers had not suffered a loss or had been placed at a greater risk of loss.

100. No evidence had been called from the lending institutions which, it was alleged, had not been notified of material facts. It would not be right that the Tribunal adopt a reverse burden of proof so that the Respondents had to disprove the allegation made. There had been no indication by a mortgage lender that it had been misled.

101. It was sad that Mr Dunleavy who was nearly 57 years of age and had been on the Roll of Solicitors for some 28 years had been brought before his professional disciplinary tribunal to answer these allegations. He recognised that he had brought matters on his own head. He was not a dishonest man and was not a solicitor from whom the public required to be protected. There was no need in his case to consider the protection of the good reputation of the solicitors' profession. The public's confidence in the profession would not be dented or diminished should Mr Dunleavy be permitted to continue in practice.

102. Mr Dunleavy had learned a salutary lesson. The Law Society had come close to making an intervention into the practice. The Respondents' firm provided a valuable service and clients continued to instruct the firm.

103. The Respondents had made no attempt to hide what had happened. The legal community in Cardiff was something of a "goldfish bowl". Mr Dunleavy had made no attempt to conceal matters and clients had been told precisely what was the position. Mr Dunleavy was an honest man.

104. With regard to the allegation that Mr Dunleavy had been dishonest, there had been no complaint made by any client, even including lending institutional clients or the firm's professional indemnity insurer. No one had lost out apart from the two Respondents themselves. They had lost over £10,000 in the fiasco relating to Mr Q. They had obtained judgment against him but that probably was worthless.

105. The Respondents had allowed their former accountants to appoint a bookkeeper. The firm had paid a considerable sum for that bookkeeper who had provided a virtually useless service.

106. Both Mr Dunleavy and Mr Ahmed conceded that problems had been brought about by their own conduct but their conduct had not been dishonest.

107. Small client credit balances had been transferred at a time when it was inevitable that the firm was to be investigated. They had not adopted a couldn’t care less attitude. It would be right to give the Respondents credit for having brought their books of account up to date. The sums of money involved were not large and the Tribunal was invited to give due regard to the fact that the Respondents had made no attempt to "cover their tracks". The Respondents would not have taken any dishonest step that would have placed them at risk of losing their practice and their livelihood.

108. The Respondents' firm was not one that sought to overcharge or take advantage of their clients most of whom came from the ethnic minority community in Cardiff for whom they provided an excellent service. The firm was operated like a "drop in centre". It was not necessary to make appointments and the Respondents operated an ever open door.

109. It might have been that the Respondents had been shoddy and slipshod but they had made no attempt to and had no intention to deceive clients. If the Respondents had properly written up their ledgers and had kept detailed attendance notes on their files, the matter would not have been before the Tribunal.

110. The Tribunal was invited to take notice of the fact that when the matter had been listed for a substantive hearing on a previous occasion, but the substantive hearing did not take place, many witnesses had travelled to London from Cardiff giving up their own time and at their own expense in order to support these two Respondents. That alone spoke for their honesty, integrity and good service.

111. The Respondents could have justified the presentation of bigger bills to their clients but they did not.

112. The Tribunal was invited to take the view that the Respondents been guilty of slipshod conduct and mistakes where many of the mistakes operated to the benefit of the client.

113. Mr Dunleavy recognised the possible consequences to them. Mr Dunleavy had been taken ill and had been in hospital for three weeks. At the time of the hearing he still did not enjoy good health.

114. In the last few years the Respondents' firm's turnover had increased and its client base had increased dramatically. No one had any concerns about the safety of their money.

115. The firm's staff were dependent upon Mr Ahmed and Mr Dunleavy for their jobs.

116. It was accepted that Mr Dunleavy was deserving of punishment but it would not be right to end his ability to practise as a solicitor.

117. The Tribunal was reminded of the high standard of proof required to demonstrate that Mr Dunleavy had been dishonest. That high standard had not been reached. It had only been on the day of the hearing that Mr Dunleavy had realised the importance and strength of the guidance issued to solicitors by The Law Society.

The Submissions of Mr Ahmed

118. Mr Ahmed wished to reiterate what had been said on Mr Dunleavy's behalf. He had denied that he had not notified lending institutional clients of salient matters. With regard to allegation (f), Mr Ahmed did deny that allegation although he admitted that he did make mistakes. He recognised that there might well be serious consequences.

119. At the material time Mr Ahmed had been going through a difficult and stressful divorce.

120. New accountants had been instructed and Mr Ahmed recognised that there was a need to review the way in which the firm made formal attendance notes.

121. Both Respondents had taken The Law Society's concerns very seriously. They recognised that they had been in breach with regard to the way that their books were kept and they had learned a lesson. They had responded to ensure that they would fully comply with the Rules.

122. Mr Ahmed had not been dishonest. He accepted that he had made mistakes but they were honest mistakes.

The Findings of the Tribunal

Findings of Fact

123. The Respondents had admitted that their books of account had not been properly written up and had not been produced for inspection and that clients' funds had been used for the benefit of other clients.

124. The Tribunal did not accept the Respondents' evidence that they had notified lending institutional clients of salient matters including changes in purchase price, to whom payments had been made where the mortgage advance exceeded the purchase price or where the firm was acting for more than one client and the purchaser's funding arrangements were out of the ordinary. The Tribunal did not accept the Respondents' oral evidence that the lending institutional clients had been notified orally. They had produced no evidence from the lenders to confirm that, and there were no attendance notes on the file. Such oral notification would not in any event in the Tribunal's view have been satisfactory.

125. With regard to the "sweeping up" of relatively small client balances both Respondents had given a number of explanations some of which were conflicting. The Tribunal took the view that the Respondents took relatively small credit balances for themselves to ensure that there was a nil balance on the client ledger.

126. The Tribunal found the oral evidence of both Respondents to be unsatisfactory. The Tribunal did not believe their explanations. The Tribunal had been invited to consider that the Respondents' behaviour in connection with allegations (f) (g) and (h) had been dishonest. The Tribunal did find that the Respondents had been dishonest and in so finding had applied the test expressed by Lord Hutton in the case of Twinsectra v Yardley 2002 UKHL 12 (2002). The Tribunal found that in taking money from client account in order to establish a nil balance on a particular client's ledger without informing the client that that was what they were doing and why, the Tribunal having not believed Mr Dunleavey's evidence that each of the clients had orally agreed to the transfers (e.g. to buy drinks for staff) or Mr Ahmed's evidence that he had looked at each of the files and concluded that the Respondents' firm had in each case done extra work that justified the rendering of a further bill, and that receipted bills were sent to the clients in place of earlier "disbursement" bills, and where monies were transferred for "disbursements" where the Respondents had not paid out such monies, the Respondents' conduct was dishonest by the standards of reasonable and honest people. Having heard and seen the Respondents give evidence and heard their explanations, such explanations differing from time to time, the Tribunal was satisfied so that it was sure that the Respondents did not have an honest belief that they were entitled to the monies so transferred and therefore they knew that what they were doing was dishonest by those same standards. The Tribunal was reminded of the case of Bultitude v The Law Society [2004] EWCA Civ 1853 where small credit balances on client account were transferred to office account by members of Mr Bultitude's staff. It was found that he "neither knew nor cared" whether he was entitled to the money. That was found to be dishonest. The Tribunal was of the view that the Respondents had adopted the same stance as that of Mr Bultitude.

127. Mr Ahmed had in evidence agreed that he had failed to make full and proper disclosure to his firm's indemnity insurers. The Tribunal accepted that his completion of the application form and his dealings with the insurers had been less than careful but accepted that he had not been dishonest in this respect.

Previous Findings

128. Following a hearing on 12th July 2001 when Mr Dunleavy appeared before the Tribunal with two other Respondents when the allegation was that each of the Respondents had been guilty of conduct unbefitting a solicitor in that contrary to Section 41 of the Solicitors Act 1974 they employed or remunerated in connection with their practice as a solicitor Mr G S Randhawa who to their knowledge was disqualified from practising as a solicitor by reason of the fact that his name had been struck off the Roll of solicitors.

129. The Tribunal recognised that Mr Dunleavy's position was different from the partners in the firm as he was a part time employee of the firm with no administrative or managerial responsibility. He was not in a position where he could personally remunerate Mr G S Randhawa as he was not a signatory on any of the firm's accounts. The firm was a small one and it was not possible that Mr Dunleavy could not have known that Mr G S Randhawa had been struck off the Roll of Solicitors and that he was engaged to some degree in the work of the firm. Mr Dunleavy was a salaried partner and was represented as such on the firm's letterhead. The members of the Tribunal did not consider that any solicitor who was a salaried partner in a firm could excuse himself entirely from responsibility for the employees of the firm in which he was a partner. The Tribunal Ordered that Mr Dunleavy be suspended from practice for the period of one month to commence on 1st September 2001. Mr Dunleavy was ordered to pay 20% of the Applicant's costs which had been fixed in the sum of £7,106.57.

130. Following a hearing on 13th May 2004 the Tribunal found the following allegations to have been substantiated against the Respondents, namely:-

(a) that Mr Dunleavy had practised without a practising certificate and;

(b) that Mr Ahmed breached Practice Rule 13 of the Solicitors Practice Rules 1990 in that he supervised and managed a solicitors' practice when he was not qualified to do so.

On that occasion the Tribunal said:-

> "The Tribunal finds allegation (a) to have been substantiated, indeed it was not disputed. The Tribunal considered Mr Dunleavy's breach to be at the lower end of the scale. The Tribunal was surprised to learn from Mr Dunleavy that he had received no notification from the Law Society that upon the conclusion of the period of suspension his Practising Certificate would not be subject to an automatic reinstatement.
>
> With regard to allegation (b) the Tribunal accepts Mr Ahmed's evidence that he was busy running a different career from that of a solicitor. The Tribunal accepts that he worked in the practice on a part time basis and was not running or managing the practice in any meaningful way. The Tribunal finds allegation (b) not to have been substantiated...

Mr Dunleavy's period of suspension arose following a hearing before the Tribunal on 12th July 2001 and its findings dated 2nd October 2001. Mr Dunleavy was a Respondent together with Mr Randhawa and Mr Edwards. The allegation against each of the Respondents was that each had been guilty of conduct unbefitting a solicitor in that contrary to Section 41 of the Solicitors Act 1974 they employed or remunerated in connection with their practice as a solicitor GS Randhawa who to their knowledge was disqualified from practising as a solicitor by reason of the fact that his name had been struck off the Roll of Solicitors. The Tribunal accepted that to a certain degree Mr Dunleavy had been more sinned against than sinning but he could not wholly escape responsibility. Mr Dunleavy had been a part time employee of the firm with no administrative or managerial responsibility. The firm had been a small one and it was not possible that Mr Dunleavy could not known that Mr GS Randhawa had been struck off the Roll of Solicitors and that he was engaged to some degree in the work of the firm. Mr Dunleavy had been a salaried partner and was represented as such on the firm's letterhead. The Tribunal ordered that Mr Dunleavy be suspended from practice for the period of one month to commence on 1st September 2001. Mr Dunleavy was ordered to pay 20 per cent of the agreed fixed costs which reflected his rather smaller responsibility than the responsibility of the other Respondents but recognised the fact that he had denied allegation which subsequently had been found to have been substantiated against him.

In May 2004 in imposing a sanction upon Mr Dunleavy the Tribunal took into account the fact that Mr Dunleavy himself had drawn the position with regard to his Practising Certificate to the attention of the Law Society. He had acted very openly. Further he had received no indication from the Law Society what he should do in order to have his Practising Certificate reinstated.

The Tribunal considered it appropriate and proportionate to reprimand Mr Dunleavy for practising, albeit inadvertently, for a short period of time without holding a current Practising Certificate."

The Tribunal Ordered that Brian John Francis Dunleavy of 2 St Martin's Row, Albany Road, Roath, Cardiff CF24 3JJ be reprimanded.

The Tribunal's Decision in April 2008

131. The Tribunal gave very careful consideration to all the evidence.

132. The Tribunal heard evidence in person from both Respondents. The Tribunal had found neither Respondent to be a credible witness.

133. The Tribunal had been supplied with a number of witness statements. The witnesses concerned did not attend the hearing and the Tribunal had been given no acceptable explanation for their absence.

134. The Tribunal had felt able only to take limited account of those witness statements.

135. The Tribunal had however noted with concern that paragraph 7 of the witness statement of Mr and Mrs R conflicted with the evidence of both of the Respondents.

Also the Tribunal noted that none of the receipted bills said to have been despatched to the clients were exhibited to any of the witness statements.

136. Allegations (a) (b) and (c) were formally admitted by both Respondents prior to the hearing. Allegation (e) was withdrawn with the Tribunal's consent.

137. The Tribunal found allegations (d) (f) (g) (h) and (i) to have been substantiated and noted that during the course of the hearing Mr Dunleavy conceded allegations (d) (f) and (g) save as to the question of dishonesty with regard to allegations (f) and (g).

138. So far as allegation (f) was concerned the Tribunal found that the Respondents acted dishonestly in transferring the funds concerned from client account to office account.

139. In order to fulfil its primary duty to protect the public and its second duty to protect the good reputation of the solicitors' profession the Tribunal concluded that it was both appropriate and proportionate to order that the Respondents be struck off the Roll of Solicitors.

140. It was right in all of the circumstances that the Respondents should bear the costs of and incidental to the application and enquiry. The Respondents had put their professional regulatory body to a great deal of time and trouble. They were the authors of their own misfortune. The payment of costs was not regarded by the Tribunal to be a penalty but a fair and proportionate requirement that the Respondents bear the consequences of their own conduct. It would not be fair that such costs fall to be paid by the members of the solicitors' profession who had conducted their own affairs in a satisfactory manner. In making this order the Tribunal is fully aware of the policy adopted by the SRA to accept the payment of costs awarded in its favour by way of such instalments as Respondents are able to meet. Although the Applicant had notified the figure that he sought for costs the Respondents did not feel able to agree it and in those circumstances the Tribunal ordered that the Respondents pay the Applicant's costs such costs to be subject to a detailed assessment unless agreed between the parties. For the avoidance of doubt the Respondents were to be liable for those costs on a joint and several basis.

Dated this 26th day of August 2008
On behalf of the Tribunal

K W Duncan
Chairman