

IN THE MATTER OF GILLIAN HARWOOD,  
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D Glass (in the chair)  
Mr A Gaynor-Smith  
Mr D E Marlow

Date of Hearing: 4<sup>th</sup> March 2008

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Jayne Willetts, solicitor advocate and partner, with the firm of Hammonds Solicitors of Rutland House, 148 Edmund Street, Birmingham B3 2JR on 10<sup>th</sup> October 2007 that as from a date to be specified in such order no solicitor should except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as The Society might think to specify in the permission, employ or remunerate in connection with the practice as a solicitor Gillian Harwood of Saltash, Cornwall a person who was or had been a clerk to a solicitor or that such other order might be made as the Tribunal should think fit.

The allegation against the Respondent was that she had been guilty of conduct of such a nature that in the opinion of The Law Society it would be undesirable for her to be employed by a solicitor in connection with his practice as a solicitor, the particulars of which were:-

"the Respondent acted to her own personal benefit in breach of an undertaking given by her employer Beers Solicitors to GMAC on 8<sup>th</sup> August 2005."

The application was heard at The Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4<sup>th</sup> March 2008 when Jayne Willetts solicitor advocate appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admission of the Respondent.

At the commencement of the hearing the Applicant invited the Tribunal to proceed in the absence of the Respondent. The Applicant had issued proceedings in October 2007 and the Respondent had telephoned her on the 30<sup>th</sup> October 2007 to say that she had received the papers and would take advice and make further contact. The Applicant had sent further communications including a Civil Evidence Act Notice by special delivery. The Applicant had heard nothing from the Respondent until a telephone call on the day of the hearing to say that the Respondent was not attending and admitted the allegation. In a further telephone call to the Tribunal office the Respondent said she had sent in a statement two weeks previously. She said she was unable to fax a copy today. No such statement was before the Tribunal. The Applicant telephoned the Respondent who indicated that she was content for the Tribunal to proceed in her absence. Having heard the Applicant's submissions the Tribunal proceeded to hear the substantive hearing.

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

The Tribunal Orders that as from 4th day of March 2008 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Gillian Harwood of Saltash, Cornwall a person who is or was a clerk to a solicitor and the Tribunal further Order that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00

**The facts are set out in paragraphs 1 to 19 hereunder:-**

1. The Respondent who is not a solicitor was employed as a conveyancing clerk by Beers Solicitors ("the Firm") from 2<sup>nd</sup> January 2004 to 24<sup>th</sup> May 2006 when she was dismissed from her employment.
2. On 26<sup>th</sup> September 2006 the Firm complained to The Law Society about the conduct of the Respondent.
3. The Respondent acted on her own behalf in connection with a re-mortgage from GMAC to be secured on her own property.
4. Pursuant to special condition 2 of the re-mortgage instructions, it was the Firm's responsibility to ensure that all prior loans on the property were discharged. Special Condition 2 reads as follows:-

"This Offer is made subject to all loans, and other encumbrances secured on the following property being repaid on or before legal completion. Property address [Saltash, Cornwall]. Please ensure that up to date and currently valid

repayment statements are held on all financial commitments prior to requesting the completion funds."

The mortgage offer further stated that:

"The terms of this mortgage offer reflect past or present financial difficulties."

5. The Respondent prepared a Certificate of Title providing for a completion date of 12<sup>th</sup> August with the funds required by 11<sup>th</sup> August. The Certificate was then signed by a partner of the Firm on 8<sup>th</sup> August 2005 and faxed to GMAC on the same day.
6. The Certificate of Title was stated to be given in accordance with the Appendix to Rule 6(3) of the Solicitors Practice Rules 1990, which provides at paragraph (xix):-
 

"ensuring the redemption or postponement of existing mortgages on the property and registering the mortgage with the priority required by the lender."
7. The Respondent requested by fax on 8<sup>th</sup> August 2005 a redemption statement. A mortgage redemption statement for the three accounts which comprised the mortgage was provided on 9<sup>th</sup> August 2005 showing the balances due to Birmingham Midshires of £17,786.79, £10,379.79 and £45,757.21, the total sum due being £73,923.79
8. The Respondent prepared a completion statement and in accordance with the Firm's standard procedure sent it to the Accounts Department of the Firm. A copy of this document was not located on the Respondent's re-mortgage file but a copy was retained in the Accounts Department. The statement was endorsed in the top right hand corner with the date that it was received by the Accounts Department i.e. 10<sup>th</sup> August 2005. The statement showed a redemption payment due to Birmingham Midshires of £45,815.96.
9. At 9.05 am on 11<sup>th</sup> August 2005 the Respondent sent a 3 page fax to the Accounts Department of the Firm with chits attached to confirm a credit of £80,220 from GMAC, payment to Birmingham Midshires of £45,757.21 and a payment to herself of £34,330.04.
10. At 13.47 pm on 11<sup>th</sup> August 2005 the Respondent received from Birmingham Midshires a redemption statement for only one account showing a balance due of £45,757.21.
11. On 16<sup>th</sup> August 2005 Birmingham Midshires wrote two letters to the Respondent advising that there was a shortfall on the redemption monies of £10,379.78 and £17,786.78 respectively, a total of £28,166.56 and that they would not be in a position to release the END or release their charge until the funds had been received.
12. On 23<sup>rd</sup> August 2005 the Respondent wrote to Birmingham Midshires stating that she was not instructed to repay the two further accounts and that her client wished to retain these mortgages to avoid early repayment charges. She demanded an END on the first account.

13. On 29<sup>th</sup> November 2005 the Respondent wrote to the Land Registry requesting that GMAC be registered as the first legal mortgage and acknowledging that there was a small loan charged to the property from Birmingham Midshires.
14. On 12 January 2006 Birmingham Midshires gave consent to a second charge in favour of GMAC.
15. On 19 January 2006 the Respondent registered the charge to GMAC as a second charge.
16. On 23 June 2006 GMAC wrote to the Firm returning the title deeds because a charge in favour of Halifax Plc (owners of Birmingham Midshires) had priority over GMAC's charge and requiring urgent action. This was the first time that the Firm became aware of the Respondent's failure to redeem the first charge on the property. The Respondent had been dismissed from her employment at the Firm by this date for unconnected reasons.
17. On 31<sup>st</sup> August 2006 the Firm paid the sum of £26,130.76 to Birmingham Midshires to redeem the charge.
18. On 25<sup>th</sup> November 2006 the Respondent was interviewed by the police. The police did not take any further action.
19. On 30<sup>th</sup> November 2006 The Law Society wrote to the Respondent requesting an explanation for her actions. On 21<sup>st</sup> January 2007 the Respondent telephoned The Law Society and said that she had made an honest mistake and did not believe that the first loan had to be repaid. She said that she would be settling the full amount with her former employers. On 13<sup>th</sup> February 2007 the Respondent confirmed her explanation in a letter.

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

20. As the Applicant had served a Civil Evidence Act Notice the Tribunal was invited to consider the matter on the documents.
21. The Respondent was an experienced residential conveyancer who would have been familiar with the mortgage offer conditions. Special condition 2 (paragraph 4 above) was entirely standard.
22. The sequence of events set out at paragraphs 5 to 10 above showed the Respondent's intent. At the date of the preparation of the completion statement the Respondent did not have a redemption statement on file showing that the figure in the completion statement was the correct figure payable. All the Respondent had on the file at that stage as proved by the documentation before the Tribunal was a redemption statement showing the full amount payable of £73,923.79. The lesser redemption statement was obtained later in order to justify the completion statement and the payment of the lesser amount to Birmingham Midshires. The Applicant accepted that it was possible that the Respondent had received the lesser figure on the telephone but there was no

documentary evidence of this. The Applicant had set out the chain of events as shown by documentary evidence.

23. From the period August 2005 until the Respondent left the Firm in May 2006 she did not disclose the existence of the problem to her employer and no one knew of the difficulty therefore until June 2006.
24. The Firm had paid the outstanding sum as what had occurred meant they were in breach of an undertaking.
25. It appeared that the Respondent had believed that the three accounts were effectively three separate mortgages and that she did not have to pay all of them off before re-mortgaging. The Respondent had obtained a financial benefit as a result of the failure to discharge all the monies due to Birmingham Midshires. Instead of paying the full amount due she had paid off a loan she had from Black Horse and used the rest for house improvements as set out in the record of the police interview.
26. The Applicant was not alleging dishonesty. The Respondent had said she had made a mistake. The Respondent had shown an astonishing level of incompetence in a straightforward conveyancing matter and the Applicant submitted that there was sufficient evidence to support the making of an Order under Section 43 of the Solicitors Act 1974.
27. The Firm had reviewed its procedures to prevent staff working on their own conveyance.
28. The Respondent had paid in full the monies due to the Firm.
29. The Applicant sought her costs. A schedule of costs had been served on the Respondent by special delivery but the Applicant sought a reduced sum of £4,800 due to the reduced length of hearing.

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

30. The Tribunal had considered the matter and the evidence presented by the Applicant. The allegation had been admitted and the Tribunal found it substantiated. The Respondent was not present but had indicated that she did not oppose the Order. The Tribunal was satisfied that it was right to make the Order sought with effect from today's date.
31. In relation to costs the Tribunal was somewhat concerned at the level of the costs. The Tribunal did not feel it would be helpful to order a detailed assessment of the costs and therefore summarily assessed them at £4,000.00.
32. The Tribunal Ordered that as from 4<sup>th</sup> day of March 2008 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as The Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer

or member, director or shareowner of an incorporated solicitor's practice Gillian Harwood of Saltash, Cornwall a person who is or was a clerk to a solicitor and the Tribunal further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00

Dated this 18<sup>th</sup> day of April 2008  
On behalf of the Tribunal

D Glass  
Chairman