

IN THE MATTER OF CHRISTOPHER PAUL HARRISON, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr E Richards
Mr J Jackson

Date of Hearing: 23rd October 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Michael Robin Havard, solicitor, of Morgan Cole, Bradley Court, Park Place, Cardiff, CF10 3DP on 26th February 2008 that Christopher Paul Harrison of Chrisharrisonlaw, High Cross, Truro, Cornwall, TR1 2AJ, 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 were that the Respondent had been guilty of conduct unbecoming a solicitor and/or, where stipulated, in breach of the Solicitors Practice Rules 1990 and of the Solicitors Accounts Rules 1998 in each of the following respects, namely that he:

- (1) Had acted in a manner which compromised his independence and integrity in breach of Rule 1(a) of the Solicitors Practice Rules 1990.
- (2) Had acted in a way which compromised his duty to act in the best interests of clients contrary to Rule 1(c) of the Solicitors Practice Rules 1990.
- (3) Had acted in a way likely to compromise or impair the good repute of himself and the solicitors' profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990.

- (4) Had failed to disclose all relevant information to a client, namely the Lender in certain conveyancing transactions which had been material to the Lender's business.
- (5) Without notifying the Lender of his intention to do so, had acted for the seller, buyer and Lender in the same conveyancing transaction in breach of Rule 6 of the Solicitors Practice Rules 1990.
- (6) Had acted for both seller and buyer without having obtained the written consent of those clients in breach of Rule 6(2) of the Solicitors Practice Rules 1990.
- (7) Had failed to take any, or sufficient notice or to adhere to the "Green Card" Warning on property fraud to include satisfying himself as to the identity of the source of funds contributing to the purchase price in conveyancing transactions and notifying the client Lender of the source of the difference between the purchase price and the mortgage advance.
- (8) Had failed to follow guidance issued by the Law Society when acting for a Lender and borrower where the conveyancing transaction included a variation in the purchase price.
- (9) Had failed, on behalf of Lender Clients, to adhere to the requirements of Parts 1 and 2 of the Council of Mortgage Lenders Handbook.
- (10) Had misled his Lender Clients by stating that he had not been acting for sellers in conveyancing transactions in which he had been acting for the purchaser, when in fact he had been.
- (11) Had acted in conveyancing transactions where there had existed a conflict of interest, or the potential for conflict of interest, between purchaser clients, Lender Clients, and seller clients.
- (12) Had failed on behalf of Lender Clients to adhere to all the requirements of Rule 6(3) of the Solicitors Practice Rules 1990.
- (13) Had acted dishonestly.
- (14) Had acted dishonestly and in breach of Rule 15 of the Solicitors Accounts Rules 1990 by deliberately including in accounts rendered to clients sums in respect of disbursements and other expenses which had been greater than the sums actually incurred and thereby had derived a secret profit.

The Application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 23rd October 2008 when Michael Robin Havard appeared as the Applicant and the Respondent did not appear and was not represented.

The evidence before the Tribunal included the admissions of the Respondent of all of the allegations save that he denied that he had been dishonest.

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

The Tribunal Orders that the Respondent, Christopher Paul Harrison of 43 Devoran Lane, Devoran, Truro, Cornwall, TR3 6PD, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £13,688.42 to include the costs of the Forensic Investigation Report.

The facts are set out in 1-3 hereunder:

1. The Respondent, born in 1954, was admitted as a solicitor in 1979. At the material time, he practised under the style of "Chrisharrisonlaw" with a partner.
2. On 13th September 2006, an Investigation Officer, from the Solicitors Regulation Authority, began an inspection of the firm's books of account and other documents. A Forensic Investigation Report ("FIR") was produced dated 9th March 2007. This FIR was before the Tribunal. Based upon the details in the FIR, the allegation fell into two categories. Firstly, the Respondent's conduct in relation to conveyancing transactions and secondly, to generating a "secret profit" when seeking remuneration for conducting conveyancing work.
3. Common features that gave rise to breaches of the Solicitors Practice Rules ("SPR"), the Council for Mortgage Lenders ("CML") Handbook and general rules with regard to conflict of interest were:
 - (a) That the Lender did not know that the Respondent was acting not only for the purchaser but also for the seller.
 - (b) That the Lender was not informed by the Respondent of the true purchase price.
 - (c) That the Lender was not informed of the destination of the funds advanced.
 - (d) That the Purchasers and Sellers did not provide written consent for the Respondent to act for both sides.
 - (e) That the actual purchase price stated on the mortgage offer was always in excess of the actual amount paid for the property.
 - (f) That the Respondent failed to adhere to either the general guidance contained within the CML Handbook or to the guidance specific to the particular Lender providing the mortgage advance.

The Submissions of the Applicant

4. The Applicant handed to the Tribunal a copy of the Civil Evidence Act Notice dated 21st August 2008. He confirmed that the Notice had been served on the Respondent. The Tribunal was satisfied that the Respondent was aware of the hearing, had chosen not to attend and had sent written submissions. The Applicant referred to a letter from the Respondent dated 25th April 2007 and to a letter dated 20th June 2007 from Richard Nelson Business Defence Solicitors, both to the Solicitors Regulation Authority. He

explained that while the facts were not in dispute, dishonesty was denied by the Respondent. The Applicant referred the Tribunal to the appropriate test for dishonesty as expressed by Lord Hutton at paragraph 27 of Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

5. The Applicant referred to four conveyancing transactions, for which the Respondent was responsible. These contained common features giving rise to the breaches referred to in allegations (1) to (13). In the first transaction, relating to the property BL, the Respondent had acted for the Vendor, the Purchaser and the Lender. The purchase price on the mortgage offer and on the Certificate of Title was £185,000.00. The mortgage advance was £157,250.00, but the funds distributed on completion were £156,674.52. The Applicant submitted that the transaction was in fact a device to enable the Vendor to raise money. To achieve this end, the Lender Client of the Respondent had been misled as to the purchase price. This was so as to ensure that the amount of the advance, for which the Purchaser had applied, was offered. The Applicant submitted that the conduct of the Respondent represented a serious breach of his duty to act in the best interests of his Lender Client. This was because of his failure to inform the Lender Client of all the circumstances surrounding the sale. The Applicant also referred to the guidance issued by the Law Society with regard to variations in the purchase price and to paragraph 6.3 of the Council of Mortgage Lenders Handbook relating to the purchase price. He also referred to paragraph 6.1.2 of that Handbook which states that the Respondent must check his instructions and ensure that there are no discrepancies between them and the title documents and other matters revealed by his investigations. The Applicant explained that the Respondent submitted the Deed of Transfer to the Land Registry. That Deed stated that the Transfer had not been for money or for anything that had had a monetary value. This was despite the purchase price being stipulated at £185,000.00. No Stamp Duty was paid on the transaction. The Applicant submitted that the features surrounding the transaction, relating to the purchase price and to the mortgage advance, together with the "arrangement" reached between the Vendor and the Purchaser, had been such that there was highly relevant material information that should have been notified by the Respondent to his Lender Client. The Applicant further submitted that the course of conduct with regard to the Deed of Transfer and to the avoidance of Stamp Duty was highly irregular and that the Respondent had acted dishonestly.
6. The second matter related to the property LP. The Respondent had acted for the Vendor, the Purchaser and the Lender. The purchase price, both on the mortgage offer and the Certificate of Title, was £170,000.00. The mortgage advance was £126,069.00, but the funds distributed on completion were £125,735.79. During the investigation interview with the Respondent, he explained that the background to and the reasons for, the second transaction were virtually identical to those exemplified in the first. Accordingly, the Applicant relied on the same submissions and alleged that in regard to the second transaction also, the Respondent had acted dishonestly.
7. The third matter related to the property TC. The Respondent had acted for the Vendors, the Purchasers and the Lender. The purchase price, as confirmed by the Estate Agents, the Sale Agreement and the Completion Statement, had been £228,000.00. However, the mortgage advance of £280,500.00 had been based on a purchase price of £330,000.00. The funds distributed, either prior to, or on, completion, had been £228,000.00. The Respondent had signed the Certificate of Title

on the 17th February 2003 stating the price stated in the "Transfer" to be £330,000.00. However, the Land Registry entry for the property detailed the price paid on 14th February 2003 as £228,000.00. The balance between the purchase price of £228,000.00 and the mortgage advance of £280,500.00, a sum of £52,500.00, had been distributed as follows:-

- A sum of £49,183.50 to the Purchasers,
- £3,316.50 in respect of Stamp Duty, paid on a purchase price of £228,000.00, plus other disbursements and the Respondent's firm's costs.

The Applicant submitted that the Respondent's conduct in this matter had represented a serious breach of his obligations to his Lender Client and to the other parties, his seller clients, the Land Registry and the Revenue & Customs. The Applicant submitted that the Respondent had acted dishonestly.

8. The fourth matter related to the property 2 MP St. The Respondent acted for the Vendors, the Purchaser and the Lender. The purchase price, on both the Mortgage Offer and the Certificate of Title, had been £195,000.00. The mortgage advance was £175,000.00 but the funds distributed on completion had been £190,000.00. The Applicant explained that the purchase price stated in the Transfer Form had been £190,000.00 and that only a balance of £15,000 had been paid on completion. This had represented the difference between £190,000.00 and the mortgage advance of £175,000.00. Stamp Duty of £1,900 had been paid. The Applicant submitted that the discrepancy between the purchase prices of £195,000.00 and £190,000.00 had been material information that should have been relayed to the Respondent's Lender Client. The Applicant submitted that in signing the Certificated of Title in respect of all four properties, the Respondent had been holding out to his Lender Clients that he had not been acting on behalf of the Vendors.
9. The Applicant referred to a further four conveyancing transactions detailed in the FIR, in which the Respondent, without the consent of the parties, had acted for the Vendor, the Purchaser and the Lender. In these transactions, he submitted that material information had not been conveyed to the parties, and in particular, to the Lender Clients, so as to assist them in their deliberations as to whether to authorise a mortgage advance. The Applicant provided details of two of the four transactions. Firstly, relating to the property 1 CH, where the Respondent had acted for the Vendor (TD a company owned by the Respondent), the Purchaser and the Lender. The Certificate of Title, signed by the Respondent, had stated that he was not acting on behalf of the Vendor. However, the Respondent was acting on behalf of the Vendor. The Applicant submitted that the serious nature of the Respondent's conduct had been compounded by the fact that the Vendor of the property was a company owned by the Respondent. This information had not been conveyed to the Respondent's Lender Client. Moreover, the Applicant submitted that the Purchaser had only been able to find the requisite purchase monies by obtaining a loan in the sum £21,350.00 from the Vendor, in effect from the Respondent. The Applicant further submitted that this situation was exacerbated by the fact that the Respondent had also been acting for the Purchaser. The Lender Client had not been informed of these circumstances. Taking account of the Respondent's conduct in relation to the transaction as a whole and of the information that any reasonable and prudent solicitor would have known what

would have been important to his Lender Client, let alone the fact that the Purchaser should have been separately represented, the Applicant submitted that the Respondent had acted dishonestly.

10. In the second of the two cases, relating to IC, the Respondent had acted for the Vendor, the Purchasers and the Lender. Again the Respondent had signed the Certificate of Title and returned it to the Lender having stated that he was not acting for the Vendor, when in fact he was. Moreover, in signing the Certificate of Title, he had held out to his Lender Client that neither he nor any relative of his were interested in the property as mortgagor. Whereas, in fact, one of the Purchasers was his sister.
11. The Applicant submitted that the transactions referred to showed, inter alia, the defrauding of the Revenue of Stamp Duty in cases where legal title had passed for consideration, a flagrant disregard of rules and the ignoring of the Law Society's guidance. The Applicant stressed that in each case the documents showed key information that should have been revealed to the Lender Clients to enable them to take that information into account in their lending decisions. The Applicant submitted that he had satisfied the higher test in relation to the allegations of dishonesty.
12. The Applicant explained that allegations (1) to (3) and (14) concerned the making of a "secret profit". The Respondent, as the person solely responsible for conveyancing transactions within the firm, had been charging clients a fee of £30 inclusive of VAT for telegraphic transfers. He had billed it as a disbursement. However, the bank charge for each transfer had been only £10. This had resulted in a "secret profit" of £17.03 on each transfer. From 5th September 2005 to 3rd September 2006 there had been 784 such transfers. These had resulted in additional revenue for the firm, by way of profit costs, of £13,351.52. In addition, the Respondent had charged clients £185 as a disbursement to conduct various searches in the course of conveyancing transactions. Up to mid-April 2006, these had in fact cost £140, rising to £155 after that date. This had resulted in increased revenue of £6,210 by way of profit costs between September 2005 and September 2006. The Applicant submitted that although the situation had been drawn to the Respondent's attention by the firm's accountants, when they prepared their Report dated March 2006 for the year ending November 2005, the Respondent had failed to take any steps to rectify the situation. The Applicant submitted that by deliberately concealing profit costs within items described as disbursements, the Respondent had deliberately misled his clients, derived a secret profit and acted dishonestly. Dealing with a question from the Tribunal, the Applicant explained that the Accountant's Report referred only to the charges made for the various searches.

The Submissions of the Respondent

13. Although the Respondent did not appear and was not represented, the Tribunal did have the benefit of various letters written by and on behalf of the Respondent. A letter dated 24th April 2007 from the Respondent to the Solicitors Regulation Authority contained his explanations in relation to the issues raised by the FIR of 9th March 2007. On 20th June 2007, Richard Nelson Business Defence Solicitors sent representations to the Solicitors Regulation Authority on behalf of the Respondent. In addition, the Respondent wrote to the Tribunal on 17th October 2008 enclosing submissions by way of a formal response to the Application. While the Respondent

had confirmed that none of the facts set out in the Application were disputed and that he admitted to the various breaches of both the Solicitors Practice Rules 1990 and the Solicitors Accounts Rules 1998, he strenuously denied any act of dishonesty.

The Findings of the Tribunal

14. Having considered all the evidence before it, both written and oral, the Tribunal found all the allegations to have been proved. In relation to the conveyancing transactions, the Tribunal found that in the matters of BL and LP the statement that the transfer was not for money or anything that had a monetary value and the consequent failure to pay Stamp Duty, were acts of dishonesty. Further, in the matters of BL, LP, TC, 2 MP St and 1CH the Tribunal found the Respondent's failure to convey material information, in relation to the transactions, to his Lender Clients, to assist in their deliberations as to whether to authorise mortgage advances, were acts of dishonesty. The Tribunal found that the Respondent's conduct in these matters was dishonest by the standards of reasonable and honest people. Moreover, having considered the Respondent's written explanations and submissions, the Tribunal was satisfied, so that it was sure, that the Respondent did not have an honest belief that he was acting properly in relation to the Stamp Duty issues or in failing to provide material information to his Lender Clients. Therefore the Tribunal was satisfied that the Respondent knew that what he was doing was dishonest by those same standards. However, in relation to allegation (14) the generation of a "secret profit" when seeking remuneration for conducting conveyancing work, while the Tribunal found a breach of Rule 15 of the Solicitors Accounts Rules 1990, it did not find dishonesty proved to the requisite standard in respect of that allegation.

The Tribunal's decision as to costs

15. The Applicant asked for costs to be assessed and handed a Schedule of Costs to the Tribunal. The Tribunal reduced the costs for attendance at the Hearing and made an Order for costs assessed at £13,688.42.

Dated this 10th day of February 2009
On behalf of the Tribunal

Miss T Cullen
Chairman