

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF STEPHEN KOJO BAIDOE-ANSAH (First Respondent)
and [*RESPONDENT 2*] solicitors (Second Respondent)

Upon the application of George Marriott
on behalf of the Solicitors Regulation Authority

Miss T Cullen (in the chair)
Mr P Housego
Mrs C Pickering

Date of Hearing: 9th March 2010

FINDINGS & DECISION

Appearances

Mr George Marriott, Solicitor Advocate of Gorvins, 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL, for the Applicant.

The First Respondent did not appear and was not represented.

Mr Trevette of Murdochs Solicitors, 45 Wanstead High Street, London E11 2AA, for the Second Respondent.

The application to the Tribunal on behalf of the Solicitors Regulation Authority (“SRA”) was made on 19th May 2008.

Allegations

The allegations against the First Respondent, Stephen Kojo Baidoe-Ansah were that:-

1. He failed to comply with Rule 6 (3)(b) Solicitors Practice Rules 1990.
2. He failed to notify his Institutional Lender client of material facts.
3. He failed to account to his client with regard to the sale proceeds of her property.

4. He made misleading and inaccurate statements to his client.
5. He attempted to persuade his client to withdraw a complaint she had made to the Legal Complaints Service.
6. He continued to act in circumstances of a conflict of interest.

By a supplementary statement dated 9th February 2009 the further allegations against the First Respondent were that:-

7. He failed to prepare reconciliation statements, contrary to Rule 32 (7) Solicitors Accounts Rules 1998 ("SAR").
8. He allowed his client account to be used as a banking facility, contrary to Rule 15 SAR.
9. He made improper withdrawals from client account contrary to Rule 22 SAR.
10. He failed to keep accounting records properly written up, contrary to Rule 32 SAR.
11. He improperly retained proceeds of sale.

By a further supplementary statement dated 10th July 2009 an allegation was made against the First Respondent that he:-

12. Breached Rule 1.02 and Rule 1.06 of the Solicitors Code of Conduct 2007 in that he failed to act with integrity and behaved in a way which was likely to diminish the trust the public placed in the profession by virtue of his convictions under the Fraud Act 2006.

By a further supplementary statement dated 9th December 2009 further allegations were made against the First Respondent that:-

13. He maintained client suspense ledgers for longer than justifiable, contrary to Rule 32 (16) SAR.
14. He made improper withdrawals from client account contrary to Rule 22 SAR.
15. He made withdrawals from client account in respect of costs without first sending a bill or written notification of costs, contrary to Rule 19 (2) SAR.
16. He failed to keep accounting records properly written up contrary to Rule 32 (1) SAR.
17. He misled the SRA and therefore breached Rule 1.02 and Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCOC").
18. He failed to act in a client's best interest and acted in a manner likely to diminish public confidence in the profession, contrary to Rule 1.04 and 1.06 SCOC.
19. He misled an insurance company and therefore breached Rule 1.02 and Rule 1.06

SCOC.

The allegations against the Second Respondent, [*Respondent 2*] were that:-

20. He failed to prepare accurate reconciliation statements contrary to Rule 32 (7) Solicitors Accounts Rules 1998 (SAR).
21. He allowed his client account to be used as a banking facility, contrary to Rule 15 SAR.
22. He made improper withdrawals from client account, contrary to Rule 22 SAR.
23. He failed to keep accounting records properly written up, contrary to Rule 32 SAR.

By a supplementary statement dated 9th December 2009 further allegations were made against the Second Respondent that:-

24. He maintained client suspense ledgers for longer than justifiable, contrary to Rule 32(16) SAR.
25. He made improper withdrawals from client account, contrary to Rule 22 SAR.
26. He made withdrawals from client account in respect of costs without first sending a bill or written notification of costs, contrary to Rule 19 (2) SAR.
27. He failed to keep accounting records properly written up contrary to Rule 32 (1) SAR.

The Tribunal had before it a letter dated 8th March 2010 from the First Respondent, Mr Baidoe-Ansah, to Mr Marriott indicating he was currently abroad and would not be attending the hearing. A request for an adjournment was not made. The letter also gave an indication of Mr Baidoe-Ansah's financial position. In the circumstances, the Tribunal was satisfied the hearing should proceed in Mr Baidoe-Ansah's absence.

The Tribunal also had before it admissions from the Second Respondent, [*Respondent 2*], to all the allegations made against him.

Factual Background

1. The First Respondent ("Mr Baidoe-Ansah") born in 1966, was admitted as a solicitor on 15th October 1999 and his name remained on the Roll. He practised as a partner in two firms, namely Gans & Co of 10a Evelyn Court, Grinstead Road, Deptford, London SE8 5AD, and Humphrey Williams of 381 Kennington Lane, London SE11 5QY ("the firm"). He retired from the firm on 30th September 2008.
2. The Second Respondent ("*Respondent 2*") was admitted as a solicitor in 1997, and his name remained on the Roll. At the material time he was a partner in Humphrey Williams Solicitors of 381 Kennington Lane, London SE11 5QY ("the firm").

Allegations 1, 2 and 6

3. In March 2005 Mrs Y-A (“the Sister”) instructed Mr Baidoe-Ansah to act for her in connection with her purchase of property for £170,000 from her brother Mr OAR (“the Brother”).
4. Mr Baidoe-Ansah agreed to act for both the Brother and the Sister. Both parties confirmed that they were happy for Mr Baidoe-Ansah to act in the sale and the purchase and that there was no conflict between them.
5. The Sister’s purchase was funded in the sum of £144,465.00 by an Institutional Lender for whom Mr Baidoe-Ansah also acted. The Sister was unable to provide the deposit or any other monies and therefore the actual amount paid on completion was £144,465.00 which represented 85% of the original stated purchase price.
6. Mr Baidoe-Ansah stated that he contacted the Institutional Lender by telephone on 16th May 2005 and by a subsequent letter to inform them that the sale was to proceed at an undervalue between Brother and Sister and the Institutional Lender gave their verbal consent. However the Institutional Lender subsequently denied this. There was no evidence on the file that Mr Baidoe-Ansah had notified the Institutional Lender that he was acting for all parties in the transaction.
7. The Institutional Lender’s offer on 21st May 2005 showed a purchase price of £170,000 and on 3rd June 2005 Mr Baidoe-Ansah completed the Certificate of Title showing the purchase price as £170,000. The Certificate of Title was therefore misleading and wrong as Mr Baidoe-Ansah stated he had agreed with the Institutional Lender that the sale price was at an undervalue. The telephone note and the letter to the Institutional Lender did not specify what the actual price was. Contracts were exchanged showing completion on 10th June 2005 for £170,000. Mr Baidoe-Ansah prepared a completion statement showing the price to be £170,000. There was no documentation relating to the difference between the documented £170,000 and the £144.465 actually paid.

Allegations 3, 4 and 6

8. On 25th August 2006 Mr Baidoe-Ansah received instructions for a sale from estate agents for the same property that he had conveyed from the Brother to the Sister in 2005. The seller of the property was represented to be the Brother. The Sister contacted Mr Baidoe-Ansah to remind him that the Brother was not the legal owner of the property although he was an occupier (as he had been throughout), and that she wished to sell the property.
9. Mr Baidoe-Ansah prepared a terms of engagement letter which he sent to the Sister and on 31st October 2006 he sent her a contract and transfer deed for signature. Contracts were exchanged showing the Sister as owner for a price of £182,000.
10. In November 2006, the Sister made enquiries of Mr Baidoe-Ansah as to why they were being informed of the transaction by the estate agents and not by Mr Baidoe-Ansah and were told that questions were being directly raised with the Brother because he lived in the property and therefore knew all about it.

11. Mr Baidoe-Ansah undertook to redeem the charge on the Charges Register dated 21st July 2005. A simultaneous exchange and completion took place on 15th November 2006. No completion statement was sent to the Sister and no funds were sent to her.
12. The Sister wrote to Mr Baidoe-Ansah on 21st November 2006 expressing her concern that instructions appeared to have been taken from her Brother, and that the balance of any sale proceeds should have been forwarded to her after the redemption of the mortgage and fees. A record of a telephone conversation between the firm and the Brother on 21st November 2006 indicated the brother was told that his Sister was requesting funds. The Brother stated that he had an equitable interest in the property as a result of the original sale to his Sister and had been paying the mortgage.
13. By letter dated 22nd November 2006 Mr Baidoe-Ansah informed the Sister that as she had not paid the full purchase price for the property in 2005, her Brother had retained an equitable interest, and because the Sister had not asked Mr Baidoe-Ansah to account to her for the balance of the sale proceeds those had not been sent to her. He threatened to unravel the transaction, or to hold on to the proceeds pending agreement or Court Order. He concluded the letter by stating that there was an obvious conflict between the Sister and the Brother and that therefore both of them should take independent legal advice.
14. By an undated letter the Sister questioned the position and Mr Baidoe-Ansah replied on 2nd November 2006 stating that during the transaction in 2005, the Brother had obtained an equitable entitlement as the full price had not been paid. He stated that this was documented in the purchase file and that Mr Baidoe-Ansah had an obligation to sell the property to the new buyers free from all encumbrances including the Brother's claim of an equitable interest. The letter also stated that, as there was a conflict between the Sister and the Brother, Mr Baidoe-Ansah could no longer act for the Sister and terminated her retainer. The letter also advised her that the Brother would be informed of the same, but that an hourly rate would be charged until the matter was resolved.
15. On 11th December 2006 Mr Baidoe-Ansah stated that unless he heard from the Sister within 7 days he would disburse the final funds to the Brother and close the file. On 9th January 2007 the Sister wrote requesting a completion statement and a cheque for the balance of the proceeds of sale. A final completion statement was sent to her under cover of a letter later that month. The balance of the proceeds of sale remained with the Respondent's firm. As a result, the Sister complained to the Legal Complaints Service ("LCS"). During the course of the investigation by the LCS Mr Baidoe-Ansah stated in a letter dated March 2007,

“during the purchase there was no indication or instructions from either the Brother or Sister as to the respective shares under which the property would be held or that (the Brother) would retain the equity.”

Allegation 5

16. In May 2007 Mr Baidoe-Ansah wrote to the Sister reflecting his understanding that there was a family mediation concerning the proceeds of sale and that if she withdrew

her complaint to the LCS he would not take any further action against her. An IPS award was made by the LCS of £1,000.00.

Allegations 7, 8, 11, 20 and 21

17. In June 2002 Mr Baidoe-Ansah acted for TN in relation to the sale of a property at C Road. The Transaction completed on 19th August 2002 and on 23rd August 2002 the Respondent sent TN a letter enclosing a completion statement and invoice for the work done. The completion statement showed a purchase price of £133,000 and following deductions for the deposit paid, a discount to the buyer and the Firm's legal costs, TN was entitled to the balance of the transaction calculated at £117,649.01.
18. An attendance note dated 10th September 2002 recorded attendance on TN and stated that a cheque for "M&TN" was to be dated 17th September 2002 and the balance was to be held on account of costs and disbursements for two other transactions. The attendance note did not record the amount of the cheque, or the balance that was to be held on account. An amended completion statement included a transfer of £13,500 to another matter "BH Road" thus reducing the balance of the transaction due to TN to £104,149.01. A copy of a cheque dated 17th September 2002 in the sum of £104,149.01 payable to "M&TN" was later provided by Mr Baidoe-Ansah.
19. On 15th January 2003 a letter was sent to TN stating that the Firm had received the balance of the deposit from the Law Society compensation fund, totalling £8,222.72. A further completion statement was therefore sent to TN and the additional £8,222.72 was transferred to the BH Road matter.
20. On 21st August 2007 TN attended the Respondent's office, with his son M in relation to the matter of C Road. TN had not cashed the cheque dated 17th September 2002. He said he had forgotten to do so. A note on the file recorded that TN would give further instructions regarding payment as he needed to discuss the issue with his accountant due to a tax investigation. Mr Baidoe-Ansah advised TN that the Firm should not have been holding the monies for so long. The proceeds of sale remained in the firm's client account for a further 11 months after this meeting. A cheque was eventually sent to TN on 14th July 2008 for the final balance. There were further meetings during the 11 months when Mr Baidoe-Ansah sought TN's instructions and made some payments from this money at his request.
21. The funds had been in the Respondents' client account for nearly five years. However, in his letter dated 16th July 2008 to the LCS, Mr Baidoe-Ansah stated that the attendance in August 2007 was the first time he was aware that TN had not cashed the cheque. TN, in his complaint to the LCS, claimed the firm owed him £260,000 in relation to the two transactions.

Allegations 9, 10, 22 and 23

22. Mr Baidoe-Ansah completed the sale of BH Road on behalf of TN on 21st October 2003. A completion statement was sent to TN on 30th October 2003 showing a balance due to TN of £60,003.07. TN signed a Letter of Authority dated 24th October 2003 authorising the Firm to hold the proceeds of sale on account of costs. £2,774.19 was transferred from client account to office on 30th October 2003. The invoice for

£2,774.19 included a disbursement for counsel's fees of £470.00 however, the matter ledger recorded a transfer of £470.00 on 9th October 2002 described as "Pd counsel's fee". TN was charged twice for this disbursement. The matter ledger for BH Road also included disbursements which were not related to this matter and should have been recorded on their own matter ledgers. These were paid following completion of BH Road instead of being transferred to their own matter ledgers. However invoices sent on those matter ledgers included these disbursements which had already been paid so the client was charged twice.

Allegation 12

23. On 13th March 2009 Mr Baidoe-Ansah was convicted of two offences involving fraud, and one offence of transferring the property of another to assist him in retaining the proceeds of criminal conduct or to avoid prosecution. He was sentenced to a term of 6 months imprisonment and a Serious Crime Prevention Order was imposed for a period of 3 years.

Allegation 13 and 24

24. The Respondents operated and maintained a client suspense ledger account described as "Fees Suspense". [Respondent 2] stated that he only became aware of this ledger whilst preparing a schedule of client liabilities for the SRA's inspection and that it was created in 2005/2006 when the Firm was transferring to a new accounts system. However, entries on the ledger covered a period from 31st March 2005 to November 2008.

Allegations 14, 15, 25 and 26

25. Between 27th June and 3rd November 2008 the "Fees Suspense" ledgers recorded seven instances of round sum transfers totalling £50,000. [Respondent 2] stated that the Firm had a problem with issuing bills of costs promptly. The result was that funds which had been earmarked for costs remained in client account waiting to be billed and transferred. The Respondents decided to transfer round sums from client account to office account on account of costs and in advance of bills being issued. When bills were finally issued the round sums "advance" was transferred back from office account to client account and the exact sum, in accordance with the bill, was transferred from client to office.
26. The transfers back of the round sums on 3rd September 2008 were made following a payment of £35,000 by Mr Baidoe-Ansah into office account from personal funds. [Respondent 2] stated that he was unaware of the payment.

Allegations 16 and 27

27. The Tribunal was provided with a schedule of matters where client ledgers recorded an office credit varying from a few pence to over £4,000 and totalled £56,086.01. Office credit balances occurred in fifty-five matters where [Respondent 2] was the fee earner totalling £25,858.07. Office credit balances occurred in thirty-three matters where Mr Baidoe-Ansah was the fee earner, totalling £6,956.81.

28. *[Respondent 2]* stated the credit balances had been caused by bills not being posted on ledgers or by transferring profit costs at a later date. Furthermore, he explained that the firm often transferred amounts earmarked for costs following the completion of a client's matter. However, on occasion an item was missed off the client's completion statement and was omitted from the transfer. This missing sum was transferred at a later date.
29. The Tribunal's attention was drawn to other matters where client debit balances had been created due to monies being wrongly paid by Mr Baidoe-Ansah into office account. These errors were not uncovered for approximately 7 weeks. During this time the firm made payments for staff wages including drawings for each Respondent, which could not have been paid without the transfers.

Allegations 14, 17 and 25

30. As part of the investigation into TN's matter relating to C Road, Mr Baidoe-Ansah provided explanations to the SRA in relation to an allegation of improperly retaining proceeds of sale. He stated that the first time he became aware that TN had not banked a cheque was in September 2006.
31. However, as a result of the investigation by the SRA a ledger on the relevant matter was obtained ("the New Ledger") which differed substantially from the ledger previously provided by Mr Baidoe-Ansah ("the Original Ledger"). According to *[Respondent 2]* the Original Ledger submitted to the SRA was a word document. However in 2002, when the matter was conducted, the Firm operated Ellipweb until 2006, when they migrated to the Osprey system.
32. The Original Ledger recorded a cheque being issued on 17th September 2002 for the proceeds of a sale for £104,149.01 which was never cashed. The Original Ledger therefore recorded no further transaction in relation to the completion funds until August 2007 when the failure to cash the cheque was apparently discovered.
33. The New Ledger also recorded a cheque for £104,149.01 being issued on 17th September 2002. However, 4 months later, on 17th January 2003, the ledger recorded the cheque being stopped, incurring a £10 charge to the client, and the sum re-credited onto the client ledger. Furthermore the New Ledger recorded a number of payments and receipts to and from TN's son (who was recorded as the client) some of which related to other matters.
34. According to Mr Baidoe-Ansah he paid £20,000 to the client, TN, on 21st August 2008; that was recorded on the Original Ledger. However, the New Ledger had no record of this payment. Both ledgers recorded a payment of £84,129.01 to the client on 14th July 2008. With the Original ledger, this payment reduced the client balance to zero. However, on the New Ledger, this payment placed the ledger into debit by £59,149.01 and was rectified ten days later by a payment of £72,191.00 recorded as being from the client.
35. Furthermore, Mr Baidoe-Ansah, in his explanation to the SRA relied upon a signed authority from the client to transfer £13,500 to the ledger of another matter for the same client. The Original Ledger recorded an inter-ledger transfer of £13,500 on 13th

September 2002 based on the signed authority. This transaction was also recorded on the receiving ledger. However, the New Ledger recorded that only £7,000 was transferred to another matter ledger, despite the client's authority to transfer £13,500. All the payments on the New Ledger had Mr Baidoe-Ansah's reference number.

Allegation 18

36. The SRA considered a ledger for a client of the Firm, EP, dealt with by Mr Baidoe-Ansah. EP made a mortgage application to a Institutional Lender giving EP's address as 9 Warwick Road. The funds were to purchase a property at Alleyn Park for £750,000. A Certificate of Title dated 6th September 2007 was completed and signed by Mr Baidoe-Ansah confirming a completion date of 7th September 2007.
37. Payments were made on 28th September and on 1st and 17th October 2007 totalling £14,457.52 described as "for client" and only one was in connection with Alleyn Park. Then on 13th October 2008, the firm requested a redemption statement from the Institutional Lender and on 5th December 2008 the ledger recorded the payment of £385,805.13 back to the lender, reducing the client balance to zero. This was accepted by the Institutional Lender as a repayment of capital. The outstanding balance on the mortgage was approximately £122,000 in December 2009.
38. The SRA carried out a Land Registry search in relation to Alleyn Park and discovered that the registered proprietor was Mr Baidoe-Ansah and the purchase price paid by him on 23rd February 2007 was stated as £720,000 and a registered charge in favour of the Mortgage Express of the same date was also registered against the property.
39. It appeared, therefore, that this was a fictitious transaction. Monies were drawn down from the Institutional Lender in September 2007 on behalf of EP in respect of a purchase of Alleyn Park from Mr Baidoe-Ansah who was also responsible for supervision of the matter. Mortgage monies were not utilised for the purpose of purchasing the property but to plug a debit on the ledger of £85,805.13 and to make further payments of just over £14,000. The balance remained on the ledger for one year and was then paid back to the lender.

Allegation 19

40. Mr Baidoe-Ansah provided information to the firm's Professional Indemnity Insurer which was incorrect. He failed to disclose on his application form for Professional Indemnity Insurance dated 26th September 2008 that one of the firm's fee earners was issued with a conditional practising certificate and had been fined by the Solicitors Disciplinary Tribunal on 26th February 2004. [*Respondent 2*] confirmed Mr Baidoe-Ansah was aware of these issues. He also failed to disclose other material information concerning investigations relating to fee earners in the practice even though he was aware of those investigations.
41. The Tribunal reviewed all the documents submitted by the Applicant which included:-
 - (i) Rule 5 Statement against Mr Baidoe-Ansah dated 19th May 2008 and all attached documents.
 - (ii) Rule 5 Statement against Mr Baidoe-Ansah and [*Respondent 2*] dated 9th

February 2009 and all attached documents.

- (iii) Rule 7 First Supplementary Statement against Mr Baidoe-Ansah dated 10th July 2009 together with attached documents.
- (iv) Rule 7 Second Supplementary Statement against both Respondents dated 9th December 2009 and all attached documents.
- (v) Statement of Costs dated 5th March 2010.

42. The Tribunal reviewed all the documents submitted by the Respondents which included:-

- (i) A letter dated 8th March 2010 from Mr Baidoe-Ansah.

Witnesses

43. The following persons gave oral evidence:-

- (i) Clare Guile (an employee of the SRA)
- (ii) The Second Respondent - *[Respondent 2]* (on mitigation)

Findings as to Fact and Law

The First Respondent (Mr Baidoe-Ansah) - allegations 1 - 19

44. In the absence of any submissions from Mr Baidoe-Ansah, the Tribunal found all the allegations made against Mr Baidoe-Ansah to have been substantiated.

The Second Respondent (*[Respondent 2]*) - allegations 20 - 27

45. The Tribunal found all the allegations against *[Respondent 2]* to have been substantiated, indeed they were admitted.

Mitigation of *[Respondent 2]*

[Paragraphs 46 to 53 inclusive redacted following a successful appeal by the Second Respondent]

Costs

54. The Applicant requested an Order for his costs in the sum of £48,318.58. Details had been served on Mr Baidoe-Ansah. *[Sentence redacted following a successful appeal by the Second Respondent]*

Sanctions and reasons

55. The Tribunal was of the view that Mr Baidoe-Ansah had shown a blatant disregard of the most simple rules with which solicitors are required to comply. Regarding the

transactions between the Brother and Sister, Mr Baidoe-Ansah had either made no enquiry into the position, or he had closed his eyes to what was going on, or he knew exactly what was going on and continued regardless. It was quite clear that Mr Baidoe-Ansah had been hopelessly conflicted and had not acted in the best interests of the lender. There had been a blatant disregard of the Solicitors Accounts Rules which were in place to ensure the proper stewardship of client monies and as a result of Mr Baidoe-Ansah's conduct, clients had suffered and the reputation of the profession had been damaged.

56. Bearing in mind Mr Baidoe-Ansah's convictions for offences involving fraud the Tribunal was of the view that Mr Baidoe-Ansah was not fit to practice as a solicitor and could not be trusted with the stewardship of client money. The Tribunal ordered that he should be struck off the Roll of Solicitors.

[Paragraphs 57 to 62 inclusive redacted following a successful appeal by the Second Respondent]

Decision as to costs

63. *[Redacted following a successful appeal by the Second Respondent]* Mr Baidoe-Ansah should pay £32,212.38 towards those costs. The Respondents had several liability for payment.

Orders

64. The Tribunal Ordered that the Respondent, STEPHEN KOJO BAIDOE-ANSAH of London, SE19, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £32,212.38.
65. *[Paragraph redacted following a successful appeal by the Second Respondent]*

The Respondents are severally liable for costs.

Dated this 20th day of July 2010
On behalf of the Tribunal

T Cullen
Chairman