

IN THE MATTER OF STEVEN DEAN MAGAC, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Gibson (in the chair)  
Mrs K Todner  
Mrs V Murray-Chandra

Date of Hearing: 10th July 2007

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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 in the firm of Hammonds, Rutland House, 148 Edmund Street, Birmingham, B3 2JR on 26th September 2006 that Steven Dean Magac of Steven Dean Magac & Co, 159 High Street, Barnet, Hertfordshire, EN5 5SU (now of 315 Bankside Lofts, 65 Hopton Street, London, SE1 9JL) 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 fit.

The allegations against the Respondent were that he had been guilty of conduct unbecoming a solicitor in that:

- 1) He misled his co-executor, Mr B, and the Law Society by stating that the inheritance tax on the estate of Mrs S deceased had been discharged and that a clearance certificate and/or a certificate of discharge had been obtained from the Capital Taxes Office.
- 2) He delayed in complying with an Adjudicator's decision dated 5th April 2005.
- 3) [withdrawn with the consent of the Tribunal]

- 4) He delayed in complying with conditions attached to his 2004/2005 Practising Certificate imposed by the Adjudicator on 27th May 2005.
- 5) He communicated directly with Mr KB, a client of WTJ Solicitors, without the consent of WTJ.
- 6) He failed to deal promptly and substantively with correspondence from his client DI Limited.
- 7) He failed to deal promptly and substantively with correspondence from the Law Society.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 10th July 2007 when Jayne Willetts appeared as the Applicant and the Respondent was represented by David Morgan, solicitor and consultant to the firm of Radcliffes LeBrasseur, 5 Great College Street, London, SW1P 3SJ.

The evidence before the Tribunal included the admissions of the Respondent. The Respondent gave oral evidence.

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

The Tribunal Orders that the Respondent Steven Dean Magac of 315 Bankside Lofts, 65 Hopton Street, London, SE1 9JL (formerly of 159 High Street, Barnet, Hertfordshire, EN5 5SU), solicitor, do pay a fine of £2,500, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

**The facts are set out in paragraphs 1 to 43 hereunder:**

1. The Respondent, born in 1958, was admitted as a solicitor in 1983.
2. At the material times the Respondent practised on his own account as Steven Dean Magac & Co at 159 High Street, Barnet, Hertfordshire. On 30th September 2005 his practice was taken over by Tarbox Robinson & Partners. The Respondent was then employed as a consultant by Tarbox Robinson & Partners.

Allegations 1 and 2

3. The Respondent was instructed in April 2002 to assist with the administration of the estate of Mrs S deceased who died in March 2002. There were four beneficiaries of the estate. The deceased had appointed Mr B, a friend, and the Respondent to act as Executors. It was agreed that the Respondent should act in the administration of the estate. The co-executor, Mr B, was not a beneficiary of the estate. Mr B was retired and his only income was a pension.
4. Mr B was dissatisfied with the level of service received from the Respondent and complained to the Law Society on 21st February 2003.
5. On 25th March 2003 the Respondent wrote to the Law Society confirming that:

“The estate has been completed within the executor’s year. An interim distribution of £70,000 was made within 6 months of the grant of probate. Final distribution (just over £10,000) was not to be made until I received a clearance certificate from the Capital Taxes Office which I only received in February 2003.

I enclose a copy of the letter to Mr B which concludes the administration of the estate.

In January when Mr B wanted me to finalise the estate I informed him on the telephone that I would do so as soon as I had the clearance certificate.”

6. Enclosed with the letter to the Law Society was a copy of a letter dated 25th March 2003 to Mr B enclosing the estate accounts. The introduction to the estate accounts stated:

“IHT amounted to £16,616.26. This has been paid and a Certificate of Discharge obtained.”

The capital account within the estate accounts showed inheritance tax (“IHT”) as a debt of £16,616.26. The capital account also showed distributions made to each of the four beneficiaries of the estate of £80,429.97.

7. By letter dated 2nd February 2004 Mr L of L & Co who was by then instructed to act on behalf of Mr B complained to the Law Society that the Respondent had failed to release the file to him despite numerous requests during the period October 2003 to January 2004.
8. On 13th May 2004 a Law Society Caseworker wrote to the Respondent requesting transfer of the file to L & Co and also stating that Mr B had received a demand for payment of IHT. No response was received from the Respondent.
9. On 24th June 2004 the Inland Revenue wrote to L & Co confirming that the sum of £34,478.38 was payable in respect of IHT and that a demand had been sent to the Respondent for payment within 28 days. It also stated that Mr B was co-liable with the Respondent and that if the Respondent did not pay a Notice of Determination would be issued against Mr B personally.
10. On 9th August 2004 the Caseworker wrote to the Respondent requesting that the file be transferred to L & Co. In addition, the Caseworker stated that confusion had arisen in relation to the payment of IHT, that Mr B had received a personal demand for payment of tax but Mr B had been told by the Respondent that the tax had been paid and a clearance certificate had been obtained. The Respondent did not respond.
11. On 1st September 2004 the Caseworker wrote again to the Respondent reminding him that he had not replied to the letter dated 9th August 2004 and enclosing a further copy. No response was received. On 23rd September 2004 the Caseworker wrote to the Respondent advising him that his failure to reply to letters dated 9th August and 1st September 2004 would be treated as a matter of professional conduct. No response was received.

12. By letter dated 12th October 2004 the Inland Revenue informed Mr B that no payment had been received from the Respondent and forwarded to him a Notice of Determination issued against Mr B personally for £34,813.55 plus interest until payment. By letter dated 2nd December 2004 however the Inland Revenue confirmed that enforcement action would not be taken against Mr B prior to 15th January 2005 as part payment had been received from two of the beneficiaries and payments were expected from the other two beneficiaries.
13. A report was prepared for adjudication and sent out for comment to the Respondent, Mr B and L & Co on 11th January 2005. The Respondent did not reply. A reminder was sent to the Respondent on 2nd February 2005 but again no response was received.
14. On 9th February 2005 the Adjudicator ordered pursuant to Section 44B of the Solicitors Act 1974 that the Respondent should deliver up within seven days to the Law Society the file including all ledger sheets.
15. On 15th February 2005 Mr B wrote to the Law Society confirming that each of the four beneficiaries was required to repay to the estate £8,703.38 to cover the IHT. He stated that two had repaid in full, one had repaid £296.62 and that the Inland Revenue was negotiating with the remaining beneficiary who lived in Australia.
16. On 1st March 2005 Mr B telephoned the Law Society and confirmed that the beneficiary in Australia had repaid and that only one beneficiary had not repaid.
17. On 3rd March 2005 the file was received by the Law Society from the Respondent and revealed as follows
  - (i) The ledger as at 25th March 2003 showed a payment to "Capital Taxes" on 20th August 2002 of £15,538.60 and a further payment to the "Inland Revenue Inher Tax" on 10th January 2003 of £1,077.66. The two entries totalled £16,616.26 as per the figure set out in the estate accounts referred to in paragraph 6 above. The last entry on the ledger showed a credit balance of £48,072.61.
  - (ii) There was an official receipt dated 21st August 2002 from the Inland Revenue for £15,538.60.
  - (iii) A letter dated 11th November 2002 from the Capital Taxes Office enclosed a calculation for further tax due to £36,541.16 by way of 10 instalments. The first instalment due was £1,077.66.
  - (iv) There was no clearance certificate or certificate of discharge on the file.
18. On 5th April 2005 the Adjudicator ordered the Respondent to pay compensation of £4,944.74 to Mr B, to account to the estate for £55.26 and to refund his fees to the estate of £3,450 plus VAT in respect of the inadequate professional service identified. He also ordered that the conduct of the Respondent in failing to reply to correspondence from the Law Society and in attempting to mislead Mr B and the Law Society should be referred to in the Tribunal.

19. By letter dated 4th May 2005 the Respondent was advised that the Adjudicator's decision was final and on 10th May 2005 that he should comply immediately with the formal directions contained in the Adjudicator's decision. No response was received to either letter.
20. On 20th May 2005 the Caseworker wrote to the Respondent reminding him that he had not complied with the Adjudicator's decision and confirming that a referral to the Tribunal was being considered. No response was received.
21. On 13th July 2005 the Respondent wrote to Mr B enclosing a cheque for £3,000 and confirming that the balance would be paid within 28 days.
22. On 20th September 2005 Tarbox Robinson & Partners Solicitors, who were taking over the Respondent's practice, wrote to the Law Society indicating that all of the outstanding payments directed by the Adjudicator had been made.

#### Allegation 4

23. On 27th May 2005 the Adjudicator resolved to grant the Respondent a Practising Certificate subject to the following conditions:
  - (i) He shall not act as sole principal; and
  - (ii) He may not accept instructions to apply for a Grant of Probate or Letters of Administration, either in his own name or on behalf of another, and except where he had already obtained a Grant of Probate or Letters of Administration in his own name, or on behalf of any other person as executor or administrator, he may not undertake further probate work.
24. These conditions were to take effect three months from the date of the letter notifying the Respondent of this decision. By letter dated 6th June 2005 the Respondent was notified of the Adjudicator's decision and of his rights of appeal.
25. By letter dated 11th August 2005 the Caseworker reminded the Respondent that the conditions were to take effect on 6th September 2005 and asked him to confirm by return what arrangements were in place to comply with the conditions. No response was received. On 6th September 2005 the Caseworker wrote again to the Respondent asking him to confirm that he had complied with the Adjudicator's decision. No response was received.
26. On 12th September 2005 Mr P of Tarbox Robinson & Partners wrote to the Caseworker indicating that it was his firm's intention to take over the Respondent's sole practice and to continue to employ him as a consultant. By letter dated 5th October 2005 Mr P enclosed a copy of a takeover agreement and a consultancy agreement both dated 30th September 2005 and confirmed that the Respondent's workload would be confined to domestic conveyancing only.
27. On 10th October 2005 the Caseworker wrote to the Respondent requesting his explanation for the delay in compliance with the conditions attached to his 2004/2005 Practising Certificate.

28. By letter dated 21st October 2005 the Respondent explained that the reason for the delay was that he had been trying to merge his practice with another practice or alternatively dispose of it. He apologised for the delay and appreciated that he should have kept the Law Society informed as to the progress that he was making in compliance with the conditions attached to his 2004/2005 Practising Certificate.

Allegation 5

29. In 2003 Mr H of WTJ Solicitors of London was instructed by Mr KB who wished to make a private secured loan to a relative, Mr M. Mr M was divorcing his wife. The loan was to be used by Mr M to purchase his wife's share of the matrimonial home. Mr M was represented by the Respondent. The transaction was completed on 25th July 2003 but delays occurred in the registration of title and it was not completed until October 2004.
30. A number of existing Nationwide mortgages on the property were to be discharged and to be replaced by a new mortgage deed to cover the existing borrowing. The Respondent was to register both the Nationwide's new mortgage and Mr KB's mortgage.
31. By letter dated 24th August 2004 the Respondent confirmed to Mr KB that the previous mortgage had been removed and that the Land Registry application had been resubmitted. The Respondent also asked Mr KB to sign an enclosed letter confirming the order of the new mortgages on the property and enclosed a stamped addressed envelope for the reply.
32. The enclosed letter confirmed that the first charge was in favour of the Nationwide Building Society and that the second charge was in favour of Mr KB. By signing that letter, Mr KB consented to the registration of the Nationwide Building Society charge as the first charge on the property, so that it would rank before Mr KB's charge.
33. By letter dated 2nd September 2004 the Respondent wrote again to Mr KB to clarify that the letter dated 24th August was to remove a priority period caused by a Land Registry search submitted by Mr H. Mr KB made a handwritten note on his copy of the letter dated 2nd September stating that he had been telephoned by the Respondent and that he was awaiting the return of his own solicitor, Mr H.
34. By letter dated 8th September 2004 Mr H complained to the Law Society that the Respondent had written to and spoken directly with his client in breach of his professional obligations. Mr H alleged that the arrangement with the Nationwide Building Society differed from that arranged the year before. Mr H stated that:
- “It is completely improper for the solicitors to write direct to our client seeking his consent in respect of something which he clearly will not understand and in circumstances where they know full well that he is represented by us.”
35. Mr H's complaint was raised by the Law Society with the Respondent who responded by letter dated 10th February 2005. The Respondent explained that Mr KB was telephoning him regularly on behalf of the Respondent's client Mr M, and that he

advised Mr KB to speak to his own solicitor. The Respondent also explained that Mr KB and Mr M were related and that Mr KB had informed the Respondent on each occasion that he was speaking on behalf of Mr M. The Respondent stated that Mr M's telephone number was the same as Mr KB's. The Respondent further stated that his letter to Mr KB dated 2nd September 2004 was in response to Mr KB's telephone call on behalf of Mr M and should have been addressed to Mr M, not Mr KB.

36. By letter dated 3rd March 2005 a Caseworker wrote to the Respondent requesting further information. No response was received. A reminder letter was sent to the Respondent on 29th March 2005 but again no response was received. By letter dated 26th April 2005 the Caseworker advised the Respondent that failure to respond to the letters dated 3rd and 29th March 2005 might be regarded as professional misconduct and requested a response to the earlier correspondence. No response was received.
37. A draft report for adjudication was prepared and sent to both the Respondent and Mr H on 14th November 2005 for comment.
38. By letter dated 24th November 2005 Mr R, the Complaints Handling Manager at Tarbox Robinson & Partners, wrote to the Caseworker. He explained that his firm had acquired the Respondent's firm as at 30th September 2005. He enclosed a letter dated 24th November 2005 from the Respondent setting out his account of events and the circumstances surrounding his direct communication with Mr KB. A copy of the correspondence was provided to the Adjudicator. On 21st December 2005 the Adjudicator resolved to refer the conduct of the Respondent to the Tribunal. On 17th January 2006 Mr R wrote again to the Caseworker stating that he was surprised by the Adjudicator's decision and that he considered that this was a technical breach rather than a blatant infringement of the rules of professional conduct.

#### Allegation 6

39. The Respondent acted for DI Limited in its sale and purchase of property in London in early 2004. Completion took place on 10th February 2004.
40. By letter dated 20th January 2005 DI Limited complained to the Respondent that it had not received a reply to 11 letters requesting a completion statement, financial information, the title deeds and a cheque for stamp duty penalties. The letters in question were dated 25th February, 18th March, 4th and 11th May, 7th and 8th June, 20th July, 19th August, 21st September and 6th and 20th December 2004. No response was received from the Respondent.
41. By letter dated 24th March 2005 DI Limited complained to the Consumer Complaints Service ("CCS"). The CCS subsequently succeeded in achieving a conciliated resolution of the complaint in November 2005. The Respondent paid to DI Limited a total of £3,097 representing £1,197 for reimbursement of stamp duty late penalty notice, £400 as a reduction of the Respondent's bill and £1,500 being a contribution towards DI Limited's costs in pursuing the complaint.
42. By letter dated 5th May 2006 a Law Society Caseworker asked the Respondent for his explanation on various issues including failing to respond to his client DI Limited. The Respondent replied on 16th May 2006 and stated that he had been awaiting a

service charge demand before he could finalise the account. He admitted that he should have written to DI Limited earlier to advise them of that fact.

### Allegation 7

43. The Respondent had failed to reply to correspondence from the Law Society as referred to above and summarised below:

In relation to allegations 1 and 2 he failed to respond to letters dated 13th May, 9th August, 1st and 23rd September 2004, 11th January, 2nd February, 4th 10th and 20th May 2005.

In relation to allegation 4 he failed to respond to letters dated 11th August and 6th September 2005.

In relation to allegation 5 he failed to respond to letters dated 3rd and 29th March and 26th April 2005.

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

44. The Applicant was not alleging dishonesty against the Respondent.
45. In relation to allegation 1 however, false representations had been made to the co-executor and to the Law Society when he wrote to them on 25th March 2003. At that date the Respondent had not received from the Capital Taxes Office a certificate of discharge or a clearance certificate confirming that all inheritance tax had been paid, whether in February 2003 or at all. Three statements within the letter to the Law Society and the statement in the estate accounts were therefore false. The Respondent had said in his witness statement that he had had made a mistake. He had however had three opportunities to check the position, namely when distributing the estate, when writing to the Law Society and when sending the estate accounts to the co-executor. His failure to do so demonstrated an outstanding level of incompetence.
46. The co-executor had been forced to appoint another solicitor to represent his interests and this had led to the complaint to the Law Society.
47. The Law Society had requested the transfer of the file to the co-executor's new solicitors in May 2004 but it had not been released until February 2005. When released the documents discovered showed the true extent of the misrepresentation.
48. The credit balance of some £48,000 on the ledger should have been retained to pay the tax rather than being distributed. The distribution to the beneficiaries of that money and the failure to pay IHT had caused considerable stress to the co-executor, who had faced personal financial loss. Fortunately the monies had been recovered but matters could easily have turned out very differently.
49. Further, the Respondent had delayed in complying with the payment to Mr B ordered by the Adjudicator.

50. In relation to allegation 4 there had been a delay of just under a month in compliance with the conditions on the Practising Certificate while the Respondent's firm was being merged with Tarbox Robinson & Partners.
51. In relation to allegation 4 the Respondent had contacted Mr KB on two occasions in writing asking him to take certain actions. The Respondent had given an explanation stating that M and KB were related and M was living at KB's house at the time.
52. In relation to allegation 6 the Respondent had said that he was awaiting the service charge demand before replying to his client but he had never informed his client of this.
53. Allegation 7 arose from failures to reply to correspondence from the Law Society in relation to the other allegations.

### **Oral evidence of the Respondent**

54. The Respondent confirmed the truth of his witness statement dated 4th July 2007.
55. The Respondent said that he had received an interim certificate of discharge for IHT but had thought that it was the final one. He did not normally do probate work where IHT was involved. This had been a genuine mistake. Six months later the Inland Revenue had contacted the Respondent and the co-executor and the beneficiaries. The IHT had been paid by the main beneficiary within the time limit.
56. In relation to allegation 4 the Respondent had already stopped probate work on the advice of the Law Society Caseworker. The Respondent referred the Tribunal to the details set out in his witness statement as to the process of complying with the conditions that he should not be a sole practitioner.
57. In relation to the matter of Mr M, after having written to KB the Respondent had realised that he should have written to M, who was at the same address as KB. As set out in his statement the telephone was always answered by KB, who did everything for M and would ask what the telephone call was about. KB and M lived together.
58. The Respondent referred the Tribunal to his statement for his explanations for the delay in replying to correspondence.
59. The Respondent had disposed of his practice and retired from full-time practice. He remained a consultant but was not practising for the time being. When his wife had recovered her health he intended to work as a locum or in employment. He had previously been a company solicitor.

### **The Submissions on behalf of the Respondent**

60. There had been no intentional misleading by the Respondent of his co-executor or the Law Society.
61. The Respondent accepted that when things had got on top of him he had buried his head in the sand. He had been suffering from other pressures and in particular his

wife's illness, details of which were fully set out in the Respondent's witness statement.

62. The Respondent's psychotherapeutic treatment had now completed. The therapist had taken the view that once the Respondent had disposed of his practice the pressures on him had ceased. Evidence about the Respondent's psychiatric illness which had led to treatment was exhibited to the Respondent's statement.
63. The Respondent apologised for what had occurred. Sole practice was not his forte. In the future he would seek only employment, locum work or work ancillary to the law.
64. The Respondent had suffered financially, having to pay the costs of representation and the agreed costs of the Applicant in the sum of £15,000.
65. The two conditions referred to above remained on the Respondent's Practising Certificate and he did not seek to remove them.

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

66. The Respondent had admitted the allegations and the Tribunal found them to be substantiated.
67. The matters referred to in allegation 1 had clearly caused distress and inconvenience to the Respondent's co-executor. The Tribunal accepted that the misleading of the co-executor and the Law Society by the Respondent had arisen as a result of a mistake. No dishonesty was alleged.
68. The Respondent had set out in detail in his witness statement what had occurred in relation to his communication with Mr KB. He had accepted that he should not have written to KB but there had clearly been muddle and confusion arising from the fact that he could only contact his own client Mr M through KB.
69. In a number of matters the Respondent had delayed in compliance or had failed to communicate. This was unacceptable behaviour for a solicitor. The Tribunal had noted carefully the matters put forward in mitigation including the Respondent's own and his wife's illnesses.
70. In all the circumstances the Tribunal considered that the Respondent's degree of culpability could be appropriately dealt with by a fine. The Tribunal was concerned however that the Respondent should not seek in future to work as a sole practitioner. The pressures of sole practice combined with external pressures had found him unable to deal with matters as he should. The Tribunal noted that the Respondent did not seek to remove the existing conditions on his Practising Certificate and the Tribunal would recommend to the Law Society in addition that the Respondent should in future practise only in employment approved by the Law Society. The Tribunal would also order that the Respondent pay the Applicant's agreed costs.
71. The Tribunal Ordered that that the Respondent Steven Dean Magac of 315 Bankside Lofts, 65 Hopton Street, London, SE1 9JL (formerly of 159 High Street, Barnet, Hertfordshire, EN5 5SU), solicitor, do pay a fine of £2,500, such penalty to be forfeit

to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

DATED this 21<sup>st</sup> day of September 2007  
on behalf of the Tribunal

A G Gibson  
Chairman