

IN THE MATTER OF STEPHEN MICHAEL OAKLEY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr A G Ground (in the chair)  
Mr L N Gilford  
Mr J Jackson

Date of Hearing: 3rd November 2009

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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 Solicitors Regulation Authority (“SRA”) by Margaret Eleanor Bromley, solicitor in the firm of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ on 30<sup>th</sup> March 2009 that Stephen Michael Oakley of Oakley & Davies Limited, 397 Cowbridge Road East, Canton, Cardiff, CF5 1JG, 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 against the Respondent were:-

1. He is guilty of professional misconduct in that he has failed to comply with and/or delayed in complying with undertakings given by his firm to Platform Funding Limited (“PFL”):-
  - 1.1 in a Certificate of Title dated 21<sup>st</sup> July 2005.
  - 1.2 in an exchange of correspondence dated 25<sup>th</sup> July 2005 and 28<sup>th</sup> July 2005.
2. He is guilty of professional misconduct in that he has failed to keep PFL informed of the reasons for the delay in complying with the undertakings given by his firm.

3. He failed to provide PFL with the name, address and policy number of his firm's qualifying professional indemnity insurer in breach of Rule 18 of the Solicitors' Indemnity Rules 2006, and contrary to Rule 1(d) of the Solicitors Practice Rules 1990.
4. He failed to respond promptly, substantively or at all to correspondence from the SRA and the Legal Complaints Service contrary to Rule 20.03 of the Solicitors' Code of Conduct 2007.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 3<sup>rd</sup> November 2009 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent appeared and was represented by Mr Ian Ryan, solicitor and partner in the firm of Finers Stephens Innocent LLP of 179 Great Portland Street, London W1W 5LS.

### **The Evidence before the Tribunal**

The evidence before the Tribunal included a Section 5 Statement dated 30<sup>th</sup> March 2009, with accompanying bundle, the admissions of the Respondent and mitigation on behalf of the Respondent.

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

The Tribunal Orders that the Respondent, Stephen Michael Oakley of Oakley & Davies Limited, 397 Cowbridge Road East, Canton, Cardiff, CF5 1JG, solicitor, do pay a fine of £2,500.00, 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 £5,000.00.

### **The facts are set out in paragraphs 1-37 hereunder:-**

1. The Respondent, Stephen Michael Oakley, was born in May 1960 and was admitted as a solicitor in March 1985 and his name remains on the Roll of Solicitors.
2. At all material times the Respondent practised under the style of Oakley & Davies from Crown Court, 9 Duke Street, Cardiff CF10 1AY.
3. The Respondent's firm was instructed by Mr H in 2005 to act for him on a re-mortgage of his property. In his letters of 2<sup>nd</sup> and 17<sup>th</sup> July 2008 to the SRA the Respondent conceded that he had "sole conduct" of this matter.
4. A mortgage in the sum of £100,495 had been agreed, in principle, with PFL for whom the Respondent also acted.
5. Mr H had been adjudged bankrupt on 5<sup>th</sup> September 2002 and Mr S had been appointed as Trustee in Bankruptcy with effect from 26<sup>th</sup> October 2004. This was noted by way of a restriction on the property's title. Consequently the transaction could not proceed without the co-operation of Mr S.

6. On 9<sup>th</sup> June 2005, the Respondent wrote to Mr S's solicitors, Douglas-Jones Mercer ("DJM"), referring to an agreement made between Mr S and Mr H to the effect that Mr S would accept £18,000 in settlement of his interest as Trustee in Bankruptcy. DJM replied on 11<sup>th</sup> July 2005 stating that "You will of course be aware of the proposed settlement figure in this matter and how our client would propose dealing with the relevant entries on the Land Register".
7. The proposed method of dealing with the Trustee's interest was by way of a Deed of Release and Assignment whereby the Trustee agreed to sell his interest in the property to Mrs H, the client's wife, for the agreed sum of £18,000.00.
8. On 21<sup>st</sup> July 2005, the Respondent's partner signed and sent off the Certificate of Title in respect of Mr H's property. The Certificate of Title, which named Mr H as the borrower, contained the following undertaking:-
 

"WE...

  - (b) have made, or will make such Bankruptcy, Land Registry or Land Charges Searches as may be necessary to justify certificate no. (2)(i) above:
  - (c) will, within the period of protection afforded by the searches referred to in paragraph (b) above:
    - (i) complete the mortgage;
    - (ii) arranged for stamping of the transfer if appropriate;
    - (iii) deliver to the Land Registry the documents necessary to register the mortgage in your favour and any relevant prior dealings;
    - (iv) effect any other registrations necessary to protect your interests as mortgagee;
  - (e) will not part with the mortgage advance (and will return it to you if required) if it shall come to our notice prior to completion that the property will at completion be occupied in whole or in part otherwise than in accordance with your instructions;...
  - (h) will notify you in writing if any matter comes to our attention before completion which would render the certificate given above untrue or inaccurate and, in those circumstances, will defer completion pending your authority to proceed and will return the mortgage advance to you if required;..."
9. On 25<sup>th</sup> July 2005, the Respondent received a fax from F. Homeloans for PFL marked "Very Urgent" which requested confirmation three days prior to funds being released inter alia that "the official receiver charge will be removed at completion and PFL's charge will be the first and only charge outstanding at completion." The Respondent replied to F. Homeloans by fax and DX on 28<sup>th</sup> July 2005 stating "Confirmed".

10. On 4<sup>th</sup> August 2005, the Respondent obtained a bankruptcy search in the name of Mr H stating that there were no subsisting entries. The protection period expired on 25<sup>th</sup> August 2005. An official search on Form OS1R was also carried out dated 5<sup>th</sup> August 2005, with the priority period expiring on 16<sup>th</sup> September 2005.
11. The matter completed on 5<sup>th</sup> August 2005. The mortgage deed in favour of PFL was dated 5<sup>th</sup> August 2005. On 15<sup>th</sup> August 2005, Mr H's previous mortgagee, GMAC, confirmed that their mortgage had been redeemed and that an Electronic Notification of Discharge had been sent to the Land Registry.
12. DJM wrote to the Respondent on 20<sup>th</sup> September 2005 confirming that the Bankruptcy Notice and Restriction would be removed and that Mr S had been asked to execute the Deed of Release and Assignment releasing his share of equity in the property. This Deed was executed by Mr S and originally dated 3<sup>rd</sup> October 2005 but subsequently backdated to 5<sup>th</sup> August 2005.
13. On 4<sup>th</sup> October 2005 DJM wrote to the Respondent enclosing title entries showing the removal of the Trustee's Notice and Restriction and the executed Deed.
14. On 4<sup>th</sup> November 2005 PFL wrote to the Respondent seeking delivery of the title documents and pointing out that three months had passed since completion.
15. The Respondent had attempted to complete registration, since the file contained a requisition from the Land Registry dated 9<sup>th</sup> December 2005 requesting a copy of the Bankruptcy Order and Certificate of Appointment as Trustee. A copy of the register printed on the same day showed that Mrs H had been registered as proprietor. No mortgage or charge was noted.
16. The Respondent sent the documents requested in the said requisition to the Land Registry on 22<sup>nd</sup> December 2005. On 9<sup>th</sup> January 2006 he received a further requisition from the Land Registry asking for confirmation that it was "the intention of the Trustee in Bankruptcy to transfer the legal estate in the above mentioned title". The requisition also pointed out that the mortgage in favour of PFL dated 5<sup>th</sup> August 2005 was not capable of registration since at the time it was entered into, title was vested in the Trustee and thus not in Mr H. The Respondent replied on 19<sup>th</sup> January 2006 confirming that the Trustee had intended to transfer the legal estate and stating that the Deed had been incorrectly dated and that this would be rectified. Following correspondence with DJM, the date on the Deed was altered to 5<sup>th</sup> August 2005 and the document re-submitted to the Land Registry on 23<sup>rd</sup> January 2006.
17. The Land Registry confirmed on 27<sup>th</sup> January 2006 that Mrs H had been registered as proprietor.
18. PFL wrote to the Respondent on 27<sup>th</sup> March 2006 complaining of non-response to their letter of 4<sup>th</sup> November 2005 and requesting a full explanation for the delay. The Respondent replied on 5<sup>th</sup> April 2006 saying that he had now resolved the situation and hoped to be able to forward the completed title within 14 days.
19. PFL wrote again on 2<sup>nd</sup> and 23<sup>rd</sup> June 2006 chasing for the title deeds. In the meantime, however, the Land Registry wrote to the Respondent on 14<sup>th</sup> June 2006

confirming that PFL's charge could not be registered because under s.106 of the Insolvency Act 1986 the property had vested in the Trustee in Bankruptcy on 26<sup>th</sup> October 2004 and as a result Mr H was not in a position to charge the land as the legal estate was not vested in him at the time the charge was drawn up.

20. On 9<sup>th</sup> February 2007 the Respondent received a letter from Glenisters Solicitors for PFL asking for an explanation as to why PFL's charge had not been registered and why the proprietor of the land was Mrs H, and notifying the Respondent of a potential claim against his firm. The solicitors requested details of the Respondent's insurers and stated their intention to apply to register a unilateral notice in their client's favour.
21. The Respondent replied on 21<sup>st</sup> February 2007 stating that "our insurers for the period in question are WR Barkley Insurance (Europe) Ltd under policy number xxxxx-1". The letter also explained that "there has been disagreement between ourselves, the solicitors for the Trustee in Bankruptcy and the Land Registry and it is fair to say that the writer has failed to resolve the matter at the time of writing." The Respondent promised to proceed "in all haste" to resolve the matter with PFL so that the charge could be registered.
22. Glenisters wrote again to the Respondent on 5<sup>th</sup> March 2007 asking for the insurers' address and for full details of the dispute so that a claim could be considered. A response was chased by letter from Glenisters to the Respondent dated 15<sup>th</sup> March 2006. On 22<sup>nd</sup> March 2006 Glenisters wrote to the Respondent enclosing a copy of the SRA's Indemnity Insurance Guidelines and explained that the details previously given had related to the wrong insurance year (2005-2006). Details of the insurers for the current year were requested. The Respondent did not reply and this request was repeated in letters dated 18<sup>th</sup> and 27<sup>th</sup> April 2007.
23. On 27<sup>th</sup> April 2007, in the absence of a reply from the Respondent, Glenisters wrote to the SRA asking for the details of the Respondent's firm's current insurers. These were supplied on 1<sup>st</sup> May 2007.
24. On 3<sup>rd</sup> August 2007, the Respondent wrote again to the Land Registry in a further attempt to register the charge. The Land Registry replied on 9<sup>th</sup> August 2007 explaining again that the charge could not be registered since at the time of the purported mortgage by Mr H his property was vested in the Trustee in Bankruptcy under the provisions of the Insolvency Act 1986. Mr H therefore had no power to charge the property.
25. On the same day Glenisters wrote a Letter of Claim to the Respondent asking for a response within 21 days and for the letter to be passed to the firm's current insurers. No response was received.
26. On 13<sup>th</sup> August 2007, the Respondent wrote to DJM enclosing a copy of the letter from the Land Registry and stating that the Land Registry required an agreement between the trustee and Mr H to enable the registration to proceed. DJM replied on 16<sup>th</sup> August 2007 pointing out that there was already an agreement between their client the trustee and Mrs H whereby Mr H's equitable interest share in the property was assigned to Mrs H. They asked the Respondent to clarify what was needed.

27. On 11<sup>th</sup> September 2007 Glenisters wrote again to the Respondent requesting a response to their letter of 9<sup>th</sup> August 2007. No response was received and on 21<sup>st</sup> September 2007 Glenisters complained to the Legal Complaints Service (“LCS”).
28. On 7<sup>th</sup> September 2007 the Respondent received a letter from the Land Registry stating that they could not register the charge and that the Respondent’s application had been cancelled. On 11<sup>th</sup> October 2007, the Respondent informed Glenisters that the Land Registry had an issue with the dating of transfer and legal documentation. He gave their insurers as “Quinn Direct xxx”. It appears that this letter was not received since on 24<sup>th</sup> October 2007 it was re-sent.
29. On 6<sup>th</sup> November 2007 the LCS spoke to the Respondent outlining the complaint and requesting the Respondent’s file within 14 days. This was followed by a letter dated 7<sup>th</sup> November 2007 formally setting out the complaint.
30. No response was received from the Respondent and on 29<sup>th</sup> November 2007 the caseworker telephoned again when the Respondent confirmed that “he will respond in next day or two”. This was chased by letters from the LCS to the Respondent dated 6<sup>th</sup> and 14<sup>th</sup> December 2007, the latter warning the Respondent that his failure to reply could lead to a referral to the Solicitors Disciplinary Tribunal.
31. The Respondent did not respond and on 28<sup>th</sup> December 2007 the LCS issued a direction to the Respondent under Section 44B of the Solicitors Act 1974 requesting delivery up within seven days of all paperwork and ledger sheets relating to the complaint. During a telephone conversation with the caseworker on 10<sup>th</sup> January 2008 the Respondent confirmed that the file had already been sent. It did not arrive and the caseworker called again on 16<sup>th</sup> January 2008 when he was told that the Respondent was busy. The caseworker tried to call back later but the number was “temporarily out of order” and so a further letter was written on 18<sup>th</sup> January 2008.
32. On 25<sup>th</sup> January 2008 the caseworker spoke to the Respondent on the telephone again when he confirmed he would send a copy of the file. This was finally sent under cover of the Respondent’s letter dated 26<sup>th</sup> January 2008, although it does not appear to have been received until after 5<sup>th</sup> February 2008. On 15<sup>th</sup> February 2008 the LCS wrote again acknowledging receipt of the file and asking for comments on the complaint as set out in the letter of 7<sup>th</sup> November 2007. No response was received.
33. On 3<sup>rd</sup> April 2008, having reviewed the file, the LCS notified the Respondent that the matter was being passed to the SRA.
34. The SRA sent a letter to the Respondent and his partner on 29<sup>th</sup> May 2008, setting out the allegations of misconduct and asking for a full explanation. No response was received and the SRA wrote again on 19<sup>th</sup> and 30<sup>th</sup> June 2008.
35. The Respondent wrote to the SRA on 2<sup>nd</sup> July 2008 stating that the letter of 29<sup>th</sup> May had been sent to an old DX address and thus not received until 2<sup>nd</sup> July. In fact the DX number used by the SRA was the same as that shown on the Respondent’s headed notepaper. He went on to say that he had had “sole conduct” of this matter, save that his partner had signed the Certificate of Title. The Respondent requested an extension of time to deal with the substantive allegations, which was duly granted.

36. On 17<sup>th</sup> July 2008, the Respondent replied to the allegations stating that:-

“...I find it difficult...to fathom how I...made the basic error of misunderstanding and misinterpreting the instructions from PFL...I am unable to recall exactly how I missed the fundamental error in not understanding that the Trustee in Bankruptcy intended that the property be transferred to Mrs H. I have dealt with many such remortgage applications intended to remove the interest of the Trustee and many of them are dealt with by way of an equitable assignment which of course will not alter the legal ownership. If this had been carried out then the title would have remained vested in Mr H and upon receipt of the payment by the Trustee the relevant land registry entries would have been removed, followed by the correct registration of the Charge in favour of the mortgagee.

Once the error had occurred it was incumbent upon me to rectify the said error and it is clear that I have been unable to do so”

37. The Respondent also accepted that he had failed in his professional obligation to deal with Glenisters’ correspondence, and said that “I offer no excuses as there are none.” However, he denied having failed to supply the insurance information.

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

38. The Applicant submitted that the allegations all arose from a conveyancing matter. In the case of *Briggs v The Law Society* [2005] EWHC 1830 (Admin), Lady Justice Smith had said that solicitors’ undertakings were the bedrock upon which the profession depended.
39. The Applicant submitted that an aggravating feature of this case was the Respondent’s failure to keep PFL or their solicitors informed of the position or give insurance details when requested to do so or to respond to correspondence.
40. The Applicant indicated that all of the allegations had been admitted by the Respondent and that costs had been agreed in the sum of £5,000.00.

#### **The Submissions of the Respondent**

41. Mr Ryan, on behalf of the Respondent, indicated that all of the allegations were admitted. Mr Oakley wished to apologise profusely to the Tribunal and accepted that what had occurred was his own fault. He was now paying the consequences of his foolish behaviour but the Tribunal should also be aware that he had co-operated with the Applicant and had now agreed the costs in the sum of £5,000.00. The Respondent had always been properly insured.
42. Mr Ryan referred to the letter written by the Respondent to the SRA on 17<sup>th</sup> July 2008 in which he admitted responsibility and indicated that he found his misunderstanding and misinterpretation of the instructions from PFL difficult to understand. In essence this was still his position today, he had made a mistake but he did not seek to either excuse it or to provide that as an explanation of his conduct.

43. Mr Ryan submitted that this matter could be properly dealt with by way of a fine. It had been a stand alone matter and a one off aberration and Mr Ryan urged the Tribunal to see it in that context.
44. The matter had now been satisfactorily resolved and the Respondent had been released from his undertaking. He was of no risk to the public and no conditions had been imposed by the SRA on his practising certificate. He now employed a more sophisticated risk management system than he had done before these events had taken place. In essence any complaints made against him would be dealt with by his other partner so what had happened in this case was unlikely to happen again. Mr Ryan suggested that the problems had originally occurred as his client took everything upon himself.
45. It was submitted on behalf of the Respondent that these allegations derived from a one-off aberration and that the appropriate penalty would be a fine with no interference with his ability to practice.

### **The Tribunal's Findings and its Reasons**

46. The Tribunal found all of the allegations against the Respondent to have been substantiated, indeed they had been admitted.

### **Previous Appearances of the Respondent before the Tribunal**

47. The Tribunal were informed of two previous appearances of the Respondent before the Tribunal.

On 26<sup>th</sup> April 1990 the Tribunal had found the following allegations to have been substantiated against the Respondent (and two other Respondents), namely that the Respondents had:

- (a) contrary to the provisions of Section 34 of the Solicitors Act 1974 failed to deliver Accountant's Reports as by the said Section required;
- (b) contrary to the provisions of Rule 11 of the Solicitors Accounts Rule 1986 failed to keep properly written up their books of account as by the said Rule required;
- (c) by virtue of the aforementioned had been guilty of conduct unbecoming a solicitor;
- (d) contrary to the provisions of Rule 11 of the Solicitors Accounts Rules 1986 continued in their failure to keep properly written up their books of account as by the said Rules required;
- (e) contrary to the provisions of Rules 7 and 8 of the Solicitors Accounts Rules 1986 the Respondents had withdrawn from client account money not permitted by the said Rules to be so withdrawn and had utilised the same for their own benefit and the for the benefit of others not entitled thereto.

- (f) in respect of the Respondent alone found the following allegations to have been substantiated:
- (i) he had been guilty of delay in attending the affairs of clients and in executing those clients' instructions;
  - (ii) failed to reply alternatively failed with reasonable expedition to reply to correspondence and enquiry addressed to him by clients, other solicitors and the Solicitors Complaints Bureau;
  - (iii) failed with reasonable expedition to hand over papers of clients pursuant to written authority from those clients;
  - (iv) delayed in making payment of fees agreed and due to other solicitors;
  - (v) failed to exercise proper supervision over an executive in the firm employed in the case of K.

The Tribunal found the Respondent to have been guilty of conduct unbecoming a solicitor in his failure to reply or reply with reasonable expedition to letters addressed to him by the Solicitors Complaints Bureau but did not consider that they amounted to conduct unbecoming a solicitor.

On that occasion the Tribunal took into account the fact that the Respondent and one of the other Respondents had to suffer considerable expenditure in connection with the rectification of the bookkeeping deficiencies. On that occasion the Tribunal Ordered the Respondent to pay a penalty of £2,500.00.

48. On 21<sup>st</sup> June 1994 on a re-hearing of the matters and allegations against the Respondent set out in earlier findings dated 20<sup>th</sup> April 1993 the Tribunal found the following allegations to have been substantiated:-

That the Respondent had:

- (1) failed with reasonable expedition to respond to correspondence and enquiry addressed to him by the Solicitors' Complaints Bureau;
- (2) failed with reasonable expedition to honour the terms of undertakings given by him in accordance with his practice as a solicitor;
- (3) failed to act with reasonable expedition in the execution of clients' affairs;
- (4) failed with reasonable expedition to respond to correspondence addressed to him by clients and/or other solicitors;
- (5) failed with reasonable expedition to discharge Counsel's fees in respect of instructions given by him to Counsel in the course of his practice as a solicitor;

- (6) practised as a solicitor in breach of a condition lawfully imposed upon him by the Adjudication Committee of the Solicitors Complaints Bureau for and on behalf of the Law Society;
- (7) practised uncertificated in breach of the provisions of the Solicitors' Act 1974;
- (8) by virtue of the aforementioned matters been guilty of conduct unbecoming a solicitor;
- (9) unreasonably delayed in the discharge of an undertaking given by him in the course of his practice as a solicitor;
- (10) been guilty of unreasonable delay in the completion of a conveyancing transaction in which he was acting;
- (11) failed with reasonable expedition to make response to correspondence and enquiry addressed to him by the Solicitors Complaints Bureau;
- (12) by virtue of each and all of the aforementioned had been guilty of conduct unbecoming a solicitor.

On that occasion the Tribunal Ordered that the Respondent be suspended from practice for the period of three months to commence on 12<sup>th</sup> April 1994 and they further Ordered that he should pay the costs of and incidental to the application and enquiry (including the costs incurred by the first hearing before the Tribunal) fixed in the sum of £4,577.05 inclusive (this Order was substituted for that dated 20<sup>th</sup> April 1993).

- 49. On 3<sup>rd</sup> November 2009 the Tribunal were most concerned that this was the third appearance of the Respondent before the Tribunal. It was also regrettable that on this occasion the allegations were once again that the Respondent had failed to respond promptly, substantively or at all in certain respects to correspondence from his professional body charged with regulation. However the Tribunal took into account that the previous appearances before the Tribunal were in relation to matters dating from over eighteen years ago and the allegations on this occasion related to single failure on the part of the Respondent deriving from an admitted serious mistake in relation to the giving of a conveyancing undertaking and the aftermath of that mistake.
- 50. This had nevertheless been a serious breach of an undertaking with aggravating features. Undertakings given by solicitors were relied upon by other parties enabling the efficient conduct of transactions. Any doubt about them undermined the system and affected the profession as a whole. The Respondent had, by his actions, displayed an almost complete disregard for his regulatory body.
- 51. In the circumstances the Tribunal considered that a fine of £2,500.00 should be imposed upon the Respondent. In addition it was noted that costs had been agreed and the Tribunal Ordered that costs in the sum of £5,000.00 would be awarded.

52. The Tribunal Ordered that the Respondent, Stephen Michael Oakley of Oakley & Davies Limited, 397 Cowbridge Road East, Canton, Cardiff, CF5 1JG, solicitor, do pay a fine of £2,500.00, 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 £5,000.00.

Dated this 7<sup>th</sup> day of April 2010  
On behalf of the Tribunal

A G Ground  
Chairman