

IN THE MATTER OF DAVID JOHN HODGSON
and PAUL LOUIS MAGGIORE, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
M D Glass
Mr D E Marlow

Date of Hearing: 29th September 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority (“SRA”) by Stephen John Battersby Solicitor and Partner in the firm of Jameson & Hill of 72-74 Fore Street, Hertford, Herts SG14 1BY on 11th December 2008 that David John Hodgson, solicitor, of 183 Queen Alexandra Road, Sunderland SR3 1XN and Paul Louis Maggiore, solicitor, of 14 West Lawn, Sunderland SR2 7HW might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegations against the Respondents were that:-

1. They gave information as to costs to clients in conveyancing matters, which was inaccurate and misleading, contrary to Section 3 (a) of the Solicitors Costs Information and Client Care Code and Rule 15 of the Solicitors Practice Rules 1990.
2. They overcharged clients in conveyancing matters by claiming as disbursements for local searches, amounts in excess of that charged to the firm by the company carrying

out searches, in that they failed to account to clients for rebates received from the company contrary to Rules 1 and 15 of the Solicitors Practice Rules 1990.

Dishonesty was not alleged against the Respondents.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 29th September 2009 when Stephen Battersby appeared on behalf of the Applicant and David John Hodgson (“the First Respondent”) appeared but was not represented. Paul Louis Maggiore (“the Second Respondent”) did not appear and was not represented.

The Evidence before the Tribunal

The evidence before the Tribunal included the Applicant’s Rule 5 Statement, with accompanying bundle which included a Practice Standards Report for Hodgson Maggiore (“the firm”) which had been enclosed with a letter dated 11th July 2007 from the SRA. The evidence also included a letter dated 21st September 2009, together with a plea of mitigation from the Second Respondent, skeleton argument and submissions by the First Respondent and character references for both Respondents.

At the conclusion of the hearing the Tribunal made NO ORDER in respect of both Respondents.

The facts are set out in paragraphs 1 – 6 hereunder:-

1. The First Respondent was born in April 1959 and admitted as a solicitor in September 1983. The Second Respondent was born in February 1948 and admitted as a solicitor in June 1973. At the times material to these allegations, the Respondents practised together as Hodgson Maggiore at Ferryboat House, Ferryboat Lane, Sunderland, SR5 3JN until the firm ceased trading in June 2008. The names of both Respondents remain on the Roll of Solicitors.
2. On 20th and 21st June 2007 Mr J Allen, a Senior Practice Standards Advisor of the Solicitors Regulation Authority made a monitoring visit to the Respondents’ firm. His findings were contained in his report produced after the visit and sent to the Respondents under cover of a letter dated 11th July 2007.
3. The concerns leading to the two allegations against the Respondents arose out of the way in which they charged clients for conveyancing services.
4. The first area of concern related to fees charged to clients for searches. The Company obtained the searches through a firm called RG. RG typically charged the Respondents £243.50 or £268.50 for carrying out searches. However, they applied what they called a ‘referral discount’ in respect of their invoices. The Respondents charged each client the amount invoiced by RG without giving the client the benefit of the referral discount.
5. The second area of concern arose out of the practice of the Respondents in charging Telegraphic Transfer fees as disbursements. This made it appear to clients that the

Respondents actually had to lay out the sum of £35.00 plus VAT in connection with each transaction. In fact the Bank made no actual charge to them in respect of each matter, dealing with the situation by making a reduction in interest payable to the Respondents.

6. On 14th May 2008 an Adjudicator resolved to refer the conduct of the Respondents to the Solicitors Disciplinary Tribunal.

The Submissions of the Applicant

7. The Applicant told the Tribunal that, subject to comment, the facts were accepted by the First Respondent but not the allegations. The allegations appeared to have been accepted by the Second Respondent who had sent in a plea in mitigation. He was not alleging dishonesty against either of the Respondents. The firm of Hodgson and Maggiore had been given a clean bill of health in most areas by the Practice Standards Unit of the SRA and the allegations related solely to certain aspects of the conveyancing practice.
8. It was the Applicant's position that the Respondents ought to have passed on to their clients the discounts that they received from the search suppliers. Similarly, in regard to the second allegation, the Applicant submitted that the Respondents had provided inaccurate and misleading information to clients and made a secret profit as a result.
9. The Applicant realised that the attention of the Tribunal would be drawn to the case of the Law Society and Mark Hedley Adcock and Neil Kenneth Mcroft [2006] EWHC 3212 (Admin) heard in the Administrative Court at the end of 2006. In this case the Court found that rebates were not commissions and could not be treated in the same way. However the Applicant wished to point out that no issue of commission had been raised in this case. His point was that the rebate should have been passed on to the client.
10. The Applicant asked for costs in the sum of £11,022.97.

The Submissions of the First Respondent

11. The First Respondent wanted to ensure that the Tribunal was fully aware of the unique nature of the firm. It was not just a High Street practice applying mark-ups and every step that the firm had taken had been done with an eye to the proper professional conduct of solicitors. After 25 years of blameless practice it was not easy for the First Respondent to appear before the Tribunal.
12. The First Respondent submitted as follows:-
 - (a) The Regulator is entitled to make Rules and interpret them.
 - (b) In both respects the Regulator must act reasonably, having regard to administrative law principles of reasonableness.
 - (c) In discharge of the duty to act reasonably the Regulator must have regard, amongst other things, to the context of the alleged transgressions, the

circumstances of those it proposes to prosecute and the “what useful purpose?” test.

- (d) The SRA has failed to have proper (or any) regard to its duties to act reasonably in commencing and/or continuing this prosecution.
13. The First Respondent also submitted with respect, that there were three questions to which the Tribunal would need to direct themselves:-
- (i) On the facts submitted are the allegations made out?
- (ii) If they are made out then, bearing in mind there was no dishonesty, is the breach a serious one?
- (iii) If it is a serious one then, bearing in mind the reasonableness test, why would the SRA trouble the Tribunal with such a matter when it has powers to deal with it internally?
14. In relation to the factual background the Respondents had both been senior executives in the North of England Building Society, which had transferred its assets and engagements to Northern Rock Building Society in 1994. The Respondents had created the firm of Hodgson Maggiore and continued a strong relationship with Northern Rock. The ethos of the firm was to act as sub-contractor to in-house legal departments, or in lieu of a legal department for commercial organisations, not to do private client work and the firm soon came to act for all middle ranking building societies and some banks in processing remortgages, further advances, commercial lending and arrears work together with some general commercial and constitutional work. In around 1997 Transco Group became an important client and in 2000 Lexcel standard was achieved by the firm. However in 2001 Foot and Mouth disease destroyed the utility practice but the firm had been rebuilt by building relationships with mortgage brokers and providers of compliance services to mortgage brokers.
15. On 1st July 2007 the SRA had brought in new professional Rules and Notes to those Rules suggested that extra compliance of brokers’ relationships would be required. The decision was taken that conveyancing work was no longer commercially viable. By September 2007 Northern Rock who were responsible for 40% of the firm’s turnover had sought emergency Bank of England funding and by December of that year all new instructions from Northern Rock had stopped. At this stage 40% of the turnover of the firm had disappeared. The firm’s bankers, RBS, indicated that they were willing to continue to support the firm based on a revised business plan. An agreed strategy was devised but in May 2008 RBS suffered a massive regulatory shortfall and support was withdrawn from the firm without notice.
16. These events left the firm with a crystallised overdraft, other unsecured creditors and tax and an office that they could not sell.
17. Thus at the time of the monitoring visit in June 2007 40% of the turnover was with Northern Rock and 40% with pre-sold introduced cases. The remaining 20% of the work was either commercial or from staff members. The main client paid exactly

what had been negotiated and the pre-sold introduced cases paid exactly what the intermediary had told them they would pay.

18. The First Respondent accepted the facts subject to these comments. He did not think it right that the SRA could make changes of the fundamental nature that they had made in July 2007 without consultation.
19. In regard to the first allegation on a broad view the costs would have been accurate, fixed and unique to an individual transaction. In regard to the second allegation the firm had a set of terms and conditions which sought to comply with Solicitors Practice Rule 10. The terms and conditions were no longer available to the First Respondent as he could no longer enter his office premises. He asked the Tribunal to accept what he was saying which was that there was a section in the terms and conditions in bold type indicating that the search would be placed with an appropriate provider and that the firm would receive commission in the order of £xxx. Clients were asked to sign and return the terms and conditions to show their agreement to the clauses. The total net effect was that the firm had very low charges which were only sustained as a result of other income lines.
20. Local searches were only purchased where it was appropriate to do so. The firm had reached Lexcel standard and operated a risk base approach which meant that they took out search insurance in appropriate cases.
21. The First Respondent denied both of the allegations against him for the reasons that he had given.

The Submissions of the Second Respondent

22. The Second Respondent had written a letter to the Tribunal dated 21st September 2009 in which he had indicated the reasons for his non attendance.
23. In that letter the Second Respondent spoke about the devastating effect that the collapse of the firm had had on his professional and personal life. Although he was not technically bankrupt, since he was co-operating with the bank and other creditors in reducing his liabilities, he was de facto insolvent. He no longer practised law and had difficulty in finding employment in the current economic climate.
24. He had never before been referred to the SRA or to the Law Society and he was deeply saddened that, after a life time of hard work protecting to the best of his ability his clients' interests, his career should end in this way.
25. He and the First Respondent had studied carefully the Guide to the Professional Conduct of Solicitors 1999 to research the position when entering the local search arrangements with RG.
26. He and the First Respondent honestly believed that this service fell properly within the provisions of Rule 10 of the Solicitors Practice Rules 1990 and that the service to be offered by RG was a bona fide service and something more than a mere disbursement. Having reached that conclusion they always complied with the full disclosure requirements of Rule 10 to the client in the retainer letter.

27. Paragraph 14.14 of the Guide to the Professional Conduct of Solicitors 1999 (Received Commissions From Third Parties – Additional Guidance) stated at sub paragraph 1 “detailed guidance on the application of Rule 10 is contained in Annex 14G page 308”, but the Second Respondent could find nothing there that described a rebate or a commission as a disbursement which must be paid to a client. This was in marked contrast with the position referred to in the later Rules, the Solicitors Code of Conduct 2007 at page 18 where at 2-06-55 it states:-
- “on the other hand, a discount on a product or a rebate, on for example, a search fee would not amount to commission because it does not arise in the context of referring your client to a third party. Such payments are disbursements and the client must get the benefit of any discount or rebate”.
28. This appeared to follow the advice given in Note 15 February 2007 published in the Law Society Gazette. So far as the Second Respondent could remember the new Rules only applied after the firm had ceased taking commissions. So far as the Second Respondent was concerned, the motivation for the Note and its incorporation into the new Rules seemed to come from the judgment in the Adcock case. It would appear that the Law Society had actually issued conflicting advice to the profession on the status of these payments.
29. The position therefore was by no means clear to the Second Respondent but both Respondents had always acted in good faith. The Second Respondent submitted that it cannot be fair or reasonable in all the circumstances for the SRA to change tack and pursue members of the profession for errors of judgment that they or their predecessors were also guilty of and to apply the decision in Adcock retrospectively. The Respondents had immediately ceased the arrangements on the day they read the article in PLC that the characterisation of commissions in these circumstances was erroneous. To the best of the Second Respondent’s knowledge neither he nor the First Respondent had ever seen the note of February 2007 in the Law Society Gazette.
30. In regard to telegraphic transfer fees, until 2004 the Royal Bank of Scotland had effected all TTs on the firm’s behalf. From then on the RBS wanted them to effect their own TTs using equipment which they, the RBS, would provide. At that stage no one gave any thought to transposing the charge from the disbursement section to the charges section of the bill. There was no intention to take advantage of the clients and the fee was not increased. It was simply an oversight by two extremely busy partners trying to run a practice employing 50 plus employees. In the Second Respondent’s submission, he believed that the work involved far exceeded any unintended gain. The firm had been Lexcel accredited since 2003 and any non compliance was also missed by their inspections. It also appeared to the Second Respondent that such inadvertent non compliance was fairly widespread throughout the country and an information campaign by the SRA or the Law Society might have helped the profession to remedy the situation.

The Tribunal’s Findings

31. The Tribunal had considered all the evidence placed before it and the submissions of the Applicant and both Respondents very carefully. They found the allegations to

have been technically proved but shared the concerns voiced by the First Respondent as to why the SRA had brought the matter before the Tribunal. In the Tribunal's opinion these Respondents had taken all reasonable steps to ensure that they complied with professional Rules and had shown no intention to mislead.

32. The Tribunal found that the firm had been well established and well run and they had heard from the First Respondent that it had been the first firm in the North East to receive the Lexcel standard. On this occasion concerning this difficult point they had got it wrong and indeed the Law Society appeared to have changed its mind.
33. Taking into account everything it had heard the Tribunal found that in this case it was appropriate to make no Order against either of the Respondents.

Costs

34. The Applicant had asked for costs in the sum of £11,022.97. These were not agreed and in the light of the Tribunal's findings the First Respondent submitted that costs should lie where they fell. At no stage had Lexcel been contacted by the SRA, although they could have done so. The SRA should have consulted the profession concerning its rule changes. The SRA could and should have gone about this case differently and there had been great confusion in the profession as to the exact position.
35. In view of its findings and the submissions of the First Respondent concerning the case as a whole and the costs issue in particular, the Tribunal was minded to make no Order as to costs.

Dated this 11th day of January 2010

On behalf of the Tribunal

J Martineau
Chairman