

IN THE MATTER OF MARIE-FRANCE JOSEPHINE JOSEPH and
MICHELE ASHLEY MORGAN, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs J Martineau (in the chair)
Mr L N Gilford
Mr G Fisher

Date of Hearing: 23rd June 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 Margaret Eleanor Bromley, solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ on 2nd December 2008 that Marie-France Josephine Joseph, solicitor, of LD Law Limited, 8th Floor, Terminus House, Terminus Street, Harlow, Essex, CM20 1XA and Michele Ashley Morgan, solicitor, of LD Law Limited, 8th Floor, Terminus House, Terminus Street, Harlow, Essex, CM20 1XA 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 Respondents were that:-

1. Contrary to Rule 1 of the Solicitors Practice Rules 1990 (“SPR”) and Section 1(2) of the Solicitors’ Introduction and Referral Code 1990 (SIRC), the Respondents’ referral arrangements with MWU compromised or impaired or would be likely to compromise or impair:
 - (a) their independence or integrity; and/or

- (b) a person's freedom to instruct a solicitor of his or her choice; and/or
 - (c) their duty to act in the best interests of the client; and/or
 - (d) their good repute or the good repute of the solicitors' profession
2. The Respondents failed to comply with the SIRC in breach of Rule 3 of the SPR in that:
- (a) They failed to undertake six monthly reviews of their referral arrangements (Section 2(10));
 - (b) Upon receiving a referral the Respondents failed to provide the client with all relevant information concerning the referral, and in particular, the amount of any payment to the introducer in breach of Section 2A(3);
 - (c) They failed to satisfy themselves that the introducers had provided the client with all information relevant to the client concerning the referral before the referral took place and, in particular, the amount of any payment, in breach of Section 2A(4)(a);
 - (d) They failed to satisfy themselves that the introducers had not acquired the client as a consequence of marketing or publicity or other activities which, if done by a solicitor, would be in breach of the SPR and in particular by "cold calling", in breach of Section 2A(4)(b);
3. They failed to ensure that publicity carried out by MWU complied with the Solicitors Publicity Code 2001 in breach of Section 1(f) of that Code.
4. They acted in breach of Rule 15 of the SPR and Rules 1(a) and/or (c) and/or (d) of the SPR by providing costs information to clients which was inaccurate and/or misleading.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 23rd June 2009 when Margaret Bromley appeared on behalf of the Applicant, both Respondents appeared in person and were represented by Robert Forman.

The evidence before the Tribunal included the admissions of both Respondents and witness statements from each Respondent.

At the conclusion of the hearing the Tribunal made the following Orders:-

The Tribunal Orders that the Respondent Marie-France Josephine Joseph of LD Law Limited, 8th Floor, Terminus House, Terminus Street, Harlow, Essex, CM20 1XA, solicitor, do pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Orders that the Respondent Michele Ashley Morgan of LD Law Limited, 8th Floor, Terminus House, Terminus Street, Harlow, Essex, CM20 1XA, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal further Orders that the Respondents do jointly and severally 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 – 22 hereunder

1. Marie-France Josephine Joseph (the First Respondent) born in 1960 was admitted as a solicitor on 15th February 1988 and her name remained on the Roll of Solicitors.
2. Michele Ashley Morgan (the Second Respondent) born in 1970, was admitted as a solicitor on 1st June 1995 and her name remained on the Roll of Solicitors.
3. At all material times the Respondents practised together as directors of the company LD Law Limited ("the Company") from 8th Floor, Terminus House, Terminus Street, Harlow, Essex CM20 1XA.
4. On 19th and 20th September 2005 a monitoring visit by the Practice Standards Unit of the Law Society was undertaken at LD Law. The Officers reviewed issues relating to client care and the company's referral arrangements with EWM Services. The Officers prepared a Report ("the PSU Report") and a copy of this was before the Tribunal.
5. The Report raised the following issues:-
 - (a) Telegraphic transfer fees (TT) containing an administrative charge for the firm were listed as disbursements when only the bank's charge alone should have been listed as a disbursement. The bank charged £15.00 per transaction for TT fees.
 - (b) Similarly charges for "postage, telephone and incidentals", contributions towards the firm's indemnity insurance and a charge for completion of the Land Transaction Return Form were listed incorrectly as disbursements.
 - (c) A fee of £50.00 appeared to be paid by EWM Services on completion of a matter and was described as "administration services rendered". This appeared to be a referral fee and clients were not provided with all relevant information in accordance with the Solicitors Introduction and Referral Code ("The Referral Code"). There were also compliance issues regarding the Introducer and the Referral Code.
6. The Respondents were advised to take action to remedy the concerns and to provide details of any other referral arrangements with introducers of work.
7. On 12th January 2006 LD Law wrote stating that corrective action had been taken and that recent referral agreements with introducers were being finalised and copies would be sent in due course.
8. The Law Society wrote to the Respondents on 6th February 2006 sending them guidance issued in December 2005 by the Law Society's Rules and Ethics Committee and guidance in relation to referral fees and fee sharing issued in March 2004 and the Solicitors Introduction and Referral Code Self Checklist.

9. On 19th May 2006 the Respondents wrote confirming that further corrective action had now been taken and that administrative charges for TT and postage were now part of the profit costs and were shown on the bill to clients as such. They purported to enclose copy agreements between LD Law Ltd and all third party agents (including GE and AFS).
10. The PSU Adviser wrote to the Respondents in June and October 2006 concerning the company's agreement with MWU and seeking further clarification and documents, and raising concerns. In particular she raised concerns about payments made to the firm by MWU in respect of search fees. In April 2007, the PSU Adviser stated commission received by the firm for search fees from MWU should be refunded to clients in line with recent guidance.
11. On 1st May 2007 Investigation Officers of the SRA commenced an inspection at the company under the Referral Arrangements Compliance Project. A copy of their Report dated 25th May 2007 ("the RACP Report") was before the Tribunal.
12. At the time of the RACP visit, the Respondents employed five fee earners, including two consultants and two assistant solicitors, and were planning to open a branch office in Norwich (which was now open) to deal with conveyancing work primarily undertaken by consultant MW. Conveyancing work accounted at that time for some 50% of the company's work (45% residential conveyancing, and 5% commercial) and the company had referral arrangements with a number of introducers, all in respect of conveyancing. The RACP inspection focused principally on the referral arrangements with the three introducers referring the highest number of cases, namely MWU, AFS and GE.
13. The company had signed the MWU Solicitor Terms and Conditions document and had a Services Agreement, renewed quarterly. Copies of all relevant documents were before the Tribunal.
14. MWU acted as an intermediary between estate agents and solicitors. MWU had a panel of estate agents and a separate panel of approximately 60 solicitors (including LD Law Limited). The panel estate agents put interested clients in contact with MWU who would in turn pass on to the client details of the proposed panel solicitor, full details of the scheme and fees and disbursements payable, a written estimate of fees and an instruction form. The client then, if he or she so chose, signed and returned the instruction sheet with a payment on account of search fees.
15. MW explained to the Officers that MWU would then email him with the client's details and the company would send a client care letter to the client. Once a week MWU sent the company a cheque representing all the payments on account of searches that they had received.
16. MWU raised monthly invoices to LD Law Limited in respect of referral payments due to them. A quarterly "Service Fee Schedule" was also supplied showing the amount due from the company that quarter. There was a complicated fee structure and MWU calculated an average of approximately £225.00 plus VAT per referral.

17. During the RACP visit, the Respondents accepted that formal reviews of the MWU arrangements were not undertaken, although the Services Agreement was signed on a quarterly basis.
18. The MWU Solicitors Terms and Conditions provided that MWU would actively market the solicitor's firm to their network of introducers and that, in certain circumstances, MWU would quote an administration fee as a disbursement to the client. Furthermore in the event that an introduced client made a related sale or purchase, these must be added to the MWU system. MWU also specified that all panel solicitors should order their personal local searches, environmental searches, drainage searches, OCE and plans through MWU's partnership provider. There was provision for a scale of charges, for bank transfer fees to be quoted at £30.00 plus VAT and for Stamp Duty Land Tax forms, or other legal costs, not to be charged without prior consultation with MWU.
19. The quarterly MWU Services Agreement provided that MWU would promote and market the company's legal services and generally assist the company in expanding the awareness of the company's conveyancing services and that MWU would keep the company fully informed of its promotional and marketing activities in respect of legal services. MWU agreed not to engage in any conduct which if done by the company would be in breach of any of the SPRs. There was a provision that MWU would pay the company search referral fees in respect of all search referrals made by them, and there was an "agreed statement" which was to be included in the company's costs information and client care procedures and on quotations given to clients by MWU. Finally, a clause provided that the company should disclose the amount of the monthly service fee paid to MWU "if...[they] are asked for further information by a client referred".
20. Client care letters to some MWU clients were reviewed and gave no information about the referral arrangement or payments. These had been written after the first PSU visit in September 2005. Letters to other clients of MWU were unclear on the issue of payments made by the company.
21. In relation to AFS and GE the SRA Officers found no evidence of any formal reviews of the referral arrangements taking place and the Respondents accepted that this was the case. The solicitors who had responsibility for this arrangement did not even have any information to hand as to the number of referrals received from these organisations. Letters sent to a number of clients introduced by these organisations made no disclosure of referral arrangements or payments. On letters sent to other clients it was not clear that the company was making a payment. These letters had been sent after the PSU visit in September 2005.
22. The company did not have any marketing material from MWU, AFS or GE and had not taken any steps to establish how these organisations obtained their clients. The company had not provided MWU with any marketing material and had not taken any steps to ensure that MWU or AFS or GE were complying with Section 2A (4) (b).

The Submissions of the Applicant

23. The Respondents had admitted all the allegations. The Applicant reminded the Tribunal that the SPR and SIRC were there for the protection of clients and contained a fundamental requirement that a client must know a solicitor has been recommended on payment of a fee, and the client should know what that fee is. This should not be disguised as disbursements. In this particular case, all the features raised by the PSU visit in September 2005 were still present by the time of the second visit in May 2007. At the time of the second visit, the Respondents had dealt with matters in a defensive manner although in their witness statements, the breaches had been conceded.
24. The Applicant submitted there had been a failure on the part of the Respondents to follow the changes suggested by the first PSU visit through and ensure that those changes were permanently implemented.
25. The Applicant submitted that the Respondents' independence and ability to act in the best interests of their clients had been compromised in a number of ways, namely that the Respondents had been given a financial incentive to obtain their clients' searches through MWU's partnership provider, there was no formal review of the percentages of overall income from the introducers, clients had not been provided with all relevant information and the Respondents had not taken steps to satisfy themselves that the introducers had provided the client with all relevant information before the referral took place. Documents sent by the introducer to the clients were misleading in that they implied there was a close relationship between the introducer and the client, costs information was misleading and in March 2007, the Respondents had continued to imply that "postage, telephone calls, faxes etc." and Stamp Duty Land Tax Form fees were "payments to others" in the client care letter which was incorrect.
26. The Applicant confirmed costs had been agreed at £15,000.00.

The Submissions of the Respondents

27. Mr Forman on behalf of both Respondents confirmed all the allegations were admitted. There had been no intention to breach the Rules and there was no evidence of any harm to any client or to the profession. These were technical breaches and the Tribunal was referred to the witness statements of the Respondents which sought to explain the breaches although did not excuse their conduct.
28. Neither Respondent had done any conveyancing work, both were litigators and the breaches had taken place in the conveyancing department which was run by MW who had been an experienced conveyancer for 28 years and, indeed, had run his own firm. Neither of the Respondents had personally dealt with referral fees and no allegations had been made against the Respondents in their own areas of work.
29. The Respondents had limited experience of running a law firm and in the first few years, they did have a few problems as their practice was considered to be a successor practice. After the first PSU visit, the firm had taken a number of steps to implement the required action and recommendations and this was acknowledged by the SRA. The Respondents accepted that the action to stop TT fees being described as disbursements was not done in a timely fashion by the conveyancing department

despite a memo being sent to them asking them to implement this. The Respondents had relied on their fee earner, MW and had taken a broad brush approach to referral agreements rather than taking time to study the agreements as they should have done. They believed the scheme with MWU, in particular, was a nationwide scheme and there would be no problems with compliance.

30. The Respondents had started their business within a few months of the SIRC coming into force and the Rules did take some time to bed in. This was a huge change for the profession and indeed, the benefit to clients was cheaper legal services as the fees being charged were well below what would normally be charged. However, guaranteed referral work made those fees viable. At the time there had been widespread non-compliance within the profession and, as a result of this, the SRA issued guidance in 2007. However, it was to be noted that the SRA required guidance themselves and the Law Society Gazette featured articles confirming 32% of firms were failing to disclose referral arrangements, and 25% were not doing so in writing. Only recently, the SRA had written an article to say that the breaches were unsatisfactory and that there was a high level of non-compliance.
31. Whilst the Respondents did not attempt to criticise the SRA, they wished to highlight the problems that the profession had with referral agreements and indeed, the SRA had been called upon by the profession to provide precedents to solicitors. This would be too late for these Respondents but the Tribunal was asked to deal with them proportionately and was reminded that under the SRA's internal disciplinary procedures, these Respondents would have been fined £2,000.00.
32. The Respondents had already paid £27,000 in legal costs. There had been no complaints from any clients and the Respondents had tried to comply although they accepted the material produced was deficient and the breaches occurred through ignorance due to lack of conveyancing and referral fee knowledge. The Respondents undertook to send letters to clients within the next six weeks offering to refund the appropriate money to them.
33. The Respondents had now decided to end all referral fee arrangements with all introducers so there were no more problems. Both Respondents had suffered enormously, this had been a stressful time which had caused them a great deal of embarrassment and they had suffered financially. The Respondents confirmed costs had been agreed with the Applicant at £15,000.00.
34. The Respondents were now Legal Services Commission Lawyers relying only on public funding work, they were still practising and worked long hours on Legal Aid matters which was a struggle. The Authority had agreed to allow the Respondents time to pay the agreed costs as they would have had to close the firm otherwise. They had been naive in relying on MW and accepted they should not have relied upon him when dealing with administration and the SRA. They held their hands up and were remorseful. The Tribunal was also asked to take into account references which had been provided to confirm the Respondents were hardworking, well respected solicitors.

The Findings of the Tribunal

35. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
36. This was a case where there had been a breach of the SPR 1990 and the SIRC 1990, in particular, in terms of referral arrangements and in relation to providing costs information to clients which was inaccurate and/or misleading. The Respondents had “taken their eye off the ball” and had relied too heavily upon the fee earner running the conveyancing department. However, the Tribunal was mindful that no harm had been done to clients, no client had suffered as a result of the breaches and indeed, there had not been any complaints from clients.
37. Nevertheless, the Rules were there for the protection of clients and to ensure that they were provided with full and adequate information and these Rules had clearly not been complied with in this case.
38. In all the circumstances, the Tribunal considered the appropriate sanction was to fine each of the Respondents £2,000 and to Order the costs be paid in the sum of £15,000.00 as agreed.
39. The Tribunal Ordered that the Respondent Marie-France Josephine Joseph of LD Law Limited, 8th Floor, Terminus House, Terminus Street, Harlow, Essex, CM20 1XA, solicitor, do pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Ordered that the Respondent Michele Ashley Morgan of LD Law Limited, 8th Floor, Terminus House, Terminus Street, Harlow, Essex, CM20 1XA, solicitor, do pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen.

And the Tribunal further Ordered that the Respondents do jointly and severally pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

Dated this 23rd day of December 2009
On behalf of the Tribunal

J Martineau
Chairman