

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ROLAND IVOR CASSAM, solicitor (First Respondent)

- and -

PETER RHIDIAN LEWIS, solicitor (Second Respondent)

Upon the application of Ian Ryan  
on behalf of the Solicitors Regulation Authority

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Mr I R Woolfe (in the chair)  
Mr E Nally  
Lady Bonham Carter

Date of Hearing: 20th April 2010

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**FINDINGS AND DECISION**

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**Appearances**

Mr Ian Ryan, solicitor, partner and member in the firm of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS for the Solicitors Regulation Authority (SRA).

Mr Cassam, the First Respondent, on behalf of himself and Mr Lewis, the Second Respondent.

The application to the Tribunal on behalf of the Solicitors Regulation Authority (SRA) was made on 21<sup>st</sup> May 2009.

**Allegations**

The allegations against the Respondents contained in the Rule 5 Statement dated 21<sup>st</sup> May 2009 were as follows:

- (i) that they carried out insurance mediation work in breach of Rule 5(6) of the Solicitors' Financial Services (Scope) Rules 2001 and Rules 3(3), 8A and Appendix 1 of the Solicitors Financial Services (Conduct of Business) Rules 2001;
- (ii) that they failed to inform their clients of the required costs information contrary to Rule 15 of the Solicitors Practice Rules 1990 or Rule 2.03 of the Solicitors Code of Conduct 2007; and

- (iii) that they breached Section 1(c) of the Solicitors Publicity Code 2001 and/or Rule 7.01 of the Solicitors Code of Conduct 2007 by holding out a trainee solicitor as a qualified solicitor and partner in the firm's client care letters.

Further allegations contained in a supplementary statement dated 22<sup>nd</sup> October 2009 were as follows:

- (iv) that they failed to keep the books of account properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules);
- (v) that they permitted client account to become overdrawn in breach of Rule 22(8) of the 1998 Rules.

### **Factual Background**

1. The First Respondent was admitted as a solicitor in 1977. The Second Respondent was admitted as a solicitor in 2000. At all material times the Respondents practised in partnership under the style of Temple Law Solicitors (the firm) at The Old Probate Registry, 49 Cardiff Road, Llandaff, Cardiff, CF5 2DQ.
2. On 16<sup>th</sup> October 2007, an Investment Business Officer (IBO) of the SRA began an investment business investigation at the firm's offices and produced a Report dated 14<sup>th</sup> May 2008 which was available to the Tribunal

**Allegation (i) - that they carried out insurance mediation work in breach of Rule 5(6) of the Solicitors' Financial Services (Scope) Rules 2001 and Rules 3(3), 8A and Appendix 1 of the Solicitors' Financial Services (Conduct of Business) Rules 2001**

3. During the investigation the IBO asked the Respondents if they were ever required to arrange indemnity insurance as part of the conveyancing process. Both Respondents confirmed that the firm had arranged some indemnity policies on rare occasions. The IBO explained to the Respondents that with effect from 14<sup>th</sup> January 2005 the Financial Services Authority (FSA) had assumed responsibility for regulating the selling of all types of non-investment insurance. This was a result of the implementation of the Insurance Mediation Directive (IMD) and the Distance Marketing Directive (DMD). As a result of the extension of the FSA's regulatory regime the arrangement of indemnity policies in conveyancing matters became regulated. This therefore amounted to insurance mediation activity. All firms engaging in insurance mediation activities had to be included on the Exempt Professional Firms (EPF) register maintained by the FSA. Any firm engaging in insurance mediation activity also had to appoint a Compliance Officer, whose details had to be made known to the FSA.
4. The IBO further explained that when the regulations came into effect in January 2005 all firms of solicitors had been included on the EPF register. Firms were then required to confirm when completing form RF1 for 2005/2006 whether or not they would be carrying out insurance mediation work in that practising year. The Second Respondent had completed the form on behalf of the firm both for 2005/2006 and 2006/2007 and on both occasions had indicated that the firm would not be engaging in insurance mediation work. As a result of that information the firm had been removed from the EPF register in January 2006. The Respondents estimated that since that date, they had arranged eight to ten indemnity policies.

5. The Respondents explained that they had not appreciated that arranging the policies amounted to insurance mediation activity and consequently had not considered the guidance or rules relating to this. They confirmed that the firm had not taken any steps to comply with the requirements of any rules relating to insurance mediation activity.

**Allegation (ii) - that they failed to inform their clients of the required costs information contrary to Rule 15 of the Solicitors Practice Rules 1990 or Rule 2.03 of the Solicitors Code of Conduct 2007**

6. The IBO noted that the firm's standard documentation stated that conveyancing fees were charged on a fixed fee basis. The additional disbursements were then shown separately. The IOB noted that the firm had charged clients telegraphic transfer fees of £35.25 as a disbursement when the bank's charge to the firm was £10.

**Allegation (iii) - that they breached Section 1(c) of the Solicitors Publicity Code 2001 and/or Rule 7.01 of the Solicitors Code of Conduct 2007 by holding out a trainee solicitor as a qualified solicitor and partner in the firm's client care letters.**

7. The IBO noted from inspecting a sample of the files of the firm's trainee solicitor that client care letters had been sent to clients showing the trainee solicitor's reference and signed by the trainee solicitor. In the section of the letters which advised clients who would be responsible for the work, the letters stated "I am a qualified solicitor and partner in the firm". The First Respondent explained to the IBO that this was a mistake and that a template letter had been used without amendment when it should not have been.

**Allegations (iv) and (v) - that they failed to keep the books of account properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 (the 1998 Rules); that they permitted client account to become overdrawn in breach of Rule 22(8) of the 1998 Rules.**

8. Upon due notice to the Respondents, an Investigation Officer of the SRA began an inspection of the Respondents' books of account on 6<sup>th</sup> April 2009 and produced a Report dated 11<sup>th</sup> June 2009 which was available to the Tribunal.
9. The Investigation Officer identified that the books of accounts were not in compliance with the 1998 Rules in several respects:
- (i) a number of office to client bank account transfers had not been made contrary to the position shown on the client ledgers;
  - (ii) Sixteen client ledgers were overdrawn in the sum of £1,717.84;
  - (iii) various other client ledgers were also overdrawn although this was not shown by the books.
10. The Investigation Officer identified a shortage of £3,163.17 on client account represented by the overdrawn client ledgers in the sum of £1,717.84 together with unmatched receipts of £1,445.33. The shortage was immediately rectified by the firm.

## **Documents reviewed**

11. The Tribunal reviewed the following documents submitted by the Applicant:
  - Rule 5 Statement and exhibits;
  - Supplementary statement and exhibits.
12. The Tribunal reviewed the following documents submitted by the Respondents:
  - Statement of mitigation;
  - Bundle containing sample conveyancing documentation and correspondence with the Applicant.

## **Findings as to Fact and Law**

13. All the allegations were admitted. The Applicant put the case as one of muddle and omission rather than of any deliberate action by the Respondents. The Applicant reported that both the Investigation Officers had said that the Respondents had been cooperative, open and friendly and had taken immediate steps to rectify the position. The Applicant confirmed that the Respondents had been helpful and cooperative during the proceedings and had made early admissions.

### **Allegation (i)**

14. The First Respondent referred the Tribunal to the statement in mitigation which asked the Tribunal to note in relation to allegation (i) that as soon as the Respondents became aware of the error, they rectified the same by registering immediately onto the EPF register.
15. The Respondents admitted the allegation and the Tribunal found it to have been substantiated on the facts.

### **Allegation (ii)**

16. The Tribunal noted that while some of the documentation described the telegraphic transfer fees as a disbursement, the Respondents' terms of business made the true position clear. The Applicant argued that the standard letter to clients and the completion statement were misleading. The Applicant said however that he was not suggesting that this had been done intentionally by the Respondents. The Respondents submitted that they had, since realising the problem, altered their completion statement and documentation to make the position abundantly clear. Their intention had been honourable.
17. The Respondents admitted the allegation and the Tribunal found it to have been substantiated on the facts.

### **Allegation (iii)**

18. The Respondents said that the trainee, who was now qualified, had not had specific conduct of any files but had engaged in the administrative running of files on behalf of and under the supervision of both partners. On a small number of occasions when

opening a file using the case management system the trainee had in error noted himself as fee earner when prompted to do so by the system which had the effect of mapping his details into the client care letters on those specific cases as a qualified solicitor and partner in the firm. As the client care letter was a standard letter, the error was not picked up by the partners when reviewing the trainee's correspondence. All clients were fully aware of the trainee's status. There had been no intention by anyone in the firm to hold the trainee out as a solicitor. The error was only made on a small number of occasions. The Respondents admitted this allegation and the Tribunal found it to have been substantiated on the facts.

### **Allegations (iv) and (v)**

19. The Respondents in their statement in mitigation set out in detail how the accounting errors had arisen through the computerised accounts system and had resulted in small inconsistencies. While accepting ultimate responsibility for the accounts, the Respondents were disappointed that the matters had not been identified in any of the client account audits performed by their accountants. The Respondents had been able to ascertain that a number of the potential shortages were in fact misposted items which did not represent real shortages at the bank.
20. While accepting that errors had been made that might have led to small shortages, these had been fully rectified and no client had suffered loss. The Respondents had made adjustments to their systems and procedures to ensure that similar errors were not made in the future. In the unlikely event there were errors, sufficient safety nets were in place to catch the same at an earlier stage than previously.
21. The allegations were admitted and the Tribunal found them to have been substantiated on the facts.

### **Mitigation**

22. The First Respondent spoke of his humiliation at being before the Tribunal but had felt it important to attend. He was a solicitor of 33 years standing and had never been in trouble previously.
23. He commended the statement in mitigation to the Tribunal. He apologised to the Tribunal and asked for leniency. The First Respondent shouldered his share of the blame and now took a completely active role particularly in relation to the accounts. The Respondents were determined that nothing like this would happen again.
24. The First Respondent spoke of the difficulties experienced by the firm because of the economic downturn. He emphasised that the Respondents were not seeking to escape their culpability and knew they would suffer a loss of reputation as a result of the proceedings. No client however had suffered any detriment, harm or loss in respect of any of the allegations. The Respondents were contrite, humiliated and took these matters very seriously.
25. The Tribunal was asked to recognise that the Respondents provided an excellent service to their clients. They had a previously impeccable disciplinary record. They had suffered financially and professionally as a result of the proceedings and the Tribunal was asked to take this into account when considering any financial sanctions.

**Costs**

26. The Applicant requested fixed costs in an agreed sum of £15,000. The Applicant accepted that the costs appeared to be high for a case of this magnitude but the Tribunal was asked to note that there had been two inspections. The First Respondent said that while the costs seemed high the Respondents had agreed them and they would pay them within an agreed timescale. The Respondents did not object to the Order being a joint and several liability.

**Previous disciplinary proceedings before the Tribunal**

27. None

**Sanction and reasons**

28. This was a sad case. There were five allegations all of a minor procedural nature. There was no allegation of dishonesty, rather the case was one of muddle or omission. All the allegations were admitted promptly in correspondence with the SRA. The First Respondent had mitigated eloquently on behalf of both Respondents and had explained how humiliated he felt at being before the Tribunal. He had asked for leniency. The Tribunal had noted that no client had suffered any loss or detriment as a result of the Respondents' errors. The errors had been unintentional. The Respondents had a previously unblemished record and had given many years of service to the profession. In the circumstances the Tribunal felt it right to grant the First Respondent's request for leniency.
29. The Tribunal therefore made the following Orders.
30. The Tribunal Ordered that the Respondent Roland Ivor Cassam of The Old Probate Registry, 49 Cardiff Road, Llandaff, Cardiff, CF5 2DQ, solicitor, be Reprimanded and it further Ordered that he be jointly and severally liable with the second respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.
31. The Tribunal Ordered that the Respondent Peter Rhidian Lewis of The Old Probate Registry, 49 Cardiff Road, Llandaff, Cardiff, CF5 2DQ, solicitor, be Reprimanded and it further Ordered that he be jointly and severally liable with the first respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

Dated this 19<sup>th</sup> day of June 2010

On behalf of the Tribunal

I R Woolfe  
Chairman