

SOLICITORS' DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF BIBI SAMEEM BEGUM JAMEER, solicitor (respondent)

Upon the application of Mohammed Afzal
on behalf of the Solicitors Regulation Authority

Mr. A. G. Ground (in the chair)
Mr. J. R. C. Clitheroe
Mr. S. Hill

Date of Hearing: 16th March 2010

FINDINGS & DECISION

Appearances

Mohammed Afzal of 5 Tenby Street, Birmingham B1 3EL appeared on behalf of the Applicant and David Morgan solicitor and consultant with Messrs Radcliffes LeBrasseur appeared for the Respondent.

The application was made on behalf of the Solicitors Regulation Authority ("SRA") on 10th November 2007.

Allegations

The allegations against the Respondent were that:

1. She provided misleading costs information in relation to telegraphic transfer fees, in breach of Rules 1.02, 1.06, 7.01 and 7.02 of the Solicitors Code of Conduct 2007 (the "Code").
2. Despite quoting £550 plus VAT for her profit costs, she then charged a client £100 plus VAT for "excessive" telephone calls, in breach of Rules 7.01 and 7.02 of the Code.
3. She gave misleading costs information, by charging a client £150 for "general disbursements", which were for overheads such as photocopying, and additional charges of £50 for completion failing to take place within 3 months. Again, this was in breach of Rules 7.01 and 7.02 of the Code.

4. She transferred £550 from client account to office account on 27 March 2008 in breach of Rules 15 and 19 of the Solicitors Accounts Rules 1998.

The Respondent's Position with regard to the allegations

The Respondent admitted the facts. She denied allegations 1, 2 and 3. She admitted allegation 4 on the basis that the transfer had been a breach of Rule 19 of the Solicitors Accounts Rules 1998.

Factual Background

1. The Respondent, born in 1968, was admitted as a solicitor in 2002. Her name remains on the Roll of Solicitors. The Respondent was in practice as a sole practitioner under the style of Temple Solicitors at 226 The Strand, London WC2R 1BA.
2. The Respondent acted for Mr. A and his partner on the purchase of a property in North Acton. In her letter of engagement the Respondent stated that, although her fees would be £550 plus VAT plus disbursements which could, excluding VAT, result in total charges of £882, but which could vary if certain matters were applicable. In addition an extra £100 per month would be added and an extra £50 per month would be charged for "general disbursements" if the purchase were not completed within 3 months. Within the charges, the Respondent would require £35 for bank charges in respect of a CHAPS transfer, and £150 plus VAT for "general disbursements".
3. The transaction began in March 2008 and completion took place on 20 August 2008.
4. The Respondent charged the clients £35 for telegraphic transfer fees. Her bank charged £20 per CHAPS transfer. She had explained that £15 was to cover her time in dealing with the payment.
5. The Respondent also charged the client an additional £100 plus VAT for "excessive telephone calls."
6. The Respondent also charged an additional fee of £150 plus VAT for "general disbursements", which she intended to cover expenses such as the costs of telephone calls, faxes, postage, DX charges and photocopying.
7. It was the Applicant's case that Mr A had been told that the Respondent's fees would be £550 plus VAT. The actual charges were £1,168.33, calculated as follows:

	£
Original fee	550.00
Extra work re insurance	150.00
Completion after 3 months	100.00
Bank charge	35.00
General disbursements	150.00
- Excessive telephone calls charge	100.00
- Completion after 3 months (disbursements)	50.00
- Work done 6 July-17 July 2008 (£39.16 including VAT)	<u>33.33</u>

TOTAL

1168.33

8. On 27th March 2008 £550.00 had been transferred from client to office account when no bill or written intimation of costs had been delivered to the client. At first the Respondent had claimed that this was an agreed fee but she had come to accept that the transfer had been made in breach of Rule 19(2) of the Solicitors Accounts Rules.
9. The Tribunal reviewed the Applicant's statement made pursuant to Rule 5 of the Tribunal's procedural rules together with his bundle of documents. The Tribunal also reviewed the skeleton argument submitted on behalf of the Respondent and documents that were handed up by her at the hearing which included a completion statement dated 9th May 2008 relating to Mr A's transaction.

Submissions of the Applicant

10. In the submission of the Applicant the Respondent had acted in breach of Rule 1.02 and 1.06 of the Code in that she had not acted with personal integrity and had acted in a manner that would undermine the trust of the public placed in her, where she had provided information to her client that she would meet her banker's charge of £35 when in fact the charge would have been £20.
11. Further it was the submission of the Applicant that in this connection she had been in breach of Rules 7.01 and 7.02 of the Code which related to publicity, Rule 7.01 relating to the geographical scope of the rule and 7.02 relating to clarity as to charges. The latter rule provided that the publicity relating to charges must not be misleading or inaccurate and must be clearly expressed. Particular care should be taken when quoting fees which are intended to be net fees.
12. The Respondent further was in breach of Rules 7.01 and 7.02 of the Code when despite quoting £550 plus VAT for her profit costs in her letter of engagement she charged more than that and incorrectly quoted costs and disbursements. This fell within the examples of breaches of the Rule relating to publicity of Rule 7.01 and/or Rule 7.02.
13. It was the Applicant's case that the Respondent had given misleading costs information when she charged Mr A £150 for general disbursements which were not in fact disbursements but a contribution to her overhead costs. The additional charge of £50 for late completion was also in breach of Rules 7.01 and 7.02 of the Code relating to publicity.
14. The Respondent had transferred £550 from client account to office account on 27th March 2008 when she herself accepted that she had not delivered a bill or written intimation of costs to the client and that was in breach of Rule 19 of the Solicitors Accounts Rules 1998. Alternatively if, as she had claimed initially, the £550 was an agreed fee then that was not client money and should not have been held in client account.
15. The Applicant confirmed to the Tribunal that whilst allegation 1 referred to providing misleading costs information in relation to telegraphic transfer "fees", allegation 1 and the other allegations related only to the transaction concerning Mr A and the client

care letter sent to Mr A setting out the terms of engagement concerning that single transaction.

The Submissions of the Respondent

16. Mr A had received the Respondent's letter of engagement and had agreed her charges and had signed a duplicate of the letter of engagement on 10th March 2008 signifying his agreement. It was open to the Respondent to agree the level of her costs with her client, subject to compliance with Rule 2 of the Code of Conduct and the Solicitors (non Contentious Business) Remuneration Order 1994. She was not prevented from applying an agreed uplift to her costs at a given stage in the transaction, nor from agreeing an amendment to her retainer with her client.
17. The Respondent accepted that the telegraphic transfer fee included an element of profit costs and that the "general disbursements" charge had been misdescribed and should have been included as profit costs. The misdescription was not significant and could not involve issues of integrity or the trust that members of the public might place in her as a solicitor.
18. Mr A had been informed in clear terms of the charges that were to be made in his specific case.
19. An individually tailored client care letter could not properly be described as "publicity" within the meaning of Rule 7. Publicity means attracting public attention or advertising. The purpose of Rule 7 of the Code of Conduct was to ensure that information which solicitors put into the public domain is clear and accurate. The very concept of publicity requires that the information should be intended for a wider audience. It was the Applicant's allegation that information contained within confidential (and legally privileged) communications between solicitor and client constituted misleading publicity. That construction stretched the ordinary and natural meaning of the term far beyond the normal and well established principles of construction. The Respondent had been completely open and honest with the client throughout the transaction as to what he would be charged and the amount of the bill could have come as no surprise to him. Mr A had accepted her charges without complaint.
20. In the circumstances, the allegations of breaches of Rules 1.02 and 1.06 were grossly exaggerated and the allegations of breaches of Rules 7.01 and 7.02 did not apply. The Respondent accepted that she should have made clear to Mr A the difference between profit costs and disbursements.
21. The Respondent had in total charged £985 excluding VAT. The Respondent had also made offers of compromise and waiver, not all of which had been taken up by the client, but had been reported to the Regulator.
22. The Respondent admitted that the transfer of £550 from her client account to her office account amounted to a breach of Rule 19 on the basis that:-

- (a) the money should not have been paid into client account in the first place if, as the Respondent contended the fee was an agreed fee within the meaning of Rule 19(5); or
- (b) the money should have been held in client account until written notification of the costs had been given to the client. The Respondent contended that such notification was given on 8th May in the first completion statement provided to Mr A.

Findings as to Fact and Law

- 23. The Tribunal found allegation 4 to have been substantiated indeed it was not contested by the Respondent.
- 24. With regard to allegations 1, 2 and 3 the Tribunal considered that it was a gross exaggeration in one isolated matter and on the particular facts of this case, which were not in dispute, to suggest that the Respondent had shown any breach of integrity or that she had behaved in a manner that would adversely affect the public's trust in her. This was an isolated matter and did not represent a course of action on the Respondent's part. The Tribunal noted that the Respondent had been open with the regulator, had sought to put matters right with her client, and had offered to waive costs which the client had disputed after completion, but that not all the waivers offered were taken up.
- 25. The Tribunal found that allegations 1, 2 and 3 which had had been put as breaches of Rule 7 of the Code which related to publicity, were entirely misconceived. The Tribunal considered that publicity meant attracting public attention or advertising. Publicity had its ordinary and everyday meaning and was understood to involve the promotion of a solicitor or a firm in order to generate business. The writing of a private and privileged letter by a solicitor to her client could not be regarded as a matter involving publicity. It was the record of a private arrangement between the solicitor and the client.
- 26. The Respondent herself accepted that some of the items in her letter of engagement were misdescribed. The Tribunal gave the Respondent credit for such acceptance and noted that she had taken steps to put matters right with the client. The Tribunal has also noted that the client paid what he could reasonably have expected to pay and had not made complaint until after completion. The Tribunal further noted that allegations 1, 2 and 3 were based on a single letter written in respect of a single conveyancing transaction of which the Respondent had conduct. It was an isolated matter and did not reflect a course of conduct on the part of the Respondent.
- 27. For these reasons the Tribunal did not find allegations 1, 2 and 3 to have been substantiated.

Mitigation

- 28. The Respondent admitted a breach of Rule 19 of the Solicitors Accounts Rules in relation to the transfer of its basic conveyancing fee. Insofar as the Respondent's

intention was relevant, it was clear that she believed that the fee was a fixed fee and that the transfer was permissible.

29. The Respondent had, at all times, sought to comply with relevant rules of conduct. She regretted that she had made mistakes. It was questioned whether the Respondent's mistakes warranted her being brought before her professional disciplinary tribunal.
30. It was undeniable that the fact that certain practices were common within the solicitors' profession did not prevent them from being misconduct but there was judicial comment to the effect that the profession could hardly allege that its reputation had been damaged when one solicitor acted in the same way as many others (Adcock v The Law Society [2006] EWHC 3212). The practice adopted by the Respondent had been adopted at the firm where she had been a trainee.

The Tribunal's Ruling and its Reasons

31. The Tribunal for the reasons set out above did not find allegations 1, 2 and 3 to have been substantiated against the Respondent. With regard to allegation 4 the Respondent did admit a breach of Rule 19 of the Solicitors Practice Rules 1998 in respect of a single transfer of an agreed fee in advance of the delivery of a bill or written intimation of costs to the client. There was no doubt that the Respondent could have transferred that money within the Rules had she delivered a bill or a completion statement or other written intimation of costs by the date of the transfer.
32. The Respondent had not been accused of any course of action where misconduct had occurred on a number of occasions or at a high level. The first three allegations had been wrongly framed in citing breaching of the Code under Rule 7 relating to publicity. With regard to the reference in allegation 1 to breach of Rule 1.02 concerning a solicitor's duty to act with integrity, the Tribunal noted that the Applicant had confirmed that dishonesty was not being alleged. It was the Tribunal's view that upon the particular facts of this matter an allegation that the Respondent had not acted with integrity or had acted in a way that would adversely affect the public's trust in her could not be substantiated. The Tribunal did not consider that the single early transfer of an agreed costs fee was a matter so serious that it required the Tribunal's consideration. Indeed in the light of the events disclosed by the agreed facts the Tribunal did not consider that the Respondent's behaviour amounted to professional misconduct and concluded that the reference of the Respondent to the Tribunal was disproportionate and could not be said to have been necessary or in the public interest.
33. In the light of these conclusions the Tribunal made no order.

Dated this 27th day of April 2010.

On behalf of the Tribunal

A. G. Ground
Chairman