

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MICHAEL CHARLES SIMPSON, ANDREW BRIAN SIMPSON,
DAVID LEWINS, PETER LESLIE JOBES and CHARLES WILLIAM MURRAY
HUMPHREY, solicitors (the Respondents)

Upon the application of Jonathan Goodwin
on behalf of the Solicitors Regulation Authority

Mr D Green (in the chair)
Miss N Lucking
Mr D Gilbertson

Date of Hearing: 7th September 2010

FINDINGS & DECISION

Appearances

Jonathan Richard Goodwin, solicitor of Jonathan Goodwin Solicitor Advocate of 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT appeared for the Solicitors Regulation Authority (SRA). George Spaulton of Counsel instructed by Kennedys Solicitors, 44 Peter Street, Manchester M2 5GP for the Respondent.

The application to the Tribunal on behalf of the Solicitors Regulation Authority was made on 12th March 2010.

Allegations

At the hearing three allegations were withdrawn with the agreement of the Respondents and the consent of the Tribunal.

The allegations are set out below in the agreed amended form.

1. It was admitted that the Respondents failed to ensure that they drew the attention of Coast to Coast Properties Limited (C2C) to the provisions of the Solicitors

Introduction and Referral Code (SIRC) and/or to the relevant provisions of their Solicitors Publicity Code, contrary to Section 2 (2) of SIRC.

2. [Withdrawn]
3. It was admitted that the Respondents failed to maintain a record of an agreement with C2C for introduction of work contrary to Section 2 (9) of SIRC.
4. It was admitted that the Respondents failed to carry out the required review of referral arrangements with C2C on a six monthly basis between 1st June 2006 and November 2008, which is strictly contrary to Section 2 (10) of SIRC.
5. It was admitted that the Respondents failed to obtain the required undertaking from C2C that they would comply with SIRC, contrary to Section 3A (2) of SIRC.
6. It was admitted that the Respondents failed to maintain a written agreement with C2C. It follows that the Respondents admit that they failed to retain such agreement for inspection by The Law Society contrary to Section 3A (4) of the SIRC.
7. It was admitted that the Respondents' terms of business did not follow the precise wording of Section 3A (9) (a)-(c) of the SIRC. It is submitted that whilst the precise SIRC wording was not followed, the Respondents' terms of business did comply with the substance of this provision in that they made clear that the client was "*free to raise questions on all aspects of the transaction*" and "*information will not be disclosed to the introducer*". There was also a reference to independence and confidentiality in the Respondents' terms and conditions.
8. [Withdrawn]
9. It was admitted that the Respondents failed to draw the attention of C2C to the provisions of Rule 9 of the SCC, and to the relevant provisions of Rule 7, contrary to Rule 9.01 (2) of the SCC.
10. It was admitted that the Respondents failed to obtain a written agreement from C2C so that such was available for inspection by the SRA, contrary to Rule 9.02 (a) of SCC.
11. It was admitted that the Respondents failed to obtain an undertaking from C2C that they would comply with the provisions of Rule 9, contrary to Rule 9.02 (b) SCC.
12. It was admitted that the Respondents failed to satisfy themselves that clients introduced by C2C had not been acquired as a result of improper marketing or publicity in that they are unable to provide a document trail to demonstrate that they took appropriate steps in that regard and therefore there has been a technical breach of Rule 9.02 (c) of the SCC.
13. It was admitted that the Respondents' terms of business sent to clients referred by C2C did not follow the precise wording of Rule 9.02 (g) of the SCC and therefore there has been a technical breach of Rule 9.02 (g) of SCC. The points set out in relation to (7) above are repeated.

14. [Withdrawn]
15. This fell into two parts:
 - (i) The allegation raised in paragraph 49 of the Rule 5 Statement was admitted i.e. that the Respondents by innocent omission did not provide an answer to the SRA regarding the discreet question as to whether the cash back/rebate payment which was a feature of Mr Dobson's matter, was a common characteristic of C2C referrals to Murray Humphrey solicitors.
 - (ii) The SRA, sought leave of the Tribunal to withdraw the allegations in paragraphs 46-48 of the Rule 5 Statement.

Note: Allegations 1 – 8 related to the period prior to 30th June 2007 and allegations 9 – 15 related to the period subsequent to 1st July 2007 following the introduction of the Solicitors Code of Conduct 2007.

Factual Background

1. The Respondents admitted the facts save as set out below.

Introduction

2. At all relevant times the Respondents carried on practice in partnership as Murray Humphrey Solicitors at three sets of premises, one each in Seaham, County Durham, Sunderland, Tyne and Wear and Prudhoe, Northumberland. The Respondents now practise under the style of MH Legal Limited ("MHLL"). By a letter dated 27th August 2008 Warrington Citizens Advice made a complaint to the Legal Complaints Service (LCS) regarding a referral arrangement between the Respondents and C2C. It is understood that C2C guaranteed to purchase properties at less than full market value, and to rent the property back to the former owner. Clients of C2C would be referred to the Respondents to deal with the legal work on behalf of the clients of C2C. Mr D contacted C2C in or around November 2006 due to his financial difficulties. C2C were separately represented in the transaction. Mr D was contacted by an employee of the Respondent's firm in order to carry out a telephone "*Fact Find*". He was taken on as a client and client care documentation was sent to him under cover of a letter dated 22nd November 2006. The letter confirmed that C2C was to be responsible for their fees in the sum of £600. Following a survey commissioned by C2C it agreed to purchase the property for a gross price of £93,500 and a net price of £81,000 and a monthly rental of £500 to be paid by Mr D. Completion occurred on or around 23rd January 2007. By virtue of instructions given by Mr D to remit £9,468 of the proceeds of sale to the purchaser, Mr D received only £12.59 from the sale.
3. Mr D was one of 696 clients who had been referred to the firm by C2C, made up of 188 in 2006, 441 in 2007 and 67 up to November 2008. Mr Michael Simpson confirmed to the SRA that the last referral received from C2C was on or around May 2008.

4. Mr Dobson's transaction was undertaken by a trainee solicitor and supervised by Mr Graeme Jobs.
5. In respect of allegation 15 that the Respondents had failed to be open and cooperative with the SRA, and in particular failed to produce documents when requested to do so, contrary to Rule 20.05 of the SCC, the SRA wished to withdraw paragraphs 46-48 of the Rule 5 statement. The Respondents admitted regarding paragraph 49 that when asked by the SRA to confirm whether the cash back/rebate payment that was a breach in Mr D's matter, was a common characteristic of C2C referrals they had failed to provide an answer or any adequate answer in response. In respect of the allegations which the SRA wished to withdraw, it was not felt that they added anything and they were implicitly contained within the remaining allegations.
6. The documents the Tribunal reviewed included:
 - (a) The statement and accompanying documents submitted by the Applicant.
 - (b) The Respondents' response
 - (c) An email from Peter Jobs explaining his non attendance at the Tribunal hearing.

The Tribunal's Findings as to Fact and Law

7. In the main the facts were not in dispute and the Tribunal found them proved. The Tribunal found those allegations that were not withdrawn to have been substantiated and they were not contested.

The Respondent's Mitigation

8. The referral arrangement ran from June 2006 to mid Autumn 2008. Murray Humphrey received £600 for each client's conveyancing transaction including disbursements and VAT. Clients had a free choice of solicitor and were not asked to pay any referral fee. The work referred from C2C made up a relatively low percentage of Murray Humphrey's fee income. Over the years 2006, 2007 and 2008 it averaged around 6%. The SRA referral code 2.11 sets 20% as the level at which a referral scheme should be looked into. The level does however need to be monitored. Mr Graeme Jobs who monitored the C2C transactions had been employed by the firm from the mid 1990s. He is the son of the Fourth Respondent. He had been an articled clerk at Murray Humphrey and had worked there for ten years by the time the facts the subject of the allegations occurred. He became a partner in mid 2007. He was therefore an established practitioner who became a partner half way through the life of the referral scheme. In respect of the complainant Mr D, Mr Graeme Jobs was supervising a trainee. The transaction was relatively straight forward and on its completion the client found nothing to complain about. At the time Mr Graeme Jobs managed the case he was only six months away from becoming a partner. It was submitted that there was nothing wrong with that particular transaction or the referral scheme per se. The fact finder form shows that the matter had been gone through with Mr D and questions asked, including his reasons for the sale. This was not a case where there had been no contact with the client.

9. Murray Humphrey entered a partnership voluntary arrangement on 30th November 2008. Three of the Respondents are directors of its successor firm MHLL. They were trying to set up a good practice; they had been approved by the SRA and have entered into a big financial commitment. The Fourth Respondent Mr Peter Jobes was not a member of the new firm, having retired. The Third Respondent Mr David Lewins was an employee of the new firm. These facts provided the context for the allegations.
10. In respect of the allegations it was submitted that a considerable number of them were effectively doubled up because the referral arrangement spanned the period in which the Code of Conduct was introduced in mid 2007. In reality there were six allegations. Focusing on allegation 7 (that the Respondents had failed to provide the clients with the required information contrary to Section 3A (9) of SIRC) and the related allegation 13, the Tribunal had seen Murray Humphrey's terms and conditions. There was an omission regarding SCC requirements in that the precise wording was not followed but the terms and conditions did comply with the substance of the provisions.
11. In respect of allegation 10 Graeme Jobes had assured the partners that there was an agreement in place with C2C and they relied on him. Murray Humphrey had agreements in place with other referral schemes. An admission had now been made in respect of allegation 10 conceding that it was likely that no such written agreement had actually existed.
12. Regarding allegation 12 (that the Respondents failed to satisfy themselves that clients introduced by C2C had not been acquired as a result of improper marketing or publicity contrary to Rule 9.02 (c) of SCC), the allegation was admitted but it was submitted that the fact find telephone interview addressed the necessary issues of client awareness. It ensured that Mr D was aware of the landlord's future intentions regarding the status of the property and the fact that he would be losing his equitable interest. It ensured that his beneficiaries had been made aware of his intention to sell, that he was aware that the sale was at an undervalue, that he had freedom of choice of solicitor and that he was made aware that the Respondents would act on his behalf.
13. Regarding allegation 15 (that the Respondents had failed to be open and cooperative with the SRA and in particular failed to produce documents when requested to do so, contrary to Rule 20.05 of the SCC), it was submitted that the Respondents failure to reply to the SRA was entirely innocent. One partner, the First Respondent Michael Simpson, had dealt on behalf of all the Respondents with the SRA as thoroughly and quickly as he could. It is submitted that this was a very minor and innocent failure but a part admission had been made regarding it.
14. In terms of mitigation the question was how seriously should the Respondent's conduct be viewed? It was submitted that Mr D's transaction had been sound, that none of the Respondents had conduct of Mr D's case and it was reasonable for them to rely on Mr Graeme Jobes. There were five key points in mitigation. The first was that the SRA was pleased with the current practice MHLL, its approach and those involved in it. The Tribunal's attention was drawn to a positive report on MHLL dated 1st September 2009 produced by Elaine Robinson a Practice Standards Advisor

at the Practice Standards Unit of the SRA. It was written following a monitoring visit to the firm on 25th and 26th August 2009. There had been a follow up email from Miss Robinson dated 16th October 2009. It acknowledged that MHLL has “*worked hard to deal with the issues raised in*” her report. It followed that, going forward, all terms of business entered into between MHLL and its clients where there was an introduction arrangement had been approved by the SRA Practice Standards Unit as compliant. In Miss Robinson’s letter dated 28th May 2010 she confirmed that the nine month review revealed a reduction in the number of complaints to the LCS and that the Practice Standards Unit intended to close its file.

15. The second key point in mitigation was the improved practice management of those involved with MHLL. This was addressed in the Respondents’ reply to the Rule 5 statement. MHLL now maintain a spreadsheet to ensure compliance with the SCC which refers to the presence of agreements and undertakings in relation to publicity material. The Adjudicator’s decision of 12th March 2010 regarding proposed restrictions on the practising certificates of the First, Second and Fifth Respondents showed that the Adjudicator reiterated the steps taken by the directors of MHLL to ensure full compliance with its professional obligations. The Adjudicator concluded “*there is no evidence to indicate that MH Legal Limited is engaged in any improper activities or practices.... A Practice Standards Unit visit in August 2009 reported positively and in particular, confirmed full compliance with all the requirements in relation to referral arrangements, which had been an issue in the disciplinary proceedings.*” The Adjudicator also made reference to the matter now before the Tribunal. He commented “*The issues identified are historic and pre-date the recent disciplinary proceedings. The matter is at a preliminary stage and it is not yet settled what allegations, if any, will be prosecuted. I consider that in these circumstances it would be unreasonable and disproportionate to draw any adverse conclusions that will affect the directors’ ability to remain as presently constituted and as set up as MH Legal Limited, where Mr Lewins is currently employed as an assistant solicitor....*”
16. The Respondents involved in MHLL could have walked away from the business debts of the former practice but instead they entered into a PVA making a significant financial commitment. There are six monthly accountants’ reports from December 2009 and June 2010 which show their accounts are compliant. The Respondents are making considerable efforts to comply with relevant rules and procedures.
17. The third key point in mitigation related to the Respondents’ financial obligations generally and especially in relation to the PVA. The three contributing directors, the First, Second and Fifth Respondents had contributed £152,000 in capital repayments by June 2010, partly from remortgaging their homes where they had equity to do so. In addition under the PVA a further £18,000 was being paid by the new firm and an additional £58,000 is to come. This represents an immense financial commitment. The amounts paid in under the PVA had been worked out carefully by the PVA supervisor and were the maximum that could be paid back, having regard to the Respondent’s resources and their obligation to pay the salaries of 19 employees of the new firm. These were careful conclusions backed up by negotiations leading to a costs agreement with the SRA. The Respondents recognised their responsibility to the Tribunal and worked out what they could now afford. Agreeing costs on a joint and several basis especially where the Fourth Respondent Peter Jobs could not afford

to make any payment represented a considerable commitment which had been worked out with great care rather than asking the Tribunal to work out what could be afforded. If further payment had to be made, both the PVA and the careers of the 19 employees of the new firm would be placed in jeopardy.

18. The fourth key point of mitigation related to historical considerations, issues which the Respondents had had to deal with in the past regarding a previous SDT hearing. The Chairman pointed out that the Tribunal would not normally be aware of any previous Findings of the Tribunal. Counsel informed the Tribunal that the misconduct by the Fourth Respondent Peter Jobes had been a main focus of the earlier hearing. The activity had ceased in 2003 but the case had not come to the Tribunal until May 2008. The transaction for Mr D took place in 2006. There was no question that the Respondents had not dealt with the earlier problems and it was submitted that they should be viewed as truly historical.
19. The Fifth and final key point in mitigation related to the Respondents approach to these proceedings. It was hoped that the Tribunal realised that the Respondents could not have acted more consistently. They admitted the allegations as early as possible and also agreed costs. This was not a case where they had acted in a difficult manner or tried to prevent enquiry. An appearance before the SDT was not an insignificant event. The Tribunal was asked to take into account the technical nature of some of the allegations and balance those against the fact that the referral scheme itself was not inappropriate and nor was the nature of Mr D's transactions.
20. In conclusion, the email before the Tribunal from Mr Peter Jobes showed that he was incapable of making a repayment. The Tribunal case against Mr Graeme Jobes led to his receiving a reprimand and a fine of £250 had been imposed by the Adjudicator. Mr Graeme Jobes had conduct of Mr D's matter and he was a partner in the firm. It was submitted that a possible Tribunal sanction should be balanced against the financial commitment undertaken by the Respondents. The Tribunal was encouraged to accept that a costs sanction would be a satisfactory response to the matter having regard to the Respondents' obligations to the firm and their staff, in setting up the new practice and in the light of compliments from the SRA on their quality of service to the public. It was submitted that there was no possibility of repetition of this conduct. Before retiring, the Tribunal enquired about the rebate mandate which Mr D signed and which meant that he gained almost nothing from the transaction. Counsel confirmed that it was not flawed and that it was open to a client to direct his solicitors to make payment of the sale proceeds as he wished and no criticism could be levelled against the Respondents on that account.

Costs

21. The parties had agreed on a total sum of £10,000 which included the costs of the SRA's investigation, VAT and disbursements, to be paid on a joint and several basis.

The Tribunal's Sanction and Reasons

22. The Tribunal, having found all of the allegations which had not been withdrawn, to have been substantiated, the conduct complained of was overlapping with that which had been the subject of earlier Tribunal Findings in case number 9746/2007 against

the same Respondents in which fines of £25,000 each had been imposed and the costs amounted to £150,000. It was noted in respect of the transaction complained of that the Respondents had been very open with the client. The SRA had now given the new practice a clean bill of health and it was recognised that the Respondents must have worked very hard to get such an unequivocal endorsement leading to sign off by the SRA in 2010 following a monitoring visit. The Tribunal were satisfied that the public was protected and was no longer at risk. The Respondents who are still in practice now have conditions attached to their practising certificates. The Tribunal considered the seriousness of the allegations and noted the SRA view that they were not at the upper end. It was also noted that there was no allegation of dishonesty.

23. In terms of sanction it was felt that the conduct complained of merited more than a reprimand and the breaches were essentially technical. It was arguable that as partners the Respondents should have maintained greater oversight of their fellow partner. It was also noted that in their response they had not asked the Tribunal to differentiate between them in terms of responsibility.
24. The Tribunal considered that a monetary penalty would be appropriate and went on to consider in terms of fine and costs the financial position of the Respondents. It was noted that Mr Peter Jobes was said not to be able to make any financial contribution, that Mr Lewins was an employee of the new firm and that the other three Respondents were making substantial financial commitments both to the PVA and to the maintenance of the new practice.
25. In all these circumstances the Tribunal Ordered that each Respondent do pay a fine of £750, such penalty to be forfeit to Her Majesty the Queen and it further Ordered that they do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000, such costs to be joint and several between the Respondents.

Dated this 29th day of October 2010
on behalf of the Tribunal

D Green
Chairman