

IN THE MATTER OF MICHAEL J E CLARK,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr E Richards
Mrs V Murray-Chandra

Date of Hearing: 26th February 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Jonathan Richard Goodwin of Jonathan Goodwin, Solicitor Advocate, 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 23rd July 2007 that an Order be made by the Tribunal directing that as from a date specified in the Order no solicitor shall except with the permission of the Solicitor Regulation Authority for such period and subject to such conditions as the Solicitors Regulation Authority might think fit to specify in the permission, employ or remunerate in connection with the practice of a solicitor Michael J E Clark of 23 Victoria Gate, Church Langley, Essex CM17 9TA a person who was or had been a clerk to a solicitor within the meaning of the Solicitors Act 1974, or that such Order may be made as the Tribunal shall think right.

The allegations against the Respondent were that he had been guilty of conduct of such a nature that in the opinion of The Law Society it would be undesirable for him to be employed or remunerated by a solicitor in connection with his or her practice in that:

- (a) he improperly signed a mortgage deed purporting the same to be the signature of his client(s);

- (b) he signed a contract purportedly on behalf of his client(s) without the clients authority or consent;
- (c) he improperly purported to witness the signatures of individuals in circumstances where the signatory had not signed in his presence.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 26th February 2008 when Jonathan Richard Goodwin appeared as the Applicant and the Respondent did not appear and was not represented.

The Applicant had addressed a letter to the Tribunal dated 18th February 2008 which is set out in full under the heading "The Submissions of the Respondent" is an email addressed by the Respondent to the Applicant dated 22nd February 2008.

At the opening of the hearing the Chairman pointed out that in his letter of 18th February 2008 the Respondent agreed that a Section 43 Order should be made in respect of him and in earlier correspondence he had admitted allegation (c). In these circumstances the Tribunal ruled that it would consider allegation (c) and that the Order would be made as had been agreed by the Respondent.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that as from 26th day of February 2008 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Michael J. E. Clark of 23 Victoria Gate, Church Langley, Essex CM17 9TA a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,612.22.

The Evidence Before the Tribunal

The evidence before the Tribunal included the beforementioned letter and email from The Respondent.

The facts are set out in paragraphs 1 to 3 hereunder:

1. The Respondent, who is not a solicitor, was employed by Messrs Attwater and Liell as a trainee legal executive until he left their employ on 12th May 2006.
2. Following the Respondent's departure from Attwater and Liell on 12th May 2006, Mr and Mrs S, clients for whom the Respondent had conducted a conveyancing transaction, expressed concern that a mortgage deed which purportedly had been signed by them and witnessed by the Respondent had never been signed by Mr and Mrs S. They confirmed that not only had they not signed the mortgage deed in the presence of Mr Clark, or at all, they had never met Mr Clark.

3. The Respondent had corresponded with The Law Society. He had explained that he was a 24 year old trainee legal executive and he had worked hard to progress his career, his knowledge and his ILEX studies. He would never have jeopardised his career by forging a deed. He said he had never intentionally signed as a witness having not witnessed the signatures being written. He explained that members of staff would often be called upon to sign mortgage deeds in reception whilst walking to meet another client in the hallway or corridor of the office or called in to assist a secretary whilst seeing a client. He did not agree with the practice but felt he had no option but to adopt it.

The Submissions of the Applicant

4. Section 43(1)(b) of the Solicitors Act 1974 (as amended) was regulatory in its nature and designed to afford safeguards and exercise control where considered appropriate. It was not a punishment and should not be viewed as such.
5. The fundamental principal to be observed was the maintenance of the good reputation of the solicitors' profession both in the interests of the profession and the public.
6. The facts giving rise to complaint made against the Respondent demonstrated that it would be both desirable and appropriate for the Tribunal to make the Order sought.

The Submissions of the Respondent

7. The Respondent's letter of the 18th February 2008 said inter alia:

"I sincerely apologise for any difficulties caused on my part. My main focus was always on client care and I enclose one piece of feedback justifying this. However, I appreciate that this focus left me administratively poor and that this had a knock on effect."

I mean no disrespect in not attending on the 26th, but would not be able to add anything further. Noting Mr Goodwin's comments in his correspondence, I appreciate my duty of care was less than it should have been, I feel I am simply not up to the job. I agree to a s.43 order being made."

8. In his email of 22nd February 2008 the Respondent said that he did not dispute the Applicant's costs. He pointed out that the sum sought represented a considerable sum of money to him and he would have to liaise with The Law Society as to how he might achieve payment. With his income and at his age £3,600 was a very large sum of money.

The Findings of the Tribunal

9. The Tribunal found allegation (c) to have been substantiated and agreed that in such circumstances it was right that the Respondent's future employment within the solicitors' and other related legal professions should be subject to control. The Tribunal made the Order sought and further Ordered the Respondent to pay the costs of and incidental to the application fixed in the sum of £3,612.22. The Tribunal noted

what the Respondent said about his ability to pay and was aware of the fact that The Law Society would in such circumstances give favourable consideration to the Respondent's proposals for settlement.

Dated this 9th day of April 2008
On behalf of the Tribunal

W M Hartley
Chairman