

IN THE MATTER OF MOHAMMED AYUB, solicitor
& LIAQAT HUSSAIN, registered foreign lawyer

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. A. H. B. Holmes (in the chair)
Mr. A. Gaynor-Smith
Ms. A. Arya

Date of Hearing: 5th 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 on 24th July 2007 by Michael Robin Havard chairman of Morgan Cole Solicitors of Cardiff of Bradley Court, Park Place, Cardiff CF10 3DP that Mohammed Ayub and Liaqat Hussain of Maher & Company, 16 Peterborough Road, Harrow, Middlesex HA1 2BQ, a solicitor and a registered foreign lawyer, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

At the opening of the hearing the Applicant sought to withdraw two of the allegations contained in his statement.

The Respondents agreed and the Tribunal consented. The withdrawn allegations are noted below.

The allegations were that Mr. Ayub and Mr. Hussain had been guilty of conduct unbecoming a solicitor and/or in breach of the Solicitors Practice Rules 1990 and the Solicitors Accounts Rules 1998 in each of the following respects namely that they:-

1. Had failed to comply with Rule 32 of the Solicitors Accounts Rules 1998.
2. Had paid monies into client account which should not have been paid into client account in breach of Rule 15 of the Solicitors Accounts Rules 1998 leading to a cash surplus.
3. Had paid the sum of £15,600 of office money into client account contrary to Rule 15(2) of the Solicitors Accounts Rules 1998.
4. Had drawn monies out of client account otherwise than is permitted by Rule 22 of the Solicitors Accounts Rules 1998, leading to a cash shortage.
5. Had failed to keep at all times accounting records properly written up to show their dealings with client money received, held, or paid by them leading to unexplained cash shortages when comparing the firm's liabilities to cash available in breach of Rule 32(1) of the Solicitors Accounts Rules 1998.
6. Withdrawn.
7. Failed to make appropriate entries in their client ledgers by not identifying funds belonging to the lender on a conveyancing transaction involving the Second Respondent contrary to Rule 32(6) of the Solicitors Accounts Rules 1998.
8. Had acted in a way which was likely to compromise or impair the solicitor's duty to act in the best interests of the client contrary to Rule 1(c) of the Solicitors Practice Rules 1990.
9. Had acted in a way likely to compromise or impair the solicitor's proper standard of work contrary to Rule 1(e) of the Solicitors Practice Rules 1990.
10. Withdrawn.
11. Had acted where there existed a conflict of interest or the potential for a conflict of interest.
12. Failed to supervise adequately, or at all, the work undertaken by an assistant solicitor, ATM.
13. Had provided misleading and inaccurate information in relation to costs incurred in conveyancing transactions.
14. Without notifying the lender of their intention to do so, acted in conveyancing transactions for the seller, buyer and lender in the same transaction in breach of Rule 6 of the Solicitors Practice Rules 1990.
15. Acted for both seller and buyer without having obtained the written consent of both clients in breach of Rule 6(2) of the Solicitors Practice Rules 1990.
16. Failed to take sufficient notice or adhere to the "green card" warning on property fraud, to include satisfying themselves as to the identity of clients, identifying the

source of funds contributing towards the purchase price and conveyancing transactions, and notifying the client funder of the source of the difference between the purchase price and the mortgage advance.

17. Failed to maintain an identification procedure which ensured the production of satisfactory evidence of identity in conveyancing transactions in breach of Regulation 4 of the Money Laundering Regulations 2003.
18. Failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transactions which was material to the lender's business.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Michael Robin Havard appeared as the Applicant and both Respondents were represented by Jack Friend solicitor of Jack Friend & Co, 11 Sudbury Hill Close, Wembley, Middlesex HA0 2QR.

The Evidence Before the Tribunal

The evidence before the Tribunal included the admissions of the Respondents. A bundle of written testimonials was handed up at the hearing.

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

The Tribunal Orders that the Respondent, MOHAMMED AYUB of 16 Peterborough Road, Harrow, Middlesex, HA1 2BQ, solicitor, do pay a fine of £12,500, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

The Tribunal Orders that the Respondent, Liaqat Hussain of 16 Peterborough Road, Harrow, Middlesex, HA1 2BQ, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

The facts are set out in paragraphs 1 to 46 hereunder:-

1. Mr Ayub, born in 1954, was admitted as a solicitor in 1981. Mr Hussain, born in 1957, became registered as a foreign lawyer in 1998. At the material times the Respondents practised in partnership, their firm's name being Maher & Co. Maher & Co's office was at 16 and 18 Peterborough Road, Harrow and it maintained a registered business address at 103 Suffield Road, High Wycombe.
2. Forensic Investigation Officers of The Law Society (the FIOs) began an inspection of the Respondents' firm on the 26th January 2004. One or more FIOs attended the Respondents' offices on a number of dates after 26th January 2004. The FIOs produced a report dated 31st May 2005 and a supplemental report. Both reports were before the Tribunal. In February 2004, some three and a half weeks after the commencement of the FIOs' investigation there was a fire at 18 Peterborough Road, Harrow which led to the destruction of or damage to clients' papers and files and some computer terminals. This affected immigration matters.

Allegations 8 - 10

3. During 2004, The Law Society received forty five complaints about Maher & Co. relating to immigration matters of which Mr Hussain had conduct.
4. The FIOs experienced difficulty in obtaining access to relevant documentation. A notice under Section 44B of the Solicitors Act 1974 requiring the delivery up of files and papers was served.
5. Many of the complaints were made by clients who wished their immigration papers to be transferred from Maher & Co to new solicitors. It was the Respondents' position that such papers had been destroyed or lost following the fire. The client ledgers and financial information relating to those immigration matters were kept at 16 Peterborough Road, Harrow, and were not affected by the fire. The Respondents kept separate files for correspondence and accounts.
6. The Respondents failed to reconstruct files damaged in the fire. They explained that immigration files were reconstructed upon a client's request.

Allegations 1 - 5

7. The Respondents submitted their Accountant's Report for the year ended 31st May 2003, on 30th July 2004. It showed that, as at 31st October 2002, there was an unexplained cash shortage of £144,971.43 and on 31st May 2003 there was an unexplained cash shortage of £74,496.23.
8. The firm's books of account were not in compliance with the Solicitors Accounts Rules. Unexplained differences when comparing the firm's liabilities to clients to cash available existed at October 2002, May 2003, December 2003, June 2004, September 2004 and December 2004. The office side of the client ledgers had not been written up properly as it did not record bills of costs raised by the firm. £15,600.00 received following an insurance claim for the fire at 18 Peterborough Road, office money, was paid into client bank account in June 2004 and withdrawn in a manner not in compliance with the Rules. Monthly reconciliations of client balances to cash available had not been prepared later than 31 December 2004.
9. On 15 March 2005, an FIO was provided with a client account reconciliation for December 2004, showing:

Liabilities to Clients (as adjusted)	£882,566.44
Cash available	<u>898,595.65</u>
Unexplained Difference (surplus)	<u>£16,029.21</u>

The Respondents' accountants had been instructed to find the difference, bring the bookkeeping up to date and prepare reconciliations for the months of January and February 2005.

10. An FIO examined a number of conveyancing files of which Mr Ayub had conduct and was concerned about a number of issues.

Sale of a Property by Mr and Mrs A

11. The firm had stated its fees for advice and assistance to be £475 but fees were also raised for redemption of mortgage, as were fees for searches, telegraphic transfer (TT) charges and disbursements. Deducting VAT from those items, the total fees charged by Maher & Co were £627.32. In fact no TT was made in that transaction.

Mr Z: Purchase of a Property

12. The file presented a confusing picture. Information had been addressed to Mr & Mrs A. The purchaser was referred to as Mr Z. A "Cost Information Sheet" began "Dear Mr. & Mrs. K." But was addressed to Mr & Mrs A. The "Confirmation of Instruction Sheet" had been signed by A. p.p. Z.
13. The costs estimate stated that if the client were to obtain a mortgage there would be mortgagees' legal costs of £150 plus VAT. In the completion statement such fees were described as "Maher & Co fees for doing work for your mortgage company."
14. The original estimate of Maher & Co's fees was £475, but the real level of fees appeared to be £655.
15. The FIO's report provided two further examples of inaccurate or misleading information being given to clients in respect of costs.

Allegations 8, 11, 14 – 18

16. Some conveyancing transactions were summarised and demonstrated links between the parties involved in a number of the transactions.
17. The Property Sold by Mr & Mrs A and its Purchase

Purchase price: £195,000
 Purchaser: Mr. I
 Funder: Mr. R (£35,000)
 Lender: Bank of Scotland
 Sellers: Mr & Mrs A

18. Mr Z: Purchase of Property

Purchase price: £310,100
 Purchaser: Mr. Z
 Funders: Mr. & Mrs. A (£134,848.68)
 Lender: Halifax
 Sellers: Mr. & Mrs. McC

19. Sale of Property High Wycombe

Sale price: £150,000
 Sellers: Mr. R and Mr. B
 Purchaser: Mr. Ayub

Lender: Bank of Scotland

Allegations 8, 11, 14 – 18 (as against Mr Ayub only)

20. In the sale and purchase of the property sold by Mr and Mrs A, Mr Ayub acted for the seller, the purchaser and the lender. There was no evidence on the file that the parties had consented to his acting for all of them.
21. There was no evidence that the lender knew that Mr Ayub was acting for the purchaser and the seller or that the lender knew that £35,000 of the purchase price was being provided by a third party, Mr. R. There was no evidence that the purchaser and sellers knew that Mr Ayub was acting for both sides.

Allegations 8, 11, 14 – 18 (as against Mr Ayub only) in Mr. Z's purchase of property

22. In the sale and purchase of the property sold by Mr and Mrs A, initially it appeared that Mr and Mrs A, the sellers, intended to purchase the property in fact ultimately purchased by Mr Z. There was nothing in the file to indicate that the lender, Halifax, had been informed of the involvement of Mr. & Mrs. A or the contribution of £134,848.68 made by them towards the purchase price.

Allegations 8, 11, 14, 15, 16 and 18 (as against Mr Ayub only) Sale and Purchase of A Avenue, High Wycombe

23. Mr MA purchased this property from Mr MH for £126,000 with a mortgage advance from the Bank of Scotland of £85,000. Mr Ayub acted for the seller, the purchaser and the lender. On inspection of the file, there was no evidence of the identification of the parties; that the lender knew that Mr Ayub was acting for the purchaser and the seller; that the lender knew that £35,000 of the purchase price was being provided by Mr. R; that the purchaser and sellers knew that Mr Ayub was acting for both sides.

Allegations 8, 11, 14 – 18 (as against Mr Ayub only) Sale of Property X at High Wycombe

24. Mr Ayub (said not to be the First Respondent) purchased this property from Mr R and Mr B for £150,000, part funded by a mortgage advance from the Bank of Scotland of £110,000.
25. Mr Ayub acted for the seller, the purchaser and the lender.
26. On inspection of the file, there was no evidence of the identification of the purchaser; that the lender knew that Mr Ayub was acting for the purchaser and the sellers or that the purchaser and the sellers knew that, or consented to, Mr Ayub acting for both sides.

Allegations 8 – 11 and 14 – 16 Mr. Hussain’s Purchase of R Road at Pinner

27. Although it was initially denied by him, Mr Hussain purchased the property for £229,950 with a mortgage advance from the Bank of Scotland of £198,590. Mr Ayub acted for Mr Hussain.
28. It was apparent that Mr Hussain did not intend to reside at the property but was purchasing it to enable another client of the firm, Mr RH, to reside at the property on the understanding that Mr RH would cover the mortgage payments.
29. In an “Instructions to Solicitors” letter to Mr Ayub of 16th July 2002 the Bank of Scotland stated:-

“In the event that another party is in occupation or will occupy the property, at the time of completion of the Bank’s legal charge an Occupiers Postponement form must be signed by each occupier or alternatively you must provide written confirmation that all occupiers have entered into an Assured Shorthold Tenancy Agreement. Before signing this, the Occupier should be encouraged to obtain legal advice independent of the Bank and the borrower.”

30. Part 2 Mortgage Security Terms (First Edition) Paragraph 2 of the Bank of Scotland’s Terms and Conditions stated:

“The owner undertakes that he will:...

2.8 Dealings

Not without obtaining the Bank’s prior written consent (which may be given with or without conditions):

- (a) grant any lease, tenancy or licence or other right or permission for anyone over the age of seventeen to occupy all or part of the property or vary any such agreement or terminate such an agreement because of a breach by a tenant;
- (b) share or part with possession of the property; ”

31. On inspection of the file, there was no evidence of the Occupier Postponement form having been completed and returned to the Bank of Scotland, nor that the Bank of Scotland was informed that the borrower was also a principal in the firm which was acting for it.
32. There was no evidence that the Bank of Scotland was informed of any interest of Mr RH in the property; that Mr Ayub sought to obtain the consent of the Bank of Scotland to the property being occupied by Mr RH or that the Bank of Scotland was aware that Mr. Hussain had other mortgage responsibilities. Mr RH had not been told or encouraged to seek independent legal advice.
33. Various names and addresses were utilised by Mr Hussain as follows:

Name	Property
Liaqat Hussain	Property at Stanmore, Middlesex
Liaqat Hussain Kayani	Property at Harrow
Liaqat Kayani	Property at Wealdstone, Middlesex
Liaqat Hussain	

34. Mr Hussain sold the property at Pinner to Mr & Mrs H for £225,000, the entire sum being funded by a mortgage advance to Mr & Mrs H from Mortgage Express.

Sale and Purchase of R Road at Pinner

35. The sale and purchase of R Road at Pinner was conducted by an assistant solicitor. The Respondents were responsible for his supervision. Neither of the Respondents, and in particular Mr Ayub, exercised any proper supervision of the assistant solicitor's work.
36. The assistant solicitor acted for the seller, the lender and the purchasers in this transaction.
37. There was no evidence on the matter file of the parties' identification; that the lender, Mortgage Express, knew that Maher & Co. was acting for the purchaser and the seller; or that the purchaser and seller had provided written consent to the Respondents' firm acting for both sides.
38. The assistant solicitor had in a letter dated 17th September 2004 stated to Mortgage Express that the advance was not in respect of a purchase but a re-mortgage as the equitable owners were Mr & Mrs H. There was a trust deed dated 24th September 2004 (the date of the completion of the purchase of the property by Mr. & Mrs. H). There was no copy of the Deed signed by Mr & Mrs H on the file.
39. The mortgage advance monies were paid into Mr Hussain's client account and not that of Mr & Mrs H.

IMMIGRATION FILES

Allegations 8 - 10

40. A fire had taken place at 18 Peterborough Road on 14th February 2004 and caused difficulties and inconvenience to the Respondents, particularly Mr Hussain who had conduct of immigration matters.

Mr S

41. Significant sums of money had been held on client account for Mr S for almost three years but there was no evidence of any effort to reconstruct the file, take any further action or locate the client.

Mr M and Mr B

42. There was no indication on file that a client care letter had been sent or information provided with regard to costs. There was no evidence to indicate that Mr Hussain had undertaken any work in the proper preparation of the case. He had requested various adjournments at the Immigration Appeal Tribunal to enable him to do so.
43. The Immigration Appeal Tribunal's determination was promulgated on 1st July 2002, refusing the client's appeal. Subsequently correspondence was received from solicitors, Wilson Terris & Co, indicating that they had been instructed by the client and enclosing his authority for the file to be transferred. Wilson Terris & Co pressed Mr Hussain but he failed to comply with their request. Mr Hussain continued to undertake work on behalf of the client.
44. In the absence of a client care letter or any formal indication of costs, and where there was a suggestion that the client was entitled to legal aid Mr Hussain stated that the costs were in the region of £1,400 which could be paid in "easy instalments".
45. Mr. I had previously instructed another firm of solicitors. It was not clear when he instructed Maher & Co in relation to an appeal to the Immigration Appeal Tribunal. Mr Hussain's involvement concerned the holding of £5,000 surety money. It was not clear for what purpose that money was used, its ultimate destination nor was there any evidence of any interest being paid.

CORRESPONDENCE WITH THE RESPONDENTS

46. By letter of 9th August 2005, The Law Society sent to the Respondents a copy of the FIOs' list and the Supplemental Reports. The written responses of the Respondents were before the Tribunal.

The Submissions of the Applicant

47. The allegations had been based on the original and supplementary reports produced by the FIOs.
48. All of the allegations surviving were admitted.
49. The allegations fell into three parts: first, breaches of the Solicitors Accounts Rules; secondly, breaches and matters of concern demonstrated on conveyancing files which primarily were the responsibility of Mr Ayub but related also to Mr Hussain where he personally had been purchaser and seller. There had been misleading and inaccurate information about the costs that the client would have to bear and there had also been instances of conflict of interest.
50. The third section related to problems arising on immigration files which had been handled by Mr Hussain.
51. No allegation of dishonesty had been made against either Respondent.

52. The Applicant did, however, consider the instances of conflict of interest as representing a serious matter. Mr Ayub had confirmed that he was aware of the provisions of Practice Rule 6.
53. With regard to the misleading costs information, it would be said that this was inadvertent. That would be a matter for the Tribunal to decide upon.
54. It appeared in the matters exemplified by the FIOs that there had been a disregard for the requirements of Practice Rule 6 and the overall obligation on the part of solicitors to identify the potential for conflicts of interest. Indeed, there appeared to have been a systemic failure on the part of Mr Ayub. In particular there had been a failure to protect the interests of lending clients.
55. The Applicant accepted that the large number of complaints that arose on immigration files had to a large extent been caused by the fire which had occurred at the office premises. That fire had post-dated the commencement of the FIO's inspection. Nevertheless Mr Hussain had failed to maintain a proper standard of work particularly where he had applied for a number of adjournments in the Immigration Appeal Tribunal but appeared to have taken no substantive steps to progress the client's case.

The Submissions made on behalf of the Respondents

56. The Tribunal was invited to take due note that there had been no allegation of dishonesty made against either of the Respondents.
57. The Applicant said that he believed that the Respondents' failures had been inadvertent and the result of confusion and shortcomings. That was an accurate description of the Respondents' conduct. No specific intent had been alleged against either of the Respondents and it had not been said that they had been guilty of a deliberate flouting of the rules.
58. The Tribunal had before it the factual assertions of professional failure and it was invited to give the Respondents credit for their realistic, professional and frank attitude when these matters had been drawn to their attention.
59. The Respondents did not seek to downgrade the allegations made against them. They recognised that the set of failures would undoubtedly be of concern and were serious.
60. The events underlying the allegations had occurred three years before the hearing. Both Respondents felt an acute sense of embarrassment about the way in which they had conducted their practice and they wished to apologise.
61. Each Respondent had given extensive accounts of what had occurred when called upon to do so. They had fully co-operated with their professional regulatory body. The Respondents' explanations had the ring of sincerity and truth. The Respondents had not been evasive and had acknowledged their fault and had sought guidance from The Law Society. The Respondents had given assurances that they would not be guilty of similar failings in the future.

62. The Respondents conceded that they had cut corners in their procedures. In the main the firm acted for individuals and families and extended families known to the Respondents.
63. Mr. Hussain had explained that there had been alternative spellings of his name and that was not uncommon in the case of persons of his ethnic background. The Respondents had made other references to ethnic considerations relating to inconsistencies in client names.
64. No client had suffered any loss. There were no extant claims against the Respondents. The Respondents had knowledge of the identity of those for whom they acted. They accepted that formal evidence of identity had not been available on the files and accepted that a legitimate concern had been raised about this.
65. The firm suffered difficulties with its own accountants. The Respondents had found it necessary to complain about the service provided by their accountants and those complaints were genuine. It was accepted that the difficulties encountered by the Respondents with their accountants provided no excuse, but the Tribunal was invited to take this into account when considering the allegations.
66. It was accepted that it was wrong that sums of money had remained in client account for long periods. The money had however been held for legitimate reasons. The Tribunal might consider that a less honest Respondent might have endeavoured to find a way of transferring that money to office account.
67. The subject matter of the allegations amounted to a sad and embarrassing chronicle of sloppiness but it was no more than that.
68. The Tribunal was invited to take into account that when the decision to refer the conduct of the Respondents to the Tribunal was made, consideration was given as to whether conditions should be imposed upon the Respondents' practising certificates. No conditions had been imposed upon Mr. Hussain. Mr Ayub had been required to attend courses on client care and the Solicitors Accounts Rules and he had attended such courses. He also had a condition imposed on his practising certificate that prevented him from acting as a sole practitioner. In addition to the required courses Mr Ayub had attended a management course.
69. The Tribunal was invited to take into account the fact that The Law Society had instigated a Monitoring Unit visit in July 2007 when the firm was given "the all clear".
70. Mr Ayub was a family man with three adult children. He was the sole breadwinner.
71. Mr Hussain had left the partnership. The firm of Maher & Co now consisted of Mr Ayub and two other partners.
72. All Accountant's Reports since 2004 had been delivered on time and were unqualified.

73. When the firm's accounts were properly analysed it was ascertained that there was in fact no cash shortage at all. The problem identified by the FIO had been generated solely by posting errors.
74. The firm's accounting system had been upgraded. The bookkeeping was maintained on a daily basis by one of the partners and the reconciliations required by the Solicitors Accounts Rules were carried out externally.
75. The firm no longer undertook immigration work and had not done so since 2005.
76. All of the firm's conveyancing procedures and paperwork had been revised and were working satisfactorily. One of the new partners shared the conveyancing work with Mr Ayub. Another partner supervised incoming and outgoing post. The firm had no unqualified fee earners and did not propose to employ any so that the question of the supervision of junior staff was no longer an issue.
77. Mr Hussain was a family man with four children. He also was a sole breadwinner. At the material time as well as being a partner with Mr Ayub, he had been a consultant with an associated firm and he had now become a partner at that firm. He undertook that firm's immigration work. He had been subject to a strict regime and there was no suggestion that anything untoward had taken place in that practice.
78. The Tribunal was invited to bear in mind the considerable difficulties caused by the fire at Maher & Co's office and that complaints had arisen when Mr Hussain had been unable to get to his records.
79. The Tribunal was invited to bear in mind that some of the allegations relied on the same background facts and amounted to facets of each other.
80. The subject matter of the complaint was now historical. All had been put right and the Respondents' firm and the individuals had moved on.
81. Neither of the Respondents had appeared before the Tribunal on an earlier occasion. The Tribunal was invited to bear in mind that there were cultural, ethnic and racial issues underlying the facts before it. There had been a number of instances where a certain racial/ethnic group of clients had not given details when asked and they had omitted to confirm instructions as requested. The Respondents believed they had served their clients well. The Tribunal was invited to give due weight to the excellent written testimonials in support of the Respondents which spoke highly of their competence and integrity. It was the Respondents' primary concern that they be allowed to continue in practice.
82. The Respondents had accepted that they must bear the Applicant's costs and had agreed a figure of £15,000 inclusive.

The Tribunal's Findings

83. The Tribunal found the surviving allegations to have been substantiated. Indeed, they were not contested. The Tribunal was in this case dealing with serious matters. The Respondents had been in breach of a number of important rules relating to practice as

solicitors and, as they themselves recognised, the Tribunal had felt bound to consider interfering with their ability to practise.

84. The Tribunal gave the Respondents credit for their admissions and their co-operation with the Solicitors Regulation Authority and the detailed explanations they had given when requested to do so. The Tribunal also took into account the testimonials handed in in support of the Respondents.
85. In all of the particular circumstances of this case the Tribunal considered that it would be appropriate and proportionate to impose financial sanctions upon each of the Respondents which reflected the seriousness with which their failures were to be regarded and their respective culpabilities. The Tribunal ordered Mr Ayub to pay a fine of £12,500 and Mr Hussain to pay a fine of £7,500. The Tribunal ordered the Respondents to pay the Applicant's costs fixed in the agreed sum of £15,000 on the basis that the Respondents were to be jointly and severally liable for those costs.

Dated this 17th day of March 2008
On behalf of the Tribunal

A H B Holmes
Chairman