

IN THE MATTER OF MICHAEL DAVID MEREDITH BROWN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr. D. Potts (in the chair)  
Mr. R. Nicholas  
Mr. D. E. Marlow

Date of Hearing: 15th November 2007

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## **FINDINGS**

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by Gerald Malcolm Lynch solicitor and consultant with the firm of Drysdales of Cumberland House, 24-28 Baxter Avenue, Southend on Sea, Essex SS2 6HZ on 7<sup>th</sup> August 2007 that Michael David Meredith Brown c/o Mr. J. Simms, Bower & Bailey, Solicitors, 8 St. Aldates, Oxford OX1 1BS 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 fit.

The allegations were that the Respondent:-

- A. Had failed to act in accordance with a professional undertaking given by him in the course of his practice as a Solicitor. Alternatively had been guilty of unreasonable delay in the execution thereof.
- B. By virtue of the aforesaid had been guilty of conduct unbefitting a Solicitor.

The application was heard at The Court Room, Third Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 15<sup>th</sup> November 2007 when Gerald Malcolm Lynch appeared as the Applicant and the Respondent was represented by David Parry of counsel.

The evidence for the Tribunal included the admissions of the Respondent. Two letters were handed up at the hearing on behalf of the Respondent.

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

The Tribunal Orders that the Respondent, MICHAEL DAVID MEREDITH BROWN of c/o Mr J Simms, Bower & Bailey Solicitors, 8 St. Aldates, Oxford, OX1 1BS, solicitor, do pay a fine of £1,000.00, 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 £3,457.80 inclusive.

**The facts are set out in paragraphs 1 – 12 hereunder:-**

1. The Respondent, 70 years of age, was admitted as a solicitor in 1966. At the material times he was practising as a consultant with the Firm of Kendall & Davis Limited (then a partnership).
2. On the 17<sup>th</sup> October 2006 Messrs Henriques Griffiths Solicitors of Bristol wrote to the Complaints Service because the Respondent had failed to honour an undertaking given to clients of the complainant firm in 2004.
3. The undertaking had been given during the course of a conveyancing transaction in which the Respondent acted for the sellers.
4. It was a condition of the contract for sale and purchase that on completion "the Seller will hand over the consent of the proprietors of the Equitable Charge dated 21<sup>st</sup> April 1999".
5. On the 10<sup>th</sup> December 2004 the Respondent's firm gave a written undertaking to Williams Mann Solicitors for the buyer in the following terms:-

"Dear Sirs

Re: H Court, H, Gloucestershire

In consideration of the completion of the sale of the above property, we hereby undertake to obtain the execution of the Agreement under seal and made between E G O, A F C and K J K of the first part A J S and C S of the second part and J J K and C E T of the third part in so far as execution is required by the Covenantees and Covenantors named in the said Agreement and to send you the part executed by the Covenantees as soon as possible after completion to the intent that you should be in possession thereof within twelve weeks of completion".

6. Henriques Griffiths had taken over Williams & Mann in about August 2005 and then discovered that the consent, the subject of the undertaking, had not been supplied. Without that consent the buyers' interest and that of their mortgagee could not be registered at H M Land Registry.

7. Numerous attempts to obtain the consent had been made but had been unsuccessful.
8. The Respondent had co-operated both with the buyers' solicitors and the Law Society. He had explained that he had been required to give the undertaking in the terms which he had, although he had at the time wanted to undertake only to use his best endeavours. The Respondent explained that the undertaking had been given in good faith and it had been a matter of serious concern to him that he had not been able to perform it and he would continue to try to discharge the undertaking.
9. On the 28<sup>th</sup> February 2007 the senior partner of the Respondent's firm wrote to the Solicitor's Regulation Authority to report progress in the matter, explaining that it was "hideously complicated". There had been delays which were not the fault of the Respondent, particularly in relation to obtaining valuations. An alternative undertaking had been offered. The complainant firm themselves on the 28<sup>th</sup> February 2007 indicated that matters were progressing.
10. On the 28<sup>th</sup> February 2007 Messrs Bower & Bailey, Solicitors, of Oxford wrote to the Authority confirming their instructions from the Respondent. The facts of the matter were not disputed. The Respondent had given an undertaking the performance of which was not within his control. He believed at the time that there were no reasons why he would not be able to perform the undertaking. The expected reasonable degree of co-operation from a third party had not been forthcoming. Bower & Bailey went on to explain that there were ongoing negotiations between the parties for the quantum involved in a dispute to be fixed.
11. The matter was referred to an Adjudicator who on 21<sup>st</sup> March 2007 required the Respondent to comply with his undertaking by the 31<sup>st</sup> May 2007, in which event he would be reprimanded in respect of his misconduct. In a statement submitted on 1<sup>st</sup> June 2007 the Respondent confirmed that it had not been possible to comply with the adjudicator's time limits.
12. The Tribunal was told that the undertaking had been discharged in September 2007.

### **The Submissions of the Applicant**

13. The Applicant accepted that the Respondent had made substantial efforts to secure the document required by him to discharge his undertaking. The Tribunal was reminded of the provisions of principle 18 of the Guide to Professional Conduct in particular that even though the Respondent had given an unqualified undertaking to do something outside his control he was none the less bound by it.
14. Although there were complications in relation to other parties and another parcel of land involved, this could not affect the requirement that the Respondent was obliged to perform his undertaking and that performance had to be within a reasonable time.
15. The Applicant accepted that the undertaking had been given in good faith and that a great deal of effort had been put into securing its performance, the Respondent had been clearly in breach of his professional undertaking and was thereby guilty of conduct unbecoming a solicitor.

### **The Submissions of the Respondent**

16. The Respondent had enjoyed a long and hitherto unblemished career in the law. He had been a solicitor for over 40 years.
17. The Respondent had given the undertaking in good faith believing at the time that he would be able to discharge it.
18. The Tribunal was invited to give due weight to two letters handed up at the hearing, one from Pitman Blackstock White addressed to the Respondent's solicitors dated 1<sup>st</sup> November 2007 and the other, undated, from Messrs Henriques Griffiths Solicitors also addressed to the Respondent's solicitors.
19. Pitman Blackstock White had acted for the buyers of the second parcel of land. They went on to say:-

"whilst it appears to be the case that Mr Brown was in breach of his undertaking, it seems quite clear to me that in this matter he is a man more sinned against than sinning. From my knowledge of the matter, whilst it may be the case that Mr Brown was unwise to give the undertaking that he did, it seems to me that he did so in perfectly good faith and in circumstances which were such as to lead him to reasonably think he could properly give the undertaking which he did give. In my view only as events thereafter unfolded that Mr Brown sadly became caught up in a situation beyond his control. This was aggravated I think by his own clients stance thereafter, by - I am afraid to say - a perhaps less than wholly co-operative approach adopted by the solicitors for the Covenantees (the undertaking having been necessitated by covenants) and thereafter what I feel were delays on the part of the valuer instructed by the covenantees.

I know personally the valuer instructed by Mr Brown and from my conversations with that valuer I am satisfied that at all times Mr Brown's valuer was attempting to move with all speed and dispatch but faced persistent and continued delays on the part of the covenantees' valuer for whatever reason.

My position was in effect similar to that of the position of Henriques Griffiths and whilst I understand their frustration and shared it, my dealings with Mr Brown throughout the matter were such that I was satisfied that he was taking all reasonable steps that he could to resolve the difficulty and for as long as the difficulty did not prejudice my client's position, I did not feel that a complaint was appropriate. I am bound to say that when the matter did become significantly more pressing Kendall and Davies forthwith gave a wide and general undertaking which in my view should have satisfied the covenantees/their solicitor and which should have enabled the matter to proceed to closure. Had that later undertaking by Kendall and Davies been accepted by the Covenantees/their solicitors then Mr Brown would not have found himself in the position he now is.

I understand that Mr Brown has a long and un-impeached period of practice and I can certainly say that in all my dealings with him in what was undoubtedly a difficult matter he seemed to me to be making every practicable and conscientious effort to resolve the problem. Whilst obviously he is in breach of a solicitor's undertaking and therefore this is something which the Tribunal have to - and properly have to - treat seriously, I feel that the facts of his breach and in the circumstances in which he found himself, are such that the Tribunal should look to hopefully impose the lightest penalty it can.

I confirm that I expressly authorise the letter to be placed before the Tribunal if it is felt appropriate so to do.

20. The letter from Henriques Griffiths also expressed the following view:-

"I welcome the opportunity to be able to write in relation to my knowledge and involvement of the case.

Insofar as it is relevant, my clients were induced into completing the purchase of their property on the basis of an undertaking from Mr Brown, through his firm, which promised the production of a document which it transpires was outside of Mr Brown's control.

You are entirely right when you surmise that the act of reporting this matter to the Solicitors Regulation Authority was through frustration as some considerable time has passed since the undertaking had been given. It could be viewed as the stick which we needed to use to have the transaction completed rather than a wish for the process to lead to punishment.

Whilst I cannot say what went on on Mr Brown's side, it is clear to me from my dealings that Mr Brown should not have given the undertaking, but now that matters have been finally resolved, I would suggest that this is more of an issue relating to the culpability of Mr Brown or his firm in whether they should have provided the undertaking on a civil basis rather than about punishing Mr Brown through the Solicitors Disciplinary Tribunal.

Perhaps I could suggest that if the Tribunal considers this a matter where they wish to impose some penalty, they do so considering what I am told to be, Mr Brown's long and un-impeached period of practice rather than necessarily judging him on one transaction where, we all agree that Mr Brown made a wrong decision in giving the undertaking, but I am sure it is not one which he did in anything other than an honest manner.

I hope the above is of some assistance and if it needs to be expressly authorised, you have my permission to produce a copy of this letter to the Tribunal".

21. The Respondent deeply regretted what had happened and the inconvenience caused.
22. The Tribunal was invited to give the Respondent credit for the efforts he made to put matters right and the full co-operation he gave not only to the solicitors acting for

other parties but also to The Law Society. The Respondent fully appreciated the seriousness of not complying with an undertaking within a reasonable time but hoped that the Tribunal would take into account all of the difficult circumstances in this particular matter.

23. The Respondent had made a mistake when he gave the undertaking in the unconditional terms that he did. He deeply regretted that.
24. The Tribunal was invited to take into account the Respondent's admissions, the fact that the Respondent would not again make such a mistake. The undertaking had in fact been satisfied in September of 2007. The Respondent's firm had at an early stage offered to make any losses suffered by any person good but that offer had not been taken up. There had been no indication that any person had suffered financial loss. The Tribunal was invited to give due attention to the tenor of the letters written by the solicitors acting for the buyers of the two parcels of land. Those letters were generous and honourable. The Respondent himself was an honourable man who had enjoyed a long professional life. In all of the somewhat unusual circumstances of this matter it was hoped that the Tribunal would feel able to deal with the Respondent with a degree of leniency and would not consider that any sanction imposed upon the Respondent need take into account a requirement to protect the public or to protect the good reputation of the solicitors profession.

#### **The findings of the Tribunal**

25. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
26. The Tribunal recognised that the Respondent, a solicitor who had enjoyed a long and unblemished career in the law, made a fundamental mistake when he gave the undertaking that he did. He had given an undertaking that was not within his power to discharge. He required the co-operation of others. The undertaking had not been discharged because that co-operation had not been forthcoming as he had anticipated. The Tribunal accepted that the undertaking was given in good faith and that the Respondent had every intention of complying with it and that he had made considerable efforts to achieve such compliance. The undertaking had, of course, been discharged by the time of the disciplinary hearing.
27. The Tribunal took into account the remarks made by the solicitors acting for the buyers who had been disadvantaged by the delay in compliance with the undertaking.
28. Although by the time of the disciplinary hearing matters had been put right, the Respondent and other members of the solicitors' profession must be left in no doubt of the solemn nature of a solicitor's undertaking. Members of the public and persons relying on such undertakings were entitled to take the view that there could be no doubt that the undertaking would be fulfilled within a reasonable time. The Tribunal adopted the Applicant's stance that the giving of undertakings is an essential and integral part of the way in which conveyancing is conducted in England and Wales. Should there be any doubt about an undertaking given by a solicitor during the course of a conveyancing transaction then the current system of conveyancing would

collapse to the great inconvenience and considerable expense of clients who buy and sell property.

29. Whilst the Tribunal accepted that the Respondent was to some extent more sinned against than sinning, the failure on his part to comply promptly with an undertaking was a very serious matter. The Tribunal had considered the imposition of a reprimand upon the Respondent but the seriousness of the failure merited a more serious sanction. In all the particular and somewhat unusual circumstances of this case and having taken all of those circumstances and mitigation into account the Tribunal concluded that it was both proportionate and appropriate to impose a financial sanction upon the Respondent but that such financial sanction should be set at a modest level. The Tribunal ordered that the Respondent pay a fine of £1,000.00. The Tribunal was pleased to note that the Respondent accepted his liability for the Applicant's costs and that the quantum of those costs had been agreed. The Tribunal ordered the Respondent therefore to pay the Applicant's costs fixed in the agreed sum.

Dated this 11<sup>th</sup> day of January 2008

On behalf of the Tribunal

D Potts  
Chairman