

File reference: CRO/97504-2008  
Customer name: Mr. Leonard M Lawrence  
Solicitor: B P Collins Solicitors ('the firm')

Local Conciliation Officer ('LCO') Gillian Anderson visited the customer at his home on 21 April 2009 in relation to a related complaint against Ratcliffe Duce & Gammer Solicitors of Reading ('RDG') and explained the powers and limitations of the Legal Complaints Service ('LCS') to him, which he confirmed he understood, and provided him with written guidance on the LCS and its compensation scheme.

Gillian Anderson provided an interim report on 27 April 2009 and a final report on 30 September 2009 in relation to complaints against Ratcliffe Duce & Gammer Solicitors which acted for the customer in ancillary relief proceedings bearing number SL03D000938 in which B P Collins Solicitors acted for his former wife.

Extract from interim report dated 27 April 2009:

*"This is a case in which the customer's former wife issued proceedings for Divorce on 5 June 2003 and for Ancillary Relief on 2 September 2003. The customer initially acted both in person and by Banky & Burger solicitors as a privately funded client; before instructing Ratcliffe Duce & Gammer Solicitors ... following advice that he might be entitled to public funding. Banky & Burger solicitors are not the subject of a complaint.*

*Ancillary Relief issues were complex, acrimonious and further complicated by the customer's lack of mental capacity evidenced by Dr Royd's report dated 23 November 2004. The invitation of DJ Jones on 25 November 2004 to the Official Solicitor to act as Guardian Ad Litem ('GAL') was accepted on 1 March 2005. Ratcliffe Duce & Gammer Solicitors filed notice of acting on 8 March 2005. Dr Royd dates a further report 24 March 2005. Judgment was reserved at final hearing on 6 April 2005. The customer has since appealed the final order and is progressing his appeal."*

A brief chronology of this complaint is as follows:

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| 2007      | Referred to the Law Society's Consumer Complaints Service when Mr Lawrence regained sufficient mental capacity.   |
| July 2008 | LCS concluded it was unable to pursue certain complaints raised against Ratcliffe Duce & Gammer Solicitors Reading on the basis of insufficient evidence. |

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| 2008          | The Legal Complaints Ombudsman recommended however that the LCS reconsider a number of complaints.   |
| 2009          | LCO appointed to investigate the above in accordance with the Legal Complaints Ombudsman's recommendations.                                |
| 27 April 2009 | LCO's interim report.  |
| 9 July 2009   | Firm's substantive response to the complaints raised   |
| August 2009   | Additional documents submitted by customer   |
| 30 Sept 2009  | LCO's final report   |
| 2009          | LCO appointed to investigate B P Collins solicitors acting in Ancillary relief in relation to the following issues raised by the customer: |
1. Solicitors of the firm failed to disclose CP 3 Court of Protection certificates and other medical evidence produced evidencing the customer's lack of mental capacity to the Court during the course of ancillary relief proceedings.
  2. The firm obtained documents directly relevant to the proceedings which it initially denied having and later disclosed to the Court. The firm failed to disclose to the customer's solicitors how it came to be in possession of his financial accounts.

Following completion of the Final Report in relation to the complaint against Ratcliffe Duce & Gammer Solicitors on 30 September 2009 the customer has provided a high volume of directly relevant and ancillary documentation which has all been read and taken very carefully into consideration along with all documentation provided by the customer both initially and immediately prior to completion of the Final Report. Relevant caselaw and practice notes relating to the Court of Protection's approach to divorce proceedings have also been considered.

In accordance with the limited jurisdiction of the Legal Complaints Service the report has been prepared in relation only to the issue of whether or not each of the customer's complaints amount to 'inadequate professional service' on the part of the firm complained of.

Although it is acknowledged that there are wide and complex issues and heads of complaint noted throughout the customer's paperwork; the outcome of this report is of necessity limited to investigating the adequacy of the professional service provided and specifically excludes consideration of any complaints

relating to solicitor's misconduct; barristers; the Official Solicitor; the Court of Protection or County or Higher Court or Judiciary; decisions on complicated issues of fact or law that can only be decided by a Court; Hildebrand documents; reviewing the outcome of the customer's Court case or any decision taken by the Legal Services Commission or to reviewing the firm's bill where the issue of costs has involved assessment within Court proceedings. The customer has kept the Legal Complaints Service and LCO appraised of his pursuit of separate complaints made to the bodies regulating the persons or institutions referred to above in relation to their involvement with him.

Complaint:	Conclusion:
<p>1. BP Collins Solicitors was notified by Sarah Benfied of Ratcliff Duce Gammer Solicitors (RDG) in March 2005 that this matter could not be concluded without the involvement of the Court of Protection. Neither Susan Andrews Head of Family Law BP Collins nor the customer's own solicitors advised the District and Circuit Judges at Slough County Court of the involvement of the Court of Protection.</p>	<p>The legal representatives in this matter including B P Collins had a duty as officers of the Court under rule 11.01 of the Solicitors' Code of Conduct not to "knowingly allow the court to be misled" and "not (to).....draft any documents relating to any proceedings containing: (a) any contention which you do not consider to be properly arguable.."</p> <p>The customer's mental capacity was a live issue and in the light of the CP 3 Court of Protection medical certificates and medical certificate under Part VII Mental Health Act 1983 the contention that the customer was capable of agreeing a sale price of the FMH or consenting to a sale was not properly arguable.</p> <p>Whether or not there was a breach of the legal representatives' and therefore B P Collins' duty to the court is however outside the jurisdiction of the LCS. This issue should be referred to the Court and SRA.</p>
<p>2. Solicitors of the firm failed in their duty as officers of the Court by failing to disclose CP 3 Court of Protection medical certificates or medical certificate under Part VII Mental Health Act 1983 evidencing the customer's lack of capacity during the course of ancillary relief proceedings or at Court</p>	<p>There is evidence to show that RDG was aware of the existence of three CP3 certificates at the relevant time but contended that it was the duty of the Official Solicitor to make any relevant application to the Court of Protection.</p> <p>There is evidence to show that B P Collins</p>

on 23 February 2005 or 18 August 2005. Further, B P Collins failed to disclose additional medical evidence and information regarding the customer's lack of capacity.

was aware of the existence of three CP3 certificates at the relevant time. There is further evidence including a letter dated 22 February 2005 that B P Collins was aware that medical evidence relating to the customer's state of mind had not been filed at Court. B P Collins held a medical report dated 23 November 2004 confirming that the customer lacked the mental capacity to manage and administer his property and affairs. RDG notified B P Collins on 4 March 2005 of the need to refer to the Court of Protection when a party lacked capacity and that matters could not be concluded without the involvement of the Court of Protection.

If B P Collins did not have in its possession during the proceedings copies of the three CP3 certificates and medical evidence and information regarding the customer's lack of capacity; it had knowledge of their existence. B P Collins was in any event entitled to request the same and as the Applicant's solicitors in Ancillary Relief proceedings had a duty to include these in the trial bundle in accordance with 2.1 of the applicable President's Direction of 10 March 2000 'Family Proceedings: Court Bundles' as "documents relevant to the hearing" and in accordance with 2.2 to include reference to the customer's lack of capacity in the summary as a matter "the court needs to know for the purposes of the hearing and for management of the case".

Whilst the legal representatives had a duty as officers of the Court under rule 11.01 of the Solicitors' Code of Conduct not to "knowingly allow the court to be misled" B P Collins did not have a higher duty than those both representing the customer and holding the said certificates.

I am unable to conclude that the firm provided an inadequate professional

	<p>service in circumstances in which the firm was not acting for the customer and had also instructed Counsel to advise and Counsel was aware of the existence of the certificates.</p> <p>Whether or not there was a breach of the legal representatives' and therefore B P Collins' duty to the court however, is an issue outside the jurisdiction of the LCS. This issue should be referred to the Court and SRA.</p>
<p>3. The firm obtained documents directly relevant to the proceedings which it initially denied having and later disclosed to the Court. The firm failed to disclose to the customer's solicitors how it came to be in possession of his financial accounts.</p>	<p>The Court ordered that B P Collins the wife's solicitors provide an explanation for their possession of the accounts. RDG raised the issue of how the customer's wife's solicitors came to be in possession of his financial accounts firstly by a letter dated 10 March 2005 to B P Collins and secondly by Counsel for the customer at final hearing.</p> <p>The Court had the power to enforce its order that the wife's solicitors provide an explanation for their possession of the accounts by a penal notice.</p> <p>However, whether or not:</p> <ul style="list-style-type: none"> <li>(i) there was a breach by B P Collins of its duty to the court to disclose how the customer's wife's solicitors came to be in possession of his financial accounts;</li> <li>(ii) the documents were wrongfully taken; or</li> <li>(iii) their acquisition amounted to 'Hildebrand' litigation misconduct;</li> </ul> <p>are matters outside the jurisdiction of the LCS. This issue should be referred to the Court and SRA.</p>
<p>4. Despite B P Collins' awareness that the customer lacked capacity evidenced by</p>	<p>As stated above, firstly, the customer's lack of capacity was a matter "the court needs to know for the purposes of the hearing and</p>

<p>(i) RDG's notification of B P Collins of the need to refer to the Court of Protection when a party lacked capacity and that matters could not be concluded without the involvement of the Court of Protection (by a letter dated 4 March 2005); and</p> <p>(ii) reference to a discussion regarding an application to be made to the Court of Protection for authority to sign the release of Mr Lawrence's right of occupation (by a letter dated 29 July 2005 reference SSB/SJA/L00529/2);</p> <p>B P Collins permitted the sale of the marital asset 38 Dukes Wood Avenue SL9 7JT on 19 August 2005 for £621,650 without consultation with or the authority of the Court of Protection.</p>	<p>for management of the case"; and secondly, the contention that the customer was capable of agreeing a sale price of the FMH or consenting to a sale was not properly arguable in all the circumstances.</p> <p>Whether or not there was a breach of the legal representatives' and therefore B P Collins' duty to the court however, is an issue outside the jurisdiction of the LCS.</p> <p>Similarly, whilst I have given consideration to the application by the Court of the law and practice applying to the implementation of property adjustment orders and orders for sale in ancillary relief proceedings under Part II of the Matrimonial Causes Act 1973 (MCA 1973) where one of the parties is under mental incapacity in relation to B P Collins' involvement in the sale of 38 Dukes Wood Avenue SL9 7JT; and whilst in all the circumstances the customer does appear to fall within the jurisdiction of the Court of Protection; again, this is an issue outside the scope and jurisdiction of the LCS.</p> <p>This issue should be referred to the Court and SRA.</p>
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I have considered but not dealt above with the issues relating to B P Collins' involvement in Mr Lawrence's public funding on the basis that responsibility for the public funding application and certificate lies first and foremost with the customer's solicitors RDG and has been dealt with in previous reports. In so far as B P Collins' knowledge of Mr Lawrence's public funding can be regarded as a matter falling within its duty as officers of the Court under rule 11.01 of the relevant Solicitors' Code of Conduct this is in any event an issue outside the scope and jurisdiction of the LCS.

I have considered but not dealt above with the issues relating to B P Collins' involvement in the drafting of the Consent Order via Counsel instructed by both parties and their alleged failure to appropriately apply the Standard Instructions to Solicitors Instructed by the Official Solicitor and conclude that this is an issue outside the scope and jurisdiction of the LCS. I understand has been referred to the Bar Council.

The above issues raised by Mr Lawrence are significant and should be investigated and responded to on the basis that they indicate areas in which the legal system appears to have failed to sufficiently protect an extremely vulnerable adult. However, the limited jurisdiction and scope of the LCS is not the appropriate forum for the resolution of these issues.

The issue of the duty of all solicitors involved in Ancillary Relief matters to the Court as officers of the Court and, as part of its duty to the court; and the more specific duty of B P Collins as the Applicant's solicitors to inform the Court of all relevant matters via the trial bundle, are issues central to the customer's complaints and should be referred to the more appropriate forums of the Court and SRA.

I understand that the above issues are currently being dealt with alongside my own investigation by other agencies with more appropriate jurisdiction and powers and that these include the Bar Council, Court and SRA.

Gillian Anderson  
Local Conciliation Officer  
20 July 2010