

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12125-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

EDWARD JOHN HARVEY STATHAM

Respondent

Before:

Mr G Sydenham (in the chair)

Mr P Lewis

Mr S Marquez

Date of Hearing: 21 December 2020

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegation against the Respondent made by the Solicitors Regulation Authority (“SRA”) was that, while in practice as a Solicitor at Inghams (“the Firm”):
 - 1.1 On or around 27 June 2016 he signed a secured lending agreement and/or a CH1 form confirming that Client A had signed one or both documents in his presence, when he did not witness Client A signing one or both documents and did not ask Client A whether he had signed one or both documents, and he thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”).

Documents

2. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit GMBH1 dated 10 September 2020
 - Respondent’s Answer dated 14 October 2020
 - Statement of Agreed Facts and Proposed Outcome dated 18 December 2020

Background

3. The Respondent was born in 1981 and was admitted to the Roll in August 2006. At the material time, the Respondent was employed as an Assistant Solicitor at the Firm. The Respondent became a partner in the Firm in July 2017 and as of the date of the Rule 12 Statement, he was one of six partners in the Firm. According to the SRA’s records, the main areas of the Firm’s practice were probate and estate administration and residential property. The Respondent held a current practising certificate, free from conditions.

Application for the matter to be resolved by way of Agreed Outcome

4. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal’s Guidance Note on Sanctions.

Findings of Fact and Law

5. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
6. The Tribunal reviewed all the material before it and was satisfied that the Respondent’s admission was properly made.
7. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal found the Respondent to be solely and directly responsible for his misconduct. He was an experienced

solicitor who knew that he ought not to have signed a document attesting to have witnessed a signature when that was not the case. In so doing, the Respondent have caused harm to both Client A and Lender F. The harm caused was foreseeable. The Tribunal noted that the Respondent had admitted his misconduct at an early stage and had demonstrated insight into his misconduct. The Tribunal also noted that this was a single episode in an otherwise unblemished career.

8. The Tribunal considered that sanctions such as No Order or a Reprimand did not adequately reflect the seriousness of the Respondent's misconduct. The Tribunal did not consider that the misconduct was so serious that there should be any interference with the Respondent's ability to practise. The Tribunal determined that a financial penalty was appropriate and proportionate. The Tribunal assessed the Respondent's misconduct as very serious such that it fell within the Tribunal's Indicative Fine Band Level 4. The Tribunal considered that a fine in the proposed sum of £20,000 adequately and proportionately reflected the seriousness of the Respondent's misconduct. Accordingly, the Tribunal approved the proposed sanction.

Costs

9. The parties agreed costs in the sum of £16,350. The Tribunal found that in the circumstances, the agreed sum was appropriate and proportionate. Accordingly, the Tribunal ordered the Respondent to pay costs in the agreed amount.

Statement of Full Order

10. The Tribunal Ordered that the Respondent, EDWARD JOHN HARVEY STATHAM, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,350.00.

Dated this 12th day of January 2021
On behalf of the Tribunal



G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
13 JAN 2021

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY

Applicant

and

EDWARD JOHN HARVEY STATHAM

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 10 September 2020, and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making one allegation of misconduct against Mr Edward Statham.

The allegation

2. The allegation against the Respondent, Edward John Harvey Statham, made by the SRA is that, while in practice as a Solicitor at Inghams ("the Firm"), on or around 27 June 2016 he signed a secured lending agreement and/ or a CH1 form confirming that Client A had signed one or both documents in his presence, when he did not witness Client A signing one or both documents and did not ask Client A whether he had signed one or both documents, and he thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").
3. Mr Statham admits this allegation.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 of this statement, are agreed between the SRA and Mr Statham.

Professional Details

5. The Respondent, who was born on 1981, is a solicitor having been admitted to the Roll on 1 August 2006. At the material time, the Respondent was employed as an Assistant Solicitor at the Firm. The Respondent became a partner in the Firm in July 2017 and as of the date of this statement is one of six partners in the Firm. According to the SRA's records, the main areas of the Firm's practice are probate and estate administration and residential property.
6. The Respondent has a current practising certificate, free from conditions.

Summary

7. In summary, this case concerns an agreement in which a lender gave a borrower a loan secured by a charge over the borrower's father's property. The Respondent had acted in relation to the original transaction in 2013, but was not instructed in relation to the re-financing in 2016. The son provided the Respondent with deeds, which already bore what purported to be the father's signature. Despite that, the Respondent signed both documents, confirming that he had witnessed the father's signature.
8. The son did not repay the loan and the lender appointed receivers to enforce the charge. As a result, the father brought proceedings against the lender to remove the charge on his property. The father claimed that a signature was not his and the lender agreed to remove the charge.

Background – Report and Investigation

9. The Firm's COLP, sent a report dated 14 November 2018 to the SRA, setting out that the Respondent had signed two documents in 2016, recording that he had witnessed Client A's signing the documents when in fact "*it was likely that [Client A] was not present at the time*". These matters had been brought to the Firm's attention by solicitors acting for Client A, Coupe Bradbury.
10. The Respondent provided his own statement to the SRA, dated 5 December 2018, in which he accepted that he had signed the two documents as a witness, when he had not in fact witnessed Client A signing the documents. The Respondent explained that the documents were provided to him by Client B, Client A's son, when Client A was not present.

Background – previous matters conducted by the Respondent

11. At the material times, Client B and Client C were the two directors of Company D, a property business.
12. The Respondent acted for Client B and Company D for a number of matters from 2006 until 2016.
13. The Respondent also acted for Client B's father, Client A, including in relation to an aborted conveyancing matter in 2011 for Property 4.
14. In 2013 the Firm was instructed by Company D/ Client B in relation to two loans (from Lender E and Lender F) which were secured by way of a charge over properties owned by Client A (Properties 1 and 3).
15. Client B and Client C were declared bankrupt in 2016 and 2017, respectively; Company D subsequently went into administration and was dissolved on 13 March 2019.

The Lender E Loan

16. On 11 September 2013 Lender E provided a lending facility to Company D in the sum of £75,000, secured by way of a debenture over Company D and a charge over Property 3, and guaranteed by Client A, Client B and Client C ("the Lender E Loan"). The owner of Property 3 was, at all material times, Client A. Property 3 is said to have been used as sunbed shop.
17. The Respondent acted for Company D in relation to the Lender E Loan, for Client B and Client C in their personal capacity as guarantors, and also acted for Client A. However, Abacus Solicitors LLP, acting for Lender E, requested that Client A receive independent legal advice, which was provided by Mr T of Blackhurst Budd Limited. Mr T witnessed Client A's signature on the charge and the guarantee for the Lender E Loan on 10 September 2013.
18. The Firm retained copies of Client A's identity, namely an electricity bill and his passport, on the file for the Lender E Loan. The copies were certified by the Respondent and bear his signature.

The 2013 Lender F Loan

19. At the same time, the Respondent also acted in relation to the purchase of Property 2, initially for Company D but then for Client B in a personal capacity. Property 2 was purchased for £100,000 and Client B obtained a bridging loan in the sum of £140,000 from Lender F, secured over Property 2 and Property 1, in order to finance the purchase and renovation of Property 2, which is described as four residential flats ("the 2013 Lender F Loan").
20. Property 1 was owned at all material times by Client A, and is said to comprise warehouse premises, garage workshops and a residential dwelling, most of which were let. The Respondent also acted for Client A in relation to the 2013 Lender F Loan. Redbird Conveyancing Limited acted for Lender F.
21. The 2013 Lender F Loan was structured by way of a secured lending agreement between Lender F and Client B, dated 20 September 2013, allowing for the loan of £140,000 and charges over Property 1 and Property 2, and a deed between Lender F and Client A, also dated 20 September 2013, in which Client A agreed to give Lender F a charge over Property 1 ("the 2013 Deed"). The Respondent witnessed Client A's signature on the 2013 Deed.
22. The Firm completed the AP1 form to register the charge over Property 1 with the Land Registry.
23. The 2013 Lender F Loan was later refinanced; the Respondent states that neither he nor the Firm acted in relation to the refinancing transactions in 2014 and 2015.

The 2016 Charge

24. The Lender F Loan was again refinanced in 2016. Neither the Respondent nor the Firm were instructed in 2016 by any party in relation to the transaction; Sam Hawking & Co acted for Lender F and Redbird Conveyancing Limited acted for Client A (although the Respondent did not know that Redbird acted for Client A and it is agreed that there was no reason that he ought to have known that). A secured lending agreement, dated 27 June 2016, ("the 2016 SLA") was prepared in which Lender F agreed to lend Client A and Client B £150,000, secured by way of a charge over Property 1 only ("the 2016 Charge").

25. Despite not being instructed in relation to the transaction, Client B attended the Firm's offices with a copy of the 2016 SLA and a copy of the CH1 form to register the charge with the Land Registry, also dated 27 June 2016, ("the 2016 CH1") and asked the Respondent to witness the signatures of Client A and Client B on the 2016 SLA and Client A on the 2016 CH1.
26. A legal interest in land must be conveyed or created by deed¹, as a result of which both the 2016 SLA and the 2016 CH1 were in the form of a deed. The formal requirements to ensure that an instrument is validly executed by deed are set out in section 1 of the Law of Property (Miscellaneous Provisions) Act 1989, and which includes the following requirement at section 1(3)(a):
- (3) *An instrument is validly executed as a deed by an individual if, and only if—*
(a) *it is signed—*
 (i) *by him in the presence of a witness who attests the signature; or*
 (ii) *at his direction and in his presence and the presence of two witnesses who each attest the signature;*
27. Client A's signature was already on both the 2016 SLA and the 2016 CH1 when Client B attended the Firm's offices and Client A was not present. The Respondent signed both the 2016 SLA and the 2016 CH1 as a witness to the signature of Client A, both of which state "*signed as a deed by [Client A] in the presence of*".
28. The Respondent was told by Client B that his father, Client A, had signed both documents. The Respondent accepted what he was told by Client B and did not attempt to verify this information with Client A.
29. Client A has said that he did not execute either the 2016 SLA or the 2016 CH1 and that the signature on the 2016 CH1 is not his. Client A instructed a handwriting expert, whose opinion is that Client A did not sign the 2016 CH1.
30. Both Client A's witness statement and the handwriting report were provided to the SRA by Coupe Bradbury, solicitors instructed by Client A to bring proceedings against Lender F (and receivers instructed by Lender F to enforce the 2016 Charge) to have the 2016 Charge removed. Those proceedings were settled by

¹ The Law of Property Act 1925, s52

Lender F and their receivers, the 2016 Charge was removed and Lender F agreed to pay Client A's costs in the sum of £16,507.16. Whilst Client A therefore has no loss, he has suffered harm, which required litigation to resolve and cannot compensate him for any emotional harm caused.

31. Had the Respondent acted properly, and in a manner consistent with the basis upon which he signed as a witness, it is unlikely that Client A would have been put in the position that he was (as detailed in his witness statement) and therefore it is unlikely that he would have had to take action against Lender F and receivers appointed by Lender F to remove the 2016 Charge. These events illustrate the significance of the formality requirements to execute a deed and the importance of following the proper process. The Respondent knew, at the time of signing the document, that his signature would be relied on by the lender as indicating the authenticity of the signature of Client A.

32. Lender F brought proceedings against Client B, the Respondent and the Firm, for the loss of security for a £150,000 loan, which again could have been guarded against had the Respondent acted properly.

Principle 2 – Integrity

33. A competent solicitor should understand both the formal requirement to witness an individual signing a deed in their presence and the public policy reasons behind the requirement (including to prevent fraudulent transactions through forged signatures).

34. The Respondent's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles. In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession.

35. A solicitor acting with integrity would refuse to act as a witness for a document which had already been signed, even more so in circumstances where the person who was asking them to sign the document was not the signatory, but instead a person who stood to gain from the transaction.

36. The Respondent accepts that he failed to act with integrity, in breach of Principle 2 of the Principles, by signing the 2016 CH1 as a witness.

Principle 6 – Maintaining Trust

37. The conduct also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by the Respondent recording that he had witnessed Client A signing documents, when he had not done so, and when he did not ask Client A whether he had signed the documents.
38. The Respondent accepts that he breached Principle 6 of the Principles, by signing the 2016 CH1.
39. On 15 April 2020 an Authorised Officer of the SRA decided to refer the conduct of Edward Statham to the Tribunal.

Non-Agreed Mitigation

40. The following mitigation, which is not agreed by the SRA, is put forward by Mr Statham in his statement dated 14 December 2020, which the Tribunal are invited to consider, in summary, the Respondent states:
- 40.1. As soon as he received the letter from Coupe Bradbury (solicitors for Client A) setting out the concerns, he met with the other partners of the Firm and made a prompt admission;
 - 40.2. The conduct dates back to 2016;
 - 40.3. The impact of the allegations on Mr Statham's health;
 - 40.4. The Firm has implemented measures to significantly reduce the risk of repetition;
 - 40.5. Mr Statham has cooperated with the SRA, making admissions from the outset;
 - 40.6. The Respondent has made no person gain from the misconduct
 - 40.7. The Respondent has undertaken relevant training; and
 - 40.8. The Respondent's conduct demonstrates insight, regret and remorse into his misconduct.

Penalty proposed

41. It is therefore proposed that Mr Statham should be fined the sum of £20,000.
42. With respect to costs, it is further agreed that Mr Statham should pay the SRA's costs of this matter agreed in the sum of £16,350 (inclusive of VAT).

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

43. The parties consider that Mr Statham's conduct is very serious and therefore warrants a fine within Level 4 of the Indicative Fine Bands, as set out in the Tribunal's Guidance Note on Sanction (7th Edition), albeit at the lower end of Level 4.
44. The Respondent is solely and directly responsible for his conduct. However the Respondent's conduct was not planned, instead it arose out of an unexpected and misleading request from a former client. The Respondent was an experienced solicitor and knew at the time that he ought to have refused the request from Client B to witness Client A's signature, but did not do so, thereby demonstrating a lack of integrity.
45. The Respondent did not personally benefit from his misconduct and was not alive to the risk of fraud, but harm was caused to both Client A and Lender F as a result of the Respondent's involvement in this apparent fraud, which the Respondent could and should have taken basic steps to guard against. This harm was reasonably foreseeable, as was the harm done to the reputation of the legal profession.
46. The Respondent has demonstrated insight into his conduct, evidenced by his prompt admissions to his partners and to the SRA. The Respondent has no adverse regulatory history.
47. In all the circumstances of the case, it is therefore proportionate and in the public interest that Mr Statham should be fined the sum of £20,000.

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Mark Rogers, on behalf of the SRA (Partner, Capsticks Solicitors LLP)
18 December 2020

Mr Edward Statham
18 December 2020