

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12145-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MAXINE MADDERTON

Respondent

Before:

Mr R Nicholas (in the chair)

Mr B Forde

Mr P Hurley

Date of Determination: 17 March 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations against the Respondent, Maxine Madderson are that, whilst in practice as a solicitor and Partner of Maddersons Solicitors (“the Firm”):

1. Between December 2011 and February 2012 the Respondent;
 - 1.1 acted where there was a conflict or significant risk of a conflict by acting (or being the supervisor of the person acting) for Mr D in a property transfer and acting (or supervising the person acting) for Mrs G in the same property transfer;
 - 1.2 failed to take adequate steps to ensure that independent advice was given to Mrs G and to Mr D prior to the transaction taking place;
- and in doing so breached Principles 4 and 6 of the SRA Principles 2011 (the Principles) and failed to achieve Outcomes 3.5 and 3.6 of the SRA Code of Conduct 2011 (the Code).

Documents

2. The Tribunal had before it the following documents:-
 - Application Notice dated 15 March 2021.
 - Statement of Agreed Facts and Proposal Outcome dated 11 March 2021.
 - Rule 12 Statement dated 19 November 2020 and Exhibit HWP/1.

Background

3. The Respondent had been admitted to the Roll in 2002 and held a current practising certificate. The Firm had been founded by the Respondent and at the material time she had been the Training Principal, designated complaints handler, Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, Money Laundering Reporting Officer and one of two partners
4. On 15 June 2018 a concern was raised to the Applicant by a solicitor acting on behalf of the daughter of one of the Respondent’s former clients, Mrs G. The daughter was Mrs M. The report related to the conduct of the Respondent in acting for Mrs G, since deceased, in the sale of her property at an undervalue to Mr D in circumstances where the Firm had also acted for Mr D in the transaction.
5. Between December 2011 and February 2012 the Respondent had acted on behalf of, or supervised junior fee earners acting for, Mrs G, who was the vendor, and Mr D, who was the purchaser, on the sale of Property A.
6. Mrs G was owner of Property A, which was her residential property. Mrs G owned the property outright, free from any mortgage. In December 2011, Mrs G approached the Firm in relation to representation for the purposes of the potential sale of the property to Mr D. Mrs G wished to sell Property A to Mr D, with whom she was in a

relationship, but to retain the right to continue to live in the property. At the time of the transaction Mrs G was 78 and Mr D 34 years of age. There was no attendance note of the meeting with the Respondent on the client file.

7. A client care letter was sent to Mrs G on 20 December 2011 in relation to the sale of Property A for £70,000. That letter showed the fee earner acting for Mrs G to be MF, a conveyancing executive, and identified the Respondent as the supervisor.
8. A client care letter was sent to Mr D on 5 January 2012 in relation to the purchase of Property A for £70,000. The client care letter was from the Respondent and confirmed “I shall carry out most of the work in this matter personally.”
9. A Declaration of Trust dated 20 February 2012 was signed by Mrs G and Mr D. Mrs G dated her signature 9 February 2012. The declaration gave Mrs G a life interest in the property. The property sale was completed on 20 February 2012 and registered by Land Registry on 24 February 2012. The property was sold for the sum of £70,000. The property had previously been sold in 2006 for £238,500.
10. In the Statement of Agreed Facts (“SAF”) the Respondent admitted that she had acted in circumstances where there was a conflict of interest between the parties, or at the least a significant risk of a conflict of interest, and without taking adequate steps to ensure that independent advice was given to the parties.
11. On 7 May 2014, the Respondent had written to Mrs M, and confirmed she had been instructed by Mrs G in relation to the sale of her property to Mr D, and that she understood from Mrs G that Mrs M was unhappy with the sale of the property. She stated that she understood that Mrs M believed there may have been undue influence. The letter stated “I personally attended upon [Mrs G] and satisfied myself that she had full capacity to make the decision to transfer the property for just £70,000 to Mr D and that she did so entirely of her own free will.”
12. On 26 October 2017, JMS, acting on behalf of Mrs M, wrote to the Firm setting out concerns, which included the lack of evidence on the file to show any steps were taken to assess whether Mrs G had mental capacity; the absence of advice to Mrs G about how the transaction was disadvantageous to her, or that raising equity from the property could be addressed in other ways; and that her right to live in the property could have been compromised. JMS also raised concerns about the Firm acting for both Mr D and Mrs G. He enclosed copies of press articles from July 2010 and November 2011 relating to Mr D’s convictions for fraud against an elderly woman and assault against his uncle.
13. On 2 April 2019, summary judgment was given by Master Price sitting in the Chancery Division of the High Court. The matter was between Mrs M as personal representative of the late Mrs G, and Mr D as the Defendant. Mrs M sought to set aside of the transaction on the basis of undue influence and Master Price issued summary judgment in Mrs M’s favour.
14. Master Price examined the involvement of the Firm. He described the Respondent’s letter to Mrs M dated 7 May 2014 in the following terms; “The letter was of course written over two years after the sale was completed and cannot be regarded as

anything other than self-serving. It does not reflect any attendance note or correspondence on the file itself, and it is impossible to regard Ms Madderson as independent since she was in fact not acting for [Mrs G], but for [Mr D] in connection with the transaction in question.”.

15. The Applicant had commenced an investigation in 2019 and the decision to refer the matter to the Tribunal was taken on 11 June 2020.

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

16. 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

17. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
18. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent’s admissions were properly made.
19. The Tribunal considered the Guidance Note on Sanction (Eighth Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
20. In assessing the seriousness of the admitted misconduct, the Tribunal considered the following factors and made the following findings.

Culpability

21. The Respondent had significant experience as a solicitor, established and maintained her own firm in respect of which she held all compliance positions. She had direct control over the conveyance of Property A and effected the same in circumstances which she acted for/supervised those within her firm acting for both the vendor and the buyer. The Tribunal found that she was highly culpable for the matters giving rise to the misconduct namely the clear conflict of interest.

Harm

22. The impact of the Respondent’s misconduct was such that Mrs M bore the stress and expense of challenging the conveyance before the Chancery Division of the High Court. It was eminently foreseeable that the sale of Property A at a substantial undervalue would give rise to challenge; it was avoidable and indeed should have been avoided. The Respondent’s failures in that regard undermined the reputation of the legal profession.

Aggravating factors

23. Mrs G was an elderly lady and it was found by the Chancery Division of the High Court that no effort had been, made prior to the sale of Property A, to ascertain her mental capacity in respect of the conveyance. The Respondent ought reasonably have foreseen that the sale of Property A at a substantial undervalue in circumstances where the Respondent acted for both the vendor and the buyer (neither of whom had been advised to seek independent legal advice) was a material breach of the obligations incumbent upon her to protect the public and the reputation of the legal profession.

Mitigating factors

24. The Tribunal accepted that there was no evidence of dishonesty or malicious intent on the part of the Respondent. The Respondent attempted, albeit ineffectively, to mitigate the risk inherent in the conflict of interests. The Respondent engaged fully in the Applicant's investigation and in the Tribunal proceedings. There was no apparent financial benefit to or motive for the Respondent's misconduct. The misconduct appeared to the Tribunal to have been an isolated incident in respect of one transaction in an otherwise unblemished career.
25. Weighing all of the attendant circumstances in the balance, the Tribunal concurred with the parties' assessment of the admitted misconduct as "more serious". In so doing, the Tribunal determined that "No Order" or a "Reprimand" were inadequate. The Tribunal found that a level 3 financial penalty (which categorises the misconduct as "more serious") was required to protect the public from future harm and to protect the reputation of the legal profession. The Tribunal therefore endorsed the proposed financial penalty of £8,000.00.

Costs


26. Costs were agreed between the parties in the sum of £4,000.00 and the Tribunal determined that those costs were both reasonable and proportionate.

Statement of Full Order

27. The Tribunal Ordered that the Respondent, MAXINE MADDERTON, solicitor, do pay a fine of £8,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,000.00.

Dated this 29th day of March 2021

On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
29 MARCH 2021

R Nicholas
Chair

Case No: 12145-2020

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND IN THE MATTER OF:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

**MAXINE MADDERSON
(SRA ID: 312540)**

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction

1. By a statement made by Hannah Pilkington on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 19 November 2020, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

Admissions

2. The Respondent admits that between December 2011 and February 2012 the Respondent:
 - 2.1. acted where there was a conflict or significant risk of a conflict by acting (or being the supervisor of the person acting) for Mr D in a property transfer and acting (or supervising the person acting) for Mrs G in the same property transfer;
 - 2.2. failed to take adequate steps to ensure that independent advice was given to Mrs G and to Mr D prior to the transaction taking place;

and in doing so breached Principles 4 and 6 of the SRA Principles 2011 (the Principles) and failed to achieve Outcomes 3.5 and 3.6 of the SRA Code of Conduct 2011 (the Code).

3. The SRA is satisfied that the admissions and outcome satisfy the public interest having regard to the gravity of the matters alleged.

Agreed Facts

4. The Respondent (SRA ID: 312540) is a solicitor having been admitted to the Roll on 16 September 2002.
5. The Respondent holds a current practising certificate.
6. The Firm was founded by the Respondent, and specialised in conveyancing and civil litigation. The Respondent was Training Principal, designated complaints handler, COLP, COFA, MLRO and Partner of the Firm at the relevant time.
7. At the time of the alleged misconduct, the Respondent was one of two partners at the Firm. The Respondent was assisted by a conveyancing executive and trainee legal executive.
8. A concern was raised to the Applicant on 15 June 2018 by a solicitor acting on behalf of the daughter of the Respondent's former client [HWP1 pg1]. The concern related to the conduct of the Respondent in acting for Mrs G, since deceased, in the sale of her property at an undervalue to Mr D in circumstances where the Firm also acted for Mr D in the transaction.
9. The full facts of the matter are set out in the Rule 12 Statement and the Respondent agrees and accepts the content of the Rule 12 Statement.
10. In summary, between December 2011 and February 2012 the Respondent acted on behalf of (or supervised junior fee earners acting for) Mrs G, vendor, and Mr D, purchaser, on the sale of Property A for an undervalue in circumstances where there was a conflict of interests between the parties, or at the least a significant risk of a conflict of interest, and without taking adequate steps to ensure that independent advice was given to the parties.
11. The alleged misconduct relates to a property transaction between two clients of the firm, Mrs G aged 78 at the time of the transaction (now deceased), and Mr D aged 34 at the time of the transaction. The concerns relate to the Respondent acting on behalf of both parties to the transaction in circumstances where this involved a conflict of

interest or significant risk of a conflict of interest. The transaction has since been set aside on application by the daughter and executrix of Mrs G, Mrs M.

12. The Applicant confirms, following enquires with Mrs M's solicitor, that the property reverted to the estate of Mrs G upon the transaction being set aside. Thereafter Mrs M became the beneficial and legal owner of the property. The property has since been sold with the net sale proceeds being paid to Mrs M.

Allegation 1.1: acting where there was a conflict or significant risk of a conflict by acting (or being the supervisor of the person acting) for Mr D in a property transfer and acting (or supervising the person acting) for Mrs G in the same property transfer;

Allegation 1.2: failed to take adequate steps to ensure that independent advice was given to Mrs G and to Mr D prior to the transaction taking place;

11. In respect of allegation 1.1 the Respondent during the course of the transaction acted for Mr D (the purchaser of the property) and acted on behalf of (or supervised the person acting on behalf of) Mrs G (the vendor of the property). In doing so, the Respondent acted where there was a conflict or a significant risk of conflict between Mrs G and Mr D, and therefore the Respondent should not have so acted.
12. In respect of allegation 1.2 the Respondent failed to take adequate steps to ensure that independent advice was provided was given to Mrs G and Mr D.
13. It is submitted that in considering the conflict of interest or risk of a conflict of interest the following are relevant:
 - 13.1. Mrs G was an elderly woman of 78 years at the time of the Respondent's instruction;
 - 13.2. Mr D was a significantly younger man with whom Mrs G stated she had been in a relationship. Mrs G had stated repeatedly that her and Mr D were in a relationship, had been for some years and that they loved each other [HWP1 pg 436, para. 9]. In her letter to the Firm dated 28 December 2011 (sent after her initial meeting with the Respondent) Mrs G had stated that she and Mr D '*...have known each other for over ten years, and we both love each other*', and would both be living at the property. [HWP1 pg111];
 - 13.3. Mrs G proposed the sale of her freehold residential property in 2011 to Mr D for a significant undervalue at £70,000 which it is submitted would or should have been identifiable as a significant undervalue (noting for illustration purposes that the property had been sold in 2006 for £238,500 as apparent from the Land Registry Proprietorship Register on the Firm's file [HWP1 pgs 162 – 163]) and which comprised the majority of Mrs G's estate;

- 13.4. The Respondent was aware that the sale was in fact at an undervalue, and this is recorded on the cover of the Firm's file for the sale@ "SALE @ UNDERVALUE" [HWP1 pg 68];
- 13.5. Mrs G's letter dated 28 December 2011 [HWP1 pg 56] stated that Ms G had financial problems which motivated the sale and which it is submitted may reasonably indicate a potential vulnerability;
- 13.6. The request to act on behalf of both Mrs G and Mr D came, on the face of it from Mrs G, on the basis that it would save them fees in comparison to separate representation (it does not appear that there was in fact such a saving, with reference to both Mrs G and Mr D being invoiced for fees for the transaction in the sum of £894 [HWP1 pg 253].
14. In this case, given the significant benefit or potential benefit to Mr D, the potential significant financial detriment to Mrs G, the age difference and the factual discrepancies which became apparent there was a conflict of interest, and at the least a significant risk of conflict as well as the enhanced risk of the transaction being successfully set aside as a transaction at an undervalue where no independent legal advice had been given and therefore the risks did not outweigh the purported benefits to the clients.
15. The Respondent was or should have been aware of the conflict or risk of a conflict of interest. Indeed, the Respondent in her draft letter to JMC [HWP1 pgs 79 – 81] states that she had put in place a "Chinese wall" and it is submitted that this indicates that the Respondent was aware of the risks and conflict involved in the transaction:
"Moreover, we put in place a 3 way "Chinese wall" with the writer [the Respondent] advising Mrs G as to the nature and consequences of the transaction; another fee earner undertaking the conveyancing work for Mrs G; and a third fee earner undertaking the conveyancing work for Mr D."
16. In any event, as set out above, the Respondent during the course of the transaction advised Mrs G, acted on behalf of Mr D and supervised a junior fee earner acting on behalf of Mrs G and therefore any "Chinese wall" in place was ineffective and did not amount to adequate steps to ensure that independent legal advice was provided.
17. In the circumstances the Respondent should not have acted on behalf of both parties to the transaction and should have taken adequate steps to ensure that the parties obtained independent advice and representation prior to completion of the transaction.

Breaches

18. Chapter 3 of the 2011 Code confirms that if there is a conflict, or a significant risk of a conflict, between two or more current clients, you must not act for all or both of them

unless the matter falls within the scope of the limited exceptions set out at Outcomes 3.6 or 3.7. In deciding whether to act in these limited circumstances, the overriding consideration will be the best interests of each of the clients concerned and, in particular, whether the benefits to the clients of the solicitor acting for all or both of the clients outweigh the risks.

19. Outcome 3.5 of the 2011 Code states: *"you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply."*
20. Outcomes 3.6 and 3.7 set out exceptions where a solicitor may act, with appropriate safeguards, where there is a client conflict.
21. Outcome 3.6 states: *"where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:*
 - (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;*
 - (b) all the clients have given informed consent in writing to you acting;*
 - (c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and*
 - (d) you are satisfied that the benefits to the clients of you doing so outweigh the risks"*
22. Outcome 3.7 states: *"where there is a client conflict and the clients are competing for the same objective, you only act if:*
 - (a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;*
 - (b) the clients have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other clients who are competing for the same objective;*
 - (c) there is no other client conflict in relation to that matter;*
 - (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the clients in that matter; and*
 - (e) you are satisfied that it is reasonable for you to act for all the clients and that the benefits to the clients of you doing so outweigh the risks."*
23. The Respondent admits that the admitted allegations give rise to breaches of Principles 4 and 6 and outcomes 3.5 and 3.6 as alleged.

Penalty proposed

24. The Respondent agrees:

- 24.1. To pay a fine in the sum of £8,000;

- 24.2. To pay costs to the SRA agreed in the sum of £4,000, which takes into account the Respondent's means.

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

25. The sanction outlined above is considered to be in accordance with the Tribunal's sanctioning guidance.
26. The level of culpability in respect of the allegations above is more serious due to:
- 26.1. The admitted allegations in the Rule 12 statement relate to the conduct of the Respondent in circumstances of a potentially vulnerable client;
 - 26.2. It was incumbent upon the Respondent to be alert to and take appropriate steps in circumstances of a conflict or potential conflict of interest. Whilst it is acknowledged that the Respondent sought to take some steps (namely the ineffective "*Chinese wall*") these steps were insufficient;
 - 26.3. The inherent risk of a transaction being set aside where both parties did not obtain independent legal advice in these circumstances, and therefore the risk of the property and/or the value of the property passing to someone other than the originally desired recipient. In this case following the transaction being set aside, legal and beneficial ownership passed to Mrs M. It is ultimately unknown whether this outcome would or would not have reflected Mrs G's intentions had she received independent advice
 - 26.4. The Applicant acknowledges the following factors which, it is submitted, reduce the Respondent's level of culpability:
 - 26.4.1. There is no evidence of dishonesty or malicious intent on the part of the Respondent;
 - 26.4.2. The Respondent had sought to take some steps to mitigate the risk namely the ineffective "*Chinese wall*";
 - 26.4.3. The Respondent has fully co-operated with internal and SRA investigation;
 - 26.4.4. The fees charged and financial benefit to the Respondent was very limited;
 - 26.4.5. This appears to have been an isolated incident and the Respondent has insight and has changed her practise;
 - 26.4.6. The Respondent has no regulatory history;
27. It is submitted that the level of harm was moderate to potentially serious. It is relevant that the Respondent's actions resulted in the parties to the transaction not being

provided with independent legal advice, the provision of which may have resulted in a different outcome. In this case legal and beneficial ownership of the property passed to Mrs M, rather than to Mr D. It is ultimately unknown whether this outcome would or would not have reflected Mrs G's intentions had she received independent advice

28. The principal factors that aggravate the seriousness of the Respondent's misconduct:

28.1. Given the length of her qualification and experience, the Respondent ought reasonably to have known that the conduct complained of was in breach of obligations to protect the public and the reputation of the legal profession.

29. As to the principal factors which mitigate the seriousness of the Respondent's misconduct, the SRA accepts that the Respondent received minimal profit costs in respect of the transactions, that this was a single identified incident and that the Respondent did seek to take some steps (albeit it is submitted that these were not adequate) to arrange for separate representation for the parties to the transaction. There is no evidence of dishonesty on the part of the Respondent, and no specific financial or ulterior motivation on the part of the Respondent. The Respondent has made full admissions and has co-operated with the Applicant's investigation. The Applicant also acknowledges the personal mitigation raised by the Respondent in relation to her own circumstances at the time of the relevant conduct.

30. The proposed sanction and contribution to costs takes into account the Respondent's financial means of which the Applicant has been apprised.

31. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Maxine Madderson

Date: 12th March 2021

Oliver Sweeney, Head of Legal and Enforcement
On behalf of the SRA

Date: 11 March 2021