SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12178-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

And

JAMES TOMPKINS First Respondent
HODDERS LAW LTD Second Respondent

Before:

Ms A E Banks (in the chair)
Mr P Lewis
Dr S Bown

Date of Hearing: 23 June 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations admitted by the First Respondent are that while in practice as a Solicitor and a Director at Hodders Law Limited (the Firm and Second Respondent) he:

1.1 Between January 2017 and November 2017, acted on behalf of Client A in circumstances where he knew an omission had been made by the Firm in a prior but related instruction. The omission could have given rise to a claim against the Firm by Client A but the First Respondent failed to advise Client A to that effect. By failing to so advise, it is alleged that the First Respondent breached Outcome O(1.16) of the SRA Code of Conduct 2011 and Principle 4 of the SRA Principles 2011.

1.2 Between January 2017 and November 2017, acted on behalf of Client A in circumstances giving rise to a significant risk of an own interest conflict, and in doing so breached Outcome O(3.4) of the SRA Code of Conduct 2011 and Principle 4 of the SRA Principles 2011.

2. The allegations admitted by the Second Respondent are that:

2.1 Between January 2017 and November 2017, it failed to take any or adequate steps to prevent the Firm from acting on behalf of Client A in circumstances in which, in a prior but related instruction, an omission had been made by the Firm which could have given rise to a claim against the Firm by Client A, but Client A had not been advised to that effect, and by reason of such failure breached Outcome O(1.16) of the SRA Code of Conduct 2011 and Principle 4 of the SRA Principles 2011.

2.2 Between January 2017 and November 2017, it failed to have in place systems and controls appropriate to prevent solicitors in the Firm from acting in circumstances giving rise to an own interest conflict, and in doing so breached Outcome O(3.2) of the SRA Code of Conduct and Principle 8 of the SRA Principles 2011.

Documents

3. The Tribunal had before it the following documents:-

- The Rule 12 Statement dated 11 March 2021 and Exhibit DWRP1
- An Answer to the Rule 12 Statement on behalf of both Respondents by way of email dated 6 May 2021
- Signed Statement of Agreed Facts and Proposed Outcome dated 21 June 2021

Background

4. The First Respondent was admitted to the Roll of Solicitors on 15 November 1993. At the material times he practised at the Firm as a Partner and Director. He held a current Practising Certificate free from conditions as at the time when the Agreed Outcome was considered by the Tribunal.

5. The Second Respondent was a limited company recognised by the Applicant. It employed about 12 solicitors in four offices in North London. Neither Respondent has been the subject of previous adverse disciplinary findings.

6. The Firm had acted for Client A, a property developer, for about 15 years in over 150 transactions, including litigation and conveyancing matters. During the course of 2016, the Firm acted on behalf of Client A in the purchase of a residential property ("the Property"). It was accepted by the Respondents that the Property was subject to a restrictive covenant, potentially affecting the scope for development of the property, which was not identified or brought to the attention of Client A, and no advice was offered to Client A about the restrictive covenant, during the course of the Firm's conduct of the purchase of the Property.

7. On 31 January 2017, Client A contacted the Firm after he had received a letter from solicitors acting on behalf of two neighbours. Following receipt of the Letter, the First Respondent assumed conduct of the matter. The Firm accepted that:

> "…it became apparent on consideration of that document that Hodders had not advised (Client A) of the restrictive covenant…".

8. However, neither Respondent informed Client A, on receipt of the Letter or subsequently, that the failure by the Firm to identify and inform him of the restrictive covenant, and its potential effect on ownership of the Property, might give rise to a claim by Client A against the Firm.

9. The First Respondent was aware, within a week of the receipt of the letter from Client A's solicitors, that Client A was undertaking works to the Property which were potentially affected by the restrictive covenant. On 10 February 2017 the First Respondent sent an email to Client A reflecting a preliminary view that the restrictive covenant was likely to be binding on Client A and that there was a continuing risk that Client A would be prevented from continuing with the planned works. Further similar advice was provided on 13 and 14 March 2017, including advice as to a "significant risk" of an injunction being granted to prevent the works.

10. The First Respondent was therefore aware, by no later than 14 March 2017, that:

- The Firm had not identified the restrictive covenant during the conveyancing of the Property;
- he had formed the view that the restrictive covenant was "likely" to be binding on Client A;
- Client A was at risk of detriment (by reason of his works being interrupted or impeded) as a result of neighbours' reliance on the restrictive covenant;
- Client A was facing a significant risk of injunctive proceedings being brought in reliance on the restrictive covenant, carrying a risk of disruption and cost liability to Client A.

11. On 4 April 2017, in response to proceedings having been issued, the First Respondent sent an email to Client A in which he advised that "to cease work would be the safest and cheapest option".

12. On 4 April 2017, the First Respondent notified the Firm's indemnity insurers of the matter.

13. On 5 April 2017, a formal client care letter was sent in the First Respondent's name to Client A and one other person, reciting Client A's instructions to the firm in relation to the proceedings brought and referring to having agreed "a fixed fee of £5,000 plus VAT to review the matter."

14. At a hearing on 6 April 2017, an interim injunction was granted preventing Client A from continuing the works on the Property.

15. The litigation between Client A and his neighbours was subsequently settled. The First Respondent continued to act on behalf of Client A until the resolution of the litigation with Client A's neighbours.

16. Subsequently, in November 2017 Client A advanced a negligence claim against the Firm in relation to the failure to identify the restrictive covenant, which was subsequently settled. The claim included the costs payable both to the Firm and the neighbours, and costs incurred as a result of delays to and changes to the works, including architects' fees and building costs.

17. The Firm accepted that it did not identify the potential conflict or take steps to secure that Client A was advised to seek independent advice, and further accepted that it did not have systems in place to identify or responds to "own interest" conflicts.

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

18. 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

19. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

21. The Tribunal considered the Guidance Note on Sanction (Eighth Edition) . In so doing the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal concurred with the assessment of seriousness of the admitted misconduct advanced jointly by the Parties. The Tribunal therefore determined that the misconduct of the First Respondent was "moderately serious" and that the public interest was served in that regard by the imposition of a financial penalty in the sum of £5,000.00. The Tribunal further determined that the

misconduct of the Second Respondent was "more serious" and that the public interest was served on that regard by the imposition of a financial penalty in the sum of £11,000.00. The Tribunal found that the costs claimed by the Applicant in the sum of £17,400.00 were reasonable and proportionate in all of the circumstances and should be borne by both Respondents on a joint and several basis.

22. The Tribunal therefore approved the Agreed Outcome.

Statement of Full Order

First Respondent

23. The Tribunal Ordered that the Respondent, JAMES TOMPKINS solicitor, do pay a fine of £5,000.00, 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 on a joint and several basis with Second Respondent fixed in the sum of £17,400.00.

Second Respondent

24. The Tribunal Ordered that the Respondent, HODDERS LAW LIMITED of 50 Station Road, Harlesden, London NW10 4UA, Recognised Body, do pay a fine of £11,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that they do pay the costs of and incidental to this application and enquiry to be paid on a joint and several basis with the First Respondent fixed in the sum of £17,400.00

Dated this 8th day of July 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
08 JUL 2021

A E Banks
Chair

Case Number: 12178-2021

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

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

JAMES TOMPKINS

First Respondent

and

HODDERS LAW LIMITED

Second Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction

1. By a statement made on behalf of Solicitors Regulation Authority Limited (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 11 March 2021 ("the Rule 12 Statement"), the SRA brings proceedings before the Tribunal making allegations of misconduct against the First Respondent and the Second Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

2. In this Statement of Agreed Facts, Admissions and Outcome ("**the Agreed Outcome**"), references to

   "**the SRA**" are to the Applicant

   "**the Firm**" are to the Second Respondent.

Admissions

3. The allegations admitted by the First Respondent are that while in practice as a Solicitor and a Director at Hodders Law Limited (the Firm and Second Respondent) he:

    3.1. Between January 2017 and November 2017, acted on behalf of Client A in circumstances where he knew an omission had been made by the Firm in a prior but related instruction. The omission could have given rise to a claim against the Firm by Client A but the First Respondent failed to advise Client A to that effect. By failing to so advise, it is alleged that the First Respondent breached Outcome O(1.16) of the SRA Code of Conduct 2011 and Principle 4 of the SRA Principles 2011.

    3.2. Between January 2017 and November 2017, acted on behalf of Client A in circumstances giving rise to a significant risk of an own interest conflict, and in doing so breached Outcome O(3.4) of the SRA Code of Conduct 2011 and Principle 4 of the SRA Principles 2011

4. The allegations admitted by the Second Respondent are that:

    4.1. Between January 2017 and November 2017, it failed to take any or adequate steps to prevent the Firm from acting on behalf of Client A in circumstances in which, in a prior but related instruction, an omission had been made by the Firm which could have given rise to a claim against the Firm by Client A, but Client A had not been advised to that effect, and by reason of such failure breached Outcome O(1.16) of the SRA Code of Conduct 2011 and Principle 4 of the SRA Principles 2011;

    4.2. Between January 2017 and November 2017, it failed to have in place systems and controls appropriate to prevent solicitors in the Firm from acting in circumstances giving rise to an own interest conflict, and in doing so breached Outcome O(3.2) of the SRA Code of Conduct and Principle 8 of the SRA Principles 2011.

Agreed Facts

5. The First Respondent was admitted to the Roll of Solicitors on 15 November 1993. At the material times he practised at the Firm as a Partner and Director. He holds a current Practising Certificate free from conditions.

6. The Second Respondent is a limited company recognised by the SRA. It employs about 12 solicitors in four offices in North London. In this Statement, the Second Respondent is referred to as “the Firm”.

7. Neither Respondent has been the subject of previous adverse disciplinary findings.

The prior Transaction

8. The Firm had acted for Client A, a property developer, for about 15 years in over 150 transactions, including litigation and conveyancing matters.

9. During the course of 2016, the Firm acted on behalf of Client A in the purchase of a residential property ("the Property"). It is accepted by the Respondents that the Property was subject to a restrictive covenant, potentially affecting the scope for development of the property, which was not identified or brought to the attention of Client A, and no advice was offered to Client A about the restrictive covenant, during the course of the Firm's conduct of the purchase of the Property.

10. On 31 January 2017, Client A contacted the Firm after he had received a letter from solicitors acting on behalf of two neighbours. Following receipt of the Letter, the First Respondent assumed conduct of the matter. The Firm has accepted that "…*it became apparent on consideration of that document that Hodders had not advised* (Client A) *of the restrictive covenant*…". However, neither Respondent informed Client A, on receipt of the Letter or subsequently, that the failure by the Firm to identify and inform him of the restrictive covenant, and its potential effect on ownership of the Property, might give rise to a claim by Client A against the Firm.

11. The First Respondent was aware, within a week of the receipt of the letter from Client A's solicitors, that Client A was undertaking works to the Property which were potentially affected by the restrictive covenant. On 10 February 2017 the First Respondent sent an email to Client A reflecting a preliminary view that the restrictive covenant was likely to be binding on Client A and that there was a continuing risk that Client A would be prevented from continuing with the planned works. Further similar advice was provided on 13 and 14 March 2017, including advice as to a "significant risk" of an injunction being granted to prevent the works.

12. The First Respondent was therefore aware, by no later than 14 March 2017, that:

    12.1. The Firm had not identified the restrictive covenant during the conveyancing of the Property;

    12.2. he had formed the view that the restrictive covenant was "*likely*" to be binding on Client A;

    12.3. Client A was at risk of detriment (by reason of his works being interrupted or impeded) as a result of neighbours' reliance on the restrictive covenant;

    12.4. Client A was facing a significant risk of injunctive proceedings being brought in reliance on the restrictive covenant, carrying a risk of disruption and cost liability to Client A.

13. On 4 April 2017, in response to proceedings having been issued the First Respondent sent an email to Client A in which he advised that "*to cease work would be the safest and cheapest option".*

14. On 4 April 2017, the First Respondent notified the Firm's indemnity insurers of the matter.

15. On 5 April 2017, a formal client care letter was sent in the First Respondent's name to Client A and one other person, reciting Client A's instructions to the firm in relation to the proceedings brought and referring to having agreed "*a fixed fee of £5,000 plus VAT to review the matter."*

16. At a hearing on 6 April 2017, an interim injunction was granted preventing Client A from continuing the works on the Property.

17. The litigation between Client A and his neighbours was subsequently settled. The First Respondent continued to act on behalf of Client A until the resolution of the litigation with Client A's neighbours.

18. Subsequently, in November 2017 Client A advanced a negligence claim against the Firm in relation to the failure to identify the restrictive covenant, which was subsequently settled. The claim included the costs payable both to the Firm and the neighbours, and costs incurred as a result of delays to and changes to the works, including architects' fees and building costs.

19. The Firm accepted that it did not identify the potential conflict or take steps to secure that Client A was advised to seek independent advice, and further accepted that it did not have systems in place to identify or responds to "own interest" conflicts.

<u>First Respondent</u>

20. The following points are advanced by way of mitigation on behalf of the First Respondent. Their inclusion in the Agreed Outcome does not amount to adoption of such points by the SRA but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcomes represent a proportionate resolution of the matter.

21. Whilst the First Respondent recognizes and accepts that he made an error in not explicitly and expressly advising Client A and continuing to act, this was based upon a genuine desire to assist Client A, a longstanding client whom he knew personally and was seriously unwell at the time, rather than protect himself or his Firm. There was no attempt, either by the First Respondent or the Firm, to hide the mistake made by the Firm during the conveyancing process and Client A was aware both of the issue and its consequence. Given the urgency of the situation that arose, Client A's position and medical condition, as well as the long-term relationship with him and his family the First Respondent genuinely felt that he and his Firm were in the best position to represent Client A in the

dispute which then developed with his neighbours and to try and resolve the situation. Whilst that desire may have been misplaced it was nonetheless genuinely held.

The Firm

22. The following points are advanced by way of mitigation on behalf of the Firm. Their inclusion in the Agreed Outcome does not amount to adoption of such points by the SRA but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcomes represent a proportionate resolution of the matter.

23. The Firm was acting at all material times through the First Respondent and adopts all of his mitigation set out above. Although the Firm had (and has) systems in place to recognize and deal with issues of potential 'conflict', it accepts that those in place at the time were not adequate to deal with the situation that arose in this case.

AGREED OUTCOME

24. In agreeing these sanctions, account has been taken of the Solicitors Disciplinary Tribunal Guidance Note on Sanctions 8th Edition December 2020 ("the Guidance Note").

First Respondent

25. The First Respondent has admitted the allegations as set out above and, given the seriousness of the admitted conduct, a reprimand is not a sufficient sanction.

26. The SRA accepts that, in the circumstances of this case, a fine is a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.

27. The level of fine has been determined after consideration of, in particular, paragraph 27 of the Guidance Note.

28. In light of all the circumstances of this case, including the mitigating factors, the First Respondent's conduct falls within Indicative Fine Band 2 as the misconduct can be rightly categorised as "*moderately serious".* The range for a Band 2 fine is £2,001 to £7,500.

29. Consequently, it is agreed that the First Respondent should be fined £5,000.

Firm

30. The Firm has admitted the allegations as set out above and, given the seriousness of the admitted conduct, a reprimand is not a sufficient sanction.

31. The SRA accepts that, in the circumstances of this case, a fine is a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.

32. The level of fine has been determined after consideration of, in particular, paragraph 27 and 30 of the Guidance Note. The SRA has taken into account the seriousness of the misconduct, and the size and financial resources of the Firm and the effect of a fine on its business. In 2020/21 the firm reported to the SRA turnover of £2,717,899.

33. In light of all the circumstances of this case, including the mitigating factors, the Firm's conduct falls within Indicative Fine Band 3 as the misconduct can be rightly categorised as "*Conduct assessed as more serious".*

34. Consequently, it is agreed that the Firm should be fined £11,000, representing 0.4% of its most recently reported annual turnover.

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

35. The sanctions outlined above is considered to be in accordance with the Tribunal's sanctioning guidance.

First Respondent

36. The level of culpability in respect of the allegations above is moderately serious due to:

    36.1. The admitted allegations relating to conduct over a prolonged period;

    36.2. The nature of the obligations breached should have been obvious to the First Respondent from the very outset;

    36.3. There was actual or potential detriment to the client through disruption and delay and potential liability, and deprivation of the opportunity to obtain full and independent advice on a potential claim against the Firm at an early stage;

    36.4. However, the misconduct related to one client matter, and a claim by the client was eventually brought and settled.

Second Respondent

37. The level of culpability in respect of the allegations above is more serious due to:

    37.1. It was incumbent upon the Firm, as a practice handling contentious matters, to be alert to, and to have systems in place to detect and respond appropriately to, "own interest" as well as its obligations in respect of preventing money laundering.

38. The SRA has further taken into account, in arriving at the proposed fine for the Firm and in accordance with paragraph 30 of the Guidance Note, the Firm's most recently reported turnover and considers a fine representing approximately 0.4% of annual turnover to be proportionate, taking into account that a settlement was entered into between the firm and the client with the consequence that the harm to the client was mitigated and no profit was derived by the Firm from the matter giving rise to the proceedings.

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

40. The Respondents agree jointly to meet the SRA's costs in the sum of £17,400 inclusive of VAT.

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Partner, Capsticks Solicitors LLP
On behalf of the Solicitors Regulation Authority

Date: 2021 21 June

James Tompkins

Date: 2021 21st June

Name [illegible]
Position SOLICITOR/DIRECTOR
On behalf of Hodders Law Limited

Date: 2021 21st June