SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12236-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

Respondent

RICHARD ANDREW SEDDON
GOWLINGS SOLICITORS LIMITED

Before:

Mr G Sydenham (in the chair)
Ms T Cullen
Mrs S Gordon

Date of Hearing: 22 November 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the First Respondent was that while in practice as a Director at Gowlings Solicitors Limited ("the Firm") and against the Second Respondent ("the Firm") was that they:

1.1 Failed to perform undertakings given to Brabners LLP and to a Lender in a letter from the Firm dated 18 November 2016 within the agreed timescale and in so doing:

1.1.1 breached Principle 6 of the SRA Principles 2011 ("the Principles") and

1.1.2 failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 ("the 2011 Code")

2. Both Respondents admitted the allegation they faced.

Documents

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

- Rule 12 Statement and Exhibit SEJ1 dated 5 August 2021
- Joint Answer of the First and Second Respondents dated 22 October 2021
- Statement of Agreed Facts and Proposed Outcome dated 17 November 2021

Background

4. The First Respondent was admitted to the Roll in December 1992. At the relevant tine he was a Director/Member of the Firm and was the sole beneficial owner. The First Respondent was also the Compliance Officer for Legal Practice ("COLP") for the Firm. The First Respondent held an unconditional Practising Certificate.

5. The Second Respondent was a Limited Company. It employed four legally qualified fee earners, including two Directors.

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

6. The parties invited the Tribunal to deal with the Allegations against the Respondents 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

7. 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 Respondents 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.

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

9. The Tribunal considered the Guidance Note on Sanction (8th Edition-December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal found that both Respondents were responsible for the undertakings given. The First Respondent appreciated the importance of complying with any undertakings given. The failure to comply with the undertakings at all, or late compliance had caused harm to the lender and to the reputation of the profession. The Tribunal did not consider that sanctions of No Order or a Reprimand reflected the seriousness of the misconduct. The Tribunal considered that a financial penalty was appropriate. The Tribunal assessed the conduct as falling within its Indicative Fine Band Level 3, as the misconduct was assessed as more serious. The Tribunal considered that a fine in the sum of £12,000.00 for each Respondent accurately reflected the seriousness of the misconduct. Accordingly, the Tribunal approved the proposed sanction agreed by the parties.

Costs

10. The parties agreed costs in the sum of £5,250.00 to be paid on a joint and several basis. The Tribunal found that the costs agreed were reasonable and proportionate and accordingly ordered the Respondents to pay costs in the agreed amount.

Statement of Full Order

11. The Tribunal Ordered that the Respondent, RICHARD ANDREW SEDDON solicitor, do pay a fine of £12,000.00, 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 £5,250.00, on a joint and several basis with the Second Respondent.

12. The Tribunal Ordered that the Respondent, GOWLINGS SOLICITORS LIMITED, Recognised Body, do pay a fine of £12,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that it do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,250.00 to be paid on a joint and several basis with the First Respondent.

Dated this 2nd day of December 2021
On behalf of the Tribunal

G Sydenham
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12235-2021**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

And

RICHARD ANDREW SEDDON

First Respondent

And

GOWLINGS SOLICITORS LIMITED

Second Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

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1. By its application dated 5 August 2021, and the statement made pursuant to Rule 12 (2) 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 Richard Andrew Seddon (the First Respondent) and Gowlings Solicitors Limited (the Firm / Second Respondent)

The allegation

2. The allegation against the First and Second Respondents, made by the SRA within the Rule 12 statement was that they: -

Breach of undertakings

1. Failed to perform undertakings given to Brabners LLP and to a Lender in a letter from the Firm dated 18 November 2016 within the agreed timescale and in so doing:

    1.1.1 breached Principle 6 of the SRA Principles 2011 ("the Principles") and

    1.1.2 failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011 ("the 2011 Code")

3. The First and Second Respondents admit the allegation.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegation set out within paragraph 2 of this statement, are agreed between the SRA and the First and Second Respondent.

4.1 **Professional Details**

The First Respondent

4.1.1 The First Respondent is a solicitor having been admitted to the Roll on 15 December 1992. He was, at the relevant time, and still is, a Director / Member in the Firm and is now the sole beneficial owner. He was, and still is, the Compliance Officer for Legal Practice (COLP) of the Firm.

4.1.2 He holds an unconditional Practising Certificate.

The Second Respondent

4.1.3 The Firm is a Limited company and a recognised body with a registered office at Derby House, Lytham Road, Preston PR2 8EJ.

4.1.4 The Firm employs four legally qualified fee earners. There are two Directors, one of whom is the First Respondent. The other Director commenced employment at the Firm in June 2021 and became a Director on 14 June 2021. At the time the undertakings were given, 18 November 2016, there was another beneficial owner and Director/ Member who left the firm on 31 October 2017. The total UK turnover from its last

complete accounting period was approximately £562,260.00. The Firm specialises in commercial/corporate work, residential and commercial property, family, landlord and tenant and wills and probate.

4.2 <u>The facts and matters relied upon in support of the allegation.</u>

Background

4.2.1 The conduct in this matter came to the attention of the SRA when Brabners LLP ("Brabners") made a report to the SRA concerning the non-performance by the Respondents of undertakings given to them.

4.2.2 In summary, the First and Second Respondents were instructed by borrower clients to act for them in a refinance transaction in September 2016. The borrowers were securing a better commercial lending facility. Brabners acted for the lender. The borrowers were existing clients and the First and Second Respondents had acted for it, its associated companies and various family members for many years in numerous transactions. The instructions in the refinance facility were in connection with the security required by the lender for a loan and overdraft facility. Eight properties were involved in the refinance transaction over which security, in the form of first legal charges, was to be taken.

4.2.3 The transaction completed on 18 November 2016. The Respondents provided undertakings to Brabners and separately to the lender in a letter dated 18 November 2016. In all, thirty-eight undertakings were given, together with confirmations in relation to seven further items.

4.3 Allegation 1.1 – Breach of Undertakings

4.3.1 The Respondents failed to perform thirty-two of the clauses within the undertaking / confirmation in the agreed time scale. Six of these are still outstanding. Delays in performing the undertakings ranged from around 2 months to almost one year.

4.3.2 The undertakings can broadly be categorised as relating to the following groups:

- Securities provided by the borrowers previous lenders.
- Noting the lender's interest on the building insurance of the properties, the insuring of loss of rent and the provision of copies of the building insurance.
- Provision of the superior landlord's / landlord's consent to the assignment of any lease / grant of new leases and the charges to the lender where appropriate and for notice of dealings to be served.
- Completion of the registration of leases to the borrower at the Land Registry where appropriate and for stamp duty land tax to be dealt with.
- The putting on cover of various indemnity / insurance policies (relating to restrictive covenants, defective title, delayed search and chancel repair liability), the payment of the premium for the indemnity / insurance and the provision of the original policy documents.

4.3.3 The delays in performing the undertakings persisted notwithstanding the consistent repeated chasing by Brabners for the undertakings to be effected. Due to the delays and non-compliance, the lender was left in a vulnerable position with respect to their security on some of the properties. For example, the application by the lender to register the legal charge on property 3 was cancelled as the First Respondent failed to respond to requisitions raised by the Land Registry. The lease to the borrower remains unregistered and the undertaking remains outstanding. Similarly, there was a delay of almost one year in the registration of the lease to the borrower relating to property 5, which prevented the lenders' legal charge being registered.

4.3.4 The Clauses that remain outstanding are:

- Clause 13 and 15 (Property 2) relate to the provision of the Landlord's (superior landlord) consent to the assignment of the lease and lease dated 15 August 2014 to the borrower
- Clause 16 (Property 3) relates to the completion of the registration of the lease to the borrower.
- Clause 33 relates to the provision of the consent of any landlord (superior landlord) where required to the charges to the landlord over any of the properties.

- Clause 34 relates to notices to be given to the landlords of any of the properties.

- Clause 37 relates to the provision of consent of any lender where required to the grant of New Leases.

Mitigation

5. The following points are advanced by way of mitigation by the First and Second Respondents. 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:

5.1 The undertakings were agreed to by the respondents as there were commercial pressures to complete the matter.

5.2 The performance of some of the undertakings were out of the Respondents' control (for example the Land Registry taking longer to process applications than had been envisaged and one of the Landlords instructing solicitors to deal with a formal Licence to Charge). The Respondents regularly chased their client and third parties regarding outstanding undertakings.

5.3 The majority of the undertakings have been complied with now.

5.4 The Respondents regret that they have not yet been able to perform all the undertakings and achieve the required outcome of full registration of the Bank's securities.

5.5 There are no previous findings against either the First or Second Respondent.

AGREED OUTCOME

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

7. The Respondents accept that the seriousness of their admitted misconduct is such that a reprimand is not a sufficient sanction.

8. Further, in the circumstances of this case, neither the protection of the public or the protection of the reputation of the profession require the Respondents to be suspended from practice or struck off the Roll of Solicitors.

9. The SRA and the Respondents submit to the Tribunal that a fine is a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.

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

11. In light of all the circumstances of this case, including the mitigating factors, the conduct should be regarded as falling into Fine Band, Level 3, conduct assessed as more serious. The appropriate fine for conduct assessed as falling within Fine Band, Level 3 is £7,501 - £15,000.

Penalty proposed

12. Being the sole beneficial owner of the Firm, the First Respondent agrees:
    a. Jointly with the Second Respondent, and in proportions to be decided between them, to pay a fine of £12,000.00,
    b. Jointly with the Second Respondent, and in proportions to be decided between them, to pay costs to the SRA in the sum of £5,250.00 (inclusive of VAT).

13. The Second Respondent agrees:
    a. Jointly with the First Respondent, and in proportions to be decided between them, to pay a fine of £12,000.00,
    b. Jointly with the Second Respondent, and in proportions to be decided between them, to pay costs to the SRA in the sum of £5,250.00 (inclusive of VAT)

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

14. An undertaking is binding even if performance is outside a solicitor's control. If an outcome is outside of a solicitor's control, any undertaking should be suitably qualified. The undertakings in the letter of 18 November 2016 were relied upon by Brabners, who had provided undertakings to their client lender in reliance on these undertakings. There was a specified time scale for the performance of each undertaking. The undertakings were given by the First Respondent and the Second Respondent on the Firm's letterhead, detailing the First Respondent's reference, who had dealt with the transaction. Both the First and Second Respondents were responsible for the performance of the Undertakings.

15. Undertakings are an integral part of the practice of law and are fundamental to the working of the solicitors' profession. Many transactions are reliant on the giving of undertakings. Such undertakings must be performed for the proper conclusion of matters. Undertakings enable business to be conducted with speed and efficiency. The recipient of an undertaking must be able to rely on it. Undertakings go to the very foundation of many transactions.

16. In this case many important aspects of the transaction, the subject of the undertakings, were delayed or have yet to be finalised. Some of the issues caused by this, as previously detailed, are for example, the delay or the failing to register new leases which meant that the lender's charge could not be registered against those properties. Many consents required from Landlords were provided late or not at all. Uncertainty remains as to whether the lender's interest is noted on building insurance policies and whether loss of rent is insured against. Delay was experienced in original insurance policies being provided to the lender. In turn, undertakings given by Brabners to the lender could not be fulfilled.

17. The First Respondent, and sole beneficial owner of the Firm is an experienced solicitor of nearly thirty years standing. He would have appreciated the importance around the giving of undertakings and of adhering to their performance. The undertakings were not qualified. The First Respondent says the undertakings were agreed to "*as there were considerable commercial pressures being brought to bear to complete the matter*". Multiple undertakings were not complied with, either due to late performance, or not being carried out at all in some cases. Culpability is correspondingly high.

18. Harm has been caused to the reputation of the profession, and harm has been caused to the lender. The lender's security for the loan has been compromised due to the lack of performance. This could have been reasonable foreseen due to the undertakings being given without any qualification. This is aggravated in that there are six undertakings still to be performed.

19. In the circumstances and in light of the admissions set out above, the SRA, the First and the Second Respondent consider that the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Dated

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Oliver Sweeney
Head of legal and Enforcement on behalf of the SRA

……..
Richard Andrew Seddon

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Name
Position
On behalf of Gowlings Solicitors Ltd.