

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No.12287-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

PAUL GEOFFREY HAYWARD

Respondent

Before:

Ms A Kellett (in the chair)

Mr J P Davies

Mr P Hurley

Date of Hearing: 12 April 2022

Appearances

Victoria Sheppard-Jones, counsel of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations made against Mr Hayward by the Solicitors Regulation Authority Limited (“SRA”) were that while in practice as a solicitor and partner at Wards Solicitors LLP (“the Firm”):
 - 1.1 Whilst acting for Clients A and/or B in the sale of one or more properties, Mr Hayward breached all or any of Principles 4, 6 and 10 of the SRA Principles 2011 (“the Principles”) and failed to achieve all or any of Outcomes 1.2 and 11.2 of the SRA Code of Conduct 2011 (“the Code”), in that he:
 - i. Breached undertakings given on behalf of the Firm
 - ii. Failed to rectify the issues arising from the breaches promptly.
 - 1.2 Whilst acting for all or any of clients A, B, C and D in respect of conveyancing transactions, Mr Hayward breached all or any of Principles 4, 6 and 10 of the Principles and failed to achieve all or any of Outcome 1.2 of the Code, in that he:
 - i. Failed to remove and/or register the relevant charges and/or titles upon completion of the transactions;
 - ii. Failed to rectify the issues promptly or at all.

Executive Summary

2. The Tribunal found that Mr Hayward had breached undertakings and failed to remedy the issues that arose following those breaches promptly, and therefore found allegation 1.1 proved. The Tribunal also found that Mr Hayward had not registered the relevant charges and titles on completion and that he also failed to remedy the issues arising from his failure promptly or at all. The Tribunal therefore found allegation 1.2 proved.
3. The Tribunal’s findings can be found here:
 - [Tribunal’s findings for allegation 1.1](#)
 - [Tribunal’s findings for allegation 1.2](#)

Sanction

4. The Tribunal considered that given the nature of Mr Hayward’s misconduct, the appropriate and proportionate sanction was a fine in the sum of £10,000. The Tribunal’s reasoning can be found here:
 - [Tribunal’s reasoning on Sanction](#)

Documents

5. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit IWB1 dated 20 December 2021
- Respondent's Answer dated 18 January 2022
- Applicant's Schedule of Costs dated 5 April 2022

Factual Background

6. Mr Hayward was admitted to the Roll in November 1999. He began working for the Firm as a trainee in 1996. He became a salaried partner in June 2007. From 1 June 2018 he was a non-member partner. Following an internal investigation by the Firm into the matters detailed within this Judgment, Mr Hayward left the Firm on 31 October 2019. Mr Hayward last held a Practising Certificate for the year ending 2019.

Witnesses

7. None

Findings of Fact and Law

8. 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 Mr Hayward'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.
9. **Allegation 1.1 - Whilst acting for Clients A and/or B in the sale of one or more properties, Mr Hayward breached all or any of Principles 4, 6 and 10 of the Principles and failed to achieve all or any of Outcomes 1.2 and 11.2 of the Code, in that he: i. Breached undertakings given on behalf of the Firm; and ii. Failed to rectify the issues arising from the breaches promptly.**

The Applicant's Case

- 9.1 On 1 October 2019, the Firm reported concerns relating to irregularities in conveyancing matters conducted by Mr Hayward whilst acting for Clients A, B, C and D. Client A held a property portfolio and had instructed Mr Hayward to act for him over the course of a number of years. Client B was the wife of Client A, and Clients C and D were their children. Whilst the Respondent acted for all four of the clients in various conveyancing matters, Client A was the primary point of contact.
- 9.2 The Firm's report advised that irregularities had been discovered on files in respect of Client A, relating primarily to the work for the client's lenders. The report advised that all issues had been rectified by the time of the Firm's report to the SRA and that no loss resulted from the conduct.
- 9.3 In its response to a request from the SRA for further information, the Firm explained that it considered that the irregularities arose from an initial mistake concerning Property A. That property was part of an umbrella charge in favour of The Mortgage Works ("TMW"), a subsidiary of Nationwide. Property A was sold and the proceeds were used to release a charge on another property within the portfolio, which would then be used to replace Property A within the umbrella charge. However, the

application for the substitution was not dealt with, resulting in sale proceeds from other properties eventually being used to release the charge on Property A. That had the consequence of affecting use of funds going forward and causing late redemptions across a number of properties. The Firm provided a list of fifteen properties they considered to be affected, and a timeline of relevant transactions on each of the properties, including full details of the lenders. Upon review of those files, the Forensic Investigation Officer (“FIO”) identified issues on twelve files.

- 9.4 Three of the files related to Properties A, B and C. Those properties were sold by Clients A and B, with Mr Hayward acting for them in the sales. The properties had charges registered against them at the time of the sales. On each of the files, Mr Hayward had undertaken (on the Firm’s behalf) to redeem or discharge any mortgages or charges. However, on each occasion, Mr Hayward failed to discharge or redeem the charges on completion.
- 9.5 Ms Sheppard-Jones submitted that whilst the charges were eventually discharged on each property, this was not done within a timely manner, causing the buyer on each occasion to contact Mr Hayward and chase up removal of the charge. By significantly delaying redemption of the charges, there existed a risk that the client might be subject to further interest charges from the lender.
- 9.6 Ms Sheppard-Jones exemplified a number of matters which evidenced that Mr Hayward had breached undertakings and thereafter failed to promptly rectify the issues that arose thereafter, including:

Property A

- 9.6.1 Mr Hayward undertook to discharge any charges on completion. Completion took place in November 2016, however there was no attempt to redeem the charge with TMW until July 2017. The failure to redeem the charge had a material effect on other property transactions within the portfolio.

Property B

- 9.6.2 Mr Hayward acted for Clients A and B in the sale of Property B, which had a registered charge in favour of TMW. Mr Haywood undertook to discharge the charge. The matter completed on 15 December 2017. On 7 March 2018, Mr Hayward informed the purchaser’s solicitors that the discharge was being chased. On 29 March 2018, the purchaser’s solicitors wrote to the Firm to advise that the charge on Property B still had not been removed and that their client’s lenders had advised that if their charge was not registered in two weeks they would remove the solicitors from their panel. The solicitors considered the Firm to be in breach of the undertaking given. The client ledger for Property B showed that on 23 October 2018, the mortgage was redeemed.
- 9.7 Ms Sheppard-Jones submitted that Mr Hayward breached the undertaking he gave in respect of this property as the charge with TMW was not redeemed for at least ten months. Furthermore, even though Mr Hayward knew of this issue by at least March 2018, he failed to rectify the issue until at least October 2018.

- 9.8 Ms Sheppard-Jones submitted that the exemplified matters evidenced that Mr Hayward had provided undertakings in the Replies to Requisition forms, which he consequently breached by failing to redeem the relevant charges upon completion. The charges were eventually redeemed between ten and eighteen months after completion.
- 9.9 Outcome 1.2 of the Code stated:
- “you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice”
- 9.10 Outcome 11.2 of the Code stated:
- “you perform all undertakings given by you within an agreed timescale or within a reasonable amount of time”
- 9.11 Ms Sheppard-Jones submitted that by failing to redeem charges on properties sold for Clients A and B upon completion of the sale as agreed within the undertakings, or within a reasonable time thereafter, Mr Hayward had breached the undertaking he gave on each occasion in the Replies to Requisitions document, and in doing so he had breached Outcome 11.2 of the Code. Furthermore, in breaching the undertakings and failing to rectify the issues promptly, he failed to provide a service to his clients that protected their interests, as they had a legitimate expectation that he would deal with the redemptions accordingly. In failing to do so, Mr Hayward had not only risked his clients being pursued by the purchasers but had further risked them being subject to interest charges as a result of the late redemption. Those failures meant that Mr Hayward had breached Outcome 1.2 of the Code.
- 9.12 Mr Hayward had failed to act in the best interests of his clients. He was responsible for managing a property portfolio and his clients would have expected that he was able to do so with the requisite skill and ability, particularly given his status as partner within the Firm. His failures to liaise in a timely manner with the lender on each occasion for the release or substitution of charges, resulted in a sequence of mismanagement affecting more than one property within his clients’ portfolio. Such conduct compromised his clients and their relationship with the lender and other parties. Mr Hayward thereby breached Principle 4 of the Principles.
- 9.13 Such conduct, it was submitted, also undermined public trust in him and the profession in breach of Principle 6. Mr Hayward was a partner at the Firm with significant responsibility for this particular portfolio. The public would expect that him to manage his work with requisite skill, such that he did not breach undertakings or fail to rectify issues promptly. The public places their trust in conveyancing solicitors to act in significant transactions. Trust in the profession would be undermined by failures to effectively carry out those transactions, with potentially serious consequences.
- 9.14 Mr Hayward had also failed to protect his clients’ money and assets in breach of Principle 10. Whilst there was no actual loss to the clients through this conduct, the complexity of the arrangements within the property portfolio and the failures of Mr Hayward to appropriately manage it, risked his clients being pursued by the lender and/or the purchaser. There existed the risk that the client would be subject to interest charges as a result of the late redemption of the mortgages.

The Respondent's Case

9.15 Mr Hayward admitted allegation 1.1.

The Tribunal's Findings

9.16 The Tribunal found allegation 1.1 proved on the evidence. The Tribunal considered Mr Hayward's admission to be properly made.

10. **Allegation 1.2 - Whilst acting for all or any of clients A, B, C and D in respect of conveyancing transactions, Mr Hayward breached all or any of Principles 4, 6 and 10 of the Principles and failed to achieve all or any of Outcome 1.2 of the Code, in that he: i. Failed to remove and/or register the relevant charges and/or titles upon completion of the transactions; and ii. Failed to rectify the issues promptly or at all.**

The Applicant's Case

10.1 Upon review of the fifteen client files, the FIO identified nine files in relation to which Mr Hayward had failed to either remove or register a charge and/or a title. Furthermore, those issues were not rectified promptly or at all.

10.2 Ms Sheppard-Jones submitted that in acting for the lenders' on the transactions, Mr Hayward was obliged to register the lenders' security over the property and in the absence of any prior agreement, to ensure that the lender had first charge over the property. By failing to register the security, he risked jeopardising the lenders' priority charge over the property.

10.3 Ms Sheppard-Jones exemplified a number of matters, including:

Property D

10.3.1 Mr Hayward acted for both parties in the sale of Property D. The vendor was Client A, whilst the purchaser was Client C. Completion took place on 20 December 2017. NatWest offered a loan to Client C in respect of Property D and instructed the Firm to act on its behalf in the transaction, including that the charge be registered with NatWest holding the first charge over the property.

10.3.2 In August 2018 and February 2019, NatWest wrote to the Firm enquiring as to why the Bank's security over the Property D still had not been registered. The charge was finally registered on 14 November 2019, a period of twenty-two months since the loan was drawn down. It was submitted that this period of time to register the charge in favour of NatWest reflected an unacceptable delay. Mr Hayward was notified more than once of the fact the charge had not been registered and yet he failed to act promptly to rectify the issue.

Property E

10.3.3 Mr Hayward acted for both parties in the sale of this property. The vendor was Client A, whilst the purchaser was Client D. On 29 April 2016, NatWest offered

Client D a buy to let mortgage for £116,250.00, against a value on the property of £155,000.00. NatWest instructed the Firm to act on its behalf in the transaction, requiring its charge to be registered as a first charge over the property.

- 10.3.4 Mortgage funds were released to Client D on 17 May 2016. Sixteen months later, on 11 October 2017, Client D sold Property E. The funds from that sale were used to discharge the mortgage with NatWest.
- 10.3.5 There was no evidence on the client file for Property E that Client D's ownership of the property or the charge in favour of NatWest were ever registered. Furthermore, there was an OS1R form on the file dated 8 August 2017, which stated that, "An official search certificate dated 29 June 2017... has been issued to protect an intending charge in favour of National Westminster Bank Plc. affecting the whole of the registered title."
- 10.3.6 Ms Sheppard-Jones submitted that in this instance, Mr Hayward had failed to register the title of Client D or the charge in favour of NatWest Bank upon the sale of the property to Client D. That issue was never rectified, as it remained the case when the property was sold in October 2017.

Property F

- 10.3.7 Mr Hayward acted for the vendor, purchaser and the lender in the sale of Property F. The vendors were Clients A and B and the purchaser was Client D. On 12 May 2016, NatWest offered a buy to let mortgage to Client D for £112,500.00 against a purchase price of £150,000.00. NatWest instructed the Firm to act on their behalf in the transaction. The loan was drawn down on 24 May 2016, the day of completion.
- 10.3.8 Neither the charge nor Client D's title were registered until May 2018. Ms Sheppard-Jones submitted that Mr Hayward had failed to register the title and the charge upon completion and that he had failed to rectify that failure promptly.

Property G

- 10.3.9 Mr Hayward acted for the vendor, purchaser and lender in relation to the sale of Property G. The purchaser was Client D and the vendor was Client A. Completion took place on 14 November 2018.
- 10.3.10 On 16 March 2019, Barclays enquired as to why its charge had not been registered. Mr Hayward advised that a certificate was awaited that was required to comply with a restriction on title and that the certificate had been chased. However, there was nothing on the file to show that a certificate was being chased. The file seemed to show that the issue was a lack of funds held in client account to redeem the pre-existing charge.
- 10.3.11 The charge in favour of Barclays was eventually registered on 21 November 2019, following Mr Hayward's departure from the Firm.

- 10.4 Ms Sheppard-Jones submitted that between November 2018 and November 2019, Mr Hayward had failed to register the charge in favour of Barclays Bank. He must have known that this was an issue by at least March 2019 when Barclays Bank enquired about the same and he replied that it was in hand. Yet he still failed to rectify the issue by the time he left the Firm in October 2019.
- 10.5 Ms Sheppard-Jones submitted that the facts evidenced that Mr Hayward, who was the partner with conduct of the relevant conveyancing matters, failed to remove and/or register the charges and/or titles as he was obliged to do and failed to rectify the issues promptly or at all.
- 10.6 Ms Sheppard-Jones submitted that by failing to appropriately manage the portfolio such that he failed to remove and/or register charges and titles in a timely manner or at all, Mr Hayward did not provide a service to his clients, including the vendor, purchaser and lender that protected their interests. Failure to register title and charges could have serious consequences if not rectified. Failure to register the title had the effect of voiding the transfer of the property, such that it remained vested with the vendor. Failure to register charges over the properties risked the lenders being unable to enforce their security and failure to remove an earlier charge would affect the priority the lender had in relation to their security. Such conduct therefore breached Outcome 1.2 of the Code.
- 10.7 Similarly, by failing to remove and/or register charges and titles in a timely manner or at all, Mr Hayward failed to act in the best interests of his clients. Acting in the best interests of his clients would have meant ensuring that he carried out all ancillary matters to the conveyance, such that the clients' assets and money were legally protected. Mr Hayward thereby breached Principle 4 and 10 of the Principles.
- 10.8 Further, his conduct undermined public trust in him as a solicitor and in the legal profession. The public would expect an experienced conveyancing solicitor, a partner in this instance, to manage their clients' conveyancing transactions with requisite ability. Conveyancing was an area of law that many of the public would have recourse to in their lives, it would no doubt undermine their trust to know that the partner within a conveyancing firm made repeated failures that had the consequence of risking his clients' assets. Mr Hayward thereby breached Principle 6 of the Principles.

The Respondent's Case

- 10.9 Mr Hayward admitted allegation 1.2.

The Tribunal's Findings

- 10.10 The Tribunal found allegation 1.2 proved on the facts. The Tribunal considered Mr Hayward's admission to be properly made.

Previous Disciplinary Matters

11. None.

Mitigation

12. Mr Hayward explained that the misconduct all stemmed from one error relating to Property A. As a result of that error the resulting transactions were carried out solely to try to rectify the situation without any loss to any lender or client. He believed, at the time, that on completion of the subsequent transaction(s) the position would be rectified with no loss to any party. At no point was it considered that any lender would be disadvantaged. All repayments would be made and no financial loss would be incurred.
13. Mr Hayward explained that he was worried that his mistake would cause a disciplinary issue at work, cause a problem with a good client, and he wished to avoid that if possible. He believed that matters would be resolved far more quickly than they were. When matters took longer than anticipated, Mr Hayward continued to try to resolve any issues without anyone losing out.
14. Mr Hayward considered that he did not wish to remain on the Roll as he did not consider that he could gain employment within the sector following this matter. Accordingly, his future earning prospects were likely to be minimal. Given his financial situation, he would prefer to be struck off the Roll than to receive a financial penalty.
15. There had been no financial loss to any client, lender or to the Firm. Further, Mr Hayward had made no financial gain. Admissions had been made at the first available opportunity, including to the Firm when it conducted an internal investigation. Mr Hayward accepted that he had made errors on the files and had never sought to deny that that was the position.

Sanction

16. The Tribunal had regard to the Guidance Note on Sanctions (9th Edition – December 2021). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
17. The Tribunal found that Mr Hayward was solely responsible for the misconduct. He was the solicitor with sole conduct of all the matters. Mr Hayward tried to rectify the initial error made. He accepted that in doing so, the error snowballed and effected other matters. Mr Hayward's misconduct was motivated by his desire to try to correct his initial mistake. His actions were not planned, but were a reaction to the circumstances arising on each of the transactions. He had direct control and was an experienced conveyancing solicitor.
18. Notwithstanding that there was no financial loss to his clients and other third parties, he had caused harm both to third parties and to the reputation of the profession. He had failed to comply with undertakings, and thereafter had failed promptly to rectify any issues arising.

19. The Tribunal accepted that Mr Hayward had made an initial mistake. However, thereafter he deliberately and repeatedly misconducted himself over a period of time, in order to rectify his error without informing his employer or his clients. The Tribunal considered that Mr Hayward ought to have known that his conduct was in material breach of his obligation to protect the public and the reputation of the profession.
20. In mitigation Mr Hayward had a previously unblemished record. He fully admitted his misconduct at the outset of the proceedings. Indeed, he had made full admissions to the Firm prior to its report to the SRA.
21. The Tribunal noted that Mr Hayward did not object to being struck from the Roll in circumstances where he had resolved that his legal career was over, and that he would not return to the profession. In determining sanction, it was the Tribunal's role to impose a sanction that was proportionate to the misconduct found proved. Whilst Mr Hayward's misconduct was serious, it was not so serious that the only appropriate and proportionate sanction in order to protect the public and the reputation of the profession was to strike him off the Roll.
22. The Tribunal determined that sanctions such as no order or a reprimand did not adequately reflect the seriousness of his misconduct. The Tribunal did not consider that the misconduct was so serious that Mr Hayward's ability to practise should be removed for a definite or indefinite period. Accordingly, sanctions such as a suspension or strike off were disproportionate to the proven misconduct. The Tribunal considered that a financial penalty adequately reflected the seriousness of his misconduct, and was the appropriate and proportionate sanction. The Tribunal considered that Mr Hayward's misconduct fell within its Indicative Fine Band Level 3 as his misconduct was assessed as more serious. The Tribunal determined that a fine in the sum of £10,000 was appropriate and proportionate in all the circumstances.

Costs

23. The Applicant's costs schedule claimed for costs in the sum of £31,175.40. Those costs, it was submitted, were reasonable and proportionate. The Applicant's internal investigation costs amounted to £8,975.40. The Applicant claimed £600 for its supervision costs which included reviewing the initial self-report, correspondence between the Firm and the SRA, commissioning the forensic investigation report, reviewing the report and preparing the referral to the Tribunal. The Applicant claimed costs of £8,375.40 for the forensic investigation which included (amongst other things) 26.6 hours for reviewing information and 48.4 hours for preparing the forensic investigation report. Ms Sheppard-Jones submitted that the report was detailed and included the examination of 15 client files. Further, the conveyancing matters being investigated were complex.
24. The Applicant claimed its legal fees in the sum of £18,500 + VAT. Ms Sheppard-Jones submitted that the amount claimed was reasonable and proportionate. Whilst the costs schedule detailed a claim for 141 hours work, that had been reduced to 129 hours as the hearing was shorter than anticipated and the preparation for the hearing had also taken less time than expected. The notional hourly rate for the work undertaken was £143. Accordingly, Ms Sheppard-Jones applied for costs in the full amount claimed.

25. Mr Hayward submitted that the case had never been contested and that his admissions were known from the outset. He had made admissions to the Firm, and had made admissions once the case was issued. He considered that both the original time estimate of 3 days and the revised time estimate of 2 days were overly long, and the hearing had, in fact, taken ½ a day.
26. There had been very little correspondence from the SRA. He had responded to all correspondence he had received. Mr Hayward was aware that there was a letter that he had not received and some emails had been sent to an email address that he did not use as it had been created solely for the purposes of resolving issues with the Firm. Once those matters had been resolved, he did not use that email address again.
27. There was some concern that the Applicant had undertaken work in circumstances where that work was not necessary. Mr Hayward submitted that he would have been happy to assist the Applicant with the investigation and that his assistance might have helped to reduce the costs now claimed.
28. The Tribunal examined the internal and external costs claimed. The Tribunal considered that the supervision costs of £600 were reasonable and proportionate. The Tribunal did not consider that the costs incurred for the preparation of the report were proportionate. The Tribunal considered that having spent over 26 hours reviewing the matter, spending a further 48 hours to prepare the report was excessive. The Tribunal considered that the report should have been prepared in approximately 24 hours. Accordingly, the Tribunal reduced the internal investigation costs by £2,274.80 to £6,322.60.
29. The Tribunal considered that it was appropriate for the Applicant to bring the proceedings given the nature and seriousness of the allegations that were admitted and proved. It was noted that Mr Hayward had admitted matters from the outset, and whilst the Applicant was required to prepare the matter for the hearing in circumstances where the Tribunal would consider whether the admissions were properly made, the Tribunal did not consider that the costs claimed were reasonable or proportionate in all the circumstances. The Tribunal did not accept Mr Hayward's submission that he could have assisted in the preparation of the report or the case. It would be highly inappropriate for Mr Hayward to assist in the prosecution against him. Equally, whilst his views could have been detailed in the report, it would not be appropriate for him to assist in its preparation.
30. The Tribunal considered that given the issues to be determined, and in circumstances where matters had been admitted from the outset, the legal fees claimed were excessive. The Tribunal considered that legal fees in the sum of £12,000 + VAT were reasonable and proportionate having account of the matters to be determined and the issues in the case.
31. The Tribunal considered whether there should be any reduction in the costs given Mr Hayward's finances. Mr Hayward had submitted that he did not think that he would be able to work in the profession as a result of the admissions made. The Tribunal did not consider that its findings would be a bar to Mr Hayward returning to the profession if he chose to do so.

32. It was noted that Mr Hayward had savings and equity in his property that far exceeded the fine and costs the Tribunal intended to impose. In the circumstances, the Tribunal did not consider that there should be any further reduction to take account of Mr Hayward's means.
33. Accordingly the Tribunal ordered that Mr Hayward pay costs in the sum of £20,722.60.

Statement of Full Order

34. The Tribunal Ordered that the Respondent, PAUL GEOFFREY HAYWARD, solicitor, do pay a fine of £10,000.00, 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 £20,722.60.

Dated this 18th day of May 2022
On behalf of the Tribunal

A Kellett
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
18 MAY 2022