

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12437-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ROBERT WILLIAM HENRY ARNISON

Respondent

Before:

Mr R Nicholas (in the chair)

Mr J Abramson

Ms L Fox

Date of Hearing: 13 June 2023

Appearances

There were no appearances as the matter was considered on the papers.

**JUDGMENT ON AN APPLICATION FOR AN AGREED
OUTCOME**

Allegation

1. The Allegation against the Respondent, was that, whilst a Partner at DLA Piper (“the Firm”) and while practising as a Solicitor, he:
2. On 5 February 2020, during an ongoing property transaction, inserted a signature to a legal charge document on behalf of a witness without their knowledge or consent, and forwarded this to solicitors acting for the lending bank in the property transaction, purporting to demonstrate that the legal charge document had been signed by the witness when it had not. In doing so he breached any or all of Principles 2, 4, and 5 of the SRA Principles 2019.

Factual Background

3. Mr Arnison was admitted to the Roll of Solicitors on 1 July 1999. At all relevant times he was employed as a solicitor by the Firm and was a Partner based in their Manchester office.

Application for approval of an Agreed Outcome

4. The parties invited the Tribunal to dispose of the matter as set out in the Statement of Agreed Facts and Outcome appended to this Judgment, in accordance with Rule 25 of the SDPR 2019. In the Statement of Agreed Facts and Outcome, Mr Arnison admitted all the allegations including the breach of Principle 4. The parties agreed that exceptional circumstances applied such that he should not be struck off the Roll. The proposed sanction was a suspension of 12 months and a contribution to the SRA’s costs in the sum of £17,500. The parties took differing views as to the start date of the suspension. The SRA invited the Tribunal to impose the suspension from the date of approval of the Agreed Outcome, while the Respondent invited the Tribunal to backdate the commencement of the suspension to 1 February 2023.
5. The matter had previously been listed for a Case Management Hearing. This had followed an earlier application for approval of an Agreed Outcome. On that occasion the proposed sanction had been a suspension of six months. At that Case Management Hearing the Tribunal had concluded that it was satisfied that this matter fell within the “small residual” category where a sanction other than strike-off could be a proportionate sanction that maintained the reputation of the profession and protected the public. The previous panel had been concerned, however, that six months (regardless of when it commenced) was insufficient in all the circumstances. The previous panel had noted that at the time of the misconduct Mr Arnison was a very experienced solicitor who was a partner in his firm. The misconduct took place in the context of a high value property transaction and involved a false representation being made to another party. While the previous panel had been satisfied that a suspension was an appropriate sanction in this case, it had considered that the minimum length of that suspension should be 12 months and not six. Accordingly, it had refused the first application for approval of an Agreed Outcome. The parties had amended the proposal and submitted a fresh Agreed Outcome, which was the matter now before the Tribunal.
6. The Tribunal was, again, satisfied that the admission to the Allegation was properly made on the evidence.

7. The Tribunal had regard to the Guidance Note on Sanctions (June 2022) and to the guidance set out in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin in which Coulson J observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”
8. The Tribunal noted, as the previous panel had, that the usual sanction where misconduct included dishonesty would be a strike-off. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as “a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.
9. The Tribunal accepted the submission that the misconduct was momentary, unplanned and it had not benefited Mr Arnison personally. The Tribunal also took note of the medical evidence that indicated that Mr Arnison’s decision making was likely to have been impaired at the time of his actions. Mr Arnison had brought the matter to the SRA’s attention almost immediately and had practised without any issues since this incident, which took place more than three years ago. There had been no harm caused, albeit there had been a risk of harm. Mr Arnison had likely been overloaded with work (as accepted by his employer) and although it was his responsibility to have raised this fact, it was nevertheless a relevant factor in the misconduct.
10. The Tribunal noted that the submission as to exceptional circumstances was endorsed by the SRA. The Tribunal welcomed a more flexible approach being taken in cases such as this, particularly where medical evidence was available.
11. Taking all the factors into account the Tribunal was satisfied that exceptional circumstances were present in this case and that a sanction other than strike-off could be applied. The Tribunal decided that 12 months was an appropriate length of suspension as it sent a message that this type of conduct was very serious and was unacceptable.

The start date of the suspension

12. The Tribunal carefully considered the written submissions of the parties.
13. The parties were in agreement that the Tribunal had jurisdiction to ‘backdate’ the start of the suspension if it saw fit. The Tribunal agreed that it had this power. The question was, therefore, whether the Tribunal should exercise its discretion and backdate the start of the suspension to 1 February 2023, or whether, as more usual, that it would take effect from the date of the Tribunal’s Order.

Respondent’s Submissions

14. In his written submissions, Geoffrey Williams KC had set out the chronology of matters and referred to Mr Arnison’s health issues. He submitted that once the proceedings had been issued on 31 January 2023, Mr Arnison’s employment prospects had vanished pending a resolution of matters. Mr Williams’ submission was that Mr Arnison had effectively been suspended from practice from that date and that this should be reflected

in the Order. There was no risk to the public and Mr Arnison had been punished already by the circumstances of his career coming to an end.

Applicant's Submissions

15. In their written submissions, the SRA referred to SRA v Main [2018] EWHC 3666 (Admin) in which the decision to backdate a suspension was criticised. One of the grounds of criticism was that Mr Main had not been prevented from practising by any order of the Tribunal. In this case, there was also no such order from the Tribunal and no restrictions had been placed on Mr Arnison by the SRA.

The Tribunal's Decision

16. The Tribunal noted that the usual practice when imposing a suspension was to order that it took effect immediately. In considering whether to depart from that, the Tribunal noted all the representations made by the parties. The situation that Mr Arnison found himself in was clearly an unfortunate one, but was to a large extent brought about by his own misconduct. The matter had been listed promptly at the Tribunal and there had been no restriction on his ability to work at any stage of the proceedings. While the Tribunal recognised that pending proceedings would have a limiting effect on a solicitor's ability to secure employment, that effect would not be as significant as the result of the proceedings in this case, namely a finding of dishonesty and the imposition of a suspension, regardless of when it commenced.
17. The Tribunal was not satisfied that there were good reasons to depart from its usual procedures and accordingly it ordered that the suspension take effect immediately.

Costs

18. The Tribunal noted the agreement on costs between the parties and made an order in those terms.

Publication

19. The parties invited the Tribunal to append a redacted version of the Agreed Outcome to this Judgment. The redactions related to the details of Mr Arnison's health. The Tribunal had considered the matter with sight of the unredacted version and the medical evidence.
20. The Tribunal recognised the importance of open justice. It also had regard to Mr Arnison's rights under Article 8 of the ECHR. The Tribunal was satisfied that that the reader would be able to follow the case and reasoning sufficiently without needing to disclose personal sensitive information about Mr Arnison's health. The Tribunal therefore directed that the redacted copy of the Agreed Outcome be appended to this Judgment.

Statement of Full Order

21. The Tribunal ORDERS that the Respondent, ROBERT WILLIAM HENRY ARNISON, solicitor, be suspended from practice for the period of 12 months to commence on the 13th day of June 2023 and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,250.00.

Dated this 27th day of June 2023
On behalf of the Tribunal



R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
27 JUN 2023

CASE NUMBER: 12437-2023

IN THE SOLICITORS DISCIPLINARY TRIBUNAL

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

AND THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

ROBERT ARNISON

(SRA ID: 36799)

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By statement made by Ian Brook on behalf of the Solicitors Regulation Authority Limited (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 10 February 2023, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made Standard Directions on 14 February 2023. There is a substantive hearing listed for 13, 15 and 16 June 2023.
2. The Respondent admits in full the allegation set out in the Rule 12 statement, including breaches to Principles 2, 4, and 5 of the SRA Principles 2019.

Allegation

3. The allegation against the Respondent is that, whilst in practice as a Partner at DLA Piper (“the Firm”) and while practising as a Solicitor, he:

1.1 On 5 February 2020, during an ongoing property transaction, inserted a signature to a legal charge document on behalf of a witness without their knowledge or consent, and forwarded this to solicitors acting for the lending bank in the property transaction, purporting to demonstrate that the legal charge document had been signed by the witness when it had not. In doing so he breached Principles 2, 4, and 5 of the SRA Principles 2019.

Agreed Facts

4. The Respondent was admitted to the roll of solicitors on 1 July 1999. At all relevant times the Respondent was employed as a solicitor by DLA Piper (“the Firm”) and was a Partner working out of their Manchester office.
5. Mr and Mrs B (“the Clients”) instructed the Respondent in relation to buying a residential property in Chelsea. Gary Shepherd of Alker Ball Healds Solicitors represented the lending bank (“the Bank”). The purchase price of the property was £13.5 million, of which the Bank was lending £6 million.
6. At 22:29 on 31 January 2020, the Respondent sent the Clients ‘various property documents’ to be signed.
7. On 5 February 2020 at 10:32 the Clients emailed the documents back to the Respondent, with the request that the Respondent confirm all was ok as soon as possible. The Respondent forwarded these documents to his Personal Assistant, Deborah Cole, with a verbal request that she confirm everything had been signed and completed correctly by the Clients which she subsequently confirmed to the Respondent
8. The Respondent confirmed in an email to his clients at 10:57 on 5 February 2020 that all was in order with the documents and that he was speaking with the Bank ‘now’ about moving money.
9. The Respondent sent the following completion documents to Gary Shepherd at 11:10:
 - 9.1 Exchanged agreement for lease;
 - 9.2 Executed lease; and
 - 9.3 Executed mortgage deed.
10. The executed mortgage deed and the executed lease identify a Gavin Paul Thomas Ryan as the person who is witnessing the signature to be added to these documents.
11. At 11:23 on 5 February 2020, Gary Shepherd emailed the Respondent stating:

“Robert, Just tried to call you. The legal charge isn’t correctly executed. I should like to see Mr [redacted]’s full name above his signatory to

match the description of Borrower but more importantly the witness hasn't signed."

12. The Respondent replied to this email at 11:29 stating:

"Gary Thanks for your e-mail. I am arranging for the witness to sign in the next few minutes. Thanks"

13. The Respondent then emailed Gary Shepherd at 11:47 attaching a copy of the mortgage deed with what he described were the *"full names and the witness signature"*.

14. It is apparent on comparing the signature of Gavin Paul Thomas Ryan on this document to the one applied to the executed lease document, the two do not match.

15. Gary Shepherd outlines in a witness statement that he spoke to the Bank regarding the signed version of the legal charge document received from the Respondent. The Bank informed him that after they had spoken to the client they were told that the signature of the witness on the legal charge document was of a removal man and not the witness named in the deed.

16. This prompted an email from Gary Shepherd to the Respondent stating:

"Robert, Can I trouble you to call me. If I am away from my desk my mobile number is [REDACTED]. Regards Gary."

17. Gary Shepherd states that he spoke to the Respondent between 12.25 and 12.34. Whilst he cannot recall the contents of that conversation, and no note of that conversation exists, it was agreed that the mortgage deed was being re-executed.

18. Following this conversation the Respondent emailed Gary Shepherd stating:

"Gary Thanks for your email. As discussed the mortgage deed is being re-executed by the witness. Thanks"

19. The Respondent sent a copy of the re-executed mortgage deed to Gary Shepherd at 14:03.

20. Gary Shepherd replied to this email at 14:32 stating:

"Robert, Thank you for your email. The Bank are working funds to me and I should have those imminently. However before I release those funds to you for completion (to be released on the terms of your earlier Undertaking) given what has preceded this email I need you to confirm by email that the Legal Charge has been correctly attested by the Borrowers in the presence of the attesting Witness and that the Bank may place reliance on your confirmation to that effect should there be any questions as to the execution and /or the validity of the document in the future. This Firm will also be placing reliance on your confirmation. Regards Gary."

21. At 14:38, the Respondent replied to Gary Shepherd's email requesting confirmation stating:

"Gary Thanks for your e-mail and we have just spoken, I can confirm that the Legal Charge has been correctly attested by the Borrowers in the presence of the attesting Witness and that the Bank may place reliance on this confirmation to the effect should there any be any questions as to the execution and/ or the validity of the document in the future. We also confirm that your firm may place reliance on this confirmation. Thanks"

22. After the transaction was completed, the Respondent reported his conduct of applying the signature of the witness to the legal charge document without the consent of the witness, or the client, to Firm's relationship partner Jonathan Watkins. This report was made either the same day or the following morning.

23. Following this disclosure the Respondent and Mr Watkins agreed that the matter would be reported to the Firm's UK Managing Partner Liam Cowell. This was done on 7 February 2020 and the matter was later escalated to the Firm's Office of General Counsel ("OGC"). The Respondent also disclosed to his secretary, a couple of days after the property transaction had completed, the fact that he had wrongly applied the witness signature to the legal charge document before sending it to Mr Shepherd.

24. Immediately following the disclosure to the OGC, the Respondent went on pre-arranged leave for one week. Thereafter, the Firm asked Respondent to remain absent from the office, with pay unaffected, while investigations continued.

25. In light of the incident, the firm's Executive considered various options and reached the conclusion that, pending the outcome of any investigation by the SRA, the Respondent should have his equity status removed. On 1 May 2020, the Respondent ceased to be a partner of the Firm and took on the role of a consultant solicitor at significantly reduced remuneration. DLA Piper submitted the finding of its investigations to the SRA on 22 May 2020

Mitigation

26. The following points are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

(a) The Respondent ("RA") has been a Solicitor for 23 years. He has no regulatory or disciplinary history. He has practised successfully in private practice becoming a partner of the firm and latterly a Consultant. RA left the firm as a result of these proceedings on 31st January 2023 and has not practised since then.

(b) RA has always worked extremely hard and, as he now understands, excessively hard. He was responsible for the management and supervision of the real estate department at the firm's Manchester office. In March 2013 the majority of the team left to join another firm. This led to a sharp increase in RA's responsibilities.

(c) From this time onwards RA would typically work between 14 and 16 hours per day in the office on 4 days per week with 10 hours worked on the fifth day. RA would also work on most Sunday afternoons and whilst on holiday. RA makes no criticism of the firm in this respect but plainly he took too much upon himself. He was on the verge of burnout. Something had to give.

(d) The client for whom RA was acting in the purchase in question was particularly demanding. Completion was scheduled for 10th February 2020 but the client wished to bring it forward to 5th February 2020 to accommodate his holiday arrangements.

(e) In the usual way RA asked his trusted secretary (of whom he makes no criticism) to check all the documents required to effect completion. Neither of them noticed that the signature of a witness on the Legal Charge was missing although all other details were present.

(f) The error was brought to the attention of RA at about 11-30a.m. on 5th February 2020. Suffering from anxiety and in panic RA applied a squiggle where the signature should have been and forwarded the document to the Solicitor for the vendor. RA made no attempt to replicate the signature which appeared on other documents.

(g) When this matter was quickly brought to RA's attention by the Solicitor for the vendor about one hour later RA immediately arranged for the witness to sign and the matter duly completed.

(h) Shortly thereafter, RA took the first available opportunity to inform a senior colleague of what he had done. The firm reported the matter to SRA and carried out an exhaustive review of RA's files. No issues requiring reports arose. RA's work in general had been exemplary despite the significant volume of the Respondent's caseload.

(i) [REDACTED]
[REDACTED]
[REDACTED] -

(i) [REDACTED]
[REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]
[REDACTED]

(j) All of the categories of exceptional circumstances set out in Solicitors Regulation Authority v Sharma (2010) EWHC 2022 (Admin) are present in RA's case: -

(i) The nature and scope of the dishonesty are limited to the application of a squiggle on a document. Plainly it was bound to have been spotted;

(ii) The dishonesty was momentary. It was a classic "moment of madness" [REDACTED] [REDACTED] caused in large part by overwork for a period of about 10 years;

(iii) There was no benefit to RA; and

(iv) There was no adverse effect upon others.

(k) RA has complete insight and genuine remorse. He presents absolutely no risk to the public [REDACTED] [REDACTED].

Agreed Outcome

27. The Respondent agrees:

27.1 To be suspended for a period of 12 months.

27.2 To pay costs to the SRA in the sum of £17,250.00.

28. The costs set out above include a reduction for the case having concluded by way of an Agreed Outcome and is an apportioned amount of the overall SRA costs incurred in total.

Explanation as to why such an order would be in accordance with the Tribunal's Sanction Guidance (10 edition)

29. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanctions" (10th edition), states that: "The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin))."

30. In *Sharma* [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

30.1 Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...

30.2 There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

30.3 In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."

31. The Applicant has considered the relevant factors. In this regard it is submitted that:

31.1 The dishonesty was momentary and limited in scope. At most it is limited to a single phone call and email to the opposing solicitor;

31.2 It was unplanned;

31.3 The motive appears to have been to benefit the client by ensuring that a scheduled completion took place rather than to provide any benefit to himself;

31.4 There was no benefit to the Respondent;

31.5 [REDACTED]
[REDACTED] his decision making is likely to have been impaired and that the professional consequences of his behaviour are unlikely to have been foremost in his mind at the time;

31.6 It appears to have been a one off incident given that a file review of some 40 cases conducted after the Respondent reported this to his employer found no malpractice; and

31.7 The Respondent admitted his misconduct at the outset, cooperated with the SRA and has made a full admission to the alleged misconduct.

32. The Applicant has considered the relevant factors and whilst it is agreed that the Respondent conduct was dishonest, exceptional circumstances justify a departure from the inevitable consequence of striking off arise in this case.

33. The parties consider and submit 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, consistent with the Tribunal's Guidance Note on Sanction (10th edition).

34. 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.

Signed by the parties:

Ian Brook, Partner, Capsticks Solicitors LLP

On behalf of the Solicitors Regulation Authority Limited

Date: 9 June 2023

Susanna Heley, Partner, Weightmans LLP

On behalf of the Respondent, Mr Robert Arnison

Date: 9 June 2023