

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12465-2023

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

DIANA JOAN MARTEN

Respondent

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Before:

Mr A Ghosh (in the chair)  
Mr C Cowx  
Mr P Hurley

Date of Hearing: 24 July 2023

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## Appearances

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

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## JUDGMENT ON AN AGREED OUTCOME

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## **Allegations**

1. The allegation against the Respondent, Diana Marten, made by the Solicitors Regulation Authority ("SRA") was that, while in practice as a Solicitor at MFG Solicitors LLP ("the Firm"):
  - 1.1 On or around 8 January 2019 she falsified the date on the Legal Charge to Paragon Bank the title WM737705 pertaining to the property at 108 Humber Avenue, Coventry, CV1 2AT by changing it from 3 December 2018 to 23 December 2018, so it would meet the prescribed timescale for registration at Companies House. In doing so she breached principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011 ("the Code for Solicitors").
2. In addition, the allegation above was advanced on the basis that the Ms Marten's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the misconduct but was not an essential ingredient in proving the allegation.
3. Ms Marten admitted the allegation, including that her conduct was dishonest.

## **Documents**

4. The Tribunal had before it the following documents:-
  - Rule 12 Statement and Exhibit RAE1 dated 25 May 2023
  - Respondent's Answer dated 16 June 2023
  - Statement of Agreed Facts and Proposed Outcome dated 13 July 2023

## **Background**

5. Ms Marten was a solicitor having been admitted to the Roll in November 1990. She last held a practising certificate of the practice year 2018-19. Ms Marten was now retired. She commenced her employment with the Firm in March 2015 and resigned in March 2019.

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

6. The parties invited the Tribunal to deal with the Allegations against Ms Marten in accordance with the Statement of Agreed Facts and Proposed 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 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.

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 (10<sup>th</sup> Edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. Ms Marten had sought to conceal her failure to register the Charge by changing the date on the document, in the knowledge that doing so was dishonest. The Tribunal determined that in light of the misconduct and admitted dishonesty, the only appropriate and proportionate sanction was to strike Ms Marten off the Roll. The Tribunal did not find that there were any exceptional circumstances such that striking Ms Marten off the Roll would be disproportionate. Accordingly, the Tribunal approved the sanction proposed by the parties.

### **Costs**

10. The parties agreed costs in the sum of £2,500. The Tribunal determined that the agreed sum was reasonable and proportionate. Accordingly, the Tribunal ordered costs in the agreed amount.

### **Statement of Full Order**

11. The Tribunal Ordered that the Respondent, DIANA JOAN MARTEN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00.

Dated this 16<sup>th</sup> day of August 2023  
On behalf of the Tribunal

*A Ghosh*

A Ghosh  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**16 AUG 2023**

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL Case No: 12465-2023**

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

**AND IN THE MATTER OF:**

**SOLICITORS REGULATION AUTHORITY LTD**

**Applicant**

**and**

**DIANA MARTEN**

**Respondent**

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**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME**

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1. By its application dated 25 May 2023, and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Ltd ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making one allegation of misconduct against Ms Diana Marten ("the Respondent").

**The allegation**

2. The allegation against the Respondent, made by the SRA within that statement was that, while in practice as a Solicitor at MFG Solicitors LLP ("the Firm"):

1.1 On or around 8 January 2019 the Respondent falsified the date on the Legal Charge to Paragon Bank the title WM737705 pertaining to the property at 108 Humber Avenue, Coventry, CV1 2AT by changing it from 3 December 2018 to 23 December 2018, so it would meet the prescribed timescale for registration at Companies House.

In doing so, she breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011("the Code for Solicitors").

3. In addition, dishonesty was alleged as an aggravating factor in respect of this allegation.
4. The Respondent admits the allegation in full. She also admits that her conduct in acting as alleged was dishonest.

### **Agreed Facts**

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent.
6. The Respondent, who was born December 1953, is a solicitor having been admitted to the Roll on 1 November 1990.
7. She does not hold a current practising certificate and has stated that she has retired. She last held a practising certificate for practice year 2018/2019.
8. The Respondent commenced working at MFG Solicitors ("the Firm") on 23 March 2015, as a commercial property solicitor, and resigned and subsequently retired on 21 March 2019.
9. On 8 February 2019, the Respondent reported her conduct to the SRA. The Firm had been instructed by her clients who had applied to re-mortgage a residential property which was run as a business student let. One of the Firm's partners, Mr Richard Connolly ("Mr Connolly"), opened a file on 8 November 2018. The Firm was also instructed by the mortgage company, on 13 November 2018. The property was already subject to a

- mortgage, therefore the work involved redeeming the existing charge and completing a new mortgage with a specialist buy to let lender.
10. The Respondent was asked to assist with the file during a period of holiday absence by Mr Connolly. Her involvement with the matter continued following Mr Connolly's return to the office.
  11. The Respondent undertook due diligence checks for the lender. A report on title requested funds for completion on 30 November 2018. The new mortgage advance was received on 3 December 2018 and the transaction was completed with the previous mortgage being redeemed. On 3 December 2018, the Respondent asked the client to provide the Companies House authentication code to enable the charge to be registered at Companies House. The Respondent chased her clients for the code on 4 December 2018, and on 10 December 2018 chased her clients. The authentication code was not provided by her clients. The Respondent was unaware that Mr Connolly was in possession of the code.
  12. The deadline to register the new charge at Companies House was 24 December 2018. This date was missed by the Respondent. Following her return to work on 2 January 2019, after a period of annual leave over the Christmas period, the Respondent became aware of the missed deadline for submission to Companies House. The lender chased the Firm for an update regarding the registration of its charge at Companies House, by letter dated 3 January 2019, date stamped as received on 7 January 2019.
  13. On 7 January 2019, the Respondent received the authentication code from Mr Connolly. The Respondent subsequently registered the charge with Companies House, recording the commencement date as 23 December 2018 rather than 3 December 2018. Companies House acknowledged submission of the registration on 8 January 2019. The Respondent subsequently wrote to HM Land Registry on 21 January 2019 to certify the certificate of registration submitted with their application related to the Legal Charge filed at Companies House and certified as a true copy of the original.
  14. The lender chased the Firm for Title Deeds by letter dated 4 February 2019, received on 6 February 2019. On 6 February 2019, the Respondent discussed with Mr Connolly, that fact that she had inserted a later date on the Legal Charge registered at Companies House

and subsequently at HM Land Registry. She stated her overriding concern had been to ensure the charge was registered with Companies House within the Land Registry priority period to avoid any risk to the lender. On 6 February 2019, the Respondent emailed the lender client and advised 'We have inserted the wrong date (23 December 2018) on the Legal Charge, instead of 3 December 2018. This is entirely our fault for which we apologise.' Mr Connolly advised the Respondent to report her conduct to the SRA, telling her it would look better if the report was made by her rather than the firm.

15. In her self-report to the SRA dated 8 February 2019, the Respondent stated she had never missed a Companies House deadline before and was only vaguely aware of the procedure required to obtain registration out of time. Therefore, she had inserted the later date on the legal charge of 23 December 2018 instead of 3 December 2018.

### **Non-Agreed Mitigation**

16. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent:

16.1 The Respondent offers her genuine, and sincere, apology for that which occurred. The Respondent was admitted as a solicitor on 1 November 1990, and other than the matter the subject of these proceedings, has an exemplary and unblemished disciplinary and regulatory history of 32 years qualification.

16.2 The Respondent made a self-report to the SRA on 8 February 2019, nearly four and a half years ago.

16.3 The Respondent accepts and recognises, with deep regret and sadness, that the admitted allegation will result in the loss of her career. The Respondent is 69 years of age and recognises she will have to live the rest of her life with the stigma of being struck off and which is not the career legacy she ever dreamt of upon qualification.

16.4 The Respondent is truly sorry for her action that has resulted in these proceedings. Factors mitigating the identified, and admitted, breach include:

- a) The Respondent made a self-report to the SRA nearly four and a half years ago.
- b) The Respondent has co-operated with the SRA investigation.
- c) The Respondent has co-operated with the SDT proceedings.
- d) Genuine insight into her failings to include open and frank admissions within the SDT proceedings as set out in the Answer dated 26 June 2023 and in this document.
- e) Remorse, genuine insight, and acceptance that her conduct and the admitted dishonesty will inevitably result in the necessary penalty of strike off.

**Penalty proposed**

17. It is proposed that Diana Marten should be struck off the Roll of Solicitors.
18. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £2,500.

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

19. By falsifying the date on the Legal Charge, the Respondent failed to act with integrity i.e. moral soundness, rectitude, and steady adherence to an ethical code in breach on Principle 2 of the Principles. The Respondent's failure to register the Charge by the deadline imposed by Companies House, and within the Land Registry priority period, meant she put her clients interests at risk. Accordingly, the Respondent has not acted in the best interests of each client and has breached Principle 4 of the Principles. The Respondent's failure to register the Legal Charge by the 21 day deadline imposed by Companies House was a failure to provide a proper standard of service to her clients and could cause severe financial ramifications, whereby the Legal Charge would not be enforceable, and she would miss the Land Registry priority period in breach of Principle 5 of the Principles. The Respondent was trusted by the lender client to complete a task and protect its interests. She failed to do this at the relevant time and altered the date on a Legal Charge to cover up her error. Accordingly, the Respondent has not behaved in a way that maintains the trust the public places in her and the provision of legal services and has breached Principle 6 of the Principles. The Respondent was required to register the Legal Charge within 21 days and a failure to do so could mean it would be difficult to recover the debt if the company becomes insolvent. In doing so the Respondent failed to provide services to her clients in a manner which protects their interests in the matter, subject to the proper administration of justice and has failed to achieve Outcome 1.2 of the Code for Solicitors. By failing to register the Charge in time and altering the date on this document the Respondent has failed to provide a service to clients that is competent, delivered in a timely manner and takes account of her clients' needs and circumstances and has failed to achieve Outcome 1.5 of the SRA the Code for Solicitors.

20. The Respondent has admitted to having acted dishonestly. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanctions" (10th edition), at paragraph 51, states that:



*"Some of 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))."*

21. 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:

*"(a) 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...*

*(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*

*(c) 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..."*

22. The Respondent did not register a Legal Charge by the Companies House deadline. Instead, she inserted a "2" before the date of "3 December" to change the date to "23 December". Strict deadlines are imposed for the registration of such Charges. If a Charge is not registered at Companies House within 21 days, it may be difficult to recover the debt if the company becomes insolvent. There was a potential risk to her clients. Her firm subsequently had to make an application to amend the date to the correct date. This was a serious act of dishonesty which benefitted the Respondent to the detriment of her clients. The case plainly does not fall within the small residual category where striking off would be a disproportionate sanction.

23. Accordingly, the parties submit that the proposed outcome represents a fair and proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 10th Edition.

Signed by the parties



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Rebecca Edmonds Legal Adviser upon behalf of the SRA



Diana Marten

Dated: 13 July 2023