

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12510-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

AYMER JAN PATRICK HUTTON Respondent

Before:

Mr P Lewis (in the Chair)

Mr E Nally

Mr A Pygram

Date of Hearing: 14-15 November 2024

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Jonathan Goodwin, Solicitor Advocate of Jonathan Goodwin Solicitor Advocates for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent, Aymer Hutton, made by the SRA are that, while in practice as a Partner at Cunningtons LLP (“the Firm”):
 - 1.1 On 2 July 2021, in a telephone conversation with a third party, the Respondent attempted to procure the backdating of a Transfer Form by a third party. In so doing, he breached all or alternatively any of Principles 2, 4 and 5 of the [SRA Principles 2019](#) and Paragraph 1.4 [SRA Code of Conduct for Solicitors, RELs and RFLs](#).
 - 1.2 On 2 July 2021, in an email sent to a third party the Respondent attempted to procure the backdating of a Transfer Form by a third party. In so doing, he breached all or alternatively any of Principles 2, 4 and 5 of the SRA Principles 2019 and Paragraph 1.4 SRA Code of Conduct for Solicitors, RELs and RFLs.

Executive Summary

2. The Respondent admitted his conduct had been a breach of Principles 2 and 5. He denied he had been dishonest (Principle 4). He gave evidence and stated that because purchase monies, although received by his firm on 30 June 2021, had not been transmitted to the vendor’s solicitors, on the day when the temporary cessation of Stamp Duty Land Tax ended, he had done no more than ask for the completion to be treated as a *deemed completion*. His proposal had not been an attempt to evade paying monies rightfully due to the Revenue.
3. The Tribunal did not accept his account and in its evaluation of the facts and the appropriate test it found the Respondent to have been dishonest.

Sanction

4. The Respondent was [struck off](#) the Roll of Solicitors.

Findings of Fact and Law

5. The Applicant was required to prove the allegations on the balance of probabilities.

The Applicant’s Case

6. The applicant’s case is set out fully here. [SRA R12](#).
7. **Ms Lucy Tullet** (read) set out her involvement in the conveyancing transaction in her capacity as a secretary at RLL. She confirmed that the Respondent sought agreement over the phone with Ms Tullet to backdate the transfer form in order for the Respondent’s client to still benefit from the stamp duty holiday. Ms Tullet confirmed

in her telephone attendance note the Respondent's request and her escalation to Ms Siemonek to which her response was 'no – not prepared to lie for him.' Ms Tullet then followed up the telephone conversation with an email confirming RLL was not prepared to change the date on the transfer form.

8. **Ms Lesley Siemonek** (read) set out her involvement in the conveyancing transaction in her capacity as the fee earner and partner at RLL dealing with the matter. She confirmed that the Respondent, after calling her secretary, emailed her and made the same request she had already declined.
9. The email from the Respondent asked Ms Siemonek to reconsider and stated "*Please could you agree. You have no onward purchase and for the Inland Revenue there are no coordination issues. Our clients do not have funds and so you can imagine we would like to avoid a claim. We paid your costs and late interest and hope please that in the circumstances the date can remain the 30 June. The whole point of enduring this madness was for our clients to benefit from the Stamp Duty holiday. Your clients have suffered no loss.*"
10. On 5 July 2021, Ms Siemonek responded to the above email and stated: "*The position remains as per our previous email of the 2 July 2021, timed at 12:46pm. The contractual completion date was 30 June 2021 but, for reasons unknown to us, the completion was delayed, which resulted in us serving a Notice to Complete on your firm. You did not offer any reason or explanation as to the circumstances surrounding the delay, despite us chasing, but irrespective of the reason, the actual completion took place on 1st July 2021. This was after our Notice had been served and when money was actually received from you. Keys were subsequently released. It is wholly improper to date the transfer on a date, when completion had not actually taken place and wholly improper and unacceptable, to try to involve us in any attempt to manipulate your clients' stamp duty liability. This not only goes against the basic rules and principles of the Code of Conduct, but is dishonest. We will not be complicit in that. Quite frankly, we are shocked you have made such a request. The transfer is dated 1st July and will not be amended.*"
11. Having made admissions to breaches of Principles 2 and 5 of the 2019 Principles (respectively maintaining public trust and confidence and integrity) the remaining allegations to be determined by the Tribunal were:

Principle 4 – You act with honesty

12. The Applicant relied upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67,

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the

facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

13. The Applicant submitted that at the time the Respondent called Ms Tullet/the Firm to request its agreement in backdating the transfer form he knew or believed the following matters:
- (i) That at the outset of this matter completion was set for 30 June 2021;
 - (ii) That completion had not taken place on 30 June 2021 it had taken place on 1 July 2021, and he was provided with a notice to complete;
 - (iii) That he gave an undertaking on 1 July 2021 at 10:59 to pay the additional fees and interest required due to the sale not being completed on the agreed date.
 - (iv) That legal completion takes place once the funds have been sent and received.
 - (v) That he had missed the Stamp Duty holiday deadline.
 - (vi) That as an experienced solicitor and conveyancer there is no concept of treating a transaction as a *'delayed completion'* to enable him to backdate a transfer form.
 - (vii) That by backdating the form he would avoid the payment of SDLT and be misrepresenting the position to both HMLR and HMRC.
 - (viii) That without backdating the form he and his firm would potentially be liable to a claim from their client.
14. In those circumstances, it was said that the Respondent was dishonest. And breached *Paragraph 1.4 SRA Code of Conduct for Solicitors, RELs and RFLs*.
15. The Respondent's purpose in speaking to Ms Tullet on 1 July 2021 was to attempt to mislead his clients, HM Land Registry and HM Revenue and Customs into believing that the conveyancing transaction with which he was concerned had completed on 30 June 2021 when in fact it had completed on 1 July 2021.

The Respondent's Case

16. Allegations 1.1 and 1.2 are admitted as a breach of principle 2 and 5, but denied as a breach of Principle 4 (honesty) and paragraph 1.4 of the Code of Conduct.
17. The R. gave evidence. He adopted the contents of his redacted [answer](#) and maintained his position throughout Mr Bullock's cross-examination.

The Tribunal's Findings

18. On 30 June 2021 there was enough money in the Respondent's firm's bank account to complete the purchase that day.
19. Completion did not take place as intended on 30 June 2021. Two reasons were given for this:
 - (i) The volume of work connected to the temporary suspension of Stamp Duty Land Tax (SDLT);
 - (ii) The firm's head cashier was away from work, in circumstances which were unexpected leading to extra pressure upon the Firms accounts department.
20. At around 4pm on 30 June 2021 the Respondent emailed the solicitors acting for the sellers. He said that "we have the sale monies and are keying in to send on to you". This assertion was not challenged in cross-examination.
21. In his evidence, the Respondent said that the firm's Accounts Department was centralised at another office, they were overwhelmed with business, and he had been advised as a result of that pressure not to check in with them. By the close of business of 30 June 2021, the Respondent had asked for the transfer of money but the Respondent had not personally checked that his instruction had been actioned.
22. The money was not in fact sent until the following day and was not received by the sellers until at 10.12am on 1 July 2021.
23. There having been no completion on the intended day, the Respondent agreed that he made the telephone call and sent the email forming the substance of the allegations. He stated that his reason in so doing was to give effect to the intentions of the parties: that completion was intended to take place on 30 June 2021.
24. The Respondent described his intention in a subsequent letter to the SRA on 17th November 2021, as follows:

'I tried to deal with the situation as a delayed completion and not an exercise in fraud'.. [he had been] 'clumsy and naïve'.

25. In evidence, reference was made to the concept of *delayed completion*. This term was used interchangeably with the term *'deemed completion'*. The Tribunal did not hear any evidence, other than from the Respondent as to the meaning of the term *delayed completion*.
26. The Respondent described a *'delayed completion'* in later correspondence and in evidence as occurring when:

'.. some parts of the transaction are not ready you can proceed with the transaction as contracted, even if parts of that transaction have not happened.'
27. Although they were referred to separately, the Tribunal found that in referring to delayed completion, the Respondent was referring to the concept of *'deemed completion'* i.e. a point in time in which both parties to the transaction agree that completion has taken place even though some contingent aspects of the transaction are still to take place e.g. the transfer or receipt of funds.
28. In hindsight, the Respondent accepted that it was inappropriate to ask the other side to date the contract differently. He accepted that the concept of deemed completion would not allow him to act as he did though he did not think it was inappropriate on 2 July 2021. He said he had been mistaken as to what was permitted.
29. In Mr Bullock's submission the concept of *'delayed completion'* relied upon by the Respondent was in fact 'an after-thought' because it did not appear in the correspondence between the parties to the conveyancing transaction and only emerged in response to an enquiry by the SRA.
30. The Tribunal considered the witness statements of Lucy Tullet and Lesley Siemonek. Their evidence was not challenged. Neither witness referred to the concept of *'delayed completion'* as a concept raised by the Respondent in his communications with them. The Tribunal considered this to be of significance and it placed some weight upon this when assessing what might be known and genuinely believed by the Respondent, a solicitor of some 30 years' experience, at the relevant time. Nevertheless, the Tribunal did not lose sight of the fact that as a primary test it had to assess what the Respondent's own knowledge and belief was to the facts.
31. The Respondent accepted there was no reference to delayed completion in the conveyancing protocol. When cross-examined, he was taken to the note prepared by Ms Tullet of her conversation with him on 2 July 2021. He accepted the note was accurate. The note referred to the primary reasons for proposing the recorded date of 30 June 2021 as the date of completion was to *'to avoid SDLT'*.

32. The Respondent accepted that the words '*delayed*' or '*deferred*' did not appear in that note. It was put to him that if he genuinely believed he was entitled to rely on the doctrine he would have said so at the time. He replied: '*Yes, but I did not*'.
33. As to the Respondent's knowledge and belief at the time the Tribunal found his primary motive in making both the telephone call and in sending the email was to avoid his client's liability for SDLT. This liability would be likely to have been passed to the firm. The basis of this finding was as follows:
- (i) In e-mail correspondence at 12:56 on 2 July 2021 with Ms Siemonek the Respondent said that he wanted to: '*avoid the claim*'; a reference which the Tribunal found related to the liability which would follow.
 - (ii) The absence of a contemporaneous reference (in either his firm's documents or elsewhere) to *delayed* or *deemed completion* did not support the Respondent's account that this was in his contemplation at the relevant time.
 - (iii) Although the Respondent referred to the concept of *delayed completion* he did not adequately develop in evidence before the Tribunal where and how his understanding of that doctrine or practice developed and could apply in this specific case and his evidence on this important part of his case was vague.
 - (iv) The Tribunal found the absence of such detail to be inconsistent with the Respondent's expertise and experience in conveyancing. He did not explain adequately or with the expected level of conviction why he believed such a doctrine or practice would apply in circumstances such as they existed on 2 July 2021 to permit the backdating that he had suggested. His account lacked credibility.
34. The Tribunal noted that the Respondent had a clear regulatory history, to which it gave due regard, along with his character references. It accepted that 'good character' was relevant both to Respondent's general credibility and also propensity to be dishonest. Mr. Bullock had also accepted that the Respondent '*deserved due credit*' for his prompt admissions and timeous co-operation with the Regulator. The Tribunal noted the Respondent's answers had, throughout these proceedings been consistent.
35. However, the Tribunal directed itself that good character of itself was not an answer to the allegations and that given the weight of its factual findings and those relating to his state of mind and knowledge at the relevant time the balance of its evaluative judgment, shifted towards a finding that the Respondent had been dishonest by the standards of ordinary decent people, as set out in the second limb of *Ivey*.

Findings

36. In conclusion, the Tribunal found the following proved on the balance of probabilities:
- (i) The Respondent was dishonest.
 - (ii) The Respondent had breached Principles 2, 4 5 of SRA Principles 2019 and Outcome 1.14 Code of Conduct.

Previous Disciplinary Matters

37. None.

Sanction

38. The Tribunal applied the Guidance Note on Sanction (10th Edition June 2022) (“the Sanctions Guidance”) and the proper approach to sanctions as set out in *Fuglers and others v SRA* [2014] EWHC 179. In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

Mitigation

39. Mr Goodwin recognised that a finding of dishonesty would almost always result in a sanction of strike off. However, there was a small residual category of cases where strike off would not be the appropriate sanction due to the presence of ‘exceptional circumstances’ which would militate towards a lesser sanction. As to whether exceptional concomitances obtained the Tribunal would need to carry out a fact specific exercise to determine the nature, extent and scope of the dishonesty and the level of culpability. The exceptional circumstances must relate in some way to the dishonesty although as a matter of principle nothing was excluded as being relevant to the evaluation, which could therefore include personal mitigation [*Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin)) and *Solicitors Regulation Authority v Imran* [2015] EWHC 2572 (Admin)].
40. In the Respondent’s case this had been an isolated, discrete and momentary lapse, lasting 30 minutes in which time he had engaged in one phone call and an e-mail. This had taken place within the context of the busiest working day the Respondent had ever experienced due to the imminent end of the SDLT holiday. His actions had to be measured against his 33 years of unblemished professional conduct, evidenced by the character references seen by the Tribunal; his admissions; that there had been no repeat of the conduct and his genuine remorse. In such circumstances a strike off represented a disproportionate disposal.

41. The Respondent advanced mitigation regarding an unblemished career, numerous character references to which the Tribunal accepted demonstrated that he was held in high regard by professional colleagues. He had been struggling with the volume of work. He had shown insight by his early admissions to the substance of the allegations (he had contested dishonesty, but this was not to be held against him)

Stage one: seriousness of the misconduct (culpability and harm).

42. The Tribunal found that the Respondent had been dishonest albeit it was an isolated event and not pre-planned. He was directly responsible for his actions. He was an experienced solicitor, but he had been motivated by avoiding liability to his client or firm.
43. As to impact on others, the Tribunal assessed that it would have required the involvement of another party (Ms Siemonek). No client was placed at loss and the appropriate SDLT was paid; the risk was that it would not have been and monies which fell rightfully to the Revenue would not have been paid. Had this occurred the risk is to the reputation of profession would have been great.
44. The Respondent advanced mitigation regarding an unblemished career, numerous character references to which the Tribunal accepted demonstrated that he was held in high regard by professional colleagues. He had been struggling with the volume of work. He had shown insight by his early admissions to the substance of the allegations (he had contested dishonesty, but this was not to be held against him). The Tribunal accepted his remorse to be sincere and genuine.

Stage two: the purpose of sanctions

45. The Tribunal had regard to the observation of Sir Thomas Bingham MR (as he then was) in *Bolton v Law Society* [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

“to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth”.

Stage three: the most appropriate sanction

46. Mr Goodwin conceded that the starting point in this matter, with proven findings of dishonesty would be ‘strike off’ absent any finding of exceptional circumstances.
47. In considering whether exceptional circumstances existed in this case it had recourse to the decision in *SRA -v James* [2018] EWHC 2058 (Admin). At para 100 of the judgment it stated:

‘the most significant factor carrying most weight and which must be the primary focus of the evaluation is the nature and extent of the dishonesty.’

48. The extent of the dishonesty in the instant case was limited in duration and not pre-planned and the Tribunal found the Respondent had been acting in unusually difficult circumstances.
49. The Tribunal gave significant weight to the nature of the dishonesty as the Respondent’s actions, if carried through, would have resulted in a deceit upon HM Revenue and Customs in the sum of approximately £6,000. The integrity of the conveyancing process is founded upon the network of obligations which exist between the profession and others. There must be unshakeable confidence that solicitors will record accurately and discharge a liability to the Revenue as an integral part of that process.
50. Balancing all the matters in the round the Tribunal did not find that there were exceptional circumstances and the appropriate sanction was a Strike off the Roll of Solicitors.

Costs

51. The parties reached agreement as to the Applicant’s costs in the sum of £5,000 and the Tribunal determined this to be a reasonable and proportionate sum in the circumstances and it made an order in those terms.

Statement of Full Order

52. The Tribunal Ordered that the Respondent, AYMER JAN PATRICK HUTTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5000.00.

Dated this 18th day of December 2024
On behalf of the Tribunal

P. Lewis

P. Lewis
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
18 DECEMBER 2024