

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12610-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARK ROBERT WESTWOOD

Respondent

Before:

Ms A Banks (in the chair)

Mr R Nicholas

Mr B Walsh

Date of Hearing: 3 October 2024

Appearances

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

**JUDGMENT ON AN AGREED OUTCOME AND
WITHDRAWAL OF AN ALLEGATION**

Allegations

1. The Allegations were as follows:
 - “2. while in practice as a Solicitor at Cavendish Legal Group/O’Neill Patient Solicitors (“the Firm”): -
 - 2.1 Between September 2016 and October 2020, he acted in five conveyancing transactions where there was a conflict of interest or significant risk of an own interest conflict between his lender client and himself. In doing so he therefore breached / failed to achieve any or all of the following:
 - 2.1.1 insofar as the conduct took place during the period from September 2016 to before 25 November 2019, Principles *[withdrawn]* 4, 5 and 6 of the SRA Principles 2011 (“the 2011 Principles”) and Outcomes 3.4 of the SRA Code of Conduct 2011 (“the Code of Conduct”)
 - 2.1.2 insofar as the conduct took place on or after 25 November 2019, Principles 2, *[withdrawn]* and 7 of the SRA Principles 2019 (“the 2019 Principles”) and Paragraphs 3.2 and 6.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 (“the Code for Solicitors”)
 - 2.2 Between September 2016 and October 2020 in five conveyancing transactions, he failed to disclose to his lender client material information, concerning his relationship to his borrower client. The borrower client being either an immediate relative or himself. In doing so he therefore breached / failed to achieve any or all of the following:
 - 2.2.1 insofar as such conduct took place from the period September 2016 but before 25 November 2019, Principles 2, 4, 5 and 6 of the 2011 Principles and Outcome 4.2 of the Code of Conduct; and
 - 2.2.2 Insofar as such conduct took place on or after 25 November 2019, Principles 2, 5 and 7 of the 2019 Principles and Paragraphs 3.2 and 6.4 of the Code of Solicitors.
 3. *[Withdrawn]*”

Note: the allegations in the Rule 12 Statement dated 23 May 2024 were numbered respectively 1, 1.1, 1.1.1. etc.

Documents

2. The Tribunal had before it the following documents:-
 - The Form of Application dated 23 May 2024
 - Rule 12 Statement dated 23 May 2024
 - Statement of Agreed Facts and Proposed Outcome dated 25 September 2024
 - Respondent’s Answer 25 June 2024

Application for the matter to be resolved by way of Agreed Outcome and withdrawal of an aggravating factor in relation to Allegation 2.1, and a breach of the Principles in relation to Allegations 2.1 and 2.2.

3. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.
4. The Respondent admitted each of the allegations but denied a breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles in relation to Allegation 2.1 and Allegation 2.2 respectively. The Respondent also denied the aggravating factor of recklessness with respect to Allegation 2.1.
5. The Applicant applied pursuant to Rule 24 of the Solicitors (Disciplinary Proceedings) Rules 2019 to withdraw the breaches and aggravating factor which the Respondent denied
6. The Respondent admitted the factual matrix and the remainder of the alleged breaches. There were no material disputes of fact.
7. In the circumstances of those admissions and the material set out in the Statement of Agreed Facts, the Tribunal was satisfied that it was reasonable and proportionate to permit the Applicant to withdraw the matters set out above.

Factual Background

8. The Respondent is a solicitor having been admitted to the Roll on 15 November 1985. He was a consultant at the Firm. Initially at Cavendish Legal Group ("CLG") from 1 October 2014 until 28 February 2020 when it was acquired by O'Neill Patient Solicitors ('ONP'), where he continued as a consultant until his employment was terminated on 26 January 2022. He was based at the Firm's Hove office (61 Church Road, Hove) where he was supervisor dealing with property matters.
9. Since 7 February 2022, the Respondent has been employed as a consultant at Engleharts. He holds an unconditional Practising Certificate for the Practising Year 2023 - 2024.

Findings of Fact and Law

10. The Applicant was required to prove the allegation on the balance of probabilities. The Tribunal had due regard to 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.
11. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

12. The Tribunal considered the Guidance Note on Sanction (10th Edition June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
13. The Tribunal considered that the Respondent had erred significantly in acting in conveyancing transactions where there were conflicts of interest, with the consequential risk of harm to clients and lenders being an evident danger.
14. The Tribunal noted that there had been no dishonesty on the Respondent's part and that he had demonstrated genuine remorse and insight into his failings, which had included open and frank admissions from the earliest opportunity and his full co-operation with his regulator throughout the investigatory process.
15. Considerable steps had been taken by the Respondent to address the mistakes he had made and to understand the significance of the lenders' requirements at the point of instruction. He had attended courses specific to this issue.
16. Considering this remedial action the Tribunal was content that the seriousness of the misconduct could be marked by a fine falling towards the top end of "level 3" i.e. "conduct assessed as more serious".
17. The appropriate fine for conduct assessed as falling within Fine Band, Level 3 is £7,501 - £15,000.00.
18. In all the circumstances of the case, the Tribunal agreed it was proportionate and in the public interest that the Respondent should be fined the sum of £12,500.00.

Costs

19. The parties agreed that the Respondent should pay costs in the sum of £19,670.00. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

20. The Tribunal ORDERED that the Respondent, MARK ROBERT WESTWOOD, solicitor, do pay a fine of £12,500 such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,670.00.

Dated this 25th day of October 2024
On behalf of the Tribunal

A Banks

A Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
25 OCTOBER 2024

Number:12610-2024

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY LTD

AND

Applicant

MARK ROBERT WESTWOOD

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 23 May 2024, 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 two allegations of misconduct against Mark Robert Westwood ("the Respondent")

The allegations

2. The allegations against the Respondent, made by the SRA within that statement are that; while in practice as a Solicitor at Cavendish Legal Group / O'Neill Patient Solicitors ("the Firm"): -

- 2.1 Between September 2016 and October 2020, he acted in five conveyancing transactions where there was a conflict of interest or significant risk of an own interest conflict between his lender client and himself. In doing so he therefore breached / failed to achieve any or all of the following:

- 2.1.1 insofar as the conduct took place during the period from September 2016 to before 25 November 2019, Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the 2011 Principles") and Outcomes 3.4 of the SRA Code of Conduct 2011 ("the Code of Conduct")

2.1.2 insofar as the conduct took place on or after 25 November 2019, Principles 2, 5 and 7 of the SRA Principles 2019 (“the 2019 Principles”) and Paragraphs 3.2 and 6.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 (“the Code for Solicitors”)

2.2 Between September 2016 and October 2020 in five conveyancing transactions, he failed to disclose to his lender client material information, concerning his relationship to his borrower client. The borrower client being either an immediate relative or himself. In doing so he therefore breached / failed to achieve any or all of the following:

2.2.1 insofar as such conduct took place from the period September 2016 but before 25 November 2019, Principles 2, 4, 5 and 6 of the 2011 Principles and Outcome 4.2 of the Code of Conduct; and

2.2.2 Insofar as such conduct took place on or after 25 November 2019, Principles 2, 5 and 7 of the 2019 Principles and Paragraphs 3.2 and 6.4 of the Code of Solicitors.

3. Recklessness was alleged as an aggravating factor with respect to allegation 2.1 of these allegations.
4. The Respondent admits each of the allegations but denies a breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles in relation to Allegation 2.1 and Allegation 2.2. The Respondent also denies the aggravating factor of recklessness with respect to Allegation 2.1.

Application to withdraw breaches

5. The SRA applies pursuant to Regulation 24 of the Solicitors (Disciplinary Proceedings) Rules 2019 to withdraw the breaches and aggravating factor which the Respondent has denied.
6. The Respondent has denied breaches of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles in relation to both allegations and the aggravating factor of recklessness in relation to Allegation 2.1. However, the Respondent admits the factual matrix and the remainder of the alleged breaches. There are no material disputes of fact

that would otherwise require resolution by the SDT. Bearing in mind the serious nature of the admitted failings and the sanction agreed, the Applicant considers that it would be disproportionate and not in the public interest to proceed to a two-day trial in order to seek to prove the unadmitted breaches and aggravating feature. On that basis, the Applicant applies to withdraw those breaches.

Agreed Facts

7. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 of this statement, are agreed between the SRA and the Respondent.
8. The Respondent is a solicitor having been admitted to the Roll on 15 November 1985. He was a consultant at the Firm. Initially at Cavendish Legal Group ('CLG') from 1 October 2014 until 28 February 2020 when it was acquired by O'Neill Patient Solicitors ('ONP'), where he continued as a consultant until his employment was terminated on 26 January 2022. He was based at the Firm's Hove office (61 Church Road, Hove) where he was supervisor dealing with property matters.
9. Since 7 February 2022, the Respondent has been employed as a consultant at Engleharts. He holds an unconditional Practising Certificate for the Practising Year 2023 – 2024.

The facts and matters relied upon in support of the allegations

Background

10. The conduct in this matter came to the attention of the SRA, when legal counsel for Clydesdale Bank, made a report dated 19 November 2021 to the SRA. He reported that a certificate of title signed in October 2020, relating to a property they were lending on, had been signed by one of the borrowers, the Respondent. They complained that this was a breach of the bank's instructions, a breach of all normal rules of conveyancing, and a significant conflict of interest.
11. Following the report, a duly authorised officer of the Applicant, the Forensic Investigations Officer ("the FIO") commenced a Forensic Investigation at the Firm on 18 May 2022. The inspection culminated in a report dated 27 September 2022 (the FI report).

12. The FI report contained details of six further transactions which were found to have similar issues. These matters had been completed between 2014 and April 2019.

UK Finance Mortgage Lenders Handbook for Conveyancers

13. The UK Finance Mortgage Lenders' Handbook for Conveyancers ('Lenders Handbook') provides instructions for conveyancers acting on behalf of lenders in residential conveyancing transactions. The Lenders Handbook comprises 'Part 1', which are general instructions; and 'Part 2' which are instructions specific to the lender.

14. Section 1.15 (Part 1) of the Lenders Handbook states as follows –

“Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us”.

15. 'Immediate family' for the purposes of the Lenders Handbook is defined at Section 1.13 as:

“a spouse, civil partner, co-habitee, parent, sibling, child, step-parent, step-child, grandparent, grandchild, parent-in-law, or child-in-law”

The Transactions

16. The Firm provided to the FIO a list of all matters on which it had acted for the Respondent or members of his family. The list showed eight completed matters. Seven of the matters were transactions on which the Firm was instructed to act for both the borrower and the lender. Two of the files had been destroyed. In each of the remaining five matters (which included the transaction detailed at paragraph 10 above) the borrower was either the Respondent, and or Client A or Client B, who were members of his immediate family.
17. All these files had been opened in the Respondent's name as case fee earner. None of the client files showed the lender client had been advised of the relationship between the Respondent and the borrower.

(1) Remortgage of 3 Eastcourt Road

18. The property was purchased by the Respondent and Client A in June 2019. The Firm did not act in the purchase. The property was remortgaged with Clydesdale bank, the mortgage offer is dated 14 October 2020. The mortgage offer was addressed to the Firm's Hove office. The matter completed on 27 October 2020. The Certificate of Title was signed by the Respondent on 23 October 2020.

19. A client care letter in the file dated 4 August 2020 detailed that Angeline Owen ("Ms Owen¹") would have day to day conduct of the matter under the supervision of Mr N Pelmont² ("Mr Pelmont") who was based at the Crouch End Office. There was no further reference to Mr Pelmont in the file.

20. In a witness statement from Ms Owen she confirms she had conducted legal work on this matter at the request of the Respondent. She said she was not aware that the Respondent should not have signed the Certificate of Title.

21. The file showed that the Respondent carried out legal work on the matter, to include:

(1) A letter to Precise Mortgages dated 26 October 2020, requesting a redemption statement, with details of the Respondent in the letter header as contact.

(2) Two authorisation slips dated 27 October 2020 relating to the mortgage advance receipt and redemption sum. The Respondent was shown to be Case Fee Earner on both slips. The mortgage advance slip is shown to have been requested by AO1 and the redemption slip by the Respondent.

(3) An email exchange between the Respondent and 'CLG TT Completions' dated 27 and 28 October 2020. The Respondent's email stated -

"Good Morning We have the above Completing – Funds on Ledger
Please approve and send the attached Chaps Payment to Precise re Redemption and
I attach CLG Comp State

¹ Ms Owen was a Legal Assistant working in the Hove Office. She had more than 30 years of experience in conveyancing transactions but had never conducted files under her own name. She solely assisted on the Respondent's files at the Hove office.

² Mr Pelmont was designated partner for the Hove office, he was based at the Firm's office in Crouch End.

Chaps Payment to Precis

Redemption Statement

Many thanks

Mark”

(4) An email from Client A to the Respondent dated 5 November 2020. The email provided her bank details and requested that £15,000.00 be sent.

(5) An email exchange and authorisation slip of 5 November 2020. The documents show that the Respondent requested and effected the payment requested by Client A.

22. The relevant extract from the Lenders Handbook for the Clydesdale states;

“1.15 Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us.

1.15 May your firm act if the person dealing with the transaction or a member of his immediate family is the borrower?

Yes, in the circumstances stated in part 1 of the handbook.”

The Respondent’s response to the FIO:

23. The Respondent said that the offer was meant to have been sent to the Crouch End Office and that the work was to be carried out by Ms Owen. He said he had not intended to have any involvement in the transaction. However, the firm was working under exceptional circumstances. This was due to the Covid-19 pandemic.

24. He said he signed the Certificate of Title “*without thinking and in the heat of the moment*” He said he was sorry that “*...despite having set up the transaction to be dealt with appropriately that I signed the Certificate without giving sufficient thought to the issue.*” He said that he had “*no intention of being duplicitous.*”

Comments at Interview with the FIO on 16 August 2022

25. He said he had not reviewed the Lenders Handbook for Clydesdale before proceedings with the transaction. He felt he was familiar enough with its contents.
26. He confirmed that he had not advised the lender he was employed by the Firm. He had not considered the point.
27. He was aware of the restrictions in the Lenders Handbook relating to acting for yourself and the lender, but at the time had not given the issue any thought. But said, he had asked Ms Owen to conduct the matter because he considered it the "*proper thing to do*" to not conduct one's own transaction. He confirmed that he did not consider Ms Owen was "*a separate fee earner of no less standing*" within the meaning of the lender's instructions. He said he had not given the matter sufficient thought at the time.

(2) Purchase of 78 Ventnor Villas by the Respondent and Client A

28. This was to be originally purchased by Client B. Contracts were exchanged in Client B's name on 6 March 2019. The solicitor acting was named as the Respondent. The client care letter dated 29 January 2019 named the Respondent as senior solicitor acting and supervision being provided by Mr Pelmont.
29. Due to expected monies not materialising, the contract was then assigned to the Respondent and Client A. The Certificate of Title was signed by the Respondent.
30. Santander provided the mortgage to the Respondent and Client A. The offer was dated 28 March 2019.
31. The relevant extract of the Handbook at the time (September 2019) as provided by Santander, said:

"1.15 Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us.

1.15 May your firm act if the person dealing with the transaction or a member of his immediate family is the borrower?

Yes, provided that a separate fee earner (acting under the supervision of another partner) acts; there is no conflict of interest and your professional guidelines are followed."

32. The Respondent continued to act on the matter after receiving the mortgage offer in the following ways:

(1) An email dated 17 April 2019 from the Respondent to Krystee Walker, a partner at the Firm. The Respondent's email attached documents including a Completion Statement, a CHAPS payment slip, and replies to requisitions. Ms Walker responded the same day to confirm completion was approved and completion monies sent.

(2) An email of 24 May 2019 from the Respondent to ODT Solicitors confirming completion of a Deed of Variation in respect of the layout of the property. ODT Solicitors had confirmed to the Respondent that they were happy to complete on his undertaking.

(3) A letter of 9 July 2019 from the Respondent to ODT Solicitors. The letter outlined documentation outstanding in order that registration at the Land Registry could be completed.

The Respondents comments at interview with the FIO

33. He said he did not give any thought to the instructions in the Lenders Handbook. And, that he had not given the matter the thought he should have done.

(3) Remortgage of a Maisonette at Powis Grove

34. Client A remortgaged the maisonette which was in her sole name. The lender was Kent Reliance. The mortgage offer was issued on 1 February 2016.

35. The matter was handled by Martin Davitt at the Firm, who also signed the Certificate of Title on 10 February 2016. Mr Davitt was not admitted to the Roll until December 2016. Communications were with Mr Davitt at the Hove office.

36. The Respondent also carried out work on the file. This included:

- (1) On 16 February 2016 Client A emailed the Respondent her bank details for the purposes of completion.
- (2) All authorisation slips on the file bore the name of the Respondent as fee earner, with Mr Davitt as the party requesting the transaction.
- (3) The AP1 form submitted to the Land Registry gave the contact details of the Respondent and the Hove office at section 7].

37. The Lenders Handbook instructions for Kent Reliance at the date of the FIO's Report said:

"1.15 Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us.

1.15 May your firm act if the person dealing with the transaction or a member of his immediate family is the borrower?

We do not agree that your firm may act in these situations."

38. Kent Reliance provided details of what instructions were in force at the date of the transaction. Communication from them in July 2022 shows that:

- a. The lender was not made aware of the relationship between the solicitor at the firm and the borrower.
- b. The lender's instructions at Part 1.15 had not changed.
- c. The lender was not aware that the individual that had signed the Certificate of Title was a trainee solicitor.

39. The lender further clarified their response to Part 2 of 1.15, stating that they would not allow any partner of a firm to act in a transaction relating to a family member. The lender stated that in the case of an employee they would consider the matter on a case-by-case basis.

40. In the witness statement provided by Mr Davitt, he states that he was a trainee solicitor throughout the transaction, under the supervision of the Respondent.

The Respondents comments at Interview with the FIO

41. The Respondent said that he had been the supervisor for the matter, and that he would have given advice to Mr Davitt if there had been queries on the file. He said he had not read the Lenders Handbook instructions before the matter was started. He said he had not disclosed the nature of the relationship between himself and the client. He said the Firm should not have acted in the matter.

42. The Respondent said having Mr Davitt handle the matter and sign the Certificate of Title had not satisfied the lender's instructions. He said that he did not place responsibility with Mr Davitt. He said he was himself responsible for failing to follow the lender's instructions as senior solicitor.

(4) Ground Floor Flat at Powis Grove

43. Client B purchased the flat at Powis Grove. The lender was HSBC who issued their mortgage offer on 29 January 2016. The matter completed on 11 March 2016. The certificate of title was signed by the Respondent.

44. The relevant HSBC's Lenders Handbook instructions in operation at the time of the transaction, as provided by HSBC (a version from 3 March 2016) provided:

"1.15 Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us.

1.15 May your firm act if the person dealing with the transaction or a member of his immediate family is the borrower?

Yes, provided that a separate partner to the firm (who is not related to the seller³) acts for us, there is no conflict of interest and you are acting within your professional guidelines.”

45. Documents on the file showed that the Respondent acted on the matter. Examples of this include:

(1) The Contract of Sale dated 26 February 2016 showed the Respondent as the buyer’s conveyancer.

(2) A letter from the firm to HSBC dated 11 March 2016, which enclosed the Certificate of Title and contained the Respondent’s contact details as writer.

(3) A letter from the sellers’ solicitor Dean Wilson LLP dated 14 March 2016. The letter was addressed to the Respondent and enclosed a signed Lease.

The Respondent’s comments at interview with the FIO

46. The Respondent confirmed he had acted on the matter. He said he should not have acted on the matter and that he had not complied with the lender’s instructions in the Lenders Handbook.

(5) Property at Grand Ave Mansions

47. The property was purchased by Client B. The mortgage offer was issued by HSBC on 5 July 2018. The matter completed on 27 September 2018. The certificate of title was signed by the Respondent.

48. A version of the Lenders Handbook instructions in operation at the time of the transaction was provided by HSBC. The version was from 2 July 2018. [SEJ1:317-320] It provided:

1.15 Your firm or company must not act for us if the partner or fee earner dealing with the transaction or a member of his immediate family is the borrower, unless we say your firm may act (see part 2) and a separate fee earner of no less standing or a partner within the firm acts for us.

³ This is likely to be a typographical error as it is identical to the Part 2 instructions for section 1.14. It is assumed that ‘seller’ should state ‘borrower’.

1.15 May your firm act if the person dealing with the transaction or a member of his immediate family is the borrower?

Yes, provided that a separate partner in the firm (who is not related to the seller⁴) acts for us, there is no conflict of interest and you are acting within your professional guidelines.”

49. Documents on the file show that the Respondent acted on the matter. Examples include:

(1) A client care letter to Client B dated 30 June 2018. The letter named the Respondent as senior solicitor handling the matter, and Mr N Pelmont as supervising partner.

(2) The Contract of Sale dated 15 August 2018 showed the Respondent as the buyer’s conveyancer.

3) All authorisation slips on the file bore the name of the Respondent as fee earner.

The Respondent’s comments at Interview with the FIO

50. The Respondent confirmed that he had signed the Certificate of Title. He said that “with hindsight” he should not have acted in the matter. He said that he *“hadn’t investigated it and I didn’t give it any thought.”*

Certificates of Title

51. In all of the five matters the Certificates of Title contained a provision that the conveyancer give the Certificate of Title referred to in IB (3.7) of the SRA Code of Conduct 2011 published by the Law Society as if it were set out in full, subject to the limitations contained in it.

52. IB (3.7) concerns; “acting for clients who are the lender and borrower on the grant of a mortgage of land only where:

⁴ This is likely to be a typographical error as it is identical to the Part 2 instructions for section 1.14. It is assumed that ‘seller’ should state ‘borrower’.

(c) the certificate of title required by the lender is in the form approved by the society and the Council of Mortgage Lenders.”

53. The full Approved Certificate of Title (SEJ1:184-191) includes the following certification:

“WE THE CONVEYANCERS NAMED ABOVE CERTIFY as follows:

...

(2) Except as otherwise disclosed to you in writing

...

(x) neither any principal nor any other individual in the firm giving this certificate nor any spouse, child, parent, brother or sister of such a person is interested in the Property (whether alone or jointly with any other) as mortgagor.”

Allegation 2.1 – Acting where there was a conflict of interest.

ONP Conflict of Interest Policy

54. The following extract is relevant from ONP’s policy:

“Examples where it may be possible to act for both lender and borrower:

- the mortgage is a standard mortgage (one provided in the normal course of a lender’s activities, where a significant part of the lender’s activities consists of lending and the mortgage is on standard terms)*
- where the property is to be used as the borrower’s private residence*
- where we are satisfied that it is reasonable and in the Client’s best interests for you to act*
- were (sic) the Certificate of Title required by the lender is in the form approved by the Society and the Council of Mortgage Lenders”*

CLG Conflict of Interest Policy

55. The following extract is relevant from CLG’s policy:

“It is also important for us to consider the possibility of a conflict with our own interests. We need to be completely confident when opening a file that our ability to act in the best interests of the client is not impaired by:

- *any financial interest*
- *a personal relationship*
- *the appointment of the firm, a member of staff, or any member of their family, to public office*
- *commercial relationships*

Your employment

If a fee-earner or member of new business feels that a matter may be impaired by any of the above issues, or any other of our own interests, they must raise this with a partner immediately who will then decide whether or not we should accept the instructions. Our system of double checking conflicts should pick up these issues if they are present.

Under no circumstances must we act for a client if there is an own interest conflict or a significant risk of an own interest conflict.”

56. In all five property matters there was a conflict or a significant risk of an own interest conflict⁵ for the following reasons:

- (a) Part 1 of the Lenders Handbook prevented the Firm from acting for the lender if a fee earner, which the Respondent was, dealing with the transaction or a member of his immediate family is the borrower, unless the lender says that the Firm may act and a separate fee earner of no less standing or a partner within the firm acts for them.
- (b) In all the property transactions (except property 3) Part 2 of the Lenders Handbook allowed the Firm to act for the Lender but only if someone other than the Respondent acted for them. In relation to property 3 there was a total prohibition on the Firm acting for the lender. Although the lender does say that the matter would have been considered on a case by case basis if a request had been received.

⁵ In the Glossary of the SRA handbook 2011, an own interest conflict is defined as follows “*for the purpose of Chapter 3 of the SRA Code of Conduct, means any situation where your duty to act in the best interests of any client in relation to a matter conflict, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter.*”

- (c) In four of the five matters the Respondent either acted (or carried out legal work on the file) for himself or immediate members of his family and the lender or in the case of Property 3 supervised a trainee with conduct of the file.
- (d) The Respondent either had a financial interest in the transaction or there was a personal relationship involved. This resulted in an own interest conflict or a significant risk thereof.
- (e) The Certificate of Title specially required that the person giving the certificate had no interest in the property as mortgagor either as an individual in the firm nor any spouse, child, parent, brother or sister of such a person.

Breaches / failure to achieve Principles and Outcomes and Paragraphs

- 57. In the circumstances in all five matters the Respondent failed to consider and acted where there was an own interest conflict or a significant risk of an own interest conflict.
- 58. The Respondent failed to take account of the Firm's policies or review the individual lenders requirements under the Lenders Handbook in each matter.

Principle 6 SRA Principles 2011 AND / OR Principle 2 SRA Principles (maintaining trust)

- 59. The conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by a solicitor who acts where there is an own interest conflict or significant risk thereof. The Respondent proceeded in such circumstances by acting for the borrowers and lenders in conveyancing transactions where he had an interest. (notwithstanding certifying the contrary to the lender) Further, acting in such circumstances was prohibited by the Lenders Handbook/s. The Respondent therefore breached Principle 6 of the 2011 Principles AND / OR Principle 2 of the 2019 Principles.

Principles 4 SRA Principles 2011 AND / OR Principle 7 SRA Principles 2019 (act in the best interests of each client And Principle 5 SRA Principles 2011 and Paragraph 3.2 of the Code for Solicitors (provide a proper standard of service to your clients)

60. The Respondent was unable to act in the client lenders best interests or provide them with a proper standard of service when there was an own interest conflict / significant risk thereof. Provisions were in place to prevent the Respondent acting for the lender when he was also acting for immediate family members or himself as the borrower. He failed to comply with the lender clients' requirements. By acting for all parties in these circumstances and in contravention of the lenders stipulations the Respondent breached Principles 4 and 5 of the 2011 Principles and Principle 7 of the 2019 Principles and Paragraph 3.2 of the Code for Solicitors.

Outcome 3.4 of the Code of Conduct and Paragraph 6.1 of the Code for Solicitors (Own interest conflict)

61. By the Respondent acting for the lender and himself / family members in property transactions he acted where there was an own interest conflict or significant risk thereof. In these circumstances the Respondent has failed to achieve Outcome 3.4 of the Code of Conduct and breached Paragraph 6.1 of the Code for Solicitors.

Allegation 2.2 – Failure to disclose material information to the lender client.

62. The Respondent acted (and / or supervised work) for both the borrower, being himself or his immediate family, and the lender in the five property matters. The lender was unaware that this was happening. The Respondent had failed to disclose this to the lender. The only way the Firm could have acted for all parties in the transactions was, in four out of the five transactions, for a partner or other qualified fee earner to act for the lender. This would have complied with and been in accordance with the Lender's Handbook. In the remaining transaction, without disclosure to the lender there was total prohibition on the Firm acting for the lender.

63. The Certificate of Title, (signed by the Respondent in four of the transactions and supervised by the Respondent in the fifth) certified, "*neither any principal nor any other individual in the firm giving this certificate nor any spouse, child, parent, brother or sister of such a person is interested in the Property (whether alone or jointly with any other) as mortgagor.*".

64. The signing of a certificate of title is not merely an administrative matter. The certificate of title is the document the conveyancing solicitor gives to the lender to confirm certain statements about the property.⁶

“The certificate confirms to the lender: there are no legal problems with the property - it has a “good and marketable” title so the lender can safely lend against it”

65. By signing the certificates of title himself, or by allowing a trainee under his supervision to sign a certificate of title, the Respondent confirmed to the lenders that he had complied with the requirements of the approved Law Society and Council of Mortgage Lenders approved certificate of title, notwithstanding the Respondent clearly not having complied. The approved certificate of title stipulates as detailed above: (x) “disclosing any relationship specified by the lender between you and the borrower.”

66. The Respondent repeatedly failed to inform the lenders of his interest in the transactions. Immediate family as defined in the Lender’s handbook includes the Respondent’s relationship to client B.

67. The Respondent admits he failed to disclose to lender clients the fact that he or one of his immediate family was the borrower in the five transactions.

Principle 6 SRA Principles 2011 AND / OR Principle 2 SRA Principles (maintaining trust)

68. The conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. The Respondent failed to give full and frank information to the lenders. Public confidence in the Respondents, in solicitors and in the provision of legal services is likely to be undermined by the Respondent failing to act in accordance with the standards required in conveyancing matters when acting for a lender. The Respondent therefore breached Principle 6 of the 2011 Principles AND / OR Principle 2 of the 2019 Principles.

Principles 4 SRA Principles 2011 AND / OR Principle 7 SRA Principles (act in the best interests of each client And Principle 5 SRA Principles 2011 and Paragraph 3.2 of the Code for Solicitors (provide a proper standard of service to your clients)

⁶ Information from the Law Society website

69. By failing to disclose to his lender clients' material information which could have prevented him acting / supervising a fee earner in the five property matters, the Respondent has failed to act in the client lenders best interests and to provide them with a proper standard of service. They should have been made aware of the circumstances and the risk of there being an own interest conflict. In his failure to disclose relevant information, the Respondent breached Principles 4 and 5 of the 2011 Principles and Principle 7 of the 2019 Principles and Paragraph 3.2 of the Code for Solicitors.

Outcome 4.2 of the Code of Conduct and Paragraph 6.4 of the SRA Code for Solicitors (making the client aware of all material information)

70. The Respondent agreed to the lender's terms when he acted in all five transactions. However, he failed to comply with their requirements. These requirements are there to protect their interests and the Respondent should have ensured compliance with their requirements. The lender clients were entitled to assume that the Respondent would understand and follow their requirements in the Lender's handbook. By failing to disclose his relationship as, or to, the borrower, the Respondent has failed to disclose information material to the transactions by omission, and in doing so has breached Outcome 4.2 of the SRA Code of Conduct 2011 and paragraph 6.4 of the Code for Solicitors.

Non-Agreed Mitigation

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

71.1. For ten years from 2012, the Respondent operated, and managed, the Brighton office of CLG (a large London based Practice) and ONP, and which was a very busy environment comprising, at varying times of, two solicitors, a mature trainee, two support staff and an Office Manager, with the Respondent personally conducting approximately 2,500 – 3,000 transactions over this period.

71.2. All work carried out by the Respondent is generated by his own Client base (with a large amount of repeat business) and/or from client recommendations and/or professional contacts.

71.3. In the period September 2016 – October 2020, the subject of the allegations, the Respondent acted in five transactions, where there was a conflict of interest, or

significant risk of an own interest conflict, and a failure to disclose material information, regarding his relationship to the borrower client, who was either an immediate relative or himself.

- 71.4. The transactions, the subject of the allegations, were genuine transactions dealt with at arm's length on the open market without any financial irregularity, and which were conducted in an open and transparent manner through the firm's Case Management System, with a Partner approving, and executing, each completion.
- 71.5. No loss has been caused to anyone.
- 71.6. Two of the mortgages remain current and subsisting (including the Clydesdale the original complainant) the others having been redeemed in the ordinary course of events at varying times.
- 71.7. No advantage was sought, or gained, by the Respondent in acting as he did. The transactions did not involve any member of the public.
- 71.8. Over the ten years or so whilst working with CLG/ONP operating, and managing, the office, the Respondent is not aware of having received intimation of any claims and/or formal complaints relating to work carried out and, which is to his credit, having conducted 2,500 – 3,000 transactions.
- 71.9. The Respondent has an unconditional Practising Certificate, with no interim conditions being thought appropriate, or required, by the SRA, throughout the eighteen months or so of the investigation.
- 71.10. The Respondent accepts, to his credit, informed with the benefit of hindsight and reflection, and based upon the matters set out within this document, responsibility for the breaches and that he acted as alleged. That which occurred was genuine oversight on the part of the Respondent.
- 71.11. The Respondent has co-operated with the SRA throughout the course of the investigation and with the SDT proceedings. The Respondent was open and transparent from the start of the SRA investigation initially acting in person and made concessions and admissions, from the outset and during the course of the interview with the SRA Investigation Officer.

71.12. Importantly, no allegation of dishonesty is raised, in any respect. There was no deliberate intent on the part of the Respondent to act, in any way, contrary to the rules. The SRA have withdrawn the allegations of lack of integrity and recklessness, and which the Respondent has consistently denied.

71.13. The Respondent offers his sincere, and genuine, apology for the identified and admitted breaches.

71.14. The five transactions, the subject of the allegations, are a very small number out of approximately 2,500 – 3,000 transactions conducted over an approximate ten-year period. The period, the subject of the allegations, namely 2016 – 2020, can fairly, and properly, be described as historical, being four – eight years ago.

71.15. The factors mitigating the seriousness of the identified and admitted breaches include, but are not limited to:

- the absence of any allegation of dishonesty, with lack of integrity and recklessness being withdrawn by the SRA.
- genuine insight into his failings, to include open and frank admissions from the earliest opportunity and within this document.
- considerable steps have been taken by the Respondent to address the significance of the lenders requirements at the point of instruction by attending courses specific to this issue.
- full co-operation with the SRA during the course of its investigation and full co-operation following the issue of SDT proceedings.

Penalty proposed

72. It is therefore proposed that the Respondent should be fined the sum of £12,500.00.

73. 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 £19,670.00.

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

74. The Respondent acted in an own interest conflict on five conveyancing matters by acting (and / or supervising) for the borrowers and lenders where he had an interest. (notwithstanding certifying the contrary to the lender). Acting in this way was also prohibited by the Lenders Handbook/s. He failed to inform the circumstances of each transaction to his lender client and deal with the transactions in an appropriate manner in compliance with the Lender's Handbook. Lenders impose such restriction to protect their interests but the Respondent failed to adhere to them. The Respondent therefore had direct responsibility for the circumstances giving rise to the misconduct, so there was a corresponding high level of culpability. Although no harm was caused to the Lender client there was a risk that harm could be caused. It has also harmed the legal profession's reputation. The Respondent was an experienced solicitor in this field of expertise – property law - and should have dealt with matters in an appropriate way.
75. The principal factors that mitigate the seriousness of the Respondent's misconduct are that the conduct was not widespread in that it only happened on five matters over a four year period. Admissions were made at an early stage and the Respondent has cooperated with the SRA's investigation. The Respondent has demonstrated genuine remorse and insight for that which occurred. This is supported by him attending courses on the Lenders Handbook and compliance. The Respondent states that he never now acts for relatives either directly or indirectly by the Firm.
76. In the circumstances, the seriousness of the Respondent's misconduct is such that a Reprimand would not be a sufficient sanction but neither the protection of the public nor the protection of the reputation of the legal profession justifies a strike off or a suspension. It is therefore proportionate and in the public interest that the Respondent should be fined.
77. Taking account of these matters, together with the seriousness of the misconduct committed by the Respondent, the Respondent's professional misconduct is assessed as justifying a fine falling towards the top end of "level 3" i.e. "conduct assessed as more serious". The appropriate fine for conduct assessed as falling within Fine Band, Level 3 is £7,501 - £15,000.00.
78. In all the circumstances of the case, it is therefore proportionate and in the public interest that the Respondent should be fined the sum of £12,500.00.

Dated this 25th day of September 024

Annabel Joester
Head of Legal and Enforcement on behalf of the SRA

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Mark Robert Westwood