

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12661-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

KERR CLEMENT

Respondent

Before:

Mr G Sydenham (in the Chair)

Mr D Green

Mrs L McMahon-Hathway

Date of Hearing: 20 February 2025

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Mr Clement, were that, while in practice as a solicitor employed by Burnett Barker Solicitors Ltd (“the Firm”), he:
 - 1.1 Between around 13 June 2018 and 8 November 2019, in relation to the purchase of the Old Eagle Pub, failed to register his clients’ interests within the appropriate time. In doing so he breached either or both of Principles 4 and 5 of the SRA Principles 2011.
 - 1.2 Failed to perform within an agreed timescale or within a reasonable amount of time undertakings he had provided to:
 - 1.2.1 Together Commercial Finance Ltd (“TCF Ltd”) and Priority Law on or about 31 January 2018 in respect of the registration of TCF Ltd’s security over a property on New Cross Road;
 - 1.2.2 Barclays Bank on or around 31 May 2018 in respect of the registration of its security over the Old Eagle Pub. In doing so he breached Principle 6 of the SRA Principles 2011 and failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011.
2. Mr Clement admitted the allegations

Documents

3. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit HVL1 dated 6 August 2024
 - Respondent’s Answer dated 13 September 2024
 - Statement of Agreed Facts and Proposed Outcome dated 18 February 2025

Background

4. Mr Clement was a solicitor and was admitted to the Roll in June 2009. At the time of his misconduct, he was an assistant solicitor at the Firm. He commenced his employment with the Firm in January 2016. He was dismissed from his position by the Firm on 16 October 2019. Mr Clement held an unconditional Practising Certificate.

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

5. The parties invited the Tribunal to deal with the Allegations against Mr Clement 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

6. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under Section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Clement’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.

7. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Clement's admissions were properly made.
8. 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. The Tribunal found that Mr Clement was an experienced solicitor with direct control of the matters giving rise to his misconduct. He had failed to comply with undertakings given and thus had caused harm both to his clients, the Firm, and to the reputation of the profession. He had failed to act in the best interests of his clients. The Tribunal noted that Mr Clement had cooperated fully with the Applicant, and had made admissions at the earliest opportunity. The Tribunal assessed his conduct as more serious such that it fell within the Tribunal's indicative fine band 3. The Tribunal then considered whether there should be any reduction in any fine on account of Mr Clement's means. The Tribunal determined that Mr Clement's financial position was such that there should be a reduction in any financial penalty imposed. Accordingly, the Tribunal considered that the fine proposed by the parties in the sum of £5,500 (notwithstanding that the amount fell within its indicative fine band 2) was proportionate in all the circumstances.

Costs

9. The parties had agreed costs in the sum of £1,350.00. The Tribunal found the agreed sum to be reasonable. Accordingly, the Tribunal ordered Mr Clement to pay costs in the agreed sum.
10. Given the Tribunal's findings, the Tribunal approved the Agreed Outcome proposal.

Statement of Full Order

11. The Tribunal ORDERED that the Respondent, KERR CLEMENT solicitor, do pay a fine of £5,500.00, 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 £1,350.00.

Dated this 6th day of March 2025

On behalf of the Tribunal

G. Sydenham

G. Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
6 MARCH 2025

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)**

BETWEEN

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

KERR CLEMENT

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By an Application and Statement made by Hannah Lane on behalf of the Applicant pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 6 August 2024, the Applicant brought proceedings before the Tribunal making allegations of misconduct against the Respondent.
2. The Respondent admits all of the allegations and the facts set out in this statement and the parties have agreed a proposed outcome. Subject to the approval of the Tribunal, the Respondent agrees to pay a fine in the sum of £5,500.00. He further agrees to pay costs agreed in the sum of £1,350.00, taking into account the Respondent's statement of means.
3. The allegations against the Respondent, Kerr Clement, are that, while in practice as a solicitor employed by Burnett Barker Solicitors Ltd ("the Firm"), he:
 - 3.1. Between around 13 June 2018 and 8 November 2019, in relation to the purchase of the Old Eagle Pub, failed to register his clients' interests within the appropriate time.

In doing so he breached either or both of Principles 4 and 5 of the SRA Principles 2011.
 - 3.2. Failed to perform within an agreed timescale or within a reasonable amount of time undertakings he had provided to:
 - 3.2.1. Together Commercial Finance Ltd ('TCF Ltd') and Priority Law on or about 31 January 2018 in respect of the registration of TCF Ltd's security over a property on New Cross Road;

3.2.2. Barclays Bank on or around 31 May 2018 in respect of the registration of its security over the Old Eagle Pub.

In doing so he breached Principle 6 of the SRA Principles 2011 and failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011.

4. The Respondent admits these allegations.

Agreed Facts

5. The following facts and matters, which are relied upon by the Applicant in support of the allegations set out in paragraph 3 above, are agreed by the Applicant and the Respondent.
6. The Respondent was admitted to the Roll of Solicitors on 15 June 2009. At the time of the misconduct, he was an assistant solicitor at the Firm (a licensed body). He is a commercial property solicitor. He commenced employment at the Firm on 1 January 2016. On 16 October 2019 he was dismissed by the Firm. He holds a current Practising Certificate free from conditions.

Allegation 1.1 – failure to register clients’ interests

Purchase of the Old Eagle Pub

7. This matter came to the attention of the SRA following a report by the Firm’s Compliance Office for Legal Practice (COLP), Ms Miranda Mortlock, to the SRA on 7 October 2019.
8. In November 2017, the Respondent was instructed to act for Company A in the purchase of the Old Eagle Pub. The purchase was to be part funded by a Barclays Bank commercial mortgage. The Respondent was also instructed by Barclays Bank to register a charge against the title to secure its lending and to register the mortgage at Companies House.
9. On 31 May 2018, a priority search was undertaken. The priority period ended on 11 July 2018. A report on title was completed on 31 May 2018 by the Respondent, which included the following undertakings to Barclays: *“That we will within the period of protection afforded by the searches ... apply to HM Land Registry to register the Security Documents as appropriate in your favour... effect any other registrations necessary to protect your interests as mortgagee or otherwise under the Security Documents including registration at Companies House within the statutory 21 day timescale”*.
10. On 13 June 2018, completion took place.
11. On 28 June 2018, the Respondent applied to register the Barclays mortgage at Companies House, six days before the deadline to register of 4 July 2018.
12. On 6 July 2018, Companies House rejected the application on the following grounds:
 - 12.1. it was not delivered, complete and correct, within 21 days of the date of creation as required by the Companies Act;

- 12.2. the brief description of the land did not match the information in the mortgage deed;
- 12.3. an incorrect filing fee was submitted.
13. The letter from Companies House further advised that: we can now register the charge only on instruction of an order of Court under the Companies Act.
14. The Respondent failed to take any further action to register Barclays charge at Companies House. The Respondent also failed to register the charge at HM Land Registry (“HMLR”). The Respondent sought to explain this to the Firm in an email to Daryl Griffiths (the Firm’s Chief Executive), which was forwarded by Mr Griffiths to Ms Mortlock on 16 September 2019. He stated that: *“You will have received an email on Friday from Barclays addressed to myself and copied to you. They were expressing concern as to why their charge had not been registered at the Land Registry. I had been hoping that we would be able to register the bank’s charge against an amended area of the premises following a transfer of car parking land into the Page Russel’s Pension scheme, thus avoiding additional work, keeping costs down and avoiding dealing with the Land Registry and the Bank more than might otherwise be necessary to keep things neat”*.
15. The Firm had to obtain a Court order to register the charge at Companies House. The fee for doing so was paid by the Firm, to ensure that the undertaking given by the Respondent was complied with.
16. The Firm subsequently conducted an investigation as part of disciplinary proceedings against the Respondent. As part of the investigation, the Firm prepared an investigation report dated 7 October 2019 authored by Ms Mortlock. The Firm subsequently terminated the Respondent’s employment on 16 October 2019 on various grounds, including that the Respondent had failed: to meet a satisfactory standard of conduct; to act in his clients’ best interests; to provide a proper standard of service to his client and to protect client money and assets.
17. Specifically in relation to the purchase of the Old Eagle, the Respondent had: negligently failed to register the transfer at HMLR; negligently failed to register Barclays mortgage at Companies House and HMLR; and breached the undertaking given to Barclays.
18. The Respondent appealed against his dismissal. His appeal was heard on 5 November 2019, however the appeal was unsuccessful and the Firm upheld its decision to dismiss him on 8 November 2019.

Allegation 1.2 – breach of undertakings

Purchase of Old Eagle Pub

19. As set out above, the Respondent failed to register the transfer of the Old Eagle Pub with HMLR and to register the charge in favour of Barclays Bank with HMLR and with

Companies House. He therefore breached the undertaking given by him to Barclays Bank on 31 May 2018.

Purchase of New Cross Road

20. The Respondent also breached other undertakings given by him in relation to the purchase of a property on New Cross Road.
21. In December 2016, the Respondent was instructed by Client B in respect of his purchase of a property on New Cross Road, from the seller Person C. Person C was represented by Hodders Law. It was agreed £500,000.00 would be paid to Person C on completion, and payment of the remaining £400,000.00 would be deferred for 12 months and be secured by a second legal charge.
22. The purchase was financed by Besson Line Ltd, who advanced £650,000.00 to Client B (secured by a first legal charge). Completion took place on 15 February 2017. Client B's purchase was registered with HMLR, as were the charges in favour of Besson Line Ltd and Person C.
23. The Respondent was subsequently instructed by Client B in the re-financing of the property. The property was to be refinanced by a loan from Together Commercial Finance Ltd ("TCF") for the sum of £710,000.00. TCF were represented by Priority Law Limited.
24. On 31 January 2018, the Respondent gave the following undertakings to TCF and Priority Law, including the following:
 - “(a) That the net advance will be immediately applied by us for the purposes of discharging the existing mortgage(s) registered against the title to the Property on completion*
 - (b) to complete and register the lender's Legal Charge (including Form P/N restriction) at Land Registry within the priority period in the OS1/OS2 search(es)...”.*
25. On 1 February 2018, Priority Law informed the Respondent that there would be a shortfall with the existing lender. The TCF bridging loan was insufficient to discharge the Besson Line Ltd loan in full. The Respondent was aware of the shortfall and wrote to Hodders Law on 14 February 2018 explaining that the funds would be insufficient to discharge Person C's security.
26. Client B obtained additional borrowing from Henley Finance Ltd. Henley Finance were represented by the Head Partnership Solicitors. On 27 March 2018, the Respondent gave an undertaking to the Head Partnership and Henley Finance in the following terms: *“Please accept this as our undertaking to submit your client's legal charge and the deed of priority for registration at HMLR together with the application for registration of the Senior Creditor's charge within 3 days of completion of the loan herein”.*

27. The Respondent did not register either the TCF charge or the Henley Finance charge with HMLR despite being chased by the Head Partnership to do so on 4 May 2018. Nor did he ensure that the charge in favour of Person C was discharged.
28. On 10 May 2018, the Respondent lodged an application to register the charges in favour of TCF and Henley Finance. Also on 10 May 2018, the Respondent wrote to Client B stating: *"I am aware that [Person C] has recently been abroad and that there has been a delay in the process as a result. I would be grateful if you could arrange for [Person C] to sign the attached form of consent addressed to the Land Registry, as a matter of extreme urgency so that the Charges in favour of [TCF] and in favour of Henley can be registered at the Land Registry... If [Person C] is not willing to assist then the likelihood is that the lenders will seek to enforce their security and could ultimately repossess the property..."*.
29. On 16 May 2018, HMLR raised requisitions. There was no evidence of the discharge of the charge in favour of Person C. There was a restriction on the title that no disposition of the property was to be registered without the written consent of Person C. HMLR required a discharge and evidence of consent.
30. On 15 June 2018, the application to register the charges was cancelled by HMLR due to the failure to respond to these requisitions.
31. A further application to register the charges was made on 26 June 2018. On 20 July 2018, the Respondent received an HMLR warning of cancellation confirming that the application could not proceed until a response to the earlier requisitions was received. The application was cancelled on 30 July 2018.
32. On 25 July 2018, the Respondent wrote to Hodders (Person C's representatives) confirming that Client B would be making an interim payment of £80,000 to Person C and proposed that the balance of £320,000 would be paid in full by the end of September 2018.
33. As of 6 August 2018, the amount outstanding to Henley Finance Ltd was just over £172,000. The amount outstanding to TCF Ltd was £677,906. The amount outstanding to Person C was £345,935.61.
34. A consent was provided by Person C on 2 August 2018. The Respondent sought again to register the charges in favour of TCF and Henley Finance. However, on 7 August 2018, the following requisitions were raised by HMLR including the following:
- 34.1. The consent of Person C was required;
 - 34.2. The charge in favour of Henley Finance was not in a form approved by HMLR.
35. On 4 September 2018, registration of the charges in favour of TCF and Henley Finance was completed. The Register showed a first charge in favour of Person C, a second charge in favour of TCF and a third charge in favour of Henley Finance. It also showed a Bankruptcy Notice. HMRC had issued a bankruptcy petition against Client B.

36. On 1 October 2018, Priority Law emailed the Respondent stating that he had failed to comply with his undertaking by not registering the TCF charge. By allowing the priority period to expire, a bankruptcy notice had been entered ahead of its charge.
37. On 10 December 2018, Priority Law contacted the Respondent noting that the bankruptcy notice against Client B was still in place and that the TCF had a second legal charge, when it should have a first legal charge. On 14 January 2019, Hoddess Law wrote to the Respondent with a formal demand for the repayment of the outstanding loan due to Person C totalling £373,082.57.
38. On 20 February 2019, the Respondent confirmed to Priority Law that Client B received notice of the dismissal of his bankruptcy petition. Priority Law responded noting that the bankruptcy notice had been removed but that the charge in favour of Person C remained. The Respondent was requested to submit an application to dismiss that charge as TCF's charge should be a first charge.
39. As of 20 February 2019, office copy entries for New Cross Road showed a first legal charge registered in favour of Client B dated 15 February 2017, a second legal charge registered in favour of TCF and a third legal charge registered in favour of Henley Finance. The TCF and Henley Finance charges were not registered until 31 July 2017.
40. The Respondent failed to comply with the undertakings given to TCF and Priority Law on 31 January 2018 and to Head Partnership and Henley Finance on 27 March 2018.
41. On 21 March 2019, Priority Law emailed the Respondent noting that, despite numerous chasers, TCF's charge was still not correctly registered. They requested a copy of the DS1 issued by Person C and evidence of the submitted application to register TCF's charge. They advised that the file would be passed to their litigation department if a response was not received by 22 March 2019.
42. The Respondent responded on 21 March 2019 to advise that he had been on leave and had requested the file from archive. He asked for some time to catch up. Priority Law responded with a copy of the undertaking dated 31 January 2018.
43. On 27 March 2019, the Respondent responded to Priority Law. He stated: "*... it appears that we satisfied the undertakings given in relation to borrowing registered against the title at the time. I am presently looking into the position as to why [Person C] has a charge in his favour. The charge was not registered against the title at the time of the initial finance to your client.*" The Respondent went on to say that Client B now had an offer of re-finance and suggested that it would be more beneficial to all to focus on the refinancing project and repaying the loan to TCF Ltd.
44. On 28 March 2019, Priority Law responded to the Respondent, stating that they were confused by the response. The email stated that the charges in favour of Person C and Besson Line Ltd were to be redeemed in order for TCF Ltd to have a first legal charge which had not happened. The Respondent responded stating: "*I too am confused... I'll*

revisit the file as clearly as I have missed something, although perhaps we can instead focus on redeeming the loan in the meantime which would be a more productive outcome.”

45. On 30 July 2020, New Cross Road was repossessed and sold at auction for £877,000. TCF Ltd paid the sum of £438,840.29 to Person C in respect of the shortfall. The amount was recouped from the Firm’s insurers by TCF. The claim on the Firm’s indemnity insurance has caused the Firm’s premium to increase.

Mitigation

46. The following mitigation is put forward by the Respondent but is not endorsed or agreed by the Applicant:

46.1. These were not deliberate acts by the Respondent, they were inadvertent mistakes when the Respondent had a very busy workload.

46.2. The Respondent fully admitted his misconduct at an early stage. He admitted the mistakes when confronted by his employer so that remedial action could be taken.

46.3. The Respondent has been a solicitor since 2009, he has no prior dealings with the regulator or SDT.

46.4. The Respondent did submit the relevant applications and take steps to deal with the relevant matters.

46.5. The work environment the Respondent found himself in at the relevant time was difficult with little to no additional support. He had at the relevant time requested additional administrative assistance but this request was refused.

46.6. The Respondent lost his job for his mistake, and he has found it difficult to work since the publication of the referral to the SDT. He has been unable to work since November 2024 whilst he awaits the outcome of these proceedings which has caused significant financial difficulties for him.

46.7. The proceedings have been very difficult for the Respondent and he has suffered physical and mental health difficulties over the period of the proceedings.

Penalty proposed

47. Subject to the approval of the Tribunal, the Respondent agrees to pay a fine in the sum of £5,500.00. He further agrees to pay costs agreed in the sum of £1,350.00, taking into account the Respondent’s statement of means.

Explanation as to why the proposed penalty would be in accordance with the Tribunal's Sanctions Guidance

48. The Applicant has considered the relevant factors in the Tribunal's Guidance Note on Sanctions (10th edition), including the seriousness of the misconduct, the Respondent's culpability and the harm caused, or which might reasonably have been foreseen.
49. It is submitted that the following factors are relevant to the level of seriousness:
- 49.1. The misconduct was not planned or pre-meditated. Nor was it deliberate.
 - 49.2. The Respondent had direct conduct of all the matters giving rise to the allegations.
 - 49.3. The Respondent was a solicitor of some experience, being 9 years qualified at the time of the allegations.
 - 49.4. The Respondent failed to protect clients' interests in their properties, thereby putting their interests at risk and failing to act in their best interests.
 - 49.5. The Respondent's failure to comply with undertakings prejudiced the interests of the relevant lenders and put their security at risk. This failure is of the type which damages public confidence in the solicitors' profession.
 - 49.6. The SRA accepts that the Respondent did take some steps to register the relevant charges and to discharge his undertakings. However, these steps were not effective.
 - 49.7. As evidenced by the Firm, the Firm has suffered harm due to its increased insurance premiums.
 - 49.8. The misconduct was repeated on more than one client matter. The Respondent failed to comply with three separate undertakings given to three separate firms of solicitors and their clients in relation to two mortgage transactions.
 - 49.9. Both the Firm and the Respondent have cooperated with the Applicant's investigation.
50. Regard has also been had to the Tribunal's purpose in imposing sanctions, previous Tribunal decisions in similar types of cases, and the Respondent's circumstances including his statement of means.
51. In the circumstances it is submitted that the level of seriousness justifies a fine in the amount proposed.

Signed:

Name:

For and on behalf of the Applicant

Date:

Signed:

Name:

Kerr Clement (Tue, 18th Feb 2025
16:36:55 GMT)

The Respondent

Dated:

18 Feb 2025