

**Robert Barber & Sons**  
**46 Bridgford Road, West Bridgford , Nottingham ,**  
**NG2 6AP**  
**Licenced body**  
**046538**

[Agreement Date: 24 May 2024](#)

## **Decision - Agreement**

Outcome: Regulatory settlement agreement

Outcome date: 24 May 2024

Published date: 28 May 2024

## **Firm details**

No detail provided:

## **Outcome details**

This outcome was reached by agreement.

### **Decision details**

#### **1. Agreed outcome**

1.1 Robert Barber & Sons (the Firm), a licensed body, agrees to the following outcome to the investigation of its conduct by the Solicitors Regulation Authority (SRA):

- a. it is fined £12,400;
- b. to the publication of this agreement; and
- c. it will pay the costs of the investigation of £1,350.

#### **2. Summary of Facts**

2.1 The Firm acted for its client who sought to obtain a loan facility where Sylvester Amiel Lewin & Horne LLP acted for the lender. As consideration for the loan the lender would take a charge over two properties owned by the client.

2.2 The Firm provided two signed undertakings on 8 September 2021 to Sylvester Amiel Lewin & Horne LLP. These undertakings included specific actions where the Firm would submit relevant applications for registration of the lender's mortgage charge over the two properties with



Companies House. This would be done within five working days of completion of the loan.

2.3 The undertakings included specific actions where the Firm would register the lenders charge at HM Land Registry as a first legal mortgage against the two properties.

2.4 Subsequently these elements of the undertakings were not satisfied by the Firm within the agreed timescales.

2.5 Completion of the loan took place on 10 September 2021. Charges were registered at HM Land Registry in April 2023. The loan was redeemed in May 2023 prior to the undertaking relating to the registration of the charge at Companies House being fulfilled.

### **3. Admissions**

3.1 The Firm makes the following admissions which the SRA accepts:

- a. The Firm accepts that it failed to perform the above undertakings within the agreed timescale in breach of paragraph 1.3 of the SRA Code of Conduct for Firms.
- b. The Firm accepts that it acted in a way that failed to uphold public trust and confidence in the solicitors' profession in breach of Principle 2 of the SRA Principles.

### **4. Why a fine is an appropriate outcome**

4.1 The SRA's Enforcement Strategy sets out its approach to the use of its enforcement powers where there has been a failure to meet its standards or requirements.

4.2 When considering the appropriate sanctions and controls in this matter, the SRA has taken into account the admissions made by the firm and the following mitigation which it has put forward:

- a. The Firm experienced difficulties in rectifying issues as it was no longer instructed by its client.
- b. The Firm has cooperated fully and promptly with the SRA investigation.
- c. This is an isolated incident and that is reflected in the Firm's regulatory history.
- d. The Firm did not financially benefit from the misconduct.

4.3 The SRA considers that a fine is the appropriate outcome because:

- a. Undertakings play a significant part in legal practice. A member of the public is reasonably entitled to expect that any solicitor or firm providing an undertaking will appreciate the importance of the obligation it creates and ensure it is fulfilled.



- b. The Firm created a risk of harm that continued for 18 months. During this time the lender's security for the loans was not protected as the securing assets were for a period liable to other charges being registered in priority.
- c. Due to the Firm's failure to complete its undertaking another party was able to register a charge on one of the properties. This risked compromising the lender's security. It was only because the loan was redeemed that this risk did not fully materialise. The conduct also impacted on the Firm's client as it had to instruct alternative solicitors to conclude the transaction.
- d. The Firm was culpable for the failure to fulfil the undertakings.
- e. A fine would deter the Firm and others from similar conduct in the future.

4.4 A fine is appropriate to maintain professional standards and uphold public confidence in the solicitors' profession. A publicised outcome will send an appropriate message to the Firm, the wider profession and the public that matters of this nature will be appropriately enforced. In this case there was a fundamental and prolonged failure to complete the agreed undertakings. A financial penalty therefore meets the requirements of rule 4.1 of the Regulatory and Disciplinary Procedure Rules.

## **5. Amount of the fine**

5.1 The amount of the fine has been calculated in line with the SRA's published guidance on its approach to setting an appropriate financial penalty (the Guidance).

5.2 Having regard to the Guidance, the SRA and Firm agree that the nature of the misconduct was more serious. The Firm allowed the breaches of the undertakings to continue for 18 months and steps taken to rectify matters were unsuccessful. The breaches were reckless as there was no supervision of the matters. The Guidance gives misconduct of this type a nature score of three.

5.3 The SRA considers that the impact of the misconduct was medium because undertakings are a fundamental part of legal practice that underpin practice areas such as conveyancing. A failure to honour the undertakings in this case had the potential for moderate harm for any or all parties involved. Additionally, it had the potential to impact upon the wider trust and confidence the public have in the performance of undertakings and the professional generally. The Guidance gives this level of impact a score of four.

5.4 The nature and impact scores add up to seven. Therefore, the Guidance recommends a broad penalty bracket equating to 1.6 to 3.2 percent of domestic turnover.



5.5 In deciding the level of fine within this bracket, the SRA has considered the mitigation at paragraph 4.2 above which the Firm has put forward.

- a. The Firm experienced difficulties in rectifying issues as it was no longer instructed by its client.
- b. The Firm has cooperated fully and promptly with the SRA investigation.
- c. This is an isolated incident and that is reflected in the Firm's regulatory history.
- d. The Firm did not financially benefit from the misconduct

5.6 The level of cooperation is not a factor taken into account when determining the basic penalty. In accordance with the Guidance, cooperation is a matter that is considered in step two when calculating the appropriate adjustment to the basic penalty. Taking into account the other mitigating factors referenced by the Firm and weighing those up against the length of time the breaches continued for, the SRA considers a basic penalty in band C1 to be appropriate which is a fine of £16,558.

5.7 The SRA considers that the basic penalty should be reduced by 25 percent to £12,400. This reduction reflects the fact that the Firm cooperated with the investigation and made admissions to the conduct from the outset. The Firm made admissions regards its conduct in its first response to the SRA.

5.8 The Firm does not appear to have made any financial gain or received any other benefit as a result of its conduct. Therefore, no adjustment is necessary to remove this, and the amount of the fine is £12,400.

## **6. Publication**

6.1 The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process. The Firm agrees to the publication of this agreement.

## **7. Acting in a way which is inconsistent with this agreement**

7.1 The Firm agrees that it will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.2 If the Firm denies the admissions or acts in a way which is inconsistent with this agreement, the conduct which is subject to this agreement may be considered further by the SRA. That may result in a disciplinary outcome or a referral to the Solicitors Disciplinary Tribunal on the original facts and allegations.

7.3 Acting in a way which is inconsistent with this agreement may also constitute a separate breach of principles 2 and 5 of the Principles and

paragraph 3.2 of the Code of Conduct for Firms.

## **8. Costs**

8.1 The Firm agrees to pay the costs of the SRA's investigation in the sum of £1,350. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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