

Richard Simon Walford

Solicitor

144635

Fined Date: 9 October 2023

Decision - Fined

Outcome: Fine

Outcome date: 9 October 2023

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Firm details

Firm or organisation at date of publication and at time of matters giving rise to outcome

Name: Gilbert Stephens LLP

Address(es): 15-17 Southernhay East, Exeter EX1 1QE

Firm ID: 536070

Outcome details

This outcome was reached by SRA decision.

Decision details

1. Agreed outcome

1.1 Richard Simon Walford, (Mr Walford) and Richard Alistair Heron (Mr Heron), solicitors of Gilbert Stephens LLP (the Firm), agree to the following outcome to the investigation of their conduct by the Solicitors Regulation Authority (SRA):

- a. Mr Walford is fined £11,250.00
- b. Mr Heron is fined £11,250.00
- c. to the publication of this agreement
- d. Mr Walford and Mr Heron will pay the costs of the investigation of £600.

Reasons/basis

2. Summary of Facts



2.1 The SRA investigation identified that Mr Walford and Mr Heron, when acting as Attorneys for Mrs H under a Lasting Power of Attorney dated 9 December 2013:

- a. failed to ensure that conditions of the home insurance policy were relating to Mrs H's property were met
- b. used Mrs H's funds of £16,220.02 to pay for the cost of the repair work to the property caused by a burst pipe, in the absence of insurance cover being available for lack of compliance with policy conditions, rather than advising their client about the potential negligence and need to take independent legal advice.
- c. despite there being an own conflict of interest from 12 March 2018 continued to act for Mrs H until the OPG appointed an Interim Deputy on 26 March 2020.

2.2 Mrs H's estate was reimbursed by the firm, in the amount of £20,000, immediately on being served with a demand for payment by solicitors acting for her Personal Representatives.

3. Admissions

3.1 Mr Walford and Mr Heron make the following admissions which the SRA accepts that they:

- a. failed to ensure that the policy conditions of the house insurance property were met
- b. used funds of Mrs H on 6th September 2018 in the sum of £16,220.02 to pay for the cost of the uninsured repair work on her property

As a result, from 12 March 2018 to 24 November 2019 Mr Walford and Mr Heron breached:

Principles 4, 5 and 10 of the SRA Principles 2011, (including a failure to achieve Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011) and from 25 November 2019 breached:

Principle 7 of the SRA Principles 2019 and paragraphs 3.2 and 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

- c. from 12 March 2018 when a potential claim against the firm arose until 26 March 2020 there was an own interest conflict of interest in them continuing to act for Mrs H.

As a result, from 12 March 2018 to 24 November 2011 Mr Walford and Mr Heron breached:

Principle 6 of the SRA Principles 2011 (including a failure to achieve Outcome 3.4 of the SRA Code of Conduct 2011) and from 25 November 2019 breached:



Principle 2 of the SRA Principles 2019 and paragraph 6.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

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 Mr Walford and Mr Heron and the following mitigation which they have put forward:

- a. accepts that when Mrs H left her property it was a mistake not to drain down the water system, which would have prevented the damage caused to the property
- b. whilst it was in Mrs H's best interests to have the repair work done, in doing so they used Mrs H's funds, when other options may have been available to her in light of their potential negligence
- c. without the need to resort to litigation, they agreed the loss in relation to the water damage to Mrs H's property of £20,000.00 which has been paid
- d. they accept they continued to act as Mrs H's Attorneys for longer than they should have.

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

- a. The conduct showed a disregard for their regulatory obligations and whilst the breaches have been rectified the misconduct continued for longer than was reasonable.
- b. There was no lasting significant harm to Mrs H or third parties, but it was nearly five years after Mrs H's money was used to address the loss and damage to her property that Mr Walford and Mr Heron agreed to pay £20,000 by way of restitution.
- c. Whilst Mr Walford and Mr Heron agreed to pay £20,000 by way of restitution this was not until May 2023
- d. Mr Walford and Mr Heron have no previous regulatory history and have co-operated with the SRA's investigation.

4.4 A fine is appropriate to maintain professional standards and to uphold public confidence in the solicitors' profession and in legal services provided by authorised persons. A fine creates a credible deterrent to Mr Walford and Mr Heron, individuals, firms, or others from similar behaviour in the future. 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 dated 20 July 2022 on its approach to setting an appropriate financial penalty (the Guidance).

5.2 Having regard to the Guidance, the SRA and Mr Walford and Mr Heron agreeing that the nature of the misconduct was within the High Category because of the decision to address the loss regarding Mrs H's funds and not replace them for nearly five years. This was inflamed by Mr Walford and Mr Heron acting in an own conflict of interest after 12 March 2018, when they were told of the damage to Mrs H's property. The Guidance gives this type of misconduct a score of three.

5.3 The SRA considers that the impact of the misconduct was in the Medium Category. This is to reflect the conduct of using Mrs H's money to address the loss for which they were responsible for a period of nearly five years, which was late into our investigation, along with a conflict of interest for nearly two years, with this only being addressed once raised by the OPG and the SRA. The Guidance gives this level of impact a score of four.

5.4 The nature and impact scores add up to seven. The Guidance indicates a broad penalty bracket of £5,001 to £25,000 is appropriate.

5.5 In deciding the level of fine within this bracket, the SRA has considered the mitigation at paragraph 4.2 above which Mr Walford and Mr Heron has put forward:

- a. acceptance that when Mrs H left her property, it was a mistake not to drain down the heating system, such decision ultimately being responsible for the burst pipe which resulted in the damage caused to her property
- b. whilst it was in Mrs H's best interests to have the repair work done, in doing so they used Mrs H's funds, when other options may have been available to her in light of their potential negligence
- c. without the need to resort to litigation, they agreed the loss in relation to the water damage to Mrs H's property of £20,000.00 which has been paid
- d. they accept they continued to act as Mrs H's Attorneys for longer than they should have.

5.6 On this basis, the SRA considers that as Mr Walford and Mr Heron were directly responsible for the harm caused and the remedial action that needed to be taken this indicates a fine at the upper mid-range of Conduct Band C due to the harm and nature in question. Whilst the harm caused to Mrs H was remedied this was nearly five years after her loss. The own conflict of interest was only addressed after the OPG raised its concerns. The SRA considers a basic penalty of £15,000.00, which is in the middle of the bracket, to be appropriate.



5.7 The SRA considers that the basic penalty should be reduced to £11,250.00. This reduction reflects Mr Walford and Mr Heron's prompt admission in accepting responsibility to the misconduct before the matter is referred to a decision maker. However, there was a significant delay in acting on that acceptance in terms of stepping down as Attorneys and reimbursing the loss they were responsible for. No claim was made to the Firm's insurers however Mr Walford and Mr Heron should have advised their client about the potential negligence and need to take independent legal advice. We have discounted the basic penalty of £15,000.00 by 15%. We have further discounted the basic penalty by a further 10% for eventually remedying the harm caused.

5.8 Mr Walford and Mr Heron do not appear to have made any financial gain or received any other benefit above the level of the basic penalty because of their conduct. Therefore, no adjustment is necessary to remove this, and the amount of the fine is £11,250.00.

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. Mr Walford and Mr Heron agree to the publication of this agreement.

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

7.1 Mr Walford and Mr Heron agree that they will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.2 If Mr Walford or Mr Heron 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 Denying the admissions made or 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 7.3 of the Code of Conduct for Solicitors, RELs and RFLs.

8. Costs

8.1 Mr Walford and Mr Heron agree to pay the costs of the SRA's investigation in the sum of £600.00. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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