

# John Carey

## Solicitor

### 133109

*Agreement Date: 28 February 2022*

#### *Decision - Agreement*

Outcome: Regulatory settlement agreement

Outcome date: 28 February 2022

Published date: 1 March 2022

#### *Firm details*

##### **Firm or organisation at time of matters giving rise to outcome**

Name: Sedgwick Legal

Address(es): 56-58 Long Street, Middleton, Manchester, M24 6UQ

Firm ID: 562804

#### *Outcome details*

This outcome was reached by agreement.

#### *Decision details*

##### *1. Agreed outcome and undertakings*

1.1 Mr John Peter Carey (known by Peter Carey), a solicitor and former director of Sedgwick Legal Limited (the Firm), agrees to the following outcome to the investigation of his conduct by the Solicitors Regulation Authority (SRA):

- a. he undertakes to apply to remove his name from the Roll of Solicitors (the Roll) within 14 days of the date of this Agreement and further undertakes that he will never apply to be re-admitted to the Roll
- b. he is fined £2,000
- c. to the publication of this agreement
- d. he will pay the costs of the investigation of £1,350.

1.2 Mr Carey provides the following undertakings to the SRA:



- a. he undertakes to apply to remove his name from the Roll within 14 days of the date of this Agreement
- b. he undertakes never to apply to be re-admitted to the Roll
- c. he will not:
  - i. be employed or remunerated by a solicitor in connection with a solicitor's practice
  - ii. undertake work in the name of, or under the direction or supervision of a solicitor
  - iii. be employed or remunerated by a recognised body
  - iv. be employed or remunerated by a manager or employee of a recognised body in connection with that body's business
  - v. be a manager of a recognised body
  - vi. have or intend to acquire an interest in such a body

without such solicitor or recognised body seeking prior approval from the SRA.

#### *Reasons/basis*

### *2. Summary of Facts*

#### *Company A developments*

2.1 Between March 2015 and February 2016, Mr Carey (then at the Firm) acted for 21 clients in the purchase of a total of 26 flats in properties developed and sold by Company A or by a special purpose vehicle (SPV) company within the same group. A total of £995,983.82 was paid through the firm's client account.

2.2 In each property, the developer purchased a disused property with the intention of refurbishing it into flats. The individual flats were sold before or during the refurbishment work. Exchange and legal completion took place at or around the same time, and up to 50% of the purchase price was paid on exchange. In some cases, it was agreed that a further interim payment would be made later at an agreed date. The balance of the purchase price (referred to in the contracts as the "deferred payment") would be paid on practical completion of the refurbishment work.

2.3 The contracts set out a long stop date by which the refurbishment work had to be completed. If practical completion had not occurred by the long stop date then the buyer could rescind the contract. In that event the seller would return all the funds that the buyer had paid and the property would be transferred back to the seller (at the seller's expense).

2.4 There were several risks with the arrangements used by Company A compared to a normal conveyancing transaction, or even to other fractional developments. These included:

- a. the buyer would have full ownership of the flat before the building/refurbishment works had actually been completed
- b. although the payment that was made upon legal completion was not technically a deposit, it is unusual for half of the purchase monies to be paid on a conveyancing transaction before the property is built
- c. if the seller ran out of funds and went into administration before the works were completed then the buyer may not be able to get their money back, despite the option to rescind the contract.

2.5 None of these risks were discussed in the report on title that the Firm sent to its buyer clients, many of whom were based abroad and so were unfamiliar with UK conveyancing processes.

2.6 Company A went into liquidation on 12 April 2016. Mr Carey was interviewed by the liquidators on 29 November 2016 and confirmed that none of the properties he acted on had reached practical completion. This has left the buyers with flats that they own but are unable to use or rent out. It will also be difficult for them to sell the flats given the outstanding building work required to make them properly habitable. Due to its liquidation and outstanding debts to lending companies, Company A has been unable to return the buyers' funds or buy back the flats as per the contracts.

#### *Sales to Mr C*

2.7 On 16 December 2015, Mr C purchased three flats at auction – two at Development M in Stockport and one at Development E in Manchester. Both properties had been developed by companies in the Company A group. The flats were advertised as fully developed and built out, and Mr C paid the full purchase price on completion – there were no interim or deferred payments.

2.8 The Firm acted for the seller in the post-exchange work on these sales (the exchange of contracts having taken place at the auction). Mr Carey has confirmed that his instructions were limited to discharging a legal charge, discharging ground rent and service charges to date of completion, and accounting for any surplus funds.

2.9 On 23 December, Mr C's solicitor emailed Sedgwick Legal about Development E, stating that: "The documents you have sent us are not as comprehensive as we would have expected. Are you able to let us have

any searches, replies to enquiries and service charge information, including a budget for the current year?" In his response, Mr Carey stated:

"We have only become involved in the transaction post-auction and therefore have no further information other than that provided in the auction pack or in our previous email. We have not had any previous involvement with this site."

2.10 Mr Carey had in fact been acting for the buyers of four other flats at Development E for several months. He knew that the refurbishment work at the development was ongoing, as none of his buyer clients had yet reached practical completion, which would have been important and relevant information for Mr C.

2.11 At that time, the four buyer clients had yet to pay their deferred payments to conclude their conveyancing and so were still clients of the Firm. Although they related to separate transactions, there was therefore a period between December 2015 and the completion of the sale to Mr C in January 2016 where Mr Carey represented both the seller and four buyers of flats in the same property development.

2.12 The sale to Mr C completed on 4 January 2016. Mr C has confirmed that there were numerous issues with his flat and with the wider property, including unfinished building work on many of the communal areas, that he was not aware of until his purchase had completed.

### *3. Admissions*

3.1 Mr Carey makes the following admissions which the SRA accepts:

1. by failing to give adequate advice to clients on the risks of purchasing flats that were still being developed, and in particular the risks in the contractual documents with Company A, Mr Carey breached Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve outcome 1.5 of the SRA Code of Conduct 2011 ("the Code")
2. by acting for the seller of a flat in Development E when he already represented buyers of other flats in the same development, Mr Carey acted in a conflict of interests and therefore breached Principles 4 and 6 of the Principles and failed to achieve outcome 3.5 of the Code
3. in his capacity as the solicitor representing the seller of a flat in Development E, Mr Carey informed the buyer's solicitor that his firm had "not had any previous involvement with this site", when in fact he represented the buyers of four other flats in Development E. Mr Carey therefore breached Principle 6 of the Principles.



*4. Why a fine and removal from the roll 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 Carey and the following mitigation which he has put forward:

- a. Mr Carey is no longer working in the legal sector and has not renewed his practising certificate since leaving Sedgwick Legal's successor firm in June 2018
- b. Mr Carey has expressed insight and remorse for his actions and has cooperated with the SRA's investigation to the best of his ability.

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

- a. although the number of clients affected was relatively small, there were significant risks to their funds which Mr Carey failed to properly explain. Those risks materialised and as a result the clients lost their money and were left with property that they were unable to rent out or sell on. Mr Carey's conduct was a contributory factor in the significant harm that was caused to his clients
- b. Mr Carey had direct control and responsibility for his conduct, although he was not directly responsible for the clients' losses.

4.4 A fine is appropriate to uphold public confidence in the solicitors' profession and in legal services provided by authorised persons because a large number of people (including Mr Carey's clients) lost money following their purchase of flats from Company A, which they might have reconsidered had they received proper and adequate legal advice. Issuing a fine to those solicitors who gave inadequate advice shows the public that the SRA takes such matters seriously and expects solicitors to maintain appropriate standards. A financial penalty therefore meets the requirements of rule 4.1 of the Regulatory and Disciplinary Procedure Rules.

4.5 In addition, Mr Carey has agreed to remove his name from the roll of solicitors. The SRA considers that his voluntary removal from the roll is an appropriate outcome because:

- a. Mr Carey's misleading statement to Mr C's solicitors may indicate a lack of integrity. Considering the facts, had the allegations been taken further, the SRA would have pursued



an allegation of a lack of integrity which would have warranted a referral to the Tribunal. However, in light of the undertakings offered by Mr Carey, the SRA does not consider it is necessary, proportionate or in the public interest to pursue allegations of a lack of integrity to trial.

- b. in view of him removing his name from the roll and undertaking never to reapply, Mr Carey will no longer practise as a solicitor. The future risk of harm is managed and the public will therefore be protected.

#### *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 Mr Carey agree that the nature of the misconduct was low because Mr Carey has cooperated with the SRA's investigation to the best of his ability, and the conduct was not an intentional breach of the SRA rules. The Guidance gives this type of misconduct a score of one.

5.3 The SRA considers that the impact of the misconduct was medium because it had the potential to cause, and in the event did cause, a significant loss, but only affected a small number of clients. The Guidance gives this level of impact a score of four.

5.4 The nature and impact scores add up to five. The Guidance indicates a broad penalty bracket of £1,001 to £5,000 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 Carey has put forward.

5.6 On this basis, the SRA considers that the relatively low number of parties affected by the conduct indicates a fine at the lower end of the bracket, although this must be balanced with the impact on each of the individual clients. It is also noted that Mr Carey has agreed to come off the roll of solicitors, which eliminates any risk of repeat misconduct and so lowers the need for a financial penalty to act as a deterrent for Mr Carey. The SRA considers a basic penalty of £2,000, which is towards the bottom end of the bracket, to be appropriate.

5.7 Mr Carey has not made any financial gain or received any other benefit as a result of his conduct. Therefore, no adjustment is necessary to remove this and the amount of the fine is £2,000.

#### *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 Carey agrees to the publication of this agreement.

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

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

7.2 If Mr Carey denies the admissions, breaches the undertakings referred to in paragraph 1.2 above 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 Carey 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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