

The Owen Kenny Partnership Limited

38 South Street, Chichester , PO19
1EL

Recognised body
537040

Agreement Date: 1 August 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 1 August 2022

Published date: 5 September 2022

Firm details

Firm or organisation at date of publication

Name: The Owen Kenny Partnership Limited

Address(es): 38 South Street, Chichester PO19 1EL

Firm ID: 537040

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome and undertakings

1.1 The Owen Kenny Partnership Limited ("The Firm") (ID: 537040) agrees to the following outcomes of the investigation of its conduct by the Solicitors Regulation Authority ("SRA") under reference number CDT-1198750-2017:

- a. that the Firm be fined the sum of £2,000;
- b. that this agreement shall be published;
- c. that it will pay the costs of the investigation in the sum of £2,000, inclusive of VAT.

2. Summary of Facts

2.1 In summary, the Firm was instructed by Mr A in his capacity as personal representative of the estate of Ms B. The beneficiaries of the estate were



Ms B's four siblings.

2.2 The Firm was instructed at the outset to act on behalf of the estate. Therefore, there was an obligation to act in the best interests of all of the beneficiaries. The Firm was not instructed by Mr A in his personal capacity.

2.3 Ms B had not made a Will and the Intestacy rules meant that her estate was to be shared equally by the surviving siblings (and in one case, the share to be inherited by her two children).

2.4 A solicitor at the Firm, handled the case from its inception in or around October 2012. Mr A instructed the solicitor to attend Ms B at her home on 25 October 2012 shortly before she died with a view to obtaining a Will. Mr A made repeated phone calls on 23 October 2012 to the solicitor indicating that he was very keen to have her attend again with a male colleague as he felt Ms B would be more receptive to a male colleague. The solicitor made it clear to Mr A that she could not do so as Ms B had expressed her firm, *compos mentis*, wish that she did not want to make a Will.

2.5 After her death, Mr A claimed that Ms B made a deathbed gift to him of Ms B's residence (valued at £550,000 constituted the vast majority of the estate value). This claim first arose during a phone call on 13 January 2013. This claim had a serious and material impact on the interests of the other beneficiaries as a deathbed gift from Ms B to Mr A would have meant that the other beneficiaries would lose out on their share. At this point, it should have been identified that a potential conflict of interest had arisen.

2.6 The Solicitor advised that Counsel's advice should be obtained on the issue, which she considered a "technical matter". She did not identify that a conflict of interest had arisen at this stage.

2.7 The solicitor's instructions to Counsel stated that Mr A was instructing Counsel "in his capacity as a beneficiary of the estate". Counsel's advice dated 15 February 2013 stated clearly that the advice was given to Mr A in his capacity as "a potential donee" of the estate and does not explicitly identify Mr A as the personal representative. Counsel advised that the deathbed gift was a valid deathbed gift.

2.8 The Solicitor informed the other beneficiaries that there was a valid deathbed gift to Mr A in a letter dated 27 March 2013. Shortly after, solicitors acting for FK (who had by this point an appointed Deputy by the Court of Protection) sought full details as to the validity of the deathbed gift in a letter dated 15 April 2013.

2.9 The Solicitor replied on 22 April 2013 stating that Counsel had advised that the gift was valid and that there were proceeding with First Registration of the property in Mr A's name.

2.10 The solicitors acting for FK wrote to the Firm on the 10 May 2013 asking them not to take any further steps in relation to the registration of the property. Around 14 May 2013, the solicitor left the Firm on 15 May 2013, the Firm replied to the Solicitors acting for FK that it had taken “its clients instructions” and would withdraw from the application to the Land Registry.

2.11 The file shows that Ms J, a solicitor at the Firm who took over the conduct of the file, was engaged in discussions with Mr A about the letter and had warned him of the risk that the solicitors acting for FK would pursue litigation. The Firm did not identify at any stage that there was a conflict of interest in acting for Mr A in his personal capacity as a beneficiary and did not identify their obligation to act in the best interests of the other beneficiaries given their instructions were to act to administer the whole estate.

2.12 On the 14 June 2013, the Firm wrote to the solicitors acting for FK again, stating that they regarded Mr A as their client – it appeared (and the Civil Court concluded) that the Firm was acting as if it was Mr A's personal interest they were representing. This was contrary to the Firm's initial instruction to act on behalf of the estate.

2.13 Despite the solicitors acting for FK's attempts to intervene, the Firm oversaw the eventual registration of the property to Mr A despite the Firm's advice to him not to do so. Mr A instructed the Firm to proceed with this despite the risks of challenge from FK's solicitors. The firm acting for FK issued proceedings on 3 December 2014 to recover the property from Mr A.

3. Admissions

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

That, by failing to assess the file independently, after the departure of the said solicitor, and continuing to act for Mr A as a personal representative to the beneficiaries, once it was aware he was claiming his personal right over the property of Ms B's estate, a conflict of interests had arisen but the Firm continued to act in a situation in which it could not act in the best interests of each client, thereby;

- a. breaching Principle 4 of the SRA Principles 2011 in that it failed to act in the best interests of its client;
- b. breaching Principle 5 of the SRA Principles 2011 in that it failed to provide a proper standard of service to its client
- c. failing to achieve Outcome (3.5) of the SRA Code of Conduct 2011.

4. Why a £2,000 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 in this matter, the SRA has taken into account the admissions made by the Firm via its representatives, by way of a letter dated 10 January 2022, the mitigation set out in the letter (including the audit trail of advice to Mr A and the fact that there was no wilful decision by the Firm or anyone at the Firm to continue to act despite a conflict having arisen) and the remediation steps taken by the Firm in the light of this matter generally.

4.3 The SRA considers that a fine is the appropriate outcome here because the admitted conduct was serious but not so serious that a sanction by the Tribunal is necessary or proportionate in order to maintain professional standards and to uphold public confidence in the solicitors' profession. A fine therefore meets the requirements of rule 4.1 of the Regulatory and Disciplinary Procedure Rules.

5. Publication

5.1 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.

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

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

6.2 If the Firm denies the admissions or acts in a way which is inconsistent with this agreement, the conduct which gave rise 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, concerns and allegations arising in the SRA's Notice dated 4 March 2021.

6.3 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 SRA Principles 2019 and paragraph 7.3 of the Code of Conduct for Solicitors, RELs and RFLs.

7. Costs

7.1 The Firm agrees to pay the costs of the SRA's investigation in the sum of £2,000 inclusive of VAT. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

8. Referral to Tribunal

8.1 The SRA's decision to refer the Firm's conduct to the Solicitors Disciplinary Tribunal dated 17 January 2022 will be overturned upon

signature of this Agreement.

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