

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11635-2017

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEPHEN ANDREW ALEXANDER

First Respondent

SPICKETTS BATTRICK LAW PRACTICE

Second Respondent

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Before:

Ms J. Devonish (in the chair)

Mr P. Lewis

Dr S. Bown

Date of Hearing: 6 September 2017

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**Appearances**

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

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**JUDGMENT**

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## **Allegations**

- 1 The allegation made against the First Respondent only by the SRA was that on or around 22 February 2013, by disclosing the address of the property being purchased by Ms SH, a client of the Second Respondent's conveyancing Department and former wife of his client Mr VM, to his client Mr VM, despite Ms SH's specific instructions to the contrary, he breached or failed to achieve any or all of:
  - 1.1 Principle 4 of the SRA Principles 2011;
  - 1.2 Principle 6 of the SRA Principles 2011;
  - 1.3 Outcome 4.1 of the SRA Code of Conduct; and/or
  - 1.4 Outcome 4.3 of the SRA Code of Conduct 2011.
  
2. The following allegation made against the Second Respondent only by the SRA was that from 7 November 2012, by acting for Ms SH in respect of a conveyancing matter whilst also acting for her former husband Mr VM in respect of child contact and divorce proceedings, without ensuring that sufficient barriers were put in place to protect Ms SH's confidential information, resulting in that confidential information being disclosed to her former husband, it breached or failed to achieve all or any of:
  - 2.1 Principle 4 of the SRA Principles 2011;
  - 2.2 Principle 5 of the SRA Principles 2011;
  - 2.3 Principle 6 of the SRA Principles 2011;
  - 2.4 Principle 8 of the SRA Principles 2011;
  - 2.5 Outcome 3.5 of the SRA Code of Conduct 2011;
  - 2.6 Outcome 4.1 of the SRA Code of Conduct 2011; and/or
  - 2.7 Outcome 4.5 of the SRA Code of Conduct 2011.

## **Documents**

3. The Tribunal considered the following documents:
  - Rule 5 statement – dated 11 April 2017;
  - Statement of costs – dated 11 April 2017;
  - First Respondent's Answer to Rule 5 statement with exhibit SA1– dated 20 July 2017;
  - Second Respondent's Answer to the Rule statement – dated 26 July 2017;
  - Statement of Agreed Facts and Indicated Outcome – dated 1 September 2017;
  - Statement of Agreed Facts and Indicated Outcome – dated 7 June 2017;
  - Statement of Means – dated 1 June 2017;

### **Factual Background**

4. The First Respondent was born on 19 February 1967 and was admitted to the Roll of Solicitors on 1 October 1992. At the date of the hearing, the First Respondent remained upon the Roll of Solicitors and had a practising certificate for the period 2016-2017 free from conditions.
5. The Second Respondent was a partnership which had been authorised to practice as a recognised body by the SRA since 2006. Its head office was at 126 Clifton Street, Roath, Cardiff, South Glamorgan, CF24 1LX together with branches at 3-4 Gelliwastad Road, Pontypridd, CF37 2AU and 56 Albany Road, Roath, Cardiff, CF24 3RR. It specialised in conveyancing, family, PI and wills and probate law.
6. At all material times, the First Respondent was employed as an Assistant Solicitor in the Second Respondent's Matrimonial department, and was based at its head office.

### **Application for matter to be resolved by way of Agreed Outcome**

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.
8. The Tribunal had previously considered such an application in this matter on 21 June 2017 and had refused to grant it. In order for this Division of the Tribunal to be able to consider this application it had to be satisfied that this was a fresh application and not simply a review of the decision made in June. The Tribunal looked at both documents and was satisfied that the September application was materially different to the June application. The information contained in this application was more detailed than the first one, there was a greater level of explanation provided and responsibility accepted on the part of the Respondents and the penalties were significantly higher than previously.
9. The Tribunal therefore treated this as a fresh application and proceeded accordingly.

### **Findings of Fact and Law**

10. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
11. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal was satisfied that the proposed sanctions were appropriate and proportionate given the seriousness of the admitted misconduct. The Tribunal therefore granted the application to resolve the matter by way of an Agreed Outcome.

**Costs**

12. The parties had agreed that the Respondents would pay the Applicant's costs in the sum of £7,000 on a joint and several basis. The Tribunal was satisfied that this was an appropriate and proportionate sum.

**Statement of Full Order**

13. The Tribunal Ordered that the Respondent, STEPHEN ANDREW ALEXANDER, solicitor, do pay a fine of £15,001.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00, such costs to be paid on a jointly and severally liable basis with the Second Respondent.

The Tribunal further ORDERED that the Respondent may not practice otherwise than other than in employment which has first been approved by the Solicitors Regulation Authority.

14. The Tribunal Ordered that the Respondent, SPICKETTS BATTRICK LAW PRACTICE, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that it do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00, such costs to be paid on a jointly and severally liable basis with the First Respondent.

Dated this 20<sup>th</sup> day of September 2017  
On behalf of the Tribunal



J. Devonish  
Chair

Judgment filed  
with the Law Society  
on 20 SEP 2017

**IN THE MATTER OF THE SOLICITORS ACT 1974**

**SOLICITORS REGULATION AUTHORITY**

**Applicant**

and

**STEPHEN ANDREW ALEXANDER**

**First Respondent**

**SPICKETTS BATTRICK LAW PRACTICE**

**Second Respondent**

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**STATEMENT OF AGREED FACTS**

**AND INDICATED OUTCOME**

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1. By its application dated 11 April 2017 and the statement made pursuant to Rule 5 (2) Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Mr Stephen Andrew Alexander ("Mr Alexander") and Spicketts Battrick Law Practice ("Spicketts Battrick").
2. The allegation made against Mr Alexander only within that statement was that on or around 22 February 2013, by disclosing the address of the property being purchased by Ms SH, a client of the Second Respondent's conveyancing Department and former wife of his client Mr VM, to his client Mr VM, despite Ms SH's specific instructions to the contrary, he breached Principles 4 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 4.1 and 4.3 of the SRA Code of Conduct 2011.
3. The following allegation made against Spicketts Battrick only within that statement was that from 7 November 2012, by acting for Ms SH in respect of a conveyancing matter whilst also acting for her former husband Mr VM in respect of child contact and divorce proceedings, without ensuring that sufficient barriers were put in place to protect Ms SH's confidential information, resulting in that confidential information being disclosed to her former husband, it breached Principles 4, 5, 6 and 8 of the SRA Principles 2011 and failed to achieve Outcomes 3.5, 4.1 and 4.5 of the SRA Code of Conduct 2011.

### Admissions

4. In respect of the allegation at paragraph 2 above Mr Alexander admits that by disclosing the address of the property being purchased by Ms SH, a client of the Second Respondent's conveyancing Department and former wife of his client Mr VM, to his client Mr VM, on or around 22 February 2013, despite Ms SH's specific instructions to the contrary, he breached Principles 4 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 4.1 and 4.3 of the SRA Code of Conduct 2011.
5. In respect of the allegation at paragraph 3 above Spicketts Batrick admit that from 7 November 2012, by acting for Ms SH in respect of a conveyancing matter whilst also acting for her former husband Mr VM in respect of child contact and divorce proceedings, without ensuring that sufficient barriers were put in place to protect Ms SH's confidential information, resulting in that confidential information being disclosed to her former husband, it breached Principles 4, 5, 6 and 8 of the SRA Principles 2011 and failed to achieve Outcomes 3.5, 4.1 and 4.5 of the SRA Code of Conduct 2011.

### Agreed Facts

6. The following facts and matters are agreed between the SRA and Mr Alexander and Spicketts Batrick :
  - 6.1 Mr Alexander was born on 19 February 1967 and was admitted to the Roll of Solicitors on 1 October 1992. His last known address is 59 Clos Dewi Sant, Canton, Cardiff, South Glamorgan, CF11 9EX. At the date of this statement, the First Respondent remains upon the Roll of Solicitors and has a practising certificate for the period 2016-2017 free from conditions.
  - 6.2 Spicketts Batrick is a partnership which has been authorised to practice as a recognised body by the SRA since 2006. It currently has six members and its head office is at 126 Clifton Street, Roath, Cardiff, South Glamorgan, CF24 1LX together with branches at 3/4 Gelliwastad Road, Pontypridd, CF37 2AU and 56 Albany Road, Roath, Cardiff, CF24 3RR. It specialises in conveyancing, family, PI and wills and probate law.
  - 6.3 At all material times, Mr Alexander was employed as an Assistant Solicitor in Spicketts Batrick's Matrimonial department, and was based at its head office.
  - 6.4 Mr Alexander was instructed by Mr VM on 17 January 2012 in respect of access to his as then unborn child, who was due to be born to his estranged wife, Ms SH. Ms SH was represented by separate solicitors in respect of the matrimonial issues.
  - 6.5 On 11 November 2011, Mr VM had been convicted of assaulting Ms SH. Mr VM was made the subject of a seven year Restraining Order (with effect from 11 November 2011) and was ordered to serve a term of imprisonment. He was released on licence on 9 December 2011. Mr Alexander was aware of the Restraining Order and of Mr VM's criminal conviction for assault against Ms SH.
  - 6.6 In March 2012, Ms SH had obtained a quote from Ms EE (a Legal Executive employed in the Second Respondent's conveyancing department and based at its Albany Road branch office) for the sale of a property, and subsequently wanted to instruct Ms EE in respect of the same.

- 6.7 Ms EE carried out a conflict check, and discovered that the First Respondent was acting for Mr VM and so informed Ms SH of the potential problems. Ms SH was adamant that she wanted to instruct Ms EE, who then discussed the issue with Mr RB, the Second Respondent's COLP and Senior Partner. Mr RB made the decision that as the two matters would be conducted by different fee earners in different offices, the firm could accept instructions from Ms SH. He based this decision on the facts that Ms SH was fully aware of all of the facts, Mr VM was aware of the property being sold by Ms SH, and Mr Alexander would not be aware that they were acting for Ms SH, and there would be a "Chinese Wall" in place Ms EE could act for Ms SH in the sale without there being a conflict of interest. No attendance or file note was made to confirm this. Mr RB did not make it clear to Ms EE that there was no conflict in her acting for Ms SH in the sale of her property only.
- 6.8 Ms EE then proceeded to act for Ms SH on that sale, and on two aborted purchases, before she was subsequently instructed in respect of the purchase of a new property on 7 November 2012 (the Property"). Ms EE has stated that as she had previously obtained consent from Mr RB to act for Ms SH she did not feel it necessary to speak to him again before accepting instructions from Ms SH in respect of the purchase of a separate property. This purchase was ultimately completed on 18 January 2013.
- 6.9 Spicketts Batrick did not make Mr Alexander aware that they were acting for Ms SH in respect of the purchase of a property.
- 6.10 Notwithstanding its assurances to Ms SH, the firm failed to put in place any measures, including a "Chinese Wall" to protect the confidential information being held on behalf of its client Ms SH, i.e. limiting the recipients of the emails sent out by the accounts department when monies were received from Ms SH, or ensuring that there was restricted access to the client matter files relating to Ms SH's matters so that Mr Alexander could not access, or even view, the same.
- 6.11 In January 2013 Spicketts Batrick received funds from Ms SH in relation to the purchase of the Property. Spicketts Batrick's accounts department sent an email to all fee earners, including Mr Alexander, confirming that it had received money on account for a client with the surname of [M] (an unusual name). Mr Alexander received this email, but was not expecting any money from his client Mr VM. He therefore undertook some preliminary investigations of the firm's systems to determine what the money related to and discovered that Spicketts Batrick was acting for Ms SH.
- 6.12 Mr Alexander initially advised his client that his former wife was purchasing a new property, but did not at this stage disclose the actual address of the Property to him.
- 6.13 However on 22 February 2013, despite being aware of the Restraining Order in favour of Ms SH against his client, Mr Alexander disclosed the address of Ms SH's new Property to Mr VM without Ms SH's knowledge or permission.
- 6.14 The matter was investigated by the Legal Ombudsman ("the Ombudsman") following a complaint by Ms SH. The Ombudsman made a decision that Spicketts Batrick should pay for an alarm system and service charge for the duration of the restraining order and should also provide financial compensation of £500 to recognise the upset and distress caused.

6.15 On 24 July 2014 the SRA received a report from the Ombudsman reporting a breach of confidentiality. The allegations against Mr Alexander and Spicketts Battrick arise out of the content of the report from the Ombudsman.

#### Mitigation

7. The following mitigation is advanced by Mr Alexander and is not endorsed by the SRA.
8. Upon discovering that Spicketts Battrick was acting for Ms SH on the purchase of her new Property, he mentioned to his client that it had come to his attention that his wife was purchasing another property, although he did not initially disclose the actual address to him.
9. He was acting in what he thought was his client's best interest when he took the view that this was information that would inevitably be disclosed by Ms SH during the divorce proceedings, and in an error of judgment he *"took the view that mentioning this to my Client would not cause harm and would satisfy what I saw as my absolute duty to my Client not to withhold information from him"*.
10. He did not act maliciously or dishonestly in any way, and became confused about what to do. He did not appreciate the consequences of Ms SH having instructed his employer's conveyancing department in respect of any purchase and had not met or been instructed by Ms SH at any stage. He was not aware of her specific instructions to the conveyancing department.
11. Mr Alexander has always accepted that this was a gross error of judgment, which he deeply regrets, and in hindsight he should never have disclosed the actual address as it exposed Ms SH to risk which thankfully did not materialise.
12. Mr Alexander has stated that he had a duty of disclosure to his client Mr VM, being his divorce Solicitor, and could not have proceeded in advising and assisting him in negotiating a divorce settlement without giving some indication of the information he had obtained. He admits that he wrongly failed to give consideration to the duties that were also owed to Ms SH as a client of the Firm, as it seemed inconceivable that the Firm were acting for her on a purchase of a property.
13. Mr Alexander has stated that his focus was purely on progressing the divorce settlement and contact issues, and he gave insufficient thought to the Restraining Order that was in force against his client, which he deeply regrets.
14. Mr Alexander has accepted that with hindsight he should have spoken to the Partners in Spicketts Battrick so that a decision could have been made as how to deal with this matter.
15. In his twenty five year career this is the only time he has made such an error, the potential consequences of which has caused him, and continues to cause him, significant distress and regret. He has ensured over the last four years, and will continue to ensure for the rest of his career that he never puts himself, or a client of the Firm, in such a position again.
16. The following mitigation is advanced by Spicketts Battrick, and is not endorsed by the SRA.



17. During his initial conversation with a Regulatory Supervisor in the employment of the SRA Mr RB on behalf of Spicketts Battrick admitted that the firm had acted improperly, the fee earner (Mr Alexander) had been reprimanded and the firm had paid compensation to Ms SH.
18. Mr RB had stated that Ms SH was already aware that her former husband, Mr VM, had instructed Spicketts Battrick in respect of the matrimonial proceedings, and was adamant that she wanted to instruct Ms EE (a Legal Executive in the conveyancing department) in respect of her sale of her property, which was registered in her sole name, albeit with a Notice of Home Rights registered against it in favour of Mr VM.
19. Mr RB has further stated that as Ms SH was aware that Mr Alexander was instructed by her former husband and the fact that the two matters were being dealt with by different fee earners in separate offices lead him to mistakenly not see that there was going to be a potential conflict of interest in Spicketts Battrick also acting for Ms SH in respect of the sale of her property.
20. Mr RB has advised that had Mr Alexander brought to his attention the issue of confidentiality and duty of disclosure he (Mr Alexander) would have been instructed that the confidentiality point would override the duty of disclosure to the client, which "of course meant that we would have had to immediately ended our instructions in relation to both matters". Mr RB has also confirmed that if Ms EE had spoken with him about acting for Ms SH in respect of the purchase of the property he would have told her they could not act as the risk of conflict on a purchase was too great.
21. Spicketts Battrick has a conflict search system that is carried out on the computer software against every new client, as shown by the fact that Ms EE who was instructed by Ms SH reported her concerns regarding the potential conflict to Mr RB.
22. Mr RB has confirmed that in his thirty year history this is the only time such an error or oversight has occurred. He has ensured over the last four years, and will continue to ensure that he never puts himself, or a client of the Firm, in such a position again.
23. The Firm has also stated that *"this is a matter that we are embarrassed by and ashamed of. We deeply regret the distress caused to [Ms SH]"*

#### Outcome

24. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions Mr Alexander and Spicketts Battrick accept that the seriousness of their admitted misconduct is such that a reprimand is not a sufficient sanction.
25. The SRA accepts that, in the circumstances of this case, neither the protection of the public nor the protection of the reputation of the profession require Mr Alexander to be suspended from practice or struck off the Roll of Solicitors, nor does it require the recognition of Spicketts Battrick to be revoked.
26. A fine appears to be a sufficient sanction to mark the seriousness of the misconduct and to protect the public and reputation of the profession.
27. Mr Alexander, with the agreement of the SRA, submits to the Tribunal that the Tribunal should order that :

- 27.1 he pay a fine of £15,001, such penalty to be forfeit to Her Majesty the Queen; and
- 27.2 he be subject to a Restriction Order that he may not practice otherwise than in employment which has first been approved by the SRA.
28. Spicketts Battrick, with the agreement of the SRA, submits to the Tribunal that the Tribunal should order that it pay a fine of £20,000, such penalty to be forfeit to Her Majesty the Queen.
29. The level of fine for both Respondents has been determined after consideration of paragraph 26-28 of the SDT's guidance note on sanctions, paragraph 35 of *Fuglers and others v Solicitors Regulation Authority* and the indicative fine bands.
30. It is submitted that in light of all the circumstances of this case, including the aggravating and mitigating factors, the Respondents' conduct falls within Level 4 of the indicative fine band as the misconduct can be rightly categorised as 'very serious'. A level 4 fine band is £15,001 - £50,000.
31. With respect to costs, Mr Alexander and Spicketts Battrick agree to pay the SRA costs of the application in the sum of £7,000, on a jointly and severally liable basis.

Dated this 1 day of September 2017

E PRIEST

.....  
Emma Priest - Legal Adviser

On behalf of the SRA

S A ALEXANDER

.....  
Mr Stephen Andrew Alexander

R. BATTRICK

.....  
Mr Richard Battrick, on behalf of Spicketts Battrick