

## Case studies

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#### Employers' duties

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**If you are an employer, make sure you comply with the Solicitors Act regarding your duties. The solicitor in this study didn't, and was suspended from practice for six months, with catastrophic consequences.**

The names in this case study have been changed.

Mr Rawlings was a sole practitioner who employed an assistant solicitor, Mr Edwards. Unfortunately, Mr Edwards became involved in a serious mortgage fraud. When matters came to light, Mr Edwards's conduct was referred to the Solicitors Disciplinary Tribunal, which ordered that he be struck off the Roll.

Eight years later, Mr Rawlings found himself in need of a clerk to help him with his conveyancing work. He decided to offer Mr Edwards the job, but before doing so sought permission from the SRA. The SRA accepted that Mr Edwards had been rehabilitated and gave its permission for Mr Rawlings to employ him.

Within days of Mr Edwards starting his job as Mr Rawlings's clerk, Mr Rawlings suffered an unexpected, and fatal, heart attack. In consequence, his practice was closed, and Mr Edwards once again found himself unemployed. Mr Edwards therefore applied for a new job with Mr Robinson, a sole practitioner who carried on his practice from offices in North London and South London.

Mr Edwards was entirely honest when he applied for the job with Mr Robinson. He explained that he was a former solicitor who had been struck off for dishonesty. Perhaps because of this frankness, Mr Robinson decided to employ Mr Edwards as a clerk in the South London office. Mr Robinson himself spent the majority of his time at the North London office but visited the South London office on a daily basis.

Unlike Mr Edwards, Mr Robinson did not formally apply to the SRA for permission before he employed Mr Edwards. However, he did tell Mr Edwards to write to the SRA to tell them that he had a new employer. He



also wrote to the SRA himself to tell them that he had given Mr Edwards a job. On the basis of this correspondence, the SRA subsequently granted Mr Robinson permission to employ Mr Edwards on condition that he should work from the same office as Mr Robinson under his direct supervision.

Subsequently, the SRA conducted a monitoring visit to Mr Robinson's offices. In the course of that visit, it discovered that Mr Edwards had undertaken six conveyancing transactions for Mr Robinson before Mr Robinson had been given permission to employ him. It also discovered that Mr Edwards was working in a different office from Mr Robinson. The SRA referred Mr Robinson's conduct to the Solicitors Disciplinary Tribunal which suspended him from practice for a period of six months. The consequences for Mr Robinson were catastrophic—he was forced to close his practice.

### **What Mr Robinson should have done before employing Mr Edwards**

- Once he knew that Mr Edwards had been struck off, he should have familiarised himself with the requirements of section 41 of the Solicitors Act 1974 before deciding to employ him.
- He should have remembered that the permission given to Mr Rawlings to employ Mr Edwards was personal to Mr Rawlings and could not be transferred.
- He should have applied to the SRA for permission to employ Mr Edwards rather than simply notifying us that Mr Edwards had changed his employment.
- He should not have allowed Mr Edwards to commence his employment until he had obtained the SRA's permission.
- He should have followed the conditions that were imposed on his employment of Mr Edwards by the SRA—to the letter. In particular, he should not have allowed Mr Edwards to continue to work in the South London office while continuing to spend the majority of his time in the North London office.