SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11310-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHEN JOHN CHUBB Respondent

Before:

Mr D. Green (in the chair)
Miss J. Devonish
Mr G. Fisher

Date of Hearing: 8 and 9 September 2015

Appearances

Mr Daniel Purcell, Solicitor Advocate of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant

Mr Andrew Blatt, Solicitor of Murdochs Solicitors, 45 High Street, Wanstead London E11 2AA for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent, Stephen John Chubb, made on behalf of the Solicitors Regulation Authority and amended with the permission of the Tribunal were that he, while in practice as a partner in Clarkson Wright and Jakes Limited ("the firm"), and in the course of acting in a series of property transactions:

1.1 created, or caused or allowed the creation of, a misleading document in that he caused or allowed a Declaration of Trust to be created, signed and submitted to HM Land Registry which purported to have been created in April 2004 but which was, in fact, created in April 2007, and in doing so breached Rules 1(a), (d) and (e) of the Solicitors Practice Rules 1990;

1.2 caused or allowed the document referred to at 1.1 above to be relied on in a document submitted to HM Land Registry ("HMLR") and in doing so breached Rules 1(a), (d) and (e) of the Solicitors Practice Rules 1990;

1.3 failed to disclose to his lender clients that his firm was acting for both the lessor and lessee under the proposed transactions and in doing so breached the instructions set out in the Council of Mortgage Lenders' Handbook and further or alternatively breached Rules 1(a), (c), (e) and 6 of the Solicitors Practice Rules 1990, and further or alternatively Rules 1.04 and 3 of the Solicitors Code of Conduct 2007;

1.4 submitted to his lender clients Certificates of Title containing incomplete or inaccurate information regarding the values for the transactions to which they purportedly related, in that the Certificates of Title failed to disclose that leases were granted for a premium of £1 each, and in doing so breached the instructions set out in the Council of Mortgage Lenders' Handbook and further or alternatively Rules 1.02, 1.04, 1.05 and 3 of the Solicitors Code of Conduct 2007;

1.5 failed to notify his lender clients that the proceeds of the mortgage advances being sought would be used, in whole or in part, for the purposes of discharging a pre-existing mortgage relating to the premises which were the subject of the transactions, and in doing so breached the instructions set out in the Council of Mortgage Lenders' Handbook, and further or alternatively breached Rules 1(a), (c), (e) and 6 of the Solicitors Practice Rules 1990, and further or alternatively Rules 1.02, 1.04, 1.05 and 3 of the Solicitors Code of Conduct 2007.

It was the Applicant's case that the Respondent acted dishonestly in respect of the matters set out at allegations 1.1, 1.2, 1.3, 1.4 and 1.5 or any of them. Dishonesty was not an essential ingredient to all or any of these allegations and it was open to the Tribunal to find any of the allegations proved with without findings of dishonesty.

Documents

2. The Tribunal reviewed all the documents including the following:

Applicant

- Rule 5 Statement dated 27 November 2014 with exhibit DWRP1

- Witness statement of Ms AM dated 23 December 2014 with exhibits AM1 to AM4
- Note on behalf of the Applicant drafted by Mr Purcell dated 2 September 2015
- Applicant's schedule of costs dated 28 August 2015

Respondent

- Admissions and denials to the Rule 5 Statement
- Witness statement of the Respondent
- Handwritten note of telephone conversation dated 27 August 2013
- Respondent's Practising Certificate for the year 2014-2015
- Bundle of character references
- Personal Financial Statement of the Respondent with attachments.

Preliminary and other Procedural Issues

3. For the Applicant, Mr Purcell informed the Tribunal that the factual matters and the allegations of breaches of the Codes and rules recited were admitted, (in the latter case with small amendments) and allegations of failure to act with integrity were made and admitted; however the allegation of dishonesty was denied and would be the focus of the hearing. The documents included character references submitted for the Respondent to which the Applicant did not object to the Tribunal seeing. The Respondent's Admissions and Denials document which was before the Tribunal raised issues about the appropriateness in allegation 1.2 of the alleged breaches of the Solicitors Code of Conduct 2007 and in allegation 1.4 of the allegations in respect of the breaches of the Solicitors Practice Rules 1990. Allegations 1.3 and 1.5 were now admitted aside from the allegation of dishonesty associated with them and in respect of these allegations both the Solicitors Practice Rules ("SPR 1990") and the Solicitors Code of Conduct ("SCC 2007") were engaged because the conduct began before and continued after July 2007. Mr Purcell sought permission to withdraw the contested parts of allegations 1.2 and 1.4. In allegation 1.2, given the admission as to the submission of the back dated document, including to the date of its submission to HMLR, the Applicant applied to amend so that the allegation was of a breach only of the SPR 1990. In allegation 1.4, all the Certificates of Title were signed after the SCC 2007 came into force. Each recited the SPR 1990 and so the Applicant applied to amend the allegation such that a breach of the SCC 2007 only was alleged, on the basis that no qualification was made to the effect that the Certificate was in any way invalidated by the reference to the SPR 1990. The Tribunal gave its permission for allegations 1.2 and 1.4 to be amended as requested.

4. In opening his defence, Mr Blatt informed the Tribunal that the Respondent had handed a handwritten document to him which he had not previously seen and he sought the permission of the Tribunal to admit it into evidence. It was said to include a contemporaneous note of a telephone conversation between the Respondent and his then legal advisers which took place on 27 August 2013 two weeks before his interview with the Investigation Officer ("IO") Baljinder Dhaliwal. The Respondent waived privilege in respect of it.

5. Mr Blatt submitted that it was clear from Mr Purcell's submissions and the observations which the Tribunal had made that looking back the Respondent had made a number of unhelpful admissions in interview. He wanted the Respondent to

give evidence on the document which noted advice given to him about his approach to the interview. The Respondent did not resile from his admissions but the way he presented in the interview was material to the allegation of dishonesty; he was not going to argue with the IO and therefore agreed with what was put to him and those answers were not helpful to him. Mr Blatt submitted that the Tribunal was dealing with a state of mind in respect of whether the Respondent acted dishonestly or not.

6. Mr Purcell had seen the document and did not argue that it was inadmissible but questioned the weight which should be attached to it. He submitted that its production on the first day of the hearing constituted waiver of privilege regarding legal advice that the Respondent had received from another firm of solicitors. Mr Purcell pointed out that the Tribunal had not seen any written advice or any record from that firm of the telephone call in question and was therefore receiving selective disclosure of a partial handwritten record. It would be possible for the Respondent to obtain from his earlier advisers a record of the telephone call and any other advice given to him. Mr Purcell also submitted that the Applicant did not rely on the minutiae of the admissions made in the interview. The document might have a bearing on the words used but not on the fact of his admissions and it should not undermine the weight that the Tribunal could put on those admissions. Mr Blatt agreed and submitted that the Tribunal would hear from the Respondent and could decide for itself but he had been handed the document that day and felt that it would be wrong for the Tribunal not to have this assistance.

7. The Tribunal gave permission for the document to be admitted into evidence.

Factual Background

8. The Respondent was admitted to the Roll of Solicitors in 1989 having previously practised in New Zealand.

9. The Respondent joined the firm as a salaried partner on or around 1 April 2000, later becoming an equity partner. He left the firm in around January 2013.

10. The matters which gave rise to the allegations were brought to the attention of the Applicant by the firm in December 2012.

11. The Respondent held a current practising certificate subject to conditions.

12. As a result of the information provided by the firm, the Applicant commenced an investigation.

13. As part of its investigation, the IO interviewed the Respondent on 9 September 2013 in respect of which a transcript was prepared. On completion of the investigation a Forensic Investigation ("FI") Report dated 3 October 2013 was completed and sent to the Respondent.

14. The responses of the Respondent, dated 23 December 2013 and 17 August 2014 were before the Tribunal.

15. In or around March 2007, the Respondent was instructed by Mr RR and Mrs HR and two companies of which they were directors, C Ltd and RD Ltd. The instructions related to the ownership of a property known as W and in particular to the ownership of the freehold of W, and the leasehold of six flats into which W was subdivided. The key elements of the work undertaken by the Respondent or under his supervision, between April and July 2007 were the transfer of the freehold in W from C Ltd to RD Ltd, the completion of mortgage loans secured against the leaseholds of the six individual flats, and the grant of leases by RD Ltd to C Ltd (in respect of three flats) and (in respect of the other three flats) to Mr and Mrs R.

16. The sequence of actions undertaken by or on the instruction of the Respondent in respect of W was as follows:

- On or about 25 April 2007, a Declaration of Trust was created purportedly made on 11 March 2004 and recording that C Ltd held the freehold in W on trust for RD Ltd.

- On or about 26 April 2007, the freehold in W was transferred from C Ltd to RD Ltd.

- On or about 26 April 2007, a form TR1 was completed recording the transfer from C Ltd to RD Ltd on 26 April 2007.

- An SDLT 60 form signed by the Respondent and dated 26 April 2007 was completed in which the Respondent stated that no Land Transaction Return was required in respect of the transfer of W. The documents were submitted to HMLR under cover of a letter from the firm dated 27 April 2007.

- In or about June 2007, mortgage offers were made to Mr and Mrs R in respect of individual leases on Flats 1, 5 and 6 and to C Ltd on Flats 2, 3 and 4 within W and were sent to the Respondent. The mortgage lenders were as follows: Mortgage Express ("ME") for Flat 1, Capital Homes Ltd ("CHL") for Flats 2, 3 and 4, the Mortgage Business ("MB") for Flats 5 and 6.

- On 3 July 2007, Certificates of Title was submitted by the Respondent to the mortgage lenders recording the purchase price of individual W flats. The purchase price described on the certificate as the "Price stated in transfer" was left blank in respect of Flats 1 to 4 and a figure £98,000 was included in relation to Flats 5 and 6.

- On 10 July 2007, mortgages were completed on the six W flats.

- On 10 July 2007, leases were entered into in respect of the W flats. Each lease showed a premium of £1 for the grant of the lease.

- On 10 July 2007, the ledger for the transaction relating to Flat 1 recorded the receipt of mortgage funds in respect of all six flats, the redemption of a pre-existing mortgage with P Mortgages Ltd ("P") in the sum of £507,523.86 and a payment to C Ltd of £62,060.37.

17. The firm subsequently received claims from solicitors acting for ME regarding Flat 1 from CHL regarding Flats 2, 3 and 4 and MB regarding Flats 5 and 6 all of which were repossessed following borrower default.

Witnesses

18. None save the Respondent

19. **The Respondent** gave evidence. Other than as set out below it is recorded under the relevant allegation where appropriate. He described his history of practice in New Zealand followed by central London and then locally. He had acquired the house building arm of a major construction company as a client and became involved in plot sales and set up a team to undertake that work at the firm. A building development could involve 100 to 200 of such sales. The Respondent stated that he had only undertaken commercial work at the firm and even with the residential plot sales, this was for a commercial client and a commercial approach was required. At its peak the team consisted of six people and the Respondent. The Respondent stated that the differences between residential and commercial conveyancing were of complexity, value and clearly commercial clients had higher expectations than those in residential conveyancing. The Council of Mortgage Lenders' Handbook for England and Wales ("CMLH") was relevant in commercial transactions depending on the amount of the loan. Normally in acting for a commercial client the solicitor was a member of their panel and for a loan up to £500,000, the solicitor would be instructed to act for both parties. Above that figure a bank would instruct its own solicitors to act. If the Respondent was asked to deal with a buy to let transaction he would take a commercial approach to it. To put the transaction in context, the Respondent stated that this was a commercial client with a portfolio of properties and the transaction involved creation of more value by putting in place six long leases where there were none to start with. One could borrow more money on six long leasehold flats than one building with six flats. The Respondent did not see anything wrong at all with the structure that he was advising and he had undertaken similar work for a number of clients.

Findings of Fact and Law

20. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

In considering the allegation of dishonesty the Tribunal employed the test set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton said:

> "… there is a standard which combines an objective and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the ordinary

standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest."

21. **Allegation 1.1 - [The Respondent] created, or caused or allowed the creation of, a misleading document in that he caused or allowed a Declaration of Trust to be created, signed and submitted to HM Land Registry which purported to have been created in April 2004 but which was, in fact, created in April 2007, and in doing so breached Rules 1(a), (d) and (e) of the Solicitors Practice Rules 1990;**

Allegation 1.2 - [The Respondent] caused or allowed the document referred to at 1.1 above to be relied on in a document submitted to HMLR and in doing so breached Rules 1(a), (d) and (e) of the Solicitors Practice Rules 1990;

21.1 For the Applicant, Mr Purcell submitted that the Respondent had a practising certificate and was still in practice. The Respondent admitted oversight and supervision of the whole sequence of transactions and the work undertaken and no other qualified staff member was involved. Mr Purcell referred the Tribunal to the sequence of events and the transactions in respect of the property W. He also referred the Tribunal to the form TR1 dated 26 April 2007 transferring the freehold in the property from C Ltd to RD Ltd. A box was ticked on the form recording that:

> "The transfer is not for money or anything which has a monetary value"

Wording had been added by hand:

> "In accordance with a Declaration of Trust dated 11 March 2004"

The form AP1 was sent to HMLR on 27 April 2007 with a covering letter of that date from the firm. The Declaration of Trust was purportedly created on 11 March 2004 and set out that:

> "The Trustee [C Ltd] declares that he holds the property trust for the company [RD Ltd]...11 March 2004."

It did not record that it was backdated, or to be effective retrospectively. The document created the impression that it was created on the 11 March 2004 and was submitted to HMLR on that basis. It was however created more than three years later and its date suggested on or about 25 April 2007. That was admitted and was demonstrated as far as that was necessary by the meta data for the document. It was not the Applicant's case that the transfer in April 2007 was for money. However it was not, as the submission to the HMLR and backdated document suggested, a transfer executed pursuant to a Declaration of Trust made in 2004. The document and the reliance upon it in a form submitted to HMLR were plainly misleading and it was the Applicant's case that it could only have been intended to mislead. The Respondent accepted in his interview with the IO that the document was created in 2007, that he gave instructions for its creation, that it was backdated and that "it shouldn't have been". When asked whether he agreed that he had provided false information, the Respondent stated "Yes I do". He further admitted that this amounted to a failure to act with integrity. The exchange in the interview was as follows:

"R: I would say [CS of the firm] has probably prepared that, but I have given her the detail or a precedent for it.

IO: The document is dated 11th March 2004, can you clarify when it was actually created?

R: In 2007

IO: So it was backdated to 11th March?

R: Yeah it was backdated and it shouldn't have been

IO: Okay, so you instructed Miss [CS] to backdate it

R: I did"

21.2 The Tribunal asked Mr Purcell to take them through the Respondent's explanation given during interview. The transcript continued:

"IO: Can you explain the purpose of this document and explain why it was backdated?

R: Well, as I said, I perceived the whole titling circumstances to be a mess, they needed to be tidied up, quickly and at a minimum of cost and that wrongly was to save stamp duty and in fact didn't, I mean, what's crazy about it is that it didn't have to, we didn't have to put that in to do that because there was a common shareholding, it was exempt stamp duty, but it was wrong and I put my hands up."

It was submitted that this amounted to very serious misconduct, seriously affecting the Respondent's integrity and public trust in the profession, quite apart from the separate allegation of dishonesty. The Respondent had not admitted the true purpose of the false document but it was submitted that the Tribunal could properly find proved to the requisite standard that the motivation was financial whether or not it resulted in financial gain to the client. That was the only plausible purpose for the creation and submission of the document. The Tribunal could also properly find that an honest person would regard a solicitor acting in such a way as dishonest and that the Respondent knew and must have known at the time that a solicitor falsely creating a backdated document, for the financial benefit of the client would be regarded as acting dishonestly. The conduct was not capable of being anything other than dishonest. By way of clarification, Mr Purcell emphasised that the Applicant did not submit that there was in fact a financial benefit and did not accept that it needed to do so; the Applicant did not rely on the tax structure at the time. Rather the Applicant's case was that the document was created and submitted incorrectly to seek to derive a tax advantage or to seek to protect the client from a tax liability.

21.3 In respect of all the allegations, Mr Purcell referred to the Tribunal's Guidance Note on Sanctions and the judgment of the Administrative Court in SRA v Ijewere [2013] EWHC 2130 (Admin) and submitted that this was conduct which ought to lead to the Respondent being struck off the Roll of Solicitors regardless of whether his conduct

was characterised by the Tribunal as dishonest. Mr Purcell did not submit that the Respondent was habitually dishonest but there had been multiple failures in a series of transactions for a single client after a long and unblemished career. Mr Purcell submitted that the Tribunal could draw an inference from the facts in respect of the second limb of Twinsectra Ltd v Yardley [2002] UKHL 12 (the subjective test) regarding the Respondent's state of knowledge about what would be seen as dishonest by the reasonable and honest person. Mr Purcell emphasised that the Applicant's case did not rest on collusion with clients to defraud or mislead lenders.

21.4 For the Respondent, in respect of all the allegations Mr Blatt submitted that the Applicant did not accept that the transaction had been just a refinancing but felt there must be some prior arrangement with the client. The Tribunal would have to decide if the Respondent set out with the clients upon a plan to deceive third parties and whether his actions were to further that deceit. Handling transactions badly or mistakenly did not constitute dishonesty. Mr Purcell was looking with the benefit of hindsight and finding afterwards that the clients had provided false information on their mortgage applications. The Respondent candidly admitted breaches of the rules and lack of integrity which was second only in seriousness to dishonesty. He recognised that his actions fell significantly below the standards required of solicitors. The Respondent did not seek to blame third parties or his staff. He signed off the Certificates of Title and must face the consequences of significant failures but the Tribunal needed to be satisfied in respect of dishonesty beyond reasonable doubt. Mr Blatt submitted that the Respondent had a genuine belief that there was some sort of quasi commercial or commercial refinancing operation taking place. In support of this assertion, the Tribunal had seen some of the mortgage offers where the purchase price was zero; there were references in the correspondence to refinancing and references in mortgage offers to other borrowings that did not have to be redeemed; the Respondent's understanding to the best of his recollection was that the lenders had a particular understanding of these borrowers and that the lenders were aware of the Rs' overall financial position. Of the three lenders, CHL in particular was so aware. At some point the Respondent was asked to advise on the structure of the title; he could not remember if this was by the client or CS. He gave advice and provided a precedent and authorised the preparation of the trust deed. It served no useful purpose in the transaction and was never sent to the lenders. It could have been used for stamp duty saving but in fact there was no stamp duty benefit; all the prices put in the documents were under £125,000. The figure of £1 for the premium for releases was inserted in the documents because consideration was needed; it was more truthful to put that figure in the documents and the Stamp Duty form than another figure that was not to be paid over. The Respondent could have offered an explanation about backdating; one explanation that Mr Blatt had suggested to him in examination in chief was that the client said W was previously held in trust but the Respondent simply could not remember and that was the reason why he had not put forward any other explanation. Mr Blatt submitted that the Respondent did not have day-to-day conduct of the transaction and that fact went to dishonesty but he had to accept responsibility. When someone dipped in and out things were missed and overlooked.

21.5 Mr Blatt also made the following points:

- The lender clients obtained good and marketable title. They should have been seised of the information which might have affected their decision to lend and

it was acknowledged that the lenders issued civil proceedings which had now been settled but they would have done that in any event.

- There was no benefit to the Respondent.

- The Respondent approached the interview with the IO without preparation; he could not face looking at the documents and received advice from his previous representatives that there had been no dishonesty and he would not be struck off and was told not to worry. The Tribunal would have to form a view of how the Respondent had answered in cross-examination and in respect of the Declaration of Trust. He candidly said that he did not know the answers. In interview did he mean there was intended to be a stamp duty saving or was he guessing and being cooperative? He never realised that his actions would be seen as so wrong and that he would end up before the Tribunal. He resigned himself to being disciplined and answered fully and candidly.

- While there were references to other transactions in the papers these had not been made part of the prosecution. The Respondent had not been investigated by the police and had not been prosecuted.

21.6 Mr Blatt submitted that the Declaration of Trust was a single act in a single matter in 40 years which the Respondent could not explain; he acted irrationally. Mr Blatt submitted that dishonesty had different degrees. If the Tribunal could not establish a state of mind such as to assist his clients dishonestly, because all the acts followed from that single premise, the Tribunal could not find the Respondent dishonest. It was not enough that he acted negligently in failing to inform the lenders. This was not a matter of stealing client money; it was all about his state of mind. The case did not involve taking advantage of vulnerable clients. In respect of the objective test for dishonesty in the case of Twinsectra, judging the Respondent by the ordinary standards of reasonable and honest people, would the public feel that this was a matter of mistake and muddle or would they think categorically that there had been dishonesty? As to the second and subjective limb of the test for dishonesty, there was clear evidence that the Respondent did not think he did anything wrong at the time; he understood, looking back, that he fell well below the standard required. He also accepted the breach of the Code in respect of integrity. If the Respondent was not found to be dishonest the Tribunal would have to find to what degree he had breached the requirement to act with integrity. Such a breach was still enough for him to face being struck off. Mr Blatt asked the Tribunal to give him the benefit of the doubt overall. There had been muddle, mistake and an unfortunate set of circumstances. The lenders had only lost out because the clients went bankrupt in the absence of which the transaction would not have resulted in any claims.

21.7 In evidence, the Respondent stated that when he undertook the transaction, Mr and Mrs R were relatively new clients to him, introduced by a mutual contact. They were well known and very active developers in the south-east London and North Kent area. As head of department he was expected to attract new clients. They became more important because in early 2007, one of the firm's clients pulled out of house building. He had particular concerns about what would happen with the plot sales team. On the other hand, there was no let up in the more complex matters. Either the Rs or their clerk D told the Respondent that they had a job which involved the

refinancing of a property. This was the type of work that the Respondent would earmark for the team under his supervision. The majority of the work was dealt with by two members of the plot sales team JR and CS. The Respondent agreed that e-mails dated 23 and 24 April 2007 from CS to D showed that CS was in contact with D as a representative of the clients. He was not seeking to blame anyone else; he was in charge and it was his responsibility. CS was a qualified legal executive although the Respondent was not sure she had reached qualification at that stage. JR was a senior legal assistant who had started as a conveyancing secretary and knew the process which was often all one needed to know. The Respondent did not see Mr and Mrs R's mortgage applications until the bundles were produced by the Applicant. He saw the instructions to the firm from the lenders. He was not originally aware who owned the property W. As to who benefited from the transaction, Mr and Mrs R were common shareholders and directors of the two companies. In terms of what the clients wanted to achieve they could not grant a long lease to themselves and so the freehold would have to be transferred by C Ltd to an associated company failing which the Respondent would have to revert to the lenders; the three mortgage offers to C Ltd regarding the flats would have to be redrawn in some way. To that extent the Respondent saw the restructuring as a way to provide a platform for granting leases for which funding could be secured. On 24 April 2007, title searches had come in and CS probably had a word with the Respondent and he told her that she had better advise the client of the position and she sent an e-mail on 24 April to D. which represented his advice. It included:

> "You cannot grant a Lease to yourself, therefore arrangements will have to be made to transfer the ownership of the freehold from [C Ltd] to [RD Ltd] to enable them to be Landlord alternatively or have [C Ltd] as the Landlords and change the Lessees but if this is done the Mortgage Offers will have to be amended?"

On 25 April 2007, CS wrote to D informing him that she had spoken to the Respondent and the firm would arrange for the freehold of the property to be transferred to RD Ltd. CS continued:

> "It will be necessary for CHL and TMB to be notified and I will do so."

The Respondent accepted that probably the lenders were not told of the situation and he took responsibility for lack of supervision on that score.

21.8 The Respondent was asked to explain why the Declaration of Trust had been prepared. He could recall certain aspects of the transaction but after five years or so and now after an even longer period, he honestly could not remember why he did it; it made no sense. It was totally out of line and out of order and he admitted that. He could not remember whether there had been some discussions with the client about some prior trust arrangement and whether it was just to put the paper in place. He could not say why the date 2004 had been put in. He looked at the file and was horrified. The Respondent stated that it was wrong for any sort of backdating of documentation in this context. The deed served no purpose in terms of what they wanted to achieve. He did not know why he said that it might have been to save stamp duty. He said he asked himself why the document had been created every day. He could not confirm that the only possible and the real reason for its creation was to

protect the client from stamp duty. As to the fact that he confirmed that when interviewed, the Respondent stated that as he said the interview was "a bit of a disaster" for him. The transaction had no stamp duty implications because it involved a transfer between associated companies; any stamp duty saving derived from that exemption which he knew about at the time and which had existed for many years, nor did it serve a useful purpose in the context of refinancing the property. Was he guessing that there was an improper attempt to save stamp duty?

21.9 The Respondent testified that the Declaration of Trust would not be shown to the lender although there were circumstances where possibly it might. Where he had fallen down was in not disclosing the restructuring to the lenders when it should have been disclosed as set out in the letter of 25 April 2007 from CS to D. What would have been involved was a complete rundown to the lenders pointing out the problem and explaining the paperwork. The Respondent guessed that the lenders would not make any comment. The Respondent was referred to a list of documents in a schedule for CHL. It did not include the Declaration of Trust. He was asked when typically he would use a Declaration of Trust and replied that an offshore buyer might want to use a UK-based entity to purchase or deal with UK property. It was a device to protect the beneficial owner from appearing on the title.

21.10 The Respondent agreed he knew the Declaration of Trust would be treated as a proper document and that it would be relied on in representations to HMLR. He remembered that he was the one who gave CS instructions and a precedent. He agreed there was forethought in creating and submitting the document. He would have to agree that a reasonable and honest person would consider it dishonest for a solicitor to create a backdated document for tax purposes. It was put to him that he knew that at the time and he said he would have to deny that. In re-examination the Respondent was asked about possible alternative explanations to stamp duty saving for creating the backdated Declaration of Trust. He agreed that if he had been told that the property had been held in trust in 2004 and the document was not now available that could be a reason to create it.

21.11 In interview, the Respondent had been asked if he agreed that he had provided false information to HMRC (in respect of the Land Transaction Return form) and was recorded in the FI Report as saying "Yes, I do". The Respondent testified that the receiving party for the form AP1 was HMLR. He accepted that putting the wrong date on form TR1 in respect of the date of the Declaration of Trust describing it as 11 March 2004 in the handwritten addition to that form was not proper and that it constituted supplying improper information but it actually said what happened. He stated that if the document (the Declaration of Trust) was inappropriate, it ought not to have been referred to.

21.12 The Respondent stated that he had not asked his previous solicitors for advice about the investigation; he had instructed them to check the company commercial aspects of his departure from the firm and it was only when he was contacted by the Applicant about the investigation that he sought some help from them. The Respondent had probably two or three telephone conference calls with the partner dealing with the company commercial aspects and another partner whom he was told had expertise in professional conduct matters. As to whether he felt confident in what they told him, he was probably in such a state that he accepted it. The Respondent was asked about

the handwritten note which he said related to a telephone conversation that he had with his previous advisers. He stated that it included his questions and his agenda for talking to the members of the firm and the notes at the right hand side arose out of the conversation. The essence of the advice was to be completely open and cooperative with the Applicant, not be confrontational and to answer anything put to him and to try to "keep a lid on it". He was to try to persuade or submit that the matter should be kept within the Applicant with a view to entering some kind of compromise agreement. Their advice was to emphasise that he was not a dishonest person, to assert that what he had done did not amount to dishonesty; to admit that he had made a major mistake, had acted negligently or whatever; that there had been recklessness but it did not warrant something like striking off. As to the extent of his preparations for meeting with the IO, the Respondent stated that the Tribunal was probably looking at it i.e. the handwritten sheet; he did not make any preparations because he was still in a state of trauma. He had and still did find it very difficult to look at the paperwork. In answering the IO's questions he followed the advice he had been given and basically admitted everything. He had been given no advice about phraseology or tactical responses if that was part of what they should have advised him. It was basically "go in and take your medicine".

Determination of the Tribunal in respect of allegation 1.1

21.13 The Tribunal considered the evidence including the oral evidence of the Respondent and the submissions for the Applicant and for the Respondent. The Tribunal found as a fact that the Respondent caused the backdated Declaration of Trust to be created and signed and submitted to HMLR. He applied his mind to it; he instructed CS to produce it and provided her with a precedent. The meta data for the document showed that it had been created at 14.15 on 25 April 2007. His sworn evidence at the hearing was that he did not remember why he had done it but he admitted that it was done with forethought. The Tribunal found to the required standard that the Respondent was in breach of Rule 1(a) of the SPR 1990 relating to independence or integrity, 1(d) relating to the good repute of the solicitor or the solicitor's profession and 1(e) relating to a solicitor's proper standard of work and that allegation 1.1 was therefore proved to the required standard; indeed it was admitted.

Determination of the Tribunal in respect of the allegation of dishonesty and allegation1.1

21.14 In respect of the allegation of dishonesty related to allegation 1.1, the Tribunal employed the two limbed test in the case of Twinsectra. The Tribunal was satisfied to the required standard that by the ordinary standards of reasonable and honest people the Respondent creating a backdated document and that causing it to be used as it had, was objectively dishonest. In respect of the subjective test, the Tribunal had to consider the Respondent's state of mind. The Respondent had waived privilege in respect of advice given to him by his previous legal advisers. He had testified that someone at that firm experienced in regulatory matters had advised him to be open with the Applicant in interview. In support, the Respondent had produced a handwritten document which was in part his notes and in part a telephone attendance note of his conversation with his advisers on 27 August 2013. The transcript of his interview with the IO included his admission that he instructed CS to backdate the document and the words "that wrongly was to save stamp duty… it was exempt stamp duty, but it was wrong and I put my hands up." The Respondent described the

interview as "a disaster" for him and attributed these comments to a desire to be cooperative and agree to anything the IO put to him. The Tribunal found that this statement in interview, made with the benefit of legal advice, showed an intention had existed to do something for the benefit of his clients although it turned out that the Respondent did not need to do it. The Respondent created a false document with forethought with a view to procuring an advantage of some kind for his clients. He explained in the interview that it was for purposes related to stamp duty saving and that appeared to be consistent with the drafting but it was not necessary to determine with precision what the exact purpose was. The Tribunal found that the subjective test in Twinsectra had been satisfied to the required standard in addition to the objective test and that dishonesty was proved in respect of allegation 1.1.

Determination of the Tribunal in respect of allegation 1.2

21.15 The Tribunal found as a fact that the backdated Declaration of Trust was referred to in a handwritten note on the form TR1 which was submitted to HMLR. The Respondent had created a false document and he sent it away to be relied on in support of the claim that the transfer of W from C limited to RD Ltd was not for money. The force of the allegation was in no way weakened by the fact that the handwriting came under a box relating to a statement that the transfer was not the money or anything which had a monetary value; the Applicant did not allege that the transfer was for money. The Respondent did not dispute, as set out in the Rule 5 Statement that the files held by the firm contained an SDLT 60 signed by him and dated 26 April 2007 in which he stated that no Transaction Return was required in respect of the transfer of W. The documents were submitted to the HMLR under cover of a letter from the firm dated 27 April 2007 and were acknowledged by HMLR on 30 April and 30 May 2007. The Tribunal found proved to the required standard that these actions of the Respondent constituted breaches of Rules 1(a), 1(d) and 1(e) of the SPR 1990 and that allegation 1.2 was proved to the required standard.

Determination of the Tribunal in respect of the allegation of dishonesty and allegation 1.2

21.16 In respect of the allegation of dishonesty relating to allegation 1.2, the Tribunal found that the objective test in Twinsectra was satisfied. By the standards of reasonable and honest people causing or allowing a false document to be relied on by HMLR would be viewed as dishonest. As to the subjective test, in causing such a document to be submitted the Respondent knew that HMLR would be misled. In interview, when referred to the form TR1 bearing the false reference to the Declaration of Trust dated 11 March 2007, the Respondent was asked whether he agreed that he provided false information to HMRC (sic) and he said "Yes I do". The Tribunal considered that his actions showed that he knew that what he was doing was dishonest by the ordinary standards of reasonable and honest people and therefore found dishonesty proved in respect of allegation 1.2.

22. **Allegation 1.3 - [The Respondent] failed to disclose to his lender clients that his firm was acting for both the lessor and lessee under the proposed transactions and in doing so breached the instructions set out in the Council of Mortgage Lenders' Handbook and further or alternatively breached Rules 1(a), (c), (e) and 6 of the Solicitors Practice Rules 1990, and further or alternatively Rules 1.04 and 3 of the Solicitors Code of Conduct 2007;**

(There is some overlap between the submissions in respect of allegations 1.3 and 1.4.)

22.1 For the Applicant, Mr Purcell submitted that the Respondent's instructions from lenders were set out in letters enclosing the mortgage offers. By way of examples, Mr Purcell referred to the letter of instruction relating to Flat 1 from ME dated 27 June 2007.The letter asked the firm to act in the transaction in accordance with the second edition of the CMLH. Mr Purcell also referred to the letter in respect of Flat 5 from MB dated 23 April 2007 again instructing the firm and referring to the mortgage offer and the CMLH. At paragraph 1.5 of Part one of the CMLH it was stated:

> "The limitations contained in rule 6(3)(c) and (c) of the Solicitors' Practice Rules 1990 apply to the instructions contained in the Lenders' Handbook and any separate instructions."

Paragraph 5.1.2 stated:

> "If any matter comes to the attention of the fee earner dealing with the transaction which you should reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as whether the borrower has given misleading information to us or the information which you might reasonably expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return our instructions stating that you consider a conflict of interest has arisen."

Paragraph 6.3.1 under the heading "Purchase Price" stated:

> "The purchase price for the property must be the same as set out in our instructions. If it is not, you must tell us…"

Substantially the same provisions were included in a successor Handbook under different paragraph numbers. Mr Purcell also referred the Tribunal to the SPR 1990. This stated at Rule 6 (3) (b):

> "A solicitor who proposes to act for both lender and borrower on the grant of a standard mortgage of land, must first inform the lender in writing of the circumstances if:
>
> ...
>
> (ii) the solicitor proposes to act for seller, buyer, and lender in the same transaction."

22.2 Mr Purcell submitted that as recited in the Rule 5 Statement, the Respondent's instructions therefore included an obligation to report the purchase price and if the seller or borrower had not owned the property or been the registered proprietor for at least six months. It also required the solicitor to inform the lender in writing if s/he proposed to act for seller, buyer and lender in the same transaction (seller and buyer including lessor and lessee). The Respondent admitted that he did not notify the lender clients that he was acting for the seller and buyer (in the case of the individual

W flats, the parties granting and receiving leases of the flats) but accepted that he was under an obligation to inform them. The following exchange took place in interview:

> "IO: OK and then can you confirm you were instructed by the new mortgagees to act in accordance with the CML Handbook
>
> R: That's correct
>
> IO: So were the mortgagees aware that you were acting for the vendor and the buyer as well as them?
>
> R: No, I don't believe that was disclosed and it should have been.
>
> IO: Is there a reason why it wasn't disclosed?
>
> R: I don't know to be honest. I look back and think well I mean I look at that whole file and I, I just can't explain the, it was obviously a bad, a wrong decision at a stressful time, I can't explain.
>
> IO: So at the time did you consider that there may be a potential conflict of interest acting for all parties?
>
> R: I should have, but I didn't"

The Applicant's case was that the acceptance of instructions to act for lessor and lessee in circumstances where the Respondent was aware of an obligation to report this to his lender client, and where express instructions to that effect had been received, amounted to a clear failure to act with integrity in that it amounted to a clear failure to adhere to an ethical code. That obligation crystallised on receipt of the letter of instruction for example on 23 April 2007 in the case of Flat 5 while the SPR 1990 were in force and continued after the coming into force of the 2007 Code until completion on 10 July 2007 of the mortgages. It was the Applicant's case that a knowing failure to notify lender clients of acting for both parties to a transaction which was funded, in large part, by the lenders in the knowledge that this would be a material fact for the lenders to be aware of when deciding whether to proceed, was also dishonest. The Respondent knew of the obligation to report, did not report, and there was no scope for confusion regarding the matter being a refinancing. Such conduct would be viewed as dishonest; the Respondent must, the Applicant submitted, have known that it would be so viewed.

22.3 For the Respondent, Mr Blatt submitted that whether there was a reference to buy to let or something else, this was a refinancing operation. On many occasions in remortgage and refinancing situations a solicitor acted for more than one party and very often one would see mortgage offers without the word "remortgage" shown on them. The Respondent did not see a conflict or potential conflict of interest because he believed that the refinancing made the structure perfectly legitimate. He believed that the Rs owned the properties; they did in that they were shareholders of the companies. Albeit there were connected parties in the transactions and that should have been revealed, the Respondent did not see the necessity to do so at the time. Now he realised that he should have but he could not say why he did not then. The

Respondent was in a bit of a muddle running the commercial property department and also involved in other matters which the team was undertaking. The Respondent gave advice to the staff about the transfer of the freehold but he candidly admitted he did not check that the lenders had been informed. He probably thought no more about it after telling them to put something in writing to the lay clients about what should be done. Mr Blatt questioned whether that was the act of someone who was dishonest.

22.4 In evidence, the Respondent stated that he believed that the lender clients had been informed of the matters set out in the letter about the restructuring but he did not check. He also stated that it was his opinion held both then and at the hearing that the lender clients should have been informed that he was acting for both buyer and seller. It should have been done before completion; it could be seen from the file (the letter of 25 April 2007) that there was an intention to disclose but it was not acted on. The disclosure of material changes should have been disclosed contemporaneously with them occurring and pre-completion. He agreed that there was no other way the lenders could find that out.

22.5 In cross-examination, the Respondent was referred to his statement which he had given when represented by Mr Blatt rather than by his earlier advisers where he had said:

> "It is right that I did not tell the lenders certain information but I would suggest that this was because of the overall muddle that I got into..."

The Respondent agreed that this was worse than muddle and stated that he made judgement decisions that were wrong rather than that the matter of got out of his control and that he did not know how it was going wrong. He agreed that the statements he made to the lenders were incorrect. The Respondent was referred to the letter dated 3 July 2007 to CHL enclosing Certificates of Title for Flat 2, 3 and 4 and other documents. It was put to him that he had been referred to the format of this letter sending three Certificates to CHL as a suggestion that it indicated commercial refinancing and was asked whether he suggested that the lenders knew the true position and colluded with or allowed incorrect statements on the Certificates Title. The Respondent stated no; it was an indicator of his perception of the commercial nature of the transaction. He was referred to his statement where he said:

> "I treated "buy to let" mortgages as "commercial" lending and generally believed that the lender would have properly been advised of the structure… I guess that I thought the lenders were more "savvy" and would have made more extensive enquires (sic) particularly as they were lending on more than one unit."

In examination in chief, the Respondent referred to the fact that one of the CHL offers referred to other borrowing which was not part of his brief. In terms of whether the lenders should have made more extensive enquiries and what he meant by that, the Respondent stated that it was more to do with the general relationship between the borrower and the lender. The Respondent was referred to Flat 5. It was not disputed that this was a buy to let mortgage offer. The Respondent was asked how he interpreted the instructions from MB dated 23 April 2007. The Respondent referred to the third paragraph of the conditions which stated:

> "We agree that the mortgage with us under Roll number… does not have to be repaid when the borrower takes out the mortgage."

The Respondent stated that this only meant something if one knew about this and a subsequent mortgage with the Halifax – it indicated that the clients had other properties and that the other mortgage referred to did not relate to the property in question and had no impact on this transaction. It suggested that the client was a customer of the mortgage lender elsewhere and reinforced the commercial nature of their relationship.

22.6 The Respondent was referred to the letter dated 25 April 2007 from CS to D and the intention to notify CHL and MB, it was put to him that this only was expressed to relate to the transfer of the freehold. The Respondent replied that information that he was acting for the lessor and lessee would also have been disclosed; one would follow the other. The Respondent clarified for the Tribunal that he recognised that he should have informed the lenders of his conflict in acting for all the parties. He knew that in circumstances of potential conflict the solicitor should write to the lender setting out the situation and seeking consent to continue and if they did not agree he would have to withdraw from acting on one side of the transaction. In this transaction because all were related parties/entities he had not thought he needed to withdraw but he could not say that there was no conflict because there was. He would probably agree to the proposition that his duty was not just to disclose but to withdraw in the absence of consent from the lender. In re-examination the Respondent stated that he did not recognise there was a conflict or potential conflict and this was negligent. In respect of the absence of the word 'remortgage' from the documents, the Respondent stated that he often did not see that word. He confirmed that where he was acting in a remortgage regarding finance for an individual/company/larger organisation he would normally expect to represent the redeeming mortgagee, the lender and the other party and so if he understood that it was a refinancing operation he did not perceive a potential conflict. It was put to him that he believed that because there were other borrowing and facilities in respect of these clients that the lenders knew all they needed to about them. The Respondent stated in terms of their creditworthiness and other assets this was so but the lender relied on him and the firm regarding the particular properties.

22.7 The Respondent agreed with Mr Blatt that his conduct fell below what was expected of him as a solicitor in respect of the CMLH and general practice. He did not believe that he acted dishonestly at any point; he was not dishonest. What happened was just an irrational aberration; he took his eye off the ball completely and did not supervise properly. He certainly accepted full responsibility for the failures.

<u>Determination of the Tribunal in respect of allegation 1.3</u>

22.8 The Tribunal considered the evidence including the oral evidence of the Respondent and the submissions for the Applicant and for the Respondent. The Tribunal found as a fact that the Respondent failed to disclose to his lender clients that his firm was acting for both the lessor and lessee in the proposed transactions. In doing so he breached the instructions set out in the CMLH. He also breached Rules 1(a) relating to independence or integrity, (c) his duty to act in the best interest of his client, (e) and Rule 6 his duty to avoid conflicts of interest in conveyancing, property selling and

mortgage related services as well as Rule 1.04 his duty to act in the best interests of each client and Rule 3 relating to conflict of interest in the Code. The Tribunal therefore found allegation 1.3 proved to the required standard; indeed it was admitted.

Determination of the Tribunal in respect of the allegation of dishonesty and allegation 1.3

22.9 Having regard to the allegation of dishonesty in respect of allegation 1.3, the Tribunal noted that in the course of his interview the Respondent stated that he did not believe that he disclosed that he was acting for the seller/lessor and buyer/lessee as well as the lender and that it should have been disclosed. He also stated that he should have considered but did not so consider that there might be a potential conflict of interest in acting for all parties. The Respondent repeated this in evidence. He stated that he was used to acting for all parties in commercial transactions and while the Tribunal was satisfied that he was not paying attention to his obligations as he should have done, by the ordinary standards of reasonable and honest people this would not be considered dishonest and so the objective test in Twinsectra was not satisfied. It was not necessary for the Tribunal to consider the subjective test and the allegation of dishonesty in respect of allegation 1.3 was not found proved to the required standard.

23. **Allegation 1.4 - [The Respondent] submitted to his lender clients Certificates of Title containing incomplete or inaccurate information regarding the values for the transactions to which they purportedly related, in that the Certificates of Title failed to disclose that leases were granted for a premium of £1 each, and in doing so breached the instructions set out in the Council of Mortgage Lenders' Handbook and further or alternatively Rules 1.02, 1.04, 1.05 and 3 of the Solicitors Code of Conduct 2007;**

23.1 For the Applicant, Mr Purcell submitted that the Respondent signed Certificates of Title all dated 3 July 2007 on which the purchase price was left blank for Flats 1, 2, 3 and 4 and in respect of Flats 5 and 6 in each case a purchase price of £98,000 was shown. The leases for each of the individual flats recorded that a premium of £1 was paid for the grant of the lease. The Respondent provided information which was incomplete for Flats 1, 2, 3 and 4 and inaccurate for Flats 5 and 6. By way of example, the letter of instruction in respect of Flat 5 expressly stated that the mortgage advance must not be released:

> "if the purchase price for the property is less than the amount set out in these instructions, unless the difference between the amount set out in these instructions and the actual purchase price is 5% or less of the amount set out in these instructions."

The purchase price in the mortgage instructions was given as £98,000; the purchase price in the Certificate of Title was in the same amount and the premium paid for the lease was £1. In interview the Respondent was asked: ..."do you agree that you failed to provide the mortgagee with the details of the correct purchase price?" He answered "Yes, I did". He also admitted a failure to act with integrity in this regard. In interview in respect of Flat 5 and the purchase price stated in the Certificate of Title, the following exchanges took place;

"IO: So can you explain why it is stated as being so?

R: Well, as I said before, I think my mindset was just to tidy the whole situation up to undertake the re-financing as quickly and as cost effectively and without proper regard to the CML and other requirements, which was totally out of order.

IO: OK, so in relation to Flat 5 then, again, Principle 6.3.1, do you agree that you failed to provide the mortgagee with the correct purchase price details?

R: That's correct"

The Applicant's case was that the knowing provision of materially inaccurate certification as to purchase price was a serious matter. The lender clients were entitled to rely on the Certificates given by the Respondent. He knew in signing those Certificates that the sums referred to were not being paid over and that, on the contrary, the lenders' funds were being used for a different purpose to discharge a previous mortgage held by the seller (for whom, also unbeknown to the lenders, the Respondent was also acting). As the Respondent admitted this amounted to a lack of integrity which the Applicant submitted was of a clear and serious nature. The Applicant further submitted that this conduct and the signature of Certificates of Titles containing false information was dishonest when viewed in the context of a scheme in which the Respondent had also failed to disclose that he was acting for the seller, and that the proceeds of the mortgage were not being used to meet the purported purchase price but to discharge a prior mortgage.

23.2 For the Respondent, Mr Blatt submitted that all the Certificates of Title had been signed by the Respondent. Some were pre-populated by the lender. In the latter case the Respondent believed that the purchase price shown (£98,000) was the gross valuation. If the lender had any concerns the Certificate of Title would be the one document they could look at and respond to. No queries were raised but with the benefit of hindsight the information the subject of the allegation should have been disclosed.

23.3 The Respondent stated that the purchase price or valuation often appeared in loan offers but where someone owned a building on a remortgage it was somewhat academic because there was no purchase price. One could indicate that it was the value of the property as per the valuation because all the flats would be valued by the lenders. There might be a clause in the offer that it was a condition that the existing mortgage would be repaid. In the Respondent's muddled view £1 was a sufficient amount to put in the lease because there had to be a consideration. It did not occur to him to put the loan offer figure. It now occurred to the Respondent that the clients were probably trying to deceive. The Respondent was referred to the Land Transaction Return form for one of the properties which showed a premium of £1. The Respondent stated that HMRC was more likely to raise a question about such a premium than if £110,000 was completed in the box. As to the documents for HMLR, the Respondent stated that there was a form AP1 for each long lease which would incur a fee of £40, the minimum fee.

23.4 In respect of his admission in interview that he had failed to provide the mortgagee with the correct purchase price details in relation to Flat 5 under paragraph 6.3.1 of the CMLH and of the requirements in the mortgage instructions, the Respondent was asked why in some Certificates of Title the purchase price was shown as a monetary amounts and in others left blank. The Respondent replied that it was his misconception that he was dealing with the whole of transaction as a remortgage and in his view making reference to any consideration in the transfer was somewhat redundant. He had provided the lender with good and marketable title of each flat. In his mind he was not buying and selling at arm's length; all the parties were associated and the figures shown were indicative of value rather than price. The letter dated 25 April 2007 from CS to D included in its heading, "RE-FINANCE". He was also referred to a "Completion Account" document relating to the mortgage of the six flats at W. The Respondent stated that this was his completion statement addressed to the client (C Ltd/Mr and Mrs R) accounting to them for all movement of monies through client account; monies in, deductions made costs and disbursements repayment of the loan to P the original mortgagee and the surplus due to them. He had put it all on one completion statement because of his view of the deal as a refinance package.

23.5 In cross-examination, the Respondent accepted that the lenders were not told that the price on the Certificates of Title was not the price paid and he accepted that this was not just a failure of supervision; he accepted responsibility for that and had all along. He agreed he did not tell them that the premium for the leases was £1. The Respondent agreed that the lenders would not necessarily have obtained information by making more extensive enquiries; there was no other source of information for them. As to his knowing that where the information was pre-printed (for Flats 5 and 6 by MB), it was incorrect, the Respondent came back to what he had said before; he perceived the figures on the pre-printed forms as an indicator of values not as a consideration for the transfer of the lease and that was wrong. He agreed that he knew that these figures were not indicators of value where they were described as the price. It was put to him that the fact that certain of the forms were pre-printed served to reinforce his obligation and he stated that if the Certificate of Title was wrong in any pre-printed particulars then it was for the solicitor to tell the lender before signing off the Certificate because he agreed that the Certificate was an indicator of the true position. As to why he had signed a document which had left the price stated in transfer box blank (Flat 1, Flat 2, Flat 3 and Flat 4) he probably didn't give it too much attention. He had six Certificates of Title for signature at once and he signed them all off. As to whether the Respondent could remember why the boxes were left blank, it would only be a guess he did not know. When one looked at the transaction as a whole, the amount stated in the transfer was equivalent to a valuation figure not a purchase figure because this was a remortgage and not a purchase transaction. Rightly or wrongly that was how Respondent perceived it.

23.6 As to his knowing that the intention was to pay off the existing mortgage and pay the balance to the clients, again the Respondent stated that rightly or wrongly his mindset was that it was a refinancing activity, although that was not what he told the lender. It was put to him that this was not a muddle but he replied that he did not give this file and the transactions as a whole, the time they warranted; he left it to others. The Respondent stated that he was mistaken in his view that the price stated on the Certificate of Title being incorrect did not matter; it did and that he was very sorry.

He agreed he knew that the lenders believed it to be correct and he knew that they would rely on the Certificate of Title and he signed it.

23.7 It was put to the Respondent that he had blamed everyone else but himself for what had happened; in his statement he said that he achieved the objective which he saw as refinancing a commercial property where the lender in particular would receive a first legal charge over the good and marketable title. He continued:

> "In doing so I accept that in my stressed and overworked state I simply failed to deal with my supervisory functions properly. I was not aware of the detail of the administrative elements of the transaction and failed to dot the I's and cross the T's."

The Respondent stated that he accepted fully the responsibility for supervising the staff and for any shortcomings; he was not seeking to offload blame and responsibility. Later in his statement he said:

> "I never saw the application forms and had no inkling that these clients had acted dishonestly even before instructing me"

The Respondent stated that he was suggesting that the borrower clients promoted the transaction as a refinance transaction but their applications were for lending for the purchase of property and he did not see the applications until the bundles were produced by the Applicant. It was put to him that he was saying that what happened was the cumulative effect of his junior staff not doing what they were asked, his clients acting wrongly, his lender clients not being savvy enough and his failure just to dot the I's and cross the T's. The Respondent stated that he had let himself and the profession down and come to the Tribunal to try and explain his mindset at the time. He did not dishonestly deal with any of these transactions acknowledged that it was a major mistake.

<u>Determination of the Tribunal in respect of allegation 1.4</u>

23.8 The Tribunal considered the evidence including the oral evidence of the Respondent and the submissions for the Applicant and for the Respondent. The Tribunal found as a fact that the information which the Respondent provided in Certificates of Title to the lender clients, instead of the £1 which was the premium for the lease, was incomplete in respect of Flats 1 to 4 in that the price was left blank and was inaccurate in respect of Flats 5 and 6 because the price of £98,000 was inserted. The Tribunal agreed with Mr Purcell's submission in his note dated 2 September 2015 that the Respondent knew in signing the Certificates that the sums referred to were not being paid over and that this constituted a lack of integrity which the Applicant submitted was clear and serious in nature. The Tribunal found proved to the required standard that the Respondent had thereby breached instructions in the CMH and in the Code Rules 1.02 integrity, 1.04 best interests, 1.05 standards of service and 3 conflict of interest. The Tribunal found allegation 1.4 proved to the required standard; indeed it was admitted.

Determination of the Tribunal in respect of the allegation of dishonesty and allegation 1.4

23.9 In interview the Tribunal noted that the Respondent agreed that he had failed to provide the mortgagee with the details of the correct purchase price and he stated that his mindset when he signed the Certificate of Title for Flat 5 which showed the purchase price to be £98,000 instead of £1 was:

> "just to tidy the whole situation up to undertake the re-financing as quickly and as cost effectively and without proper regard to the CML and other requirements, which was totally out of order ."

In evidence the Respondent stated that this was all about value because this was a remortgaging transaction and mindset was focused totally on that and he proceeded on that assumption. The Tribunal found his explanation that he took his eye off the ball to be plausible. Mr Blatt had submitted that the Respondent was generally muddled and in this instance the Tribunal agreed that he was. The Tribunal did not consider that by the ordinary standards of reasonable and honest people the muddle in respect of the incomplete or inaccurate information would be considered to be dishonest and therefore it was not necessary for the Tribunal to consider the subjective test. The Tribunal found the allegation of dishonesty in respect of allegation 1.4 was not proved to the required standard.

24. **Allegation 1.5 - failed to notify his lender clients that the proceeds of the mortgage advances being sought would be used, in whole or in part, for the purposes of discharging a pre-existing mortgage relating to the premises which were the subject of the transactions, and in doing so breached the instructions set out in the Council of Mortgage Lenders' Handbook, and further or alternatively breached Rules 1(a), (c), (e) and 6 of the Solicitors Practice Rules 1990, and further or alternatively Rules 1.02, 1.04, 1.05 and 3 of the Solicitors Code of Conduct 2007.**

24.1 For the Applicant, in respect of the use of mortgage funds it was submitted by way of example that the mortgage application submitted by Mr and Mrs R in respect of Flat 1 recorded that the purchase price of the property was £125,000 to be made up of the loan amount (£106,250) and their own savings (£18,750). It was described as a buy to let mortgage. A subsequent change of mortgage details was completed which confirmed that the loan required was £91,991 and that the purchase price of the property was £110,000. The mortgage offers relating to Flats 1, 5 and 6 did not make any reference to remortgage. The Respondent therefore failed to notify the lenders as to the intended use of the mortgage advances. Again he admitted a failure to act with integrity; the Applicant's case was that the Respondent's conduct would be viewed as dishonest and that he must have known at the time that it would have been so viewed. Furthermore the misconduct had the effect of depriving lender clients of information relevant to lending decisions. Claims were subsequently advanced by lender clients against the firm as demonstrated in the statement of Ms AM. The claims brought by the lender clients were settled by the firm. The Applicant submitted that this was very serious professional misconduct falling well below the standards to be expected of a solicitor and that it should be treated accordingly, regardless of whether or not the Tribunal found that the Respondent acted dishonestly.

24.2 For Mr Blatt's submissions for the Respondent and the evidence of the Respondent see allegations 1.3 and 1.4 above.

Determination of the Tribunal in respect of allegation 1.5

24.3 The Tribunal considered the evidence including the oral evidence of the Respondent and the submissions for the Applicant and for the Respondent. The Tribunal found as a fact that the Respondent failed to notify the lender clients that the proceeds of the mortgage advances being sought in respect of the leasehold flats would be used, in whole or in part, for the purposes of discharging a pre-existing mortgage relating to the freehold premises. It also found that in doing so the Respondent breached the instructions set out in the CMLH, and breached Rules 1(a), (c), (e) and 6 of the SPR, and Rules 1.02, 1.04, 1.05 and 3 of the Code. The Tribunal found allegation 1.4 proved to the required standard indeed it was admitted.

Determination of the Tribunal in respect of the allegation of dishonesty and allegation 1.5

24.4 It followed from the Tribunal's findings in respect of dishonesty alleged regarding allegation 1.4, that the Respondent was, as he testified, operating with a mindset which was totally focused on refinancing/remortgaging the property W by creating and mortgaging the leases of the six flats. As the purpose of remortgage was frequently in part to release capital for the borrower, the fact that over £60,000 became available to the lay clients would not and did not set alarm bells ringing with the Respondent. He failed in his duty of disclosure about the discharge of the mortgage to P but the Tribunal did not consider that by the ordinary standards of reasonable and honest people the Respondent's failure would be considered as dishonest and the objective test in Twinsectra was therefore not satisfied. It was not necessary for the Tribunal to consider the subjective test and the allegation of dishonesty in respect of allegation 1.5 was not found proved to the required standard.

Previous Disciplinary Matters

25. None.

Mitigation

26. For the Respondent, Mr Blatt submitted that considerable mitigation was offered in the course of submissions and by the Respondent in giving evidence. The Respondent's practising certificate was subject to conditions and he would never run a practice or even a department again. The Tribunal had read testimonials including from his current employers which showed that it was not in his character to be dishonest. The Respondent had a previously unblemished career. Mr Blatt asked for the Respondent to be given full credit for never having sought to blame anyone else or to deny what he had done. The Respondent had made early and candid admissions and fully cooperated with his firm, the insurers and the Applicant. He had faced the prosecution and answered questions. He regretted the circumstances of the case every day. Mr Blatt submitted that this was an exceptional case even having regard to the test in the case of Bolton v The Law Society [1994] 1 WLR 512 and strike off would be disproportionate. The Respondent had not been prosecuted on the basis of a predesigned scheme with clients. The Respondent had shown considerable remorse

and recognised all through the evidence that his actions were clearly wrong and that he had fallen below the standards required of a solicitor of his experience. The Respondent derived no personal benefit. This was a single one-off transaction regarding a loan where nobody suffered; the lenders made a claim but knew a lot about the clients. The decision turned upon the Tribunal's impression of the Respondent. He always accepted the lack of integrity and he recognised that his moral compass had gone way off. The Tribunal had found dishonesty in respect of two of the allegations and Mr Blatt asked would the public expect in the context of the facts of this case after a 40 year career and complete loss of his livelihood that he should be struck off. Having regard to the Tribunal's Guidance Note on Sanctions, Mr Blatt asked the Tribunal to consider suspension and if appropriate for it to be a short period or even a suspended period of suspension. In addition, the Tribunal could order a restriction so that the conditions on his practising certificate continued in respect of his practice unless revised by the Tribunal. As to his personal circumstances, the Respondent was 63 years old and was unlikely to have income from any other source if he was struck off. He had suffered a significant financial impact when he left the firm; he had to sell his house and now lived in rented accommodation. The Respondent had lost out significantly in a financial sense and had suffered the humiliation of having to tell others about the allegations. The Respondent testified that since leaving the firm he had worked as a locum and was presently a consultant providing maternity leave cover. The Respondent also gave details of his involvement in community work.

Sanction

27. The Tribunal had regard to its Guidance Note on Sanctions, the mitigation offered for the Respondent and the testimonials he had provided. There were five allegations some of which overlapped including two findings of dishonesty and findings of lack of integrity. The Guidance Notes stated that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties; a finding that an allegation of dishonesty had been proved almost invariably led to striking off, save in exceptional circumstances. These allegations were so serious that nothing short of a period of suspension or strike off would be appropriate. The Respondent had been found culpable for the misconduct and had accepted full responsibility. Aggravating factors included the dishonesty which involved creating a backdated Declaration of Trust and which caused serious harm to the reputation of the profession. His actions regarding that document had been deliberate and planned. As Mr Purcell pointed out this was not an isolated incident of wrong doing; it lasted from April 2007 when the backdated declaration of trust was created to July 2007 when the Certificates of Title was signed and submitted and later in July 2007 when the mortgage proceeds were distributed. The Respondent's continuing obligations of disclosure were breached throughout the life of his instructions. He was a very experienced solicitor and as a senior solicitor who had spent all his life dealing in property work knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession. As to mitigating factors, the Tribunal was not convinced that his admissions were open and frank in respect of the document save at the interview but otherwise he had been frank about his lack of oversight of the transaction and his general approach to signing the Certificates of Title and informing the lenders of what they needed to and were entitled to know. The Tribunal had regard to the fact that

only one transaction was involved in an otherwise unblemished career of 40 years. While no client money had been taken and the Respondent had not benefited personally from his actions, his misconduct had been of the utmost seriousness. A suspended period of suspension could be ruled out as totally inadequate. Lenders formed part of the public and the Respondent had failed miserably in his duty to them, even setting aside the finding of dishonesty. The protection of the public was important and while the Tribunal had regard to what had been said about future restrictions upon the Respondent's ability to practise, it did not consider that would be sufficient to reassure the public that they were being properly protected. The Tribunal had regard to the case of Sharma v SRA [2012] EWHC 3176 (Admin) about exceptional circumstances and the cases to which it in turn referred. The Tribunal could find no such exceptional circumstances. Taking into account all the circumstances including the comments in Bolton about the purpose of sanction, that the reputation the profession was more important than the fortunes of any individual member, strike off was both appropriate and proportionate.

Costs

28. For the Applicant, Mr Purcell applied for costs in the amount of £22,424.55. He pointed out that 80 hours of activity had been involved in the investigation. While the hearing had extended over into a second day he did not propose to reflect the additional hours in his claim. Mr Purcell clarified in respect of the blended rate of claim for all levels of staff at his firm that after a particular total was billed to the Applicant the blended rate dropped from £160 and to £155 an hour. He sought summary assessment by the Tribunal and asked that the order for costs should not be made unenforceable without leave the Tribunal. For the Respondent, Mr Blatt submitted that it was impossible for him to consider if the blended rate was fair or not. He also asked for summary assessment. Mr Purcell submitted that the blended rate represented what was payable to the Applicant. The sum claimed was a reliable figure by reference to the entirety of the work done for the Applicant and unqualified staff had carried out well below 10% of the total time spent in this case. Mr Purcell would be surprised if partner time was below 60% of the total; he had undertaken the vast majority of the work involved in the Rule 5 Statement and going through the voluminous material. Mr Blatt expressed himself comfortable with Mr Purcell's assurance but found it difficult to challenge or comment on the claim. The Tribunal considered the costs claimed to be reasonable. It noted that the Applicant had not applied for costs in respect of the second part day of the hearing. The allegation of dishonesty had only been found proved in respect of two of the five allegations but the Tribunal did not consider that any reduction in costs would be appropriate because the bulk of the work by the Applicant related to proving the underlying allegations. Although Mr Blatt had made no express application for an order that costs should not be enforced without leave of the Tribunal, he had made representations about the Respondent's financial position and what would be his difficulties in finding other employment. However the Tribunal noted that the Respondent had capital investments. The Tribunal therefore awarded costs in the amount sought; the order to be enforceable.

Statement of Full Order

29. The Tribunal Orders that the Respondent, Steven John Chubb, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,424.55.

Dated this 23rd day of October 2015
On behalf of the Tribunal

D. Green
Chairman