The Respondent appealed to the High Court (Divisional Court) against the Tribunal's decision dated 1 February 2017 in respect of certain findings and costs. The appeal was heard by Sir Brian Leveson PQBD and Mrs Justice Carr DBE on 7-9 June 2017. Judgment was handed down on 21 June 2017. The appeal was allowed in respect of the Tribunal's findings: (1) that the Respondent had been dishonest; (2) that the Respondent lacked integrity in relation to the F Ltd. representations. The Respondent's appeal against the Tribunal's finding of lack of integrity in relation to the negotiation representations was dismissed. On 26 July 2017 the High Court heard submissions on: (1) sanction (2) the Respondent's appeal against the Tribunal's Order for costs, and (3) the costs of the Respondent's appeal. The High Court ordered that the Tribunal's Order striking off the Respondent be quashed and substituted with the Order by the High Court that the Respondent be suspended from practice as a solicitor for the period of 9 months commencing on 9 December 2016. The High Court ordered that the Tribunal's Order that the Respondent do pay the Applicant's costs of and incidental to this application and enquiry fixed in the sum of £195,000 be quashed and substituted with the Order by the High Court that the Respondent do pay the Applicant's costs of and incidental to this application and enquiry fixed in the sum of £60,000. No order for costs was made on the appeal. Williams v Solicitors Regulation Authority [2017] EWHC 1478 (Admin.) and Williams v Solicitors Regulation Authority [2017] EWHC 2005 (Admin.).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11421-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

PETER RHYS WILLIAMS — Respondent

Before:

Mr J. A. Astle (in the chair)
Mr K. W. Duncan
Mr S. Hill

Date of Hearing: 28 November 2016 to 9 December 2016

Appearances

Michael McLaren QC and Marianne Butler of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by Iain Miller, solicitor of Bevan Brittan LLP for the Applicant

Patrick Lawrence QC and Scott Allen of 4 New Square, 4 New Square, Lincoln's Inn, London, WC2A 3RJ instructed by Neil Jamieson, solicitor of Clyde and Co for the Respondent.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority ("SRA") were that in the course of advising and/or acting on behalf of his client ("the Client") in relation to the proposed sale of the Property and the related communications and/or negotiations with the Client's mortgagee, Northern Rock (Asset Management) PLC ("Northern Rock"), his Trustee in Bankruptcy, and other third parties:

1.1 He failed to act with integrity in breach of Rule 1.02 of the Solicitors' Code of Conduct 2007 ("the SCC 2007") and (from October 2011) Principle 2 of the SRA Principles 2011 ("the Principles").

1.2 He failed to act in the best interests of his client in breach of Rule 1.04 of the SCC 2007 and (from October 2011) Principle 4 of the Principles.

1.3 He failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Rule 1.06 of the SCC 2007 and (from October 2011) Principle 6 of the Principles.

1.4 He took unfair advantage of third parties in his professional capacity in breach of Rule 10.1 of the SCC 2007 and (from October 2011) as a consequence he failed to achieve mandatory Outcome (11.1) in the SRA Handbook 2011.

1.5 He deceived or knowingly misled the Court in breach of Rule 11.01(1) of the SCC 2007.

2. Dishonesty was alleged in relation to allegations 1.1 – 1.5. However, whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of allegations 1.1 – 1.4.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 11 August 2015
- Rule 5 Statement and Exhibit IGM1 dated 11 August 2015, amended on 1 December 2015 and re-amended on 7 December 2016
- Applicant's Schedule of Costs dated 23 November 2016
- Respondent's Response dated 9 October 2015
- Respondent's Response to the Amended Rule 5 Statement dated 14 June 2016
- Respondent's Witness Statement dated 2016
- Respondent's Second Witness Statement dated 14 November 2016

Preliminary Matters

<u>Oral Opening and Closing Submissions by the parties.</u>

4. Prior to the hearing, it had been agreed between the parties that oral opening and closing submissions should be made by both parties. This was a break from the

Tribunal's ordinary process, whereby the Applicant would make oral opening submissions, and the Respondent oral closing submissions. Given the agreement of the parties, and the issues in the case, the Tribunal determined that it was appropriate for both parties to make oral opening and closing submissions.

The Report to the SRA by Wilsons

5. This matter began with a report by Wilsons to the SRA on 18 March 2013, alleging that the Respondent had devised and sought to implement a scheme whereby the Client would defraud Northern Rock and his Trustee in Bankruptcy.

6. The complaint, Mr Lawrence submitted, arose out of an acrimonious breakdown in the relationship between the Respondent and Wilsons, which resulted in litigation. Mr Lawrence submitted that, in the circumstances, Wilsons had a very significant axe to grind. Whilst it was accepted that the origins of the complaint may not matter as it was for the Tribunal to decide the case on the evidence before it, the Respondent had, it was submitted, justified concerns relevant to the Tribunal's deliberations in relation to the way in which Wilsons had dealt with disclosure of documents.

7. The Tribunal made no determination on the motivation for the report by Wilsons, as it was not necessary to the Tribunal's assessment of the Respondent's conduct. Whilst Wilsons had made the initial report, it was for the SRA to decide, having read the report and investigated the matter, whether there was evidence of misconduct such that the Respondent should be referred to the Tribunal.

Disclosure

8. Mr Lawrence expressed concerns in relation to the way in which Wilsons and the SRA dealt with the disclosure of documents from the Client's file or files. A large quantity of additional disclosure was made to the Respondent by the SRA in September 2016, notwithstanding that the SRA had served a Section 44B notice on Wilsons in 2015. Clyde and Co pressed for further information as to the electronic searches undertaken by Wilsons and were informed on Friday 25 November 2016 (the last working day before the commencement of the hearing), that in fact Wilsons had not carried out any electronic searches of the type that would be carried out in civil litigation. Mr Lawrence submitted that it was likely that additional documents existed which had not been disclosed.

9. In his oral evidence, Mr Wiltshire confirmed that he dealt with the requests for disclosure received by Wilsons and had reviewed the paper files on the assumption that all material documents that might exist on the electronic files would be on the paper files. He did not understand the Section 44(B) Notice to include the carrying out of a full electronic search, and did not recall being asked to carry out electronic searches.

10. Mr McLaren submitted that the Respondent had not pointed to any specific documents that were in the files which should have been disclosed to the Respondent. Further, as the files and documents were created by the Respondent for the Client, the Respondent was best placed to say what further material should be disclosed. The only specific documents that have been identified as missing by the Respondent were

not on the file and had not been located. Further, the Respondent could have issued a High Court summons against Wilsons for additional disclosure. The Applicant was not aware of any specific documents that were material or germane to the case, which had not been disclosed.

11. The Tribunal invited the Respondent to notify the SRA of any additional documents that should have been disclosed, so that an appropriate search could be undertaken with service of any relevant documents discovered.

12. Mr Lawrence explained that had there been any identifiable documents, an application for specific disclosure would have been made. The position was that given the discovery on Friday of the failure to undertake electronic searches, any electronic search would "probably throw up quite a large number of electronic documents, which might be material, they might not."

13. Given the issues raised, the Tribunal did not release Mr Wiltshire.

14. Having reflected on the position, Mr Lawrence confirmed that he would not be making any application that electronic searches be carried out or that an order be made to that effect as "it would be disruptive and inappropriate for that process to take place in the middle of this hearing". Further, Mr Lawrence made no application for further disclosure reminding himself "that this is not a civil litigation in which my client is a party who is seeking to prove anything. These are proceedings in which there is a burden on the Applicant … to prove the relevant allegations to the criminal standard."

15. Accordingly, the Tribunal made no direction in relation to further disclosure, and Mr Wiltshire was formally released.

Market Value of the Property

16. Mr Lawrence submitted that, as per the Rule 5 Statement, it was the Applicant's case that the market value of the Property in 2011/12 was "substantially in excess of £2.2 million". This was not accepted as:

- the market value of the Property in 2011/12 was in fact £2.2 million and not "substantially in excess" as alleged;

- there was no cogent evidence to support the proposition that the market value was substantially in excess of £2.2 million;

- no valuation evidence to support a case for a market value substantially in excess of £2.2 million had been served; and

- the sale price achieved in 2014 of £2.4 million was determinative of the point.

17. Given the lack of evidence, any allegations against the Respondent which relied upon the proposition that he sought dishonestly to misrepresent the market value of the Property should be withdrawn.

18. During his closing, Mr McLaren confirmed that the Applicant was no longer pursuing a case that the Respondent made deceitful representations as to market value. Mr McLaren submitted that, given the Respondent's position in his written evidence, it was "entirely right" that the SRA explored with him what he said about the relevance of JD, an associate of the Respondent and a potential purchaser, to the value of the property. Having heard his oral evidence, the particulars in relation to misrepresentation as to market value were no longer relied upon.

19. The Tribunal directed that in the circumstances a re-amended Rule 5, clearly identifying those particulars upon which the Applicant no longer relied, be provided by the Applicant to the Tribunal and the Respondent.

The Evidence of Ms Nigogosian ("EN")

20. Mr McLaren submitted that during the course of the hearing it had become apparent that the Respondent had initiated contact with EN in relation to the proceedings. A number of documents were produced in relation to that issue. It was submitted that the Tribunal ought to have sight of those documents as:

20.1 Any attempt to influence the evidence of a witness was a serious matter and one which must necessarily be brought to the attention of the determining body;

20.2 It was vital that when the Tribunal considered EN's evidence, it should satisfy itself, as a matter of fact, that her evidence had not been affected by the Respondent's contact with her; and

20.3 Whilst there was no separate allegation before the Tribunal in relation to this conduct, the circumstances went to the character and credibility of the Respondent which was very much in issue in the instant case.

21. Mr Lawrence objected to the provision of the documents to the Tribunal. He submitted that the Tribunal should not have sight of the documents as:

21.1 If any further allegations were introduced to the case, the effect would be liable to be prejudicial to the Respondent, as the Tribunal would be unable to avoid an inchoate view of what had taken place;

21.2 The evidence of EN was peripheral, and amounted to very little in the case;

21.3 The likelihood of EN becoming a hostile witness was remote; and

21.4 The conduct of the Respondent in 2016 could not be taken as an indicator of his conduct at the time of the allegations.

22. The Tribunal was aware that the parties had been given the opportunity of ventilating issues in relation to the documents before a differently constituted Tribunal; both parties had stated that it was not necessary. The Tribunal was an expert and experienced Tribunal, and as such was capable of disregarding matters not relevant to the issues in the proceedings. The Tribunal did not find it appropriate to view the documents in consideration of the Respondent's credibility. The Tribunal determined

that it did need to see the documents, and hear the submissions of the parties on the basis that it may be relevant to the Tribunal's assessment of the evidence of EN. Further, the Tribunal determined that, in order better to be able to evaluate her evidence, the appropriate time to hear the submissions and consider the documentation was before EN gave her evidence.

Factual Background

23. The Respondent was born in 1955 and admitted to the Roll of Solicitors in October 1982. He remained on the Roll and continued to practice under an unconditional practising certificate.

24. The Respondent was a partner at Burges Salmon LLP until November 2010. From 10 November 2010 until 31 March 2011, he was a member of Ebery Williams LLP and on 1 April 2011 Wilsons Solicitors LLP ("Wilsons") became the successor practice to that firm. The Respondent was a partner at Wilsons from 1 April 2011 until 30 June 2012, when he retired as a result of a resolution passed by 75% of the majority membership of Wilsons authorising the service of an Involuntary Notice of Retirement on the Respondent. That Notice was subsequently the subject of High Court proceedings brought by the Respondent against Wilsons. Those proceedings settled in November 2013.

25. During the course of the proceedings Wilsons carried out detailed file reviews of files which the Respondent had conducted during his time at Wilsons and Ebery Williams LLP. As a result of those file reviews, on 18 March 2013, Wilsons made a report to the SRA raising concerns about the Respondent's conduct in relation to his dealings with a client "the Client".

26. The allegations against the Respondent were essentially that during the course of his retainer and whilst advising the Client, the Respondent devised and sought to implement a scheme to defraud the Client's creditors and, in an attempt to give effect to the scheme, he misled, or caused his Client to mislead, various third parties.

Initial Meeting – 2010

27. The Client approached the Respondent in early 2010 to seek advice regarding the structure of a proposed property transaction. An initial meeting took place on 18 February 2010, whilst the Respondent was a partner at Burges Salmon LLP. A record of the meeting was kept by the Respondent in an attendance note. The Client was the then owner of the Property, which was subject to a mortgage in favour of Northern Rock in the sum of £2.8m - £2.9m. The Client had been made bankrupt in April 2009, and told the Respondent that the debts in bankruptcy amounted to around £600,000 - £700,000. The Trustee in Bankruptcy, BDO ("the Trustee"), had raised around £200,000, which the Client stated amounted to about 20p in the £1 for creditors, and the Trustee was interested in pursuing the Client for any equity in the Property.[1] The Client stated that there had been two valuations of the Property by

[1] The Respondent did not accept that he was told that the Trustee was interested in pursuing any equity, rather he was told that the Trustee had been interested in potential equity.

Allied Surveyors for £2.1m and £2.3m. He believed that the Trustee had obtained a valuation for around £2.2m.

28. The Client told the Respondent that an interested party had immediately offered £3.9m for the Property, and whilst the deal had not proceeded, this proved what the Property was really worth.

29. The Respondent explained to the Client that, were Northern Rock to take possession of the Property and sell for £3.9 million, it could redeem the mortgage in full, leaving around £1.2 million to pay the Client's creditors in full, with about £400,000 remaining for the Client. However, a forced sale at, for example, £2 million would leave Northern Rock with a shortfall of £800,000, with nothing remaining for other creditors or for the Client.

30. The attendance note showed that the Respondent "said that what he has to do on [the Client's] behalf is to utilise the very substantial undervalue that the Client thinks has been put on it …" The Respondent confirmed that title to the Property would have vested in the Trustee and said that "clearly [the Client] needs to buy the Property to get it out of the TiB, [the Client] needs to do that now while the values are scudding around… What PRW [the Respondent] had in his mind was that everything that is within [the Client's] portfolio and control needs to be whisked away from the TiB and the clutches of Northern Rock if that is lawfully possible, and now is the time to do it because of the values".

31. The Respondent suggested that a "vehicle" (i.e. a company) be established with a view to purchasing the Property at "somewhere around £2 million if not less". It could then be sold onwards. The Respondent stated that the scheme was difficult to do if the company was in the Client's name, and therefore needed to be detached from the Client and his partner. The attendance note reported that he "emphasised that in writing to Northern Rock he would give no indication that the Client is involved". The Respondent suggested writing to Northern Rock to say that they had "an interested party at £1.85 million" or slightly more.

<u>The Transaction 2011-2012</u>

32. A review of Wilsons' correspondence files from 28 April 2011 to 21 June 2012 showed that a retainer between Wilsons and the Client was in place by April 2011, although a retainer letter was not sent out to the Client until 11 May 2011. After a period of reflection following the meeting of 18 February 2010, the Respondent had declined to act for the Client at that time. The Client had contacted the Respondent again in early 2011.

33. On 19 May 2011 the Respondent provided the Client with a copy of the instructions to valuers Carter Jonas in relation to obtaining a valuation of the Property. His letter to the Client stated "I have not expressly said to him in the email (not least having regard to the possibility of disclosure in the event of any dispute) that we are obviously seeking to have the lowest possible valuation. I did relay that to [SP] of Carter Jonas on the telephone when I spoke to him but you reiterate this when you see [the valuer, RM] at the Property. I will obviously tell [RM] when I speak to him following the visit, as predicated by my email to him".

34. A meeting took place between the Respondent and the Client on 7 June 2011. At that stage, although the Client had been discharged from bankruptcy, the Property remained vested in the Trustee (until April 2012), pursuant to Sections 283a and 306 of the Insolvency Act 1986. During the meeting, the Client informed the Respondent that Carter Jonas had valued the Property at £2.3 million. He also clarified that he had agreed a sale of the Property to JD for £3.9 million. He described JD as "very close to my family". JD had agreed to pay (in instalments) a deposit for the Property of £1.3 million, of which he had already paid £930,000 - £940,000, (which monies, it was submitted, would have fallen within the Client's bankrupt estate and thereby vested in the Trustee). The Client envisaged selling through a company (i.e. the arrangement initially proposed by the Respondent in February 2010). The Client confirmed that there was as yet no written contract, and queried whether JD would be able to get the deposit monies back if the sale did not complete, telling the Respondent: "The £900K is spent now really."

35. The Respondent advised that:

> "I do not want to have a contract in place with them at all because I don't want to have to disclose that to Northern Rock".

36. When the Client queried, in light of the potential difference in the price, whether this should be disclosed to Northern Rock or JD, the Respondent further clarified that he wanted to maintain "distance" between the two transactions, and the plan was to: "Lift property and title away from Northern Rock and TiB for £2.1m and £2.2m. So you ae in a position to sell the Property next year to [JD] for £3.9m … Northern Rock take a hit but not massive."

37. On 9 June CKFT, solicitors for the Trustee, wrote to the Respondent stating that the Trustee was not prepared to remove its bankruptcy restriction. In response the Respondent replied on 10 June 2011, stating that:

> "… there is a significant negative equity and accordingly no benefit to the bankrupt estate for maintaining the restrictions …"

38. The Respondent wrote to JD's solicitor, AP of Ison Harrison, on 15 June 2011, confirming that subject to the payment by JD of a further instalment of the deposit monies, he was instructed to move matters forward to progress the transaction.

39. On 22 June 2011 the Respondent then wrote to Northern Rock indicating that a "family friend" of the Client had indicated his wish to buy the Property and that the Client had received a verbal offer from "his acquaintance" for £2.2 million, with the purchase intended to be through a company. The letter stated that "…our client considered that an offer of £2.2 million was likely to be in accordance with the open market value." The letter referred to the valuation obtained by the Client from Carter Jonas for £2.3 million. The letter also stated that the Property was of "no benefit to the bankrupt estate as a consequence of there being significant negative equity".

40. On 23 June 2011 the Client sent the Respondent a copy of a draft agreement between JD and himself headed "PROPERTY PURCHASE AGREEMENT BETWEEN [JD] AND [the Client]. Attached to the hand written agreement was a schedule of

payments made by JD between 8 March 2010 and 3 June 2011, primarily to companies E Ltd and D Ltd, indicating a total amount paid of £1,001,305.

41. On 13 July 2011 Northern Rock replied to the Respondent's letter of 22 June 2011. Northern Rock stated that it would not be in a position to accept the £2.2 million offer on the current basis: "A major factor in our criteria for accepting offers that would not redeem our mortgage in full is that it is an "arm's length" transaction. As a family friend has made the offer we would require evidence to substantiate that an offer of £2.2 million is in fact the best price that can be achieved". The letter then set out the further information required including a "competitive marketing history".

42. On 26 July 2011 RM of Carter Jonas sent a copy of his valuation to the Respondent and on 29 July 2011 the Respondent sent a copy of it to Northern Rock.

43. On 3 August 2011 the Respondent received an email from AM of Ison Harrison stating that "our clients have now signed an agreement and that we are now working towards the exchange of contracts. Please could you let me know if this is your understanding and if so, where you are currently up to in the process?"

44. Northern Rock issued proceedings for possession against the Client on 8 August 2011. On 12 August 2011 the Client and the Respondent met to discuss the position. A manuscript record of that meeting (which was later typed), recorded that, amongst other things: –

- The Respondent and the Client had discussed the identity of the initial purchasing company. The Client mentioned a company, D Ltd, of which his "mate", KK, was a Director. Upon enquiry by the Respondent, the Client confirmed that KK was also the shareholder in D Ltd, to which the Respondent replied:

  "That needs to be changed. He only needs to front it but is not to be (sic) shareholder. Initially shares held in trust 4 u (sic) so not transparent it is you."

- They also discussed the offer to Northern Rock and the Respondent stated that he would "draft something" to send to the solicitor engaged for the proposed initial purchasing company. The discussion turned to the possibility of proposing a higher offer to Northern Rock and the Respondent stated that: "I think we ought to push the offer up a bit. Looks like we have been working on the purchaser. So we get £2.35m on the table …"

45. On 16 August 2011 the Respondent had a discussion with JH of Northern Rock about the disposal of the Property, and the possession proceedings. Northern Rock indicated that they would undertake a valuation and the Respondent suggested that they might speak to Carter Jonas. He was told that they would want to reach their own valuation independently. The Respondent also stated that he was engaged in trying to get a firm and increased offer. "… PRW said that he would expect at least £2.3 million and will be pressing the prospective purchaser through solicitors to see if can be improved". A discussion also took place about the Trustee and the Respondent said "…that although there is a very significant negative equity, there is no prospect of the bankrupt estate achieving anything out of this".

46. On the same day, the Respondent was sent a copy of a document signed by the Client and JD dated 4 July 2011. The document stated:

> "MR [JD] AND MR [Client] AGREE WITH THE FIGURES PRESENTED OVERLEAF.
>
> MR [Client] HAS AGREED TO PAY ALL CHARGES/INTEREST RELATED TO THE MONTELLO BRIDGING LOAN.
>
> ONCE THE DEPOSIT HAS BEEN PAID (30% of £3.9 million property sale price) NO FURTHER MONIES WILL BE DUE UNTIL COMPLETION.[#]
>
> SOLICITORS FOR MR [JD] AND [Client] HAVE BEEN INSTRUCTED TO EXCHANGE CONTRACTS AS SOON AS POSSIBLE.
>
> [#]MR [JD] WILL RAISE A FURTHER £2,467,675.10 TO BUY [THE PROPERTY] AND COMPLETE THE DEAL.
>
> *Cheque paid/released 4 July for £450,970.75
>
> Total deposit paid £1,432,324.90 by Mr [JD]"

On 30 August 2011 the Respondent wrote to the Client saying that he had spoken to RB of Landmark Surveyors, the Northern Rock valuer, and had told him inter alia that:

(a) they had an offer amounting to £2.3 million; and

(b) Carter Jonas had valued the property at £2.4 million.

47. On 2 September 2011, the Respondent was then sent a copy of Landmark's valuation which valued the Property at £2.2 million.

48. On 7 September 2011 the Respondent wrote to Northern Rock asking for a response to the proposal put to them on 22 June 2011, reiterating that this represented the open market value.

49. On 14 September 2011, the Client telephoned the Respondent stating that as the Northern Rock mortgage was a "portable mortgage" and that if Northern Rock did "not claim it all, then it is suggested that his fall-back will be to cover the shortfall but then purchase another mortgage with Northern Rock in respect of a new property". In response the Respondent stated that: "he saw 2 major difficulties with regards to the fall-back position of the portable mortgage. First, PRW thought that the Client would need to be transparent about his financial dealings and if he still hopes to be able to deal with [JD] then they need straightforward transparency which is going to be a problem for the Client. …PRW's view is that we should be cautious about this".

50. On 19 September 2011 the Respondent spoke to Northern Rock again, seeking a response to the proposal, given the impending possession proceedings. During the course of the conversation he was advised that, given the extent of the loss, Northern

Rock were considering obtaining another valuation. The Respondent stated that "as regards the sale of the Property plainly there is now a danger that the purchaser revisit the offer. PRW said that this would be a problem arising from the delay." A copy of the attendance note of the conversation was sent to the Client. The covering letter stated "I have deliberately trailed my coat regard to the danger of the offer being reduced, as discussed".

51. The possession hearing took place on 22 September 2011, at which it was ordered that the application be adjourned for 28 days; Northern Rock indicated to the Court that they had agreed to the proposed sale.

52. A third valuation of the property was undertaken on behalf Northern Rock on 26 September 2011 by Shepherds. The Respondent wrote to Northern Rock on 30 September 2011 requesting their confirmation that they would agree to the sale of the Property at £2.2 million. The letter also stated:

> "For our part, when we have such confirmation, we will check with the Purchaser's solicitors that the offer remains unaltered. We have not disturbed the Purchaser in this regard as we have been waiting for a decision from you (since 22 June)".

53. On 4 October 2011, the Respondent spoke to JH of Northern Rock who confirmed that Northern Rock were prepared to accept the offer and allow the Property to be sold for £2.2 million, subject to the approval of a senior director. During the conversation, JH stated that he understood the purchaser was a friend of the family to which the Respondent said "the way that he would describe it is that he is someone who is known to the family". The Respondent was asked if the offer was still there and the Respondent said that he hoped so although "given the passage of time, there was always a danger that there could be an issue in relation to this".

54. On 10, 17, and 25 October 2011, in various telephone conversations, the Client updated the Respondent on the position with JD, saying that he was being pressured and JD wanted a meeting.

55. The possession proceedings had been adjourned to 10 November 2011. Between 19 October and 10 November 2011, the Respondent was in communication with Northern Rock and its solicitors, trying to obtain confirmation that Northern Rock had obtained the appropriate approval for the sale of the Property at £2.2 million. During one such conversation with RE of Northern Rock on 28 October 2011, the Respondent represented that there remained a danger of losing the purchaser due to the delay in accepting the offer. In a letter from Northern Rock dated 21 October 2011, Northern Rock stated that "… The offer of £2.2 million by your client has not been accepted". In his reply to Northern Rock dated 1 November 2011, the Respondent wrote:

> "Your letter of 21 October misses the point. The offer of £2.2 million is not an offer "by [our] client". It is an offer which has been made to our client by a prospective purchaser". The letter also stated that "this is not a negotiation between our client and Rock. It is our client presenting details of an offer which he has received".

56. On 9 November 2011, Northern Rock wrote to the Respondent confirming that the offer of £2.2 million was accepted.

57. On 17 November 2011 the Respondent wrote to Northern Rock stating inter alia that one issue that arose related to the identity of the solicitors acting in the sale (to the company vehicle) and that Northern Rock would need to convey as mortgagee due to the existence of the Trustee's bankruptcy restriction.

58. On the same day the Respondent wrote to the Client stating that "one thing which occurred to me was whether [a proposed solicitor for the purchasing company] acted for you at the time you purchased the Property. If she or her firm did, then I think it might be wise to have a different firm of solicitors acting now so that Northern Rock does not make the connection with you …" Subsequently, SM of Davies and Partners was instructed to act for the company.

59. On 6 December 2011, the Respondent wrote to Northern Rock confirming that the purchaser intended to proceed with the purchase of the Property from Northern Rock as mortgagee for the sum of £2.2 million, stating that "notwithstanding the passage of time since I first wrote on 22 June 2011, there has been no attempt on the part of the prospective purchaser to reduce the price." The Respondent also stated that he "had been told" that the purchaser would form a new company as a special purchase vehicle for the transaction.

60. On 7 December 2011 the Respondent wrote to the Trustee's solicitors confirming that an offer had been received on the Property of £2.2 million and that Northern Rock had agreed to sell for £2.2 million after having two valuations. The letter added that "the outcome is of course entirely consistent with the Trustee in Bankruptcy's decision not to intervene in respect of the property … because of the existence of the very significant negative equity". The Trustee's solicitors replied on 12 December 2011 confirming that they had no objection to the sale of the Property.

61. On 24 December 2011, SM of Davies and Partners, wrote to the Respondent confirming that the new company had been established under the name of F Ltd

62. In January 2012, AP questioned the need for the sale to his client to be via a company. On 19 January 2012 the Respondent had a telephone conversation with AP during which the Respondent confirmed that a "confidential accommodation" had been reached with Northern Rock whereby Northern Rock were now prepared to agree to convey the Property as mortgagee, but that part of the deal was that the conveyance would be to a company. He also later stated that this was the only way the transaction could proceed and that JD could not be substituted for the company or "the deal would be lost". Despite requests by AP for further information about the Northern Rock deal, the Respondent said that he was not at liberty to disclose how the company's purchase would be funded and that he could not disclose what Northern Rock had been told as it was "confidential".

63. On 23 January 2012, AP sent an email to the Respondent stating that he could not see any justification for there not being a direct conveyance to his client and further that: "As part of my own obligations on this matter to my client, my client's lender and HMRC I have to ensure that the documentation – whether it be by formal property

transfer or by share transfer – accurately reflects the consideration that has been paid". That email was discussed by the Respondent and the Client. The Respondent advised "that a strict veil of confidentiality should apply between the two ends of the transaction" to avoid AP questioning whether the transaction was at an undervalue. The Respondent pointed out that "in the context of an undervalue claim which would be governed by Section 423 of the Insolvency Act 1986 [the Respondent] said that [AP] would be right to be concerned. This had occurred to [the Respondent] reflecting on the position since the discussion with [AP] on Thursday.

64. Following this discussion, the Respondent drafted a letter to AP, a copy of which was sent to the Client for his approval. The letter to the Client stated that:

> "I think [AP] could have a legitimate concern about the possibility of this being a transaction at an undervalue. The problem is that you cannot explain to him and [JD] that it is not a transaction at an undervalue because Northern Rock has obtained two independent valuations. The moment that you do that, plainly that opens up a fresh negotiation as to the purchase price."

65. The letter to AP stated that the use of a purchasing company had been instigated by JD. On 7 February the Respondent wrote to AP stating that it was essential to complete the transaction by the end of March 2012, seeking a commitment from JD to a timetable.

66. The Respondent wrote to A Ltd (proposed funders of F Ltd's purchase) on 9 and 17 February 2012. The 9 February letter stated that the Client wanted to proceed with the advance of bridging finance in order to secure the deal with Northern Rock in advance of the "onward sale" for £3.9 million which had been agreed. The Respondent further stated that the Client wished to "borrow against the full value of the onward sale which should take place within a relatively short time after closing out the Northern Rock deal." In a letter of 17 February 2012 the Respondent explained that the Property would be purchased by F Ltd. for £2.2 million. The Client's objective was to raise £2.7 million overall. The letter further explained that "the onward sale to [JD] has been agreed in principle at £3.9 million", but if that sale fell through, the Client had been approached by Savills on the basis that they would have an interested purchaser.

67. In a letter to the Respondent of 22 February 2012, AP stated "Can I now deal with your continued assertion that this transaction has been structured in this way at the behest of my client. This is simply incorrect."

68. On 29 February 2012 the Client advised that he had spoken with his contact at Savills who thought they "could do better that the £3.9 million figure", although it was agreed that it was better to sort things out with JD.

69. During a conversation between the Respondent and the Client on 5 March 2012, the Client explained that he had looked at two more bridging companies, one of which was only prepared to proceed if the borrowing was in the Client's name personally. The Respondent's attendance note recorded him as advising that this option "would only be acceptable if Northern Rock were to accept refinancing rather than a sale whereby Northern Rock received £2.2 million. [The Respondent] said that he thought

that this was unlikely because in order to refinance, Northern Rock will wake up to the fact that the Client has persuaded somebody that the value is greater on the basis that the Client cannot be borrowing at 100% loan to value. [The Respondent] said that realistically this was probably therefore not at option".

70. At the Client's request, on 8 March 2012 the Respondent wrote letters to HSBC and Barclays stating that "We act for [F Ltd]. This firm does not act in relation to the conveyancing as our client is using a firm that has regularly undertaken work for him in the past. However, we are instructed in connection with other matters including our client's disposal of his current principal residence, the Property. Our client had agreed, subject to contract, to sell the Property for £3.9 million. The sum due to our client's Mortgagee, upon completion, is £2.2 million."

71. On 13 March 2012, the Respondent also wrote to United Trust Bank ("UTB"), another prospective funder of F Ltd, stating that:

> "We act for [the Client]. We understand that you are involved with the prospective funding of [F Ltd] ("the Company") in connection with the Company's purchase of the Property from our client prior to [F. Ltd's] onward sale to [JD].
>
> We have been asked to confirm that our client is neither a shareholder nor a director of F Ltd. We confirm this is the case.
>
> We have also been asked to confirm that our client is independent and entirely separate from the end purchaser [JD]. We confirm this to be the case.
>
> Lastly we confirm that advance payments have been made in the sum of £1.3 million by [JD] in relation to his purchase of the Property.

72. On the same day (13 March 2012), the Respondent spoke to the Client in relation to KK, the proposed Director of F Ltd, who, it was said, was becoming nervous about the potential liabilities of his role. The Client asked whether he could simply be a Director of F. Ltd himself. The Respondent advised that "this was one course which certainly could not be adopted … the moment that the Client is a Director of [F. Ltd] then if that happens before the completion of the transaction to Northern Rock, Northern Rock will see that this is a connected transaction and the deal could be lost."

73. On 18 March 2012 the Client sent an email to the Respondent saying that "the valuation took place … and (sic) valuer told me off the record that he was happy with its value at £3.9m so just need him to confirm this in writing …". It was not clear on whose behalf this valuation was obtained; however; on 20 March 2012 the Client told the Respondent about a valuation with A Ltd that had gone well. Subsequently, on 5 April 2012 the Client confirmed that A Ltd's valuation was £3.95 million, and on 11 April 2012, A Ltd issued a loan proposal based on a total valuation and loan security of £3.9 million.

74. On 22 March 2012, the Trustee's solicitors, CKFT, wrote to CT at the Respondent's firm saying that the firm had received a call from UTB, explaining that UTB were lending £2.2 million to F Ltd via a special purpose vehicle to purchase the Property

which was purportedly ultimately being purchased for £3.9 million. The letter stated that UTB had said that a broker acting on behalf of the Client had stated that the Property had been valued at £3.9 million and that the Client had been paid £1.3 million by a third party who was ultimately going to purchase the property from F Ltd "This is clearly a matter of some concern". On 26 March 2012 the Respondent sent a copy of CKFT's letter to the Client stating that "Loose tongues cost lives…plainly this is disastrous".

75. The Respondent and the Client discussed the position on 26 March 2012. The Respondent recorded his advice as stating "that his starting point on this is that we must be truthful and therefore anything that goes in the letter must be correct. However there is a difference between being truthful and disclosing everything which might be relevant. The Respondent further stated that he had drafted a letter which "was prepared on the basis that it is truthful but provides limited information".

76. In a conversation with the Client on 27 March 2012, the Client advised the Respondent that he had re-instructed SM to act on behalf of F. Ltd. The Client explained that SM would be "doing a second company. It may not be used, but it may be that it is necessary to do it because it avoids [KK]." The Client explained that KK had been a witness in his bankruptcy proceedings, and further that he was looking for a new director for F Ltd in place of KK.

77. On 13 April 2012, the Client telephoned the Respondent and explained that AP was "advising [JD] that there has been gross fraud and the matter should now be referred to the police". The note of the conversation also stated that the Client was told that JD wanted to buy the property but on the basis that he paid £35k per month. It was agreed that the Respondent would provide an email for the Client to send to JD's agent which would respond to all the matters under discussion.

78. Also on 13 April 2012, the Respondent sent a letter to CKFT. The letter stated, amongst other things, that:

> "I and my firm do not act for [F Ltd] the purchaser of the Property. We act for [the Client] the vendor.
>
> …………
>
> [The Client] is neither a director nor a shareholder in [F. Ltd].
>
> It is correct that [the Client] obtained a valuation. That was from Carter Jonas. That was in line with the offer of £2.2 million which had been received. That was supplied to Northern Rock who in turn obtained two independent valuations, which Northern Rock has not disclosed to us, but as a consequence of the valuation process, Northern Rock agreed that [the Client] would have the permission of Northern Rock to sell the Property to [F. Ltd] for £2.2 million.
>
> …………

> I have spoken to [the Client] who has confirmed that he was unaware of any contract entered into for the onward sale of £3.9 million or otherwise.
>
> [The Client] does not have a valuation of the Property at £3.9 million.
>
> …………
>
> As to the contact made by [UTB] with [the Trustee's office], that was not after consultation with my firm or my client. Given the terms of your letter, I very much doubt that if the contact was made with the contact of [F. Ltd] or its solicitors. However, I note that it has been suggested by [UTB] that [F. Ltd] is intending to transfer the Property to a "special purpose vehicle" and then there will be further transactions. It all sounds extremely convoluted. However, all that [the Client] is interested in is achieving closure with regard to the agreement reached with Northern Rock and his Trustee to sell for the price agreed at £2.2 million. We are proceeding on that basis. Our client is proceeding in accordance with what has previously been agreed."

79. On 18 April 2012, CKFT wrote to the Respondent thanking him for his letter and clarification of the position concerning the Client and the proposed purchase by F. Ltd. CKFT stated that the Respondent "will appreciate that it was my client's concern that there may be a transfer at an undervalue but that does not appear to be the case".

80. On the same day the Respondent met with the Client to discuss the stance being taken by JD/his agent in relation to the transaction and the allegation of fraud, and to consider the issue of whether the deposit was refundable. The Respondent indicated that it could be suggested to JD/AP that the £1.3 million already paid was linked to a "lockout" agreement rather than a straightforward deposit. The Respondent stated that "if it becomes known that the Client and his merry men have sold it for the thick end of £4m – what will happen is they will suggest the original transaction is a transaction at undervalue and under section 423 IA capable of being set aside". The Client commented "But how can they say that with the valuations?" to which the Respondent replied "Because you and your team have been able to sell for £3.95 million. If it becomes known – it is worse if they see it go on the market – and you are marketing for £4m".

81. Further to their meeting on 18 April 2012, the Respondent sent copies of his draft letter to the Client explaining that "Attached is my first stab at the "all singing, all dancing" e-mail of advice to you covering all of the various aspects, including setting up the lockout agreement vis-à-vis [JD]".

82. Historical office copy entries show that on 17 January 2013, a Unilateral Notice was registered against the two titles comprising the Property "in respect of Agreement to purchase dated 4 July 2011 made between [the Client] and [JD]". Office copy entries obtained on 1 July 2015 showed that the two titles comprising the Property were sold to SH and RH on 8 July 2014 for a total of £2.4 million.

Witnesses

83. The following witnesses provided statements and gave oral evidence:

- Andrew Wiltshire – Wilsons Solicitors
- Emma Nigogosian – Wilsons Solicitors
- Peter Williams – The Respondent

84. The following witness provided a reference and gave oral evidence as to the Respondent's character:

- Stephen Jourdan QC

85. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case, made notes of the oral evidence, and referred to the transcript of the hearing. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

86. 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.

87. The Tribunal when determining the allegation of dishonesty considered the file of testimonials submitted on the Respondent's behalf. The Tribunal also considered the oral evidence of Mr Jourdan QC who stated that having seen hundreds of letters written by the Respondent, having been with him in conference with a variety of different clients over the years, some very difficult clients, Mr Jourdan QC believed he would know if the Respondent was capable of deceitful behaviour; if he was willing to push the boundaries of behaviour regarded as acceptable. Whist it was hard to prove a negative, Mr Jourdan QC stated that he was quite satisfied that the Respondent was not capable of dishonesty or lack of integrity. This was based on his dealings with the Respondent since Mr Jourdan QC was a pupil.

88. Further he stated that the Respondent was somebody who loved being a solicitor and cared deeply about his profession; he did not grumble about his work. Mr Jourdan QC regarded the idea that the Respondent would knowingly do something that was contrary to his professional duties and knowingly set out to deceive people, based on his experience of the Respondent, as ludicrous.

89. **Allegation 1.1 - He failed to act with integrity in breach of Rule 1.02 of the SCC 2007 and (from October 2011) Principle 2 of the Principles.**

Allegation 1.2 - He failed to act in the best interests of his client in breach of Rule 1.04 of the SCC 2007 and (from October 2011) Principle 4 of the Principles.

Allegation 1.3 - He failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Rule 1.06 of the SCC 2007 and (from October 2011) Principle 6 of the Principles.

Allegation 1.4 - He took unfair advantage of third parties in his professional capacity in breach of Rule 10.1 of the SCC 2007 and (from October 2011) as a consequence he failed to achieve mandatory Outcome (11.1) in the SRA Handbook 2011.

(i) Devising the Fraudulent Scheme

The Applicant's Submissions

89.1 Mr McLaren submitted that the Respondent devised, proposed and advised the Client to undertake a scheme the net effect of which would be that: (i) Northern Rock would suffer a shortfall on the mortgage debt; (ii) there would be nothing remaining for any other creditors; and (iii) the Client would obtain a sum of around £1.7 million. The aim of the scheme was to entice Northern Rock and the Trustee to proceed on the basis of a wholly erroneous belief that the market value for the Property was significantly lower than was in fact achievable (and significantly lower than the amount of the mortgage debt) and thereby to persuade Northern Rock to settle the Client's mortgage debt of £2.9 million for that lower amount (and the Trustee to settle his bankruptcy debts of £600,000 - £700,000 at an estimated 20p in the £1). It was submitted that in advising the Client as to how to carry that intended scheme into effect, the Respondent had failed to act with integrity; failed to act in the Client's best interests, and failed to behave in a way that maintains the trust the public placed in him.

89.2 At the initial meeting in February 2010, the Respondent proposed that the Client establish a company, designed to appear to be entirely independent of the Client, which would purchase the property for around £2 million if not less. The company would then sell the property on to another buyer at a substantial profit. At the meeting on 7 June 2011, the Respondent encapsulated the intended scheme in the statement that the plan was to "Lift property and title away from Northern Rock and [the Trustee] for £2.1m and £2.2m. So you are in a position to sell the Property next year to [JD] for £3.9m…Northern Rock take a hit but not massive".

89.3 As to that intended scheme, the Respondent knew: (i) that at the time the Client considered the valuations of £2.1 - £2.3 million that the Client had recently obtained, they constituted a very substantial undervalue of the property; (ii) that as at 18 February 2010 an interested party had offered £3.9 million for the property; and (iii) that by 7 June 2011 there was an agreement to sell to JD for £3.9 million. At the 18 February 2010 meeting, the Respondent suggested that the Client write to Northern Rock to say that they had "an interested party at £1.85 million" or slightly more. In fact, there was no offer on the property for £1.85 million and the Client had in fact received an offer £3.9 million.

89.4 Accordingly, notwithstanding the Respondent purporting to qualify his proposed scheme to the Client in February 2010 as being only “if that is lawfully possible” the Respondent knew or ought to have known that he was advising the Client to undertake a course of action that could only achieve its objective through: (i) partaking in a transaction that would have been vulnerable to an application under Section 423 of the Insolvency Act 1986 to set the transaction aside as being at an undervalue; and (ii) making misrepresentations to third parties.

89.5 Consistent with the Respondent’s advice to the Client at their initial meeting in February 2010 to misrepresent the position to Northern Rock, between May 2011 and May 2012 the Respondent went on to advise the Client as to how to carry the intended scheme into effect.

89.6 At various points the Respondent advised the Client with regard to what price the Client should be seeking to sell to F Ltd such that Northern Rock would realise the lowest return possible whilst still giving their approval. An attendance note of a 20 October 2011 phone call recorded the following exchange:

> “the Client asked PRW whether, if we end up going to Court, we can move on the figures. PRW said that he did not think it would be possible to move on the figures. PRW said that what needs to be borne in mind here is that this is a third party purchaser”.

89.7 Similarly, during a 25 October 2011 phone call, the Respondent advised the Client:

> “the position with Northern Rock is currently on a knife edge and we need to get closure on that and we should not therefore consider reducing the price of £2.2 million. Indeed if we are going to do anything, it is likely that we might have to up a little bit”.

89.8 The Respondent repeatedly advised the Client to avoid doing anything that could expose the lack of independence of F Ltd. At a meeting on 12 August 2011, he stated that the Client could not be a director or shareholder of the purchasing company. He explained the rationale for this approach in a 13 March 2012 conversation with the Client, stating that:

> “the moment that the Client is a director of [F Ltd] then if that happens before the completion of the transaction to Northern Rock, Northern Rock will see that this is a connected transaction and the deal could be lost”.

89.9 Likewise, at other times the Respondent advised that the Client must have “no connection” with the company (conversation of 16 March 2012), that the Client should avoid using CS as the company’s conveyancer “so that Northern Rock does not make the connection with you” (letter of 17 November 2011), and that the Client should not obtain a re-mortgage from Northern Rock as providing the requisite transparency about his financial details would be “a problem” (telephone conversation of 14 September 2011).

89.10 The Respondent advised the Client with regard to the instruction of solicitors on behalf of F Ltd and was privy to the engagement letter sent to KK by Davies and Partners which outlined the nature of the forward sale transaction.

89.11 During a 23 January 2012 phone call, the Respondent and the Client further discussed AP's concerns with regard to the value of the underlying sale from Northern Rock to the company. The Respondent "said that his advice to the Client remains that a strict veil of confidentiality should apply between the two ends of the transaction [and] that if [AP] were to see that the transaction is at stage 1 between the Client and the Company at £2.2 million, but the property is then being sold to [JD] for just shy of £4 million, the obvious question for [AP] is whether the transaction is one at an undervalue." The Respondent "therefore advised the Client needs to tread very carefully here."

89.12 In his letter of 5 April 2012, the Respondent answered a question posed by the Client regarding the rights of the Trustee. The Respondent advised that "The critical thing therefore is to make sure that the Trustee in Bankruptcy has not taken any steps to realise the interest which he has in the Property before 17 April 2012" when the three year statutory limitation on the Trustee realising his interest in the Property was to expire. The Respondent went on to advise that "we ought to deal with the inquiry from the Trustee in Bankruptcy to make it clear that we are not anticipating that there is anything untoward in relation to anything here."

89.13 Mr McLaren submitted that the scheme was improper, as in order to implement it, (or seek to implement it) the Respondent would inevitably have to mislead Northern Rock. So as to ensure that the Client obtained the benefit of the intended onward sale to JD, the Client needed to be in control of the purchasing company; if Northern Rock were aware that the Client controlled the purchasing company "it is quite obvious that Northern Rock would never have consented to a sale – regardless of whether or not the sale price appeared to be at the open market value." It was further submitted that Northern Rock would have been profoundly suspicious as to what the Client was doing, and would consequently have declined to release its security. It followed that the purchasing company needed to be presented to Northern Rock as a genuine third party purchaser. This was what the Respondent sought to do, which, it was submitted, inevitably involved making misrepresentations to Northern Rock. The misrepresentations that the Respondent made to Northern Rock and others as to the structure of the transaction were absolutely integral to the impropriety of the scheme.

89.14 Prior to this hearing, the SRA had understood the Respondent to acknowledge the impropriety in what he had been proposing at the February 2010 meeting. In his Answer the Respondent stated that: "Insofar as Mr Williams' thinking out loud on 18 February 2010 indicated that a negotiation could properly be carried out with the mortgagee in these circumstances [i.e. where there was a "serious potential purchaser of the property"], it is accepted that this was not in fact a proper course". That position, it was submitted, must be right.

89.15 In his oral evidence, however, the Respondent sought to "row back" from that position, contending that the meeting was merely a "fact gathering" opportunity and suggesting that what was being discussed with the Client was a legitimate proposal

for trying to win the Client's confidence and enabling the Client to profit from an uplift in value through obtaining planning permission.

89.16 In response to the position taken by the Respondent in his oral evidence, Mr McLaren submitted that: (i) the attendance note spoke for itself and did not begin to support such a position; and (ii) the nature of what the Respondent was proposing to the Client was borne out by the letter that he subsequently drafted on 25 February 2010 (a week later) to be sent to Northern Rock on behalf of the Client, which stated, amongst other things:

> "We act for a client who at this stage wishes to remain anonymous. We are not at liberty to disclose the reasons for the anonymity, but we are able to vouch for the bona fides of our instructions.
>
> Our client has a longstanding interest in the Property.
>
> …………
>
> Our client has not had any dealings with the Client's Trustee in Bankruptcy
>
> …………
>
> Our client is a cash purchaser."

89.17 Mr McLaren submitted that the letter was important for two reasons:

89.17.1 It evidenced the willingness of the Respondent to cross the line and do his client's bidding notwithstanding the obviously misleading nature of what he was intending to say to Northern Rock. Whilst the Respondent sought to justify the letter on the basis that it was only a draft and would have been the subject of subsequent discussion and consideration, the Respondent should never have been comfortable with even proposing such a letter - that much was obvious. At the time of the draft letter, there was no special purchase vehicle; the mention of "bona fides" was meaningless; the special purchase vehicle did not have a longstanding interest in the property; and the Respondent had no instructions in relation to a cash purchase.

89.17.2 The Respondent's explanation as to how he came to write the letter provided a telling insight into his approach to the Client. His position in his written evidence was that he wrote the letter "in response to pressure from the client". When asked in cross-examination about what possible pressure a new client with no leverage could have exerted over him, it emerged that the alleged pressure amounted to "no more than the client repeatedly telephoning his secretary".

89.18 The Respondent explained that "this man drew you into things you had no intention of becoming involved in" and that there came a time when he started "indulging this man". That, it was submitted, was precisely the position in 2011. Having declined to act for him in 2010, the Respondent was "sucked in" to acting for him in 2011, seeking to implement precisely the same scheme that he had outlined to the Client in

February 2010. There was little evidence that the Respondent had agreed to act for the Client under a limited retainer, and no evidence at all of the Respondent actually acting under a limited retainer.

89.19 It was suggested, in the opening for the Respondent, as being a complete answer to the case that JD's motivations for buying the property were those of a benefactor - the only reason that JD was willing to pay more than would be paid on the open market was due to his benefaction. Thus, Mr Lawrence submitted, it followed that JD would not have been willing to pay that money to Northern Rock and – as such – Northern Rock could never suffer a loss such that there was no impropriety. That, Mr McLaren submitted, was no answer to the case:

89.20 First, it was manifestly obvious that if Northern Rock had known that the 'offer' to purchase was merely an offer from the client to himself then it would not have consented to the sale:

- The fact that the Respondent appreciated that fact is obvious from the advice that he repeatedly gave to the Client with a view to keeping his connection to the purchasing company hidden from Northern Rock. It was common ground that the Respondent "advised that any interest which the Client was to have in the purchasing company should not be visible to the mortgagee".

- The advice to keep the connection hidden took the form of advising the Client to use different solicitors for the purchasing company to those that he had used historically. The Respondent's attempt to distance himself from that letter by (i) claiming in his written evidence that he was doing it for the protection of the client (to save him from himself); and (ii) claiming in his oral evidence that he was doing it for the protection of KK (to ensure that he got independent legal advice) should be rejected as self-serving and disingenuous. The terms of the letter were plain and accorded with his advice elsewhere to use Davies & Partners specifically to hide the connection. The note of the Respondent's call with the client on 3 May 2012 could not be clearer as to what was being said:

    "PRW said that if K really is concerned about advice from Steve McColgan, and he wants to have Caroline Spectre's input, then the best way would be for her to advice K personally, leaving SM to act for [F Ltd] in relation to the transaction so that Davies and Partners continue to appear in connection with the correspondence, the contract etc. PRW said that the second alternative available to the Client is something which he has personally raised in the past when [KK] had the last 'wobble'. That is replacing [KK]. [The client] said that it had gone through his mind. PRW said that the third alternative is for [KK] to instruct Ashley Wilson and take the risk which is involved in that".

- There were numerous instances of the Respondent advising the Client as to the need for the company not to have a name that linked it to the Client: see by way of example only:

    - In a telephone call on 13 March 2012 PRW said that the moment that [the Client] is a director of F Ltd then if that happens before the completion of the

transaction to Northern Rock, Northern Rock will see that this is a connected transaction and the deal could be lost

- o In a telephone call on the 16 March 2012, the Client told the Respondent that he had decided to replace F Ltd's solicitors (Davies & Partners) because they were unwilling to do a stamp duty saving scheme and enquired whether he should continue to use F Ltd as the purchasing company, to which the Respondent advised that "it needs to be in the name of a company which has no association with [the Client] in the context of closing out the deal with Northern Rock and therefore it should continue in the name of F Ltd".

89.21 Secondly, it was equally obvious that if Northern Rock had known about the intended onward sale to JD they would not have consented to the sale.

- They would in the first instance no doubt have sought to have "a piece of the action" with JD, or would have been reluctant to let the Client benefit from the onward sale without obtaining from him a contribution to the outstanding mortgage debt.

- Regardless of whether JD would have declined to contract with Northern Rock (on grounds of benefaction), the notion that Northern Rock would still have consented to the sale to the Client at £2.2 million was absurd.

- Northern Rock would have had no reason to do the deal with the Client at the open market value when they could equally well either do the deal with another purchaser or simply sit on the security.

89.22 Thirdly, had Northern Rock realised that an offer had been made for the property by JD for £3.9 million or that the Client was controlling the special purchase vehicle, it followed that Northern Rock would have realised that, contrary to the impression that was being created by the Respondent of a penniless individual struggling to meet the mortgage payments, in fact, the Client had access to other money, or could call upon other sources of money, which Northern Rock would have wanted to pursue. There were various references within the documents as to how the Client was allegedly financially struggling for example in the letter to Northern Rock setting out the purported 'offer' from the purchasing vehicle dated 22 June 2011, it was said that:

> "Our client has sought to maintain his home and to that end he has managed to pay the mortgage instalments due to Northern Rock. This has been a struggle and recently he has run into arrears. The continued pressure has caused our client to consider his overall position. This has also come about because a family friend has indicated his wish to purchase [the Property]".

89.23 In support of the submissions above, and the further submission that the Respondent knew full well at the time that it would be a big problem if Northern Rock or the Trustee found out either about the intended onward sale to JD or the fact that the purchasing company was merely an offer from the Client to himself (by means of the SPV that he controlled), Mr McLaren highlighted the Respondent's reaction when CKFT found out about the intended onward sale to JD, when he told the Respondent - "Loose tongues cost lives….plainly this is disastrous".

89.24 It was submitted that the Respondent was at pains in his oral evidence to stress that Northern Rock would "not care" about the Client's interest in the purchasing company and nor, the Respondent contended, could Northern Rock hope to benefit from the onward sale to JD because it was an offer premised on their (the Client and JD's) relationship of benefaction. This, Mr McLaren submitted, could not be right. The language that the Respondent used at the time was that the discovery was disastrous and it clearly was. It was obvious that Northern Rock would have been very interested in both the arrangement with JD and the Client's control of F Ltd and that is why the Respondent had gone to such great lengths on behalf of his client to keep them hidden. Further, that was why there was the finely crafted response on 13 April 2012 to CKFT. If Northern Rock would be so uninterested in the Client's interest and/or control over the purchasing company and the intended onward sale to JD, why was there not a response that explained what the plan was, namely to sell the property on? The answer was clear: if Northern Rock were aware of the onward sale, there was a risk to the Northern Rock deal.

89.25 The scheme accordingly depended upon the offer from JD and the Client's control of the purchasing company being kept secret from Northern Rock. This inevitably, it was submitted, necessitated the Respondent making false/misleading statements to Northern Rock as to the structure of the transaction and the value of the property.

89.26 It was not the Applicant's case that the open market value of the Property was higher than around £2.2 million in 2011/2012. Rather, what mattered was the achievable value - an item is worth what someone is willing to pay for it; JD was willing (for whatever reason) to pay £3.9 million for the property. As to that case, and the fact that it was specifically the presence of JD that had the result that the value of the property was higher than around £2.2m:

89.26.1 It was implicit in the Respondent's written evidence that prior to the start of the hearing, he in fact considered the presence of JD as being capable of having a bearing on the value of the property and whether it was proper for him to act. That was clear from the following:

(i) The Respondent's position in his written evidence was that it would not be proper to act in circumstances in which the Client knew that the market value of the property exceeded the value represented to the mortgagee;

(ii) The Respondent's evidence as to the alleged lack of certainty of the deal with JD only in fact made sense if he accepted that the existence of JD was capable of having a bearing on the value of the property. His case was that he allegedly insisted in April 2011 upon JD instructing solicitors "to establish whether [JD] was prepared to enter into an irrevocable binding contract to acquire the property" and that "if JD's interest developed then, or later, into a special purchaser who was prepared to acquire the property in excess of the open market value, then I required disclosure of that to the mortgagee. If the client was not prepared to agree that then we would be in the position that we were in in 2010 and I would cease to act". If Mr Lawrence's point was right (that the presence of JD had no bearing on the value of the

property because he was a benefactor and could be discounted from calculations of the open market value), the Respondent's case did not make sense; there would be no purpose in disclosing any contract with JD to Northern Rock. The lack of certainty in relation to the JD deal would not be a relevant consideration.

(iii) On the contrary, the reality is that the case advanced, that JD could be discounted from determining the value of the property, was a legal argument that was not the Respondent's case prior to the hearing. It had been the Respondent's evidence that:

- A special purchaser was: "someone who is ready willing and able to make a binding commitment to purchasing the property at a higher value, because if there was then in my view it would not be proper to contend to the mortgagee that the value of the property was some lower sum".

- In his witness statement of 12 August 2016, the Respondent stated that "I am clear that I reached the conclusion by 2 March 2010 that the Client believed that there was a special purchaser, and this was not therefore a negative equity case."

- In his witness statement of 14 November 2016, the Respondent explained that following the February 2010 meeting "By the time I was able to focus on advancing matters on behalf of the Client, there had been a material development in that the Client had confirmed that he believed that he had identified a purchaser who would be prepared to pay more than the market value for the property. As a consequence of that information, on 2 March 2010 I declined to act for the Client…"

(iv) There was not a single place in the Respondent's written evidence where he said that the distinction between the position in 2010 (when it was not proper for him to act) and 2011 (when it allegedly then was) was because JD was a benefactor whereas the purchaser in 2010 had been at arms-length. Rather, the distinction being drawn was as regards the certainty of the deal with JD, which was said to have been less certain than the position in 2010. It was not merely that there was no instance where the Respondent sought to draw the distinction between 2011 and 2010 as being on the grounds of benefaction, he actively asserted that if the arrangement with JD had resulted in an enforceable contract then the position would have been the same as in 2010 and he would have ceased acting:

In his witness statement of 12 August 2016, the Respondent stated that "If the client was not prepared to agree [to disclose the contract with JD] then we would be in the position that we were in in 2010 and I would cease to act".

Further in that statement the Respondent stated that "Had I concluded in April 2011 that JD was a special purchaser for £3.9m (or some other price over what was otherwise the open market value) then, as in 2010, I would not have acted. Further, I was only prepared to act if conditions were applied to allow me to be satisfied that it was a genuine negative equity case".

(v) The only logic of his written evidence is that he accepted that JD had a bearing on the market value of the Property. He said in his oral evidence that he would have insisted on disclosure of any contract with JD "regardless of the fact that he was a benefactor". But why? It would make no sense on his (new) case that the existence of JD was always going to be irrelevant to market value and the position as regards whether the property was in negative equity and it was proper to act.

89.26.2 As to the Applicant's case that it was the achievable value of the property that was relevant to the propriety of the Respondent acting, Mr McLaren submitted that the Rule 5 statement, which described the fraudulent scheme, stated that:

> "The Respondent devised, proposed and advised [the client] to undertake a scheme the aim of which was to entice Northern Rock and the Trustee in Bankruptcy to proceed on the basis of a wholly erroneous belief that the market value for the property was significantly lower than was in fact achievable (and significantly lower than the amount of the mortgage debt)….."

The Rule 5 statement made it clear that it was referring to the onward sale to specifically JD as being the factor that rendered the Respondent's conduct improper by spelling out that "the client would recover around £1.7 million from the onward sale of the property via a company" (where £1.7 million is the difference between £2.2 million and £3.9 million).

The Respondent's Submissions

89.27 Mr Lawrence submitted that the Applicant sought to take issue with the Respondent's knowledge of the connection between the Client and F Ltd. However, the criticism levelled at the Respondent for that connection and his knowledge thereof was misconceived; there was nothing improper or remarkable about a structure under which a limited company, in which the Client had some interest, made an offer to purchase the Property. The use of corporate bodies to carry out commercial transactions was commonplace with one of the perceived advantages being that beneficial interests were not apparent on the face of the transaction. If the counterparty wanted more information, it could ask for it.

89.28 The Applicant's allegation that the prospective purchase of the property by F Ltd was a sham was, it was submitted, simply wrong as a matter of law. F Ltd, as a limited company, had a separate legal personality and was separate to the Client. The director and sole shareholder of F Ltd was KK, who, the Respondent was instructed, was the Client's business partner. KK was undoubtedly involved with the proposed purchase;

he was copied into or had forwarded to him emails relating to the purchase. Further, file notes demonstrated that KK was going to be closely involved in the borrowing that would be necessary to support the acquisition of the Property by the F Ltd.

89.29 Mr Lawrence submitted that as far as the Respondent was concerned, and on the basis of his instructions, the Client was unquestionably very closely connected to F Ltd and very closely connected with the proposed purchase. That was completely obvious; all the instructions in relation to the purchase by F Ltd came from the Client. However, the Respondent's understanding was that F Ltd was a corporate vehicle connected to KK and that underlying everything there was, (although no evidence had been provided), an arrangement of some sort between KK and the Client which would relate to the proposed transaction. This was, it was submitted, an unremarkable commercial structure in terms of the acquisition of a property by a limited company, and was completely proper.

89.30 It had been put to the Respondent in cross examination that whilst technically correct, the arrangement was in substance a sham. The Respondent explained "Well, we are lawyers and I was seeking to be technically correct, i.e. legally correct". The Respondent, it was submitted, was quite entitled to say that. The term "technically correct" was meaningless; if it was correct, it was correct. It was correct to describe F Ltd as the purchaser, as it was also correct to treat instructions from the Client about the terms of the proposed purchase as being given by the Client as an agent of F Ltd. Whilst it might be difficult to discern the difference between an individual buying the Property and the company buying the Property, there was a legal difference. The Respondent knew that, and reflected it in some of the things that he said about the transaction.

89.31 Mr Lawrence submitted that in the circumstances, there was nothing to support the Applicant's assertion that this was a "sham". In the case of Snook v London and West Riding Investments Ltd [1967] 2 QB 786, Lord Diplock stated that:

> "As regards the contention of the plaintiff that the transactions between himself, Auto-Finance and the defendants were a 'sham', it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create. But one thing, I think, is clear in legal principle, morality and the authorities … that for acts or documents to be a 'sham', with whatever legal consequences follow from this, all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating. No unexpressed intentions of a 'shammer' affect the rights of a party whom he deceived. There is an express finding in this case that the defendants were not parties to the alleged 'sham' so this contention fails."

89.32 Mr Lawrence submitted that in this matter, it clearly could not be a sham under the Lord Diplock definition, as there was no suggestion that Northern Rock was a party to the proposed sham, and the transaction was the purchase of the Property from Northern Rock by F Ltd.

89.33 In submitting that the transaction between F Ltd and Northern Rock was improper due to the Client's connection with the company, the Applicant, it was submitted, was seeking to "buttress its case by making a submission which runs counter to about 120 years' worth of established company law." F Ltd had a separate legal personality and was the intended purchaser. If it acquired the Property, it then owned the Property. The individuals who were stakeholders in F Ltd, or who had underlying arrangements as to the distribution of any proceeds or the allocation of any losses, had an interest in the transaction but were not parties to it; neither KK nor the Client, could have been sued by Northern Rock if F Ltd had defaulted on the contract to purchase.

89.34 Further, during cross examination, it had been put to the Respondent that there was a major difference between connection with a company and control of a company. This was not accepted. A person who is connected with a company is a direct or indirect stakeholder, and the existence of a connection can have certain consequences. There are various types of control of a company, and whatever the degree of control one enjoys, one is still a connected person. So the sharp distinction between connection on the one hand and control on the other that was put to the Respondent was not solidly founded in company law. The Respondent, it was submitted, was absolutely correct, technically and legally, to regard the prospective purchaser as a different legal entity to the Client. The Respondent was not only entitled, but was obliged, to proceed on the basis of that correct legal perception. In their letter of 21 October 2011 to the Respondent, Northern Rock referred to the offer made to purchase the Property for £2.2 million, as an offer made "by your client". The Respondent, in his letter in response dated 1 November 2011 stated that the "… offer of £2.2 million is not an offer "by [our] client". It is an offer which has been made to our client by a prospective purchaser." Mr Lawrence submitted that the Respondent's response was completely correct.

89.35 The Applicant sought, in the Rule 5 statement, its opening and during cross-examination to show that, in the Respondent's attempts to ensure that Northern Rock were not aware of the Client's connection with the company, that the Respondent had acted improperly. That was not accepted. This was a commercial transaction and the Respondent was under no duty to disclose to Northern Rock the connection between the Client and F Ltd.

89.36 Mr Lawrence observed that the Applicant had not called any witnesses to attend on behalf of Northern Rock who could give evidence to the effect that Northern Rock had been misled by the Respondent in telephone calls or correspondence. That, it was submitted, was not surprising. The SRA, in its formulation of the case against the Respondent, had almost entirely ignored the fact that Northern Rock was not materially misled. In his letter to Northern Rock of 22 June 2011, the Respondent disclosed the connection between the proposed purchaser and the Client, when he was under no duty to do so.

89.37 That, Mr Lawrence submitted, was really all that Northern Rock needed to know. This was a binary situation; either the proposed purchase was an open market transaction at arm's length, or there was a connection between the prospective purchaser and the seller. Where there was a connection the purchase price had to be treated with circumspection.

89.38 Thus the disclosure that was made on the 22 June 2011 by the Respondent was critically important, particularly as that disclosure was not obligatory; there was no principle of law or professional practice which required the Respondent to make that disclosure. He could have written a much shorter letter to Northern Rock which simply stated that there was an offer from F Ltd to purchase the Property for £2.2 million and said nothing about any connection between the Client and F Ltd. The fact of that disclosure to Northern Rock, should, it was submitted, stand to the Respondent's credit.

89.39 In his letter of 20 June 2011, the Respondent asked the Client to "remind me of the name of your chum who stands by the company in the event that I need to supply that information to Northern Rock, which I would expect to have to do". This information was required in the event that Northern Rock made further enquiries as a result of the disclosure of the connection. However, Northern Rock made no further enquiries about the identity of the family friend or about the nature of the company which might buy the property or about beneficial ownership of that company. This, it was submitted, was because Northern Rock did not need to do so; it was not relying on the purchase price as evidence of value.

89.40 In its letter of 13 July 2011, Northern Rock stated that: "We would not be in a position to accept the offer of £2.2 million on the current basis. A major factor in our criteria for accepting offers that would not redeem our mortgage in full is that it is an arm's length transaction. As a friend of the family has made the offer, we would require evidence to substantiate that an offer of £2.2 million is in fact the best price that can be achieved".

89.41 That letter made it completely clear that Northern Rock were proceeding on the basis that the potential purchase was not an arm's length transaction. That, Mr Lawrence submitted was what the Respondent had successfully conveyed to Northern Rock and it was to his credit that he did so. The Respondent's disclosure prompted Northern Rock to obtain two professional valuations. It was on the basis of those valuations that Northern Rock accepted the offer of £2.2 million, that offer being in line with market value.

89.42 Mr Lawrence submitted that it would have been absurd for someone from Northern Rock to give evidence attempting to persuade the Tribunal that Northern Rock had in substance been misled by the Respondent; it had not. In fact, Northern Rock, by virtue of the Respondent's voluntary disclosure, had been given rather more assistance from the Respondent as to the underlying facts than he was obliged to give. Further, having given that disclosure, the Respondent was not under an obligation to make any further voluntary disclosure. Further, the Respondent was under no duty to inform Northern Rock of information that Northern Rock might have regarded as material, for example, JD's intended purchase of the Property subsequent to F Ltd's purchase.

89.43 As to the Applicant's submissions in terms of achievable value, Mr Lawrence submitted that the Applicant was in "grave difficulties" in relation to its case on market value, which was why it had attempted to focus on the best achievable price, (which it differentiated from market value) and suggested that the Respondent was under a duty to provide information as to best price. This, Mr Lawrence submitted was "completely hopeless." Best price was synonymous with open market value when the red book definition of market value was considered. Further, when instructing surveyors to ascertain the value of the Property, Northern Rock requested a report as to the open market value of the Property, and not one identifying the best price.

89.44 Given all of the above, Mr Lawrence submitted that the Applicant's submissions that the scheme was improper were completely unfounded and should be rejected.

The Tribunal's Findings

89.45 The Tribunal found that the essence of the impropriety complained of was that it was the Respondent's intention, on the Client's behalf, to secure the sale of the Property to F Ltd by Northern Rock for approximately £2.2 million when F Ltd was a company to which the Client was connected and it was the Client's intention that there would be an onward sale to JD for the much increased price of £3.9 million. The Client thereby, potentially, depending upon whatever arrangement, if any, he had made with KK, stood to gain the whole or a share of approximately £1.7 million, being the difference between the price of the purchase by F Ltd and the price of the sale by F Ltd. The Applicant submitted that the scheme was inherently improper as it would necessitate the Respondent making misrepresentations to Northern Rock. The Respondent had seemingly accepted, in his response, that the scheme he proposed in 2010 was "not a proper course". The Applicant argued that the scheme proposed in 2011 was ostensibly the same as that proposed in 2010, and the Respondent's explanations of a limited retainer, the certainty of a purchaser and the proposed 2011 purchaser being a benefactor should be regarded by the Tribunal as self-serving and disingenuous.

89.46 The Tribunal found, as a fact, that the proposal in 2011 was ostensibly the same as the proposal in 2010. The question for the Tribunal, notwithstanding the Respondent's seeming admission of the impropriety of the 2010 scheme, was whether the scheme proposed and embarked upon was inherently improper, in that it necessitated the Respondent making false and/or misleading statements to third parties.

89.47 The Tribunal considered the individual steps of the scheme, and the scheme in its entirety. First, a company would need to be created or used to make the offer to Northern Rock. The Tribunal found that there was nothing improper in the formation of a company for that purpose. Then, that company would need to make an offer to purchase the property. Again, there was nothing inherently improper in the making of the offer, and an offer was duly made by F Ltd to purchase the Property. Next, Northern Rock would need to agree the sale of the Property for a sum lower than the mortgage debt to F Ltd (with which the Client was connected). The Tribunal determined that there was no impropriety in purchase of the Property by a company in which the Client had an interest, that interest not having been disclosed to Northern Rock. The Respondent was under no duty to disclose the nature of any interest the

Client had in the company to Northern Rock. Indeed, as was submitted by the Respondent and accepted by the Tribunal, the Respondent did not need to disclose to Northern Rock in his letter of 22 June 2011 that the proposed transaction was not at arm's length; he could properly both in terms of professional conduct and law, have simply stated that F Ltd wished to purchase the Property for £2.2 million. Given that Northern Rock were potentially going to suffer the loss (that being the difference between the mortgage debt and the sale proceeds) it was incumbent upon Northern Rock to make the necessary enquiries and satisfy itself both as to the value of the Property and the nature of the purchasing company. Whilst Northern Rock obtained two independent valuations in relation to the Property, there was no evidence before the Tribunal that it had made further enquiries as to the nature of the company, or the nature of the connection between the Client and the company. The Tribunal did not find, as was submitted by the Applicant, that, if Northern Rock had been aware of the Client's connection with F Ltd, it was "manifestly obvious that … Northern Rock would not have consented to the sale". Further, the Tribunal did not find that Northern Rock would 'not have cared' about the Client's beneficial interest in the company, as was submitted by the Respondent. Submissions in relation to what Northern Rock's position would have been had it been fully aware of the Client's interest in F Ltd were supposition on the part of both parties, and were not matters upon which the Tribunal could make a ruling.

89.48 Once the Property had been purchased by F Ltd, there would be a sale by that company to JD for £3.9 million. The Tribunal determined that the onward sale would not be improper. Further, the Respondent was under no obligation to inform any third parties about the onward sale; the Respondent was under no obligation, either in law or in conduct, to disclose to Northern Rock the intended onward sale by the purchasing company to JD. Nor was he under any duty to disclose to JD the purchase price paid by F Ltd. The Respondent did not represent F Ltd, and the information he had was obtained as a result of his retainer to represent the Client in connection with the sale of the Property to F Ltd. His professional obligation was to not disclose confidential information without the consent of his client.

89.49 Accordingly, the Tribunal did not find that the scheme proposed (both in 2010 and 2011) was inherently improper, as it did not necessitate the Respondent making misrepresentations to Northern Rock, or the Trustee in Bankruptcy. (Whether misrepresentations were actually made was a separate matter; this is considered by the Tribunal below). The Tribunal found that it was to the Respondent's credit that he made the voluntary disclosure that he did, and it was seemingly that disclosure which prompted Northern Rock to obtain independent valuations of the Property.

89.50 The Tribunal accepted the Respondent's submissions that F Ltd, had its own legal identity, and as such, was not simply the "alter ego" of the Client, irrespective of the Client's interest in that company. The Tribunal accepted, in their entirety, the submissions made by Mr Lawrence as to the status of the company detailed in paragraphs 89.28 – 89.34 above. There was no evidence before the Tribunal that Northern Rock had made any enquiries as to the nature of the F Ltd, any interest the Client may have had in the F Ltd or any connection the Client had with F Ltd.

89.51 The Tribunal determined that, in the circumstances, the Respondent's advice to the Client to avoid disclosing his connection with F Ltd, was proper advice to give. Given that the individual steps required for the completion of the scheme did not necessitate the provision of fraudulent or misleading statements, the Tribunal found that the scheme generally was not inherently fraudulent.

89.52 Accordingly the Tribunal did not find allegations 1.1, 1.2, 1.3 or 1.4 proved beyond reasonable doubt in relation to devising the scheme.

(ii) Deceitful Misrepresentations

Applicant's Submissions

A. The value of the Property

89.53 It was alleged by the Applicant that the Respondent made statements on behalf of the Client in correspondence with Northern Rock and the Trustee (and its solicitors) as to the value of the Property which he knew were materially false and/or misleading, alternatively he was reckless as to their truth or falsity and thereby failed to act with integrity; failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services; and took unfair advantage of third parties.

Representations to Northern Rock

89.54 In his letter of 22 June 2011 to Northern Rock, the Respondent stated:

> "The Purchaser has offered to buy the Property for £2.2 million."
>
> "… our client will seek to negotiate with the Purchaser in order to try and obtain an increase in the offer, ideally to £2.3 million."

89.55 As recorded in an Attendance Note of 16 August 2011, during a telephone conversation with JH of Northern Rock that day, the Respondent stated the following:

> "… PRW said that he is currently engaged in the process of trying to get a firm and increased offer. … PRW said that he would expect at least £2.3 million and will be pressing the prospective purchaser through solicitors to see if the price can be improved."
>
> "PRW said that although there is a very significant negative equity, there is no prospect of the bankrupt estate achieving anything out of this, it is plain that the Trustee in Bankruptcy is going to do nothing to assist …"

89.56 In his letter of 1 November 2011 to JH and two other Northern Rock employees, the Respondent stated: "Our client's concern … is that the offer of £2.2 million, in a continuing difficult market, will be reduced and not increased."

Representations to the Trustee in Bankruptcy/the Trustee's solicitors

89.57 In his letter of 10 June 2011 to solicitors for the Trustee, the Respondent stated that the "Trustee correctly ascertained that there is a significant negative equity and accordingly no benefit to the bankrupt estate for maintaining the restrictions."

89.58 In his letter of 18 August 2011 to solicitors for the Trustee, the Respondent stated with regard to the Trustee maintaining the restriction on the property "We should be grateful if you would explain why that is the case given the conclusion reached earlier by the Trustee in connection with his consideration of the property and having regard to the substantial negative equity which exists."

89.59 In his letter of 7 December 2011 to solicitors for the Trustee, the Respondent stated that "An offer has been received for The Property in the sum of £2.2 million … The outcome is of course entirely consistent with the Trustee in Bankruptcy's decision not to intervene in respect of the property during the period that he was active in respect of the affairs of our client because of the existence of the very significant negative equity."

89.60 In his letter of 13 April 2012 to solicitors for the Trustee, the Respondent stated: "It is correct that [the Client] obtained a valuation. That was from Carter Jonas. That was in line with the offer of £2.2 million which had been received" and "[the Client] does not have a valuation of the property at £3.9 million."

89.61 Accordingly, the Respondent expressly represented to Northern Rock and/or the Trustee that:

- As at April 2011, that there was significant negative equity in the Property; i.e. the value of the property was substantially less than the Northern Rock mortgage.

- A purchaser had offered the Client £2.2 million for the Property and that the Client had been in negotiations with that purchaser to secure and increase that offer. By implication, the Respondent thereby represented that (i) the offer being made was a genuine one, in that it was being made by a third party, independent of the Client; and (ii) no higher offers were available for consideration.

89.62 The Respondent knew these representations to be materially false and/or misleading, alternatively he was reckless as to their truth or falsity, in that:

89.62.1 The Respondent knew or ought to have known that the value of the Property was substantially in excess of £2.2 million and that the Client believed such:

- As at the 18 February 2010 meeting with the Client, the Respondent became aware that: (1) it was the Client's view that a "very substantial undervalue" had been put on the Property; (2) that an offer had been made on the property for £3.9 million; (3) that another offer was "floating around" in the same price range.

- As at the latest 7 June 2011, the Respondent was aware that the Client had reached an agreement with JD to sell the Property for £3.9 million and JD had paid nearly £1 million towards the purchase.

- In a 9 February 2012 letter to Acorn, the Respondent asked Acorn to lend money to the Client based on "the full value of the onward sale" of the Property; i.e. £3.9 million.

- On 29 February 2012, the Client told the Respondent he had spoken to Savills who thought they could sell the Property for more than £3.9 million.

- As at mid-March 2012, the Respondent was aware that the Client had obtained substantially higher valuations for the Property. In an email dated 18 March 2012 from the Client to the Respondent, the Client referred to an "off the record" valuation of £3.9 million. On 5 April 2012, during a conversation with the Respondent, the Client referred to an Acorn valuation of £3.95 million and on 23 April 2012 the Client informed the Respondent that Hamptons had valued the property at between £3.75 million and £4.45 million.

- During a meeting on 18 April 2012 with the Respondent, the Client stated that "we know" the value to be in the region of £3.9 million. He also confirmed that Knight Frank wanted to market the Property at £4.5m.

89.62.2 The Respondent knew or ought to have known that there was not negative equity in the property:

- As at 7 June 2011, an agreement was in place for the Client to sell the property to JD, through a company, for £3.9 million of which nearly £1 million (later in excess of £1.3 million) had already been put towards the purchase, monies which had already been spent by the Client. This agreement was later reduced to writing.

- The price of £3.9 million was in line with at least one other offer made on the property and the Client's stated assessment of its value.

89.62.3 The Respondent knew or ought to have known that there was no offer of £2.2 million for the Property:

- No offer of £2.2 million had been made to the Client for the Property. The only offer that had been made on the Property was JD's offer of £3.9 million, which the Respondent knew as at 7 June 2011 had been accepted by the Client.

- At no point was the Client engaged in negotiations with a "Purchaser" to sell the Property for a price of around £2.2 million. The Client did not at any time intend to seek "an increase in the offer, ideally to £2.3 million" nor was he "engaged in the process of trying to get a firm

and increased offer". Similarly, the Respondent never expected to press a "prospective purchaser through solicitors to see if the price can be improved [above £2.2 million]". Each of these statements were fabrications based on a fictional purchaser, intended solely to hide the true value of the property and the fact that the transfer from Northern Rock was at an undervalue. The Respondent recognized as much when, during a conversation on 23 January 2012, the Respondent advised the Client that there should be a "strict veil of confidentiality" between the two ends of the transaction because if AP saw the sale from Northern Rock at £2.2 million and then the onward sale to his client JD at £3.9 million, the obvious question would be whether there was a transfer at an undervalue.

Respondent's Submissions

89.63 The Respondent accepted in his amended Answer that in his letter of 1 November 2011 to Northern Rock, the language used by him was "imperfect, and was capable of creating an inaccurate impression as to the relationship between the purchaser and the Client", however his intention was not to mislead. Further he accepted that in this instance "his language as to the relationship between the Client and the proposed purchaser was apt to create an inaccurate impression, and … that, in drafting documents which were open to misinterpretation, he breached Principle 6 [of the Principles]: the public are entitled to expect solicitors to write documents which are clear and do not create an inaccurate impression."

89.64 Mr Lawrence submitted that the concept of alleging a deceitful misrepresentation, which is to be implied from something which has actually been said, was a difficult proposition. If the party alleged to have made the implied misrepresentation was to be shown to have acted deceitfully then it had to also be shown that the implication not only followed from the express words that were used but also that the implication was present to the mind of the representor. So, conceptually, the idea of a deceitful implied misrepresentation needed very careful consideration.

89.65 The implications for which the SRA contended did not follow. It was entirely possible to say that an offer of £2.2 million has been made for the Property, in circumstances in which that offer has been made by an entity with which the Client was connected. The Respondent's statement to Northern Rock that an offer for £2.2 million had been received was literally true and was not misleading, notwithstanding the Client's connection with F Ltd. It was for Northern Rock to make any subsequent enquiries as to the connection between the Client and F Ltd. The implication contended for by the Applicant was not, it was submitted, made out.

89.66 Mr Lawrence submitted that the Applicant's notion of an implication of there being no higher offers available for consideration, was incomprehensible and simply did not work. An offer could be reported without, it was submitted, impliedly representing that no higher offer had been received.

89.67 As regards the alleged misrepresentations to Northern Rock and the Trustee in Bankruptcy about the Property being in a position of negative equity, it was submitted that the Property was clearly in negative equity; the mortgage debt being greater than

the market value. The Applicant's case on negative equity was made by way of its concept of the achievable value (that being the £3.9 million offer from JD) being in excess of the mortgage debt. This formulation it was submitted, relied on a misunderstanding on the part of the Applicant as to the meaning of 'negative equity'. Even if, which was not accepted, that formulation of negative equity was correct, the question to be asked when considering achievable value was 'achievable by whom?' In cases of negative equity, it would be the value that could be achieved by the mortgagee. Mr Lawrence submitted that given the benefaction involved in the JD offer, that offer would not have been available to Northern Rock and so that value was not 'achievable' by Northern Rock. Thus, the Applicant's argument about achievable value was flawed; the JD offer was not available to Northern Rock. In the circumstances it was submitted that the Applicant could not make out its case in relation to negative equity and those matters ought to be dismissed.

89.68 In relation to the various references in the correspondence to "negotiations", Mr Lawrence submitted the Respondent had accepted, in cross-examination, that those letters were not well worded. However, there was no evidence that those references made any difference to Northern Rock; if the Applicant wanted to make that point good, it should have called a witness from Northern Rock to give evidence. Further, there was a deal of discussion in the autumn of 2011 in relation to shaving the price, with talk of increasing the offer to £2.35 million and also of reducing the price. This, it was submitted, would have been in the Respondent's mind when he talked of negotiation in relation to the price. Whilst the Respondent fully accepted, and Mr Lawrence did not resile from the acceptance, that the letters were not well worded, it was submitted that it was "miles away from the sort of material that would justify this Tribunal, on the criminal standard, concluding that a solicitor of this eminence and seniority had acted without integrity.

B. *The Structure of the Transaction*

89.69 The Respondent made statements on behalf of the Client in correspondence with Northern Rock, UTB, the Trustee and AP as to the structure of the transaction which he knew were materially false and/or misleading, alternatively he was reckless as to their truth or falsity, and thereby he failed to act with integrity; failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services; and took unfair advantage of third parties.

89.70 In his letter of 13 March 2011 to UTB, the Respondent made the following representation as to the Client's relationship to F Ltd: "We have been asked to confirm that our client is neither a shareholder nor director [in F Ltd]. We confirm that this is the case."

89.71 The Respondent made various representations to Northern Rock as to the nature of the purchaser and structure of the transaction namely:

- In his letter of 22 June 2011: "… a family friend has indicated his wish to purchase [the Property]. Our client has received a verbal offer from his acquaintance ("the Purchaser") for the purchase of [the Property]."

- In a telephone conversation on 4 October 2011 with JH "… JH said that he understood that the purchaser was a friend of the family. PRW said that the way that he would describe it is that he is somebody who was known to the family."

- In his letter of 15 September 2011 to JH: "During our telephone conversation with [JH] on 13 September we confirmed that the offer made to purchase [the Property] remains available at £2.2 million (notwithstanding the passage of time which has caused considerable problems)."

- In a telephone conversation of 4 October 2011 with JH: "JH asked whether the offer was still there. PRW said that he hoped so….PRW is anxious to ensure that we secure the offer from the purchaser …PRW confirmed that his understanding is that the purchaser was ready, willing and able to proceed straightaway. That had been the position at 22 June. PRW said that he also understood that the purchaser was a cash purchaser and there was no question of a chain or anything of that nature."

- In his letter of 1 November 2011 to JH, RE, and JM, of Northern Rock: "The offer of £2.2 million is not an offer 'by [our] client'. It is an offer which has been made to our client by a prospective purchaser…our client wishes to proceed to accept that offer and sell the Property in accordance with what the Court was informed on 22 September 2011 was the agreement on the part of Northern Rock…This is not a question of 'settling this matter on a commercial basis'. This is not a negotiation between our client and Northern Rock. It is our client presenting details of an offer which he has received."

89.72 In his letter of 13 April 2012 to solicitors for the Trustee, the Respondent stated:

> "As you know, I and my firm do not act for [F Ltd], the purchaser of The Property".
>
> "[The Client]…is neither a director nor a shareholder in [F Ltd]"
>
> "I have spoken to [the Client] who has confirmed that he was unaware of any contract entered into for an onward sale at £3.9 million or otherwise."
>
> "However, I note that it has been suggested by [UTB] that [F Ltd] is intending to transfer the Property to a 'special purpose vehicle' and then there will be further transactions. It all sounds extraordinarily convoluted. However, all that [the Client] is interested in is achieving closure with regard to the agreement reached with Northern Rock and his Trustee to sell for the price agreed at £2.2 million."

89.73 The Respondent thereby expressly or implicitly represented:

- That the Client and F Ltd were independent of one another in that F Ltd was a third party entity outside the control of the Client and not acting for his benefit; and

- That the transaction contemplated comprised "someone known to [the Client's] family" having made an offer (which had been accepted) to purchase the Property for £2.2 million and was accordingly not an offer being made by the Client or anyone acting on his behalf to purchase the Property from Northern Rock.

89.74 The Respondent knew these representations to be materially false and/or misleading, alternatively he was reckless as to their truth or falsity, in that he knew that the Client and F Ltd were not separate and distinct entities and that, on the contrary, the Client was the sole controlling mind of F Ltd, which itself was created as part of the scheme devised, proposed and carried out by the Respondent.

89.75 The Respondent's statement in his letter of 13 April 2012 to the solicitor for the Trustee in Bankruptcy that he did not act for F Ltd was directly contradicted by his letter only a month earlier dated 8 March 2012 to HSBC and Barclays where he wrote "We act for [F Ltd]". The former statement is either materially false or, if the Respondent had been engaged on a limited basis or had ceased acting for F Ltd, failing to disclose the highly relevant and very recent prior relationship was intentionally misleading.

89.76 The Respondent knew that no independent third party purchaser had offered £2.2 million for the Property. Each of the repeated references to the "Purchaser" and to negotiations, discussions and solicitations of the alleged purchaser were falsehoods designed to create the illusion that F Ltd represented a person independent of the Client who had made a genuine and independent offer to purchase the Property.

89.77 In stating to the Trustee in his letter of 13 April 2012 that the Client was unaware of any contract entered into for an onward sale at £3.9 million or otherwise and dismissing the notion that a special purpose vehicle was being used to facilitate an onward sale, the Respondent impliedly represented that he (as the Client's solicitor) was likewise unaware. The Respondent knew, however, that these representations as to the Client's alleged lack of knowledge and his own alleged lack of knowledge were materially false and/or misleading, alternatively he was reckless as to its truth or falsity, in that he knew that:

- There was a signed agreement stating the intentions of both parties to proceed with the transaction;

- The transaction was structured, at the Respondent's suggestion, around the use of a special purpose vehicle to facilitate an onward sale from Northern Rock to the final purchaser;

- JD had already paid a deposit of in excess of £1 million which the Client had in fact already spent;

- The Respondent and JD's solicitors had proceeded at all times on the basis that the intention of all parties was to exchange and complete on the sale of the Property to JD for £3.9 million;

- He had represented in a letter of 9 February 2012 to Acorn Finance that the Client intended to undertake an "onward sale for £3.9 million which has been agreed".

89.78 As recorded in an Attendance Note of 19 January 2012, during a telephone conversation with AP that day, the Respondent stated that "a confidential accommodation was reached with Northern Rock whereby Northern Rock was prepared to convey as the mortgagee. Part of that deal was that the conveyance would be to a company" and that "the only way in which this could proceed however was through what had been agreed, namely the company exit." The Respondent thereby represented to the solicitor for JD that the use of an interceding company was a requirement imposed by Northern Rock. The Respondent knew, however, that such representation was materially false and/or misleading, alternatively he was reckless as to its truth or falsity, in that at no point had Northern Rock ever suggested that the sale proposed by the Respondent on behalf of the Client should be through a company. On the contrary, the requirement that the structure of the sale be through a company was part of the scheme entirely devised and implemented by the Respondent to disguise the true nature of the transaction.

Respondent's Submissions

89.79 Mr Lawrence submitted that there was never any contract for an onwards sale at £3.9 million or any other sum. The dealings between the Client and JD were not certain or contractual; there was no binding agreement. It was, Mr Lawrence submitted, remarkable that the Applicant alleged that the Respondent ought to have disclosed a contract when it was clear that no such contract existed.

89.80 In terms of the Respondent's failure to disclose the full extent of the connection between the Client and F Ltd, as had been accepted, the Respondent was under no duty to disclose the connection, and had in fact disclosed more than he was required to in informing Northern Rock that the Client and F Ltd were connected. There was nothing improper in the connection, and it was clear that Northern Rock, having been informed of the connection adjusted its approach accordingly.

89.81 It was submitted that no allegation was made, or evidence adduced, that anyone was actually misled or deceived in any way by the representations made by the Respondent.

89.82 Whilst the Respondent had accepted that some of his letters were not phrased as felicitously as they might have been, there was no breach of any disclosure obligation, no intention to mislead anyone, and no-one was in fact misled. No 'deceitful representations' were made, and the Respondent did not act with dishonest intent in any respect.

The Tribunal's Findings

89.83 The Tribunal examined each of the representations made by the Respondent with care. Given its findings in relation to the scheme per se, and the separate legal identity of F Ltd, the Tribunal found that F Ltd had made an offer to purchase the Property, and thus the Respondent's representation to Northern Rock in his letter of 22 June 2011, namely that "The Purchaser has offered to buy the Property for £2.2 million" was accurate.

89.84 The Tribunal considered the representations made to Northern Rock about seeking to negotiate with the purchaser. The Tribunal noted that in his Answer, the Respondent did not deal with the actual representations made in terms of advising that negotiations were ongoing. During cross-examination, it was put to the Respondent that he was trying to deceive Northern Rock into thinking that he had been genuinely trying to work up the price, and that he was disguising from Northern Rock that fact that the company and the Client were one and the same. The Respondent explained that it was important to negotiate with Northern Rock, and that he had not been at all deceitful.

89.85 When asked if he considered the strategy to be commercially legitimate, the Respondent replied:

> "It was a perfectly legitimate commercial strategy given the straightforward disclosure to Northern Rock of the valuation of Carter Jonas. … I can't imagine very many solicitors would, in those circumstances, have actually put in the £2.3 million valuation. So I believed that I was acting entirely properly in the manner in which I was proceeding. And having regard to that, I thought that it was right to say that we would negotiate the price and I made that clear in the first letter to Northern Rock."

89.86 When put to him, the Respondent accepted that "there wasn't a negotiation" and that there could never be a negotiation "where he [the Client] was hand in glove with the person who was going to own [the company]."

89.87 The Respondent explained in his oral evidence that he regretted the words "to negotiate" and that he would not use those words if writing the letter again. Further he stated that he had in mind a negotiation with Northern Rock. The Tribunal did not accept this. It was clear when the Respondent referred to "negotiation" in his communications with Northern Rock that he was referring to negotiations between his client and the purchaser. It was also clear from the evidence that at no time did the Respondent seek to have the Client negotiate with the purchaser. There was no real negotiation between the Client and the purchaser in terms of trying to achieve a higher figure. The Tribunal found that the Respondent had made the representations as to a negotiation with the sole purpose of seeking to make the deal more attractive to Northern Rock. Accordingly, the Tribunal found that the representations made to Northern Rock in relation to negotiations about the price were false and misleading.

89.88 The Tribunal found that the Respondent's statement to Northern Rock relating to concern that the offer in the declining market would be reduced and not increased, was also false and misleading. It was the Client's desire that the offer be reduced, not his "concern" that it might be. The Tribunal noted that in an attendance note of 25 October 2011, the Respondent recorded the Client as stating that "he "wants to shave" more money off the price to be paid to Northern Rock", and that "although he [the Respondent] does not rule out completely the possibility that we might engage in some "shaving" last minute with Northern Rock, … realistically this is unlikely…" Further, the Respondent referred to the deal with Northern Rock being "on a knife edge" and advised that there should be no consideration of reducing the price from £2.2 million. The Tribunal determined that Respondent had represented that the Client was genuinely worried about a reduction in the offer price when in actuality,

the Respondent knew that the Client himself wanted to reduce the price. Accordingly, the Tribunal also found the statement made to Northern Rock on 1 November 2011 to be false and misleading.

89.89 The Tribunal considered the representations made to Northern Rock and the Trustee in relation to the Property being in a position of negative equity. The Tribunal noted that the Respondent, in his written evidence, had made it clear that he believed that the Property was in negative equity; had he believed otherwise, he would not have been prepared to act. The Tribunal determined that the correct formula for assessing whether a Property was in negative equity was as submitted by Mr Lawrence, namely market value minus mortgage debt. It was not right to calculate the value of the Property by reference to the Applicant's concept of best achievable price. The valuations produced by three independent valuation companies were the best indication of the market value of the Property, and each valuation was for less than the mortgage debt. Accordingly, the Tribunal found that the Property was in substantial negative equity; the representations made by the Respondent in this regard were accurate and not false and/or misleading as pleaded and alleged.

89.90 The Tribunal considered the representation made to the Trustee that the Client did not have a valuation of the Property at £3.9 million. The Tribunal noted that the Client emailed the Respondent on 18 March 2012 stating that he was awaiting written confirmation of a £3.9 million pound valuation. On 19 March 2011, the Respondent replied to that email saying simply "Good". On 20 March 2012, the Client informed the Respondent that he had given UTB a copy of the valuation obtained. On 26 March 2012, the Respondent produced a draft letter to send to CKFT in which nothing was said about a valuation for £3.9 million. On 5 April, the Respondent wrote to the client in relation to, inter alia, the rights of the Trustee. He explained that the letter drafted to the Trustee "gives nothing away, **but appears** to be a straightforward response to the questions which have been raised …" (Tribunal's emphasis). On 11 April 2012, 2 days prior to sending the letter to CKFT, the Respondent was sent a completed draft loan proposal from a Financier which clearly stated that the valuation of the Property was £3.9 million.

89.91 The Tribunal did not accept that the Respondent believed that his assertion that the Client did not have a valuation for the Property at £3.9 million was true, (as per the Respondent's witness statement of 12 August 2016) or that he was aware that the Client "had never commissioned any valuation of the Property which had provided such an opinion" and that "it must have slipped his mind that the Client had previously asserted to him that he had seen another valuation of the Property" (as per his Answer of 14 June 2016). The letter from CKFT had come at a crucial time in the process. Contracts had not yet been exchanged with Northern Rock and F Ltd. There was a substantial risk that if Northern Rock became aware of the onward sale to JD, they might pull out of the deal. Further, if the Trustee believed that there was to be an onward sale, he might attempt to realise his interest in the property and thwart the Northern Rock deal. The timing was all the more crucial, as the Trustee's interest in the Property would cease on 17 April 2012. The Tribunal determined that, notwithstanding that he had not seen the valuation, the Respondent knew that the valuation existed, indeed it was the basis upon which the loan application was predicated. The Tribunal found that in stating that the Client did not have a valuation for £3.9 million, the Respondent had consciously and deliberately misrepresented the

true position. Accordingly, the Tribunal found that the statement to CKFT in that regard was false and misleading as pleaded and alleged.

89.92 The Tribunal determined that the statement "We act for F Ltd" contained in letters written by the Respondent to HSBC and Barclays on 8 March 2012 were false and misleading. Mr Lawrence submitted that misconduct in relation to those representations was not pleaded in the Rule 5 statement and that accordingly, the Applicant was not entitled to rely on those assertions as evidence of misconduct. Mr McLaren submitted that on receipt of the Respondent's witness evidence, it was open to the Applicant to seek the permission of the Tribunal to advance an alternative case, namely that if the Respondent's stated position was correct, the letters were false and misleading. It had chosen not to do so as it was unnecessary, and could be addressed during cross-examination of the Respondent. The Tribunal considered that it was clearly the Respondent's case that he did not act for F Ltd. Mr Lawrence, in addressing the letter to CKFT of 13 April 2012, submitted that the Respondent's statement that he did not act for F Ltd was correct. Whilst finding the assertion in the letters to be false and misleading, the Tribunal considered those assertions in terms of the Respondent's credibility and integrity. It did not consider the representations when considering dishonesty, as those representations had not been pleaded as being dishonest.

89.93 The Tribunal then considered whether the misrepresentations found proved breached the Principles, Rules and Outcomes as alleged.

89.94 The Tribunal found that the Respondent had consciously and deliberately made misrepresentations to third parties. This, it determined, demonstrated a manifest lack of integrity; deliberately misrepresenting the position and misleading third parties was incompatible with a solicitor's obligation to act with integrity. The Tribunal rejected the submissions that the misrepresentations made were "inaccuracies" or "loose language"; they had been employed by the Respondent, in the case of Northern Rock, to give the false impression that the Client was in negotiation with the purchaser; that was simply not the case. Likewise, there was never any fear that F Ltd was going to pull out of the deal due to the delay. The misrepresentation made to CKFT was so as to prevent the deal from falling apart. The Respondent knew, as was demonstrated by the documents, that there was a substantial risk that the Trustee might attempt to realise his interest in the Property so as to obtain maximum assets for the bankrupt estate. The Tribunal found that the Respondent's evidence throughout was self-serving and unconvincing. Further, it did not assist the Respondent to assert that the Client had approved correspondence sent out that contained misrepresentations. That correspondence had been sent by the Respondent, on his Firm's headed paper, with the intention that the recipients would rely on the information contained therein. Accordingly the Tribunal found beyond reasonable doubt that the Respondent had acted without integrity, and thus found allegation 1.1 proved in relation to the proven misrepresentations.

89.95 The Tribunal found that in making the misrepresentations the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Indeed, the Respondent had conceded that in writing in some of the terms that he did, his conduct was not in accordance with what the public would expect from a solicitor on the Roll, and in that regard he had breached Principle

6 of the Principles. The Tribunals findings related to those matters admitted by the Respondent and those found proved by the Tribunal. Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt.

89.96 The Tribunal did not consider that the misrepresentations made to Northern Rock in relation to negotiating the price, or that the purchaser was reconsidering his position, took an unfair advantage of third parties as pleaded and alleged. The Tribunal considered that Northern Rock had not accepted the offer based on those representations, but rather its acceptance was based on the independent valuations it had commissioned. There was no evidence that the Client had received an advantage arising out of the representations. Accordingly, the Tribunal did not find proved that the Respondent had taken unfair advantage of Northern Rock. The Tribunal considered that the misrepresentation made to CKFT did result in an unfair advantage. Had the Trustee been aware of the £3.9 million valuation, he would have considered whether to take steps to realise his interest in the property, so as to realise as much as possible for the bankrupt estate. As was clear from the letter from CKFT, the Trustee, on receipt of the information from UTB, was concerned that there was an onward sale for £3.9 million, and that the Client had already been paid £1.3 million. The Respondent's letter in response misrepresented the position, and the Tribunal determined that it was the response which caused the Trustee to take no further action. Accordingly, the Tribunal found that the Respondent had taken unfair advantage of the Trustee, and to that extent, found allegation 1.4 proved beyond reasonable doubt.

90. **Dishonesty**

90.1 The Applicant submitted, and the Respondent concurred, that the appropriate test for dishonesty was that set out Twinsectra Ltd v Yardley and others [2002] UKHL 12, namely that the Respondent's conduct was dishonest by the standards of reasonable and honest people ("the objective test") and that the Respondent must have been aware that it was dishonest by those standards ("the subjective test").

90.2 Mr McLaren submitted that in making the false/misleading statements the Respondent had acted dishonestly, it being obvious that making deceitful statements to third parties would be dishonest by the ordinary standards of reasonable and honest people and that the Respondent knew this to be the case.

90.3 Mr Lawrence submitted that it was "almost vanishingly unlikely" that the Respondent was consciously dishonest in this case. He may well have made some mistakes and he may well have written some letters about which concessions had been made. He regretted that, but it was "very, very, very unlikely" that there was the sort of conscious dishonesty which was a precondition of a finding of dishonesty before the Tribunal.

The Tribunal's Findings

90.4 The Tribunal found that reasonable people operating ordinary standards of honesty, would find that making deliberate misrepresentations was dishonest, and accordingly the objective test in Twinsectra was satisfied. The Tribunal did not accept that the misrepresentation in relation to the valuation was a mere oversight. The letter to CKFT was not an email drafted in haste, but was a considered letter, discussed with

client and re-drafted; that redraft added the misrepresentation in relation to the £3.9 million valuation. The letter was sent in response to the CKFT letter of 22 March 2012, which made clear that a response in writing was required before the Trustee would be prepared to proceed with the sale. The Respondent viewed the knowledge of the Trustee in relation to the onward sale as "plainly…disastrous". The Tribunal did not accept the Respondent's assertion in cross-examination that he in fact thought it was 'disastrous' because the JD deal, at that point, was "dead and buried" and the £3.9 million onward sale to JD was "a complete red herring". The Tribunal considered the Respondent's record of his telephone attendance note with the Client on 26 March 2016 and noted that the Respondent stated that "his starting point in this is that we must be truthful and therefore anything which goes into a letter must be correct. However, there is a difference between being truthful and disclosing everything that might be relevant." It was clear from the advice given to the Client that the Respondent was aware that the Trustee's consent to the sale was "conditional upon approving the documentation therefore in reality it was always capable of being withdrawn." When discussing the timing of a response to CKFT, the Respondent considered that if matters were dragged out for too long "it will look as if we are not answering the questions and that will raise even more suspicion."

90.5 In his letter of advice to the Client of 5 April 2012, the Respondent stated that "the critical thing … is to make sure that the Trustee in Bankruptcy has not taken any steps to realise the interest he had in [the Property] before 17 April 2012 … it obviously follows that if the Trustee were to try to do anything in the interim in respect of enforcement, that would be a problem." The Tribunal determined that the Respondent deliberately and consciously misrepresented the position so as to prevent the Trustee from taking any steps to realise his interest in the Property or withdraw his consent to the sale. Accordingly, the Tribunal determined that the Respondent knew his conduct was dishonest by ordinary standards, and the subjective limb of the Twinsectra test was satisfied. The Tribunal thus found, beyond reasonable doubt, that the Respondent had been dishonest in this regard.

90.6 The Tribunal considered that the proven misrepresentations made by the Respondent to Northern Rock were objectively dishonest; reasonable and honest people operating ordinary standards of honesty would find that representing that there were negotiations when none were in fact taking place, was dishonest. The Tribunal considered that the Respondent, when making these representations did not consider that his conduct would be deemed dishonest; his representations were simply part of the cut and thrust of a commercial transaction. Whilst the Respondent's assertions that he had in mind the negotiations that had to take place with Northern Rock were not accepted, they were, the Tribunal determined, sufficient to cast doubt on the Respondent's state of mind at the time the assertions were made. Accordingly, the Tribunal did not find that the Respondent was subjectively dishonest in relation to those statements, and thus did not find beyond reasonable doubt that the Respondent was subjectively dishonest in relation to those representations.

91. **Misleading the Court**

Allegation 1.1 - He failed to act with integrity in breach of Rule 1.02 of the SCC 2007 and (from October 2011) Principle 2 of the Principles.

Allegation 1.3 - He failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Rule 1.06 of the SCC 2007 and (from October 2011) Principle 6 of the Principles.

Allegation 1.5 - He deceived or knowingly misled the Court in breach of Rule 11.01(1) of the SCC 2007.

Applicant's Submissions

91.1 The Respondent made statements on behalf of the Client to the Court as to the value of the Property and as to the structure of the intended transaction which he knew were materially false and/or misleading, alternatively he was reckless as to their truth or falsity, and thereby deceived or knowingly misled the Court; and failed to act with integrity; and failed to behave in a way that maintains the trust the public places in him and in the provision of legal services.

91.2 During possession proceedings brought by Northern Rock for the Property, at a hearing before District Judge Davidson on 22 September 2011, and as recorded in the Respondent's attendance note of that hearing, the Respondent stated to the Court that:

> "There was no equity in the property" and that "there is negative equity" in the Property.
>
> The Client had received "an offer from somebody to purchase the Property for £2.2 million". That statement carried the implied representation that the offer was from a third party entity independent of the Client.

91.3 The Respondent knew those representations were materially false and/or misleading, alternatively he was reckless as to their truth or falsity, in that the Respondent knew that:

- The value of the property was substantially in excess of £2.2 million.
- That there was not negative equity in the Property.
- No independent third party purchaser had offered £2.2 million to purchase the Property.

91.4 As a result of the Respondent's representations to the Court, the possession proceedings were adjourned.

Respondent's Submissions

91.5 Mr Lawrence submitted that it was unsatisfactory for the Applicant to base this allegation on the attendance note of the Respondent without obtaining a transcript of the hearing so that the precise statements made by the Respondent to the Court were before the Tribunal.

91.6 Mr Lawrence repeated his submissions, namely that:

- there had been a legitimate offer to purchase the Property for £2.2 million; and

- the Property was in negative equity, the mortgage debt exceeding the market value.

91.7 Further, there was no evidence that the Respondent stated that "an independent third party" had made an offer to purchase the property. The Respondent explained in his Response that he could not recall providing any details to the Court in relation to the prospective purchaser, save to say that an offer had been made to purchase the Property at market value.

The Tribunal's Findings

91.8 Given the Tribunal's findings detailed above in relation to the Property being in negative equity, and there being an offer from F Ltd to purchase the Property at £2.2 million, the Tribunal found that the Respondent had not deceived or deliberately misled the Court as alleged and did not find the matter proved. Accordingly allegation 1.5 was dismissed. It followed that allegations 1.1, 1.3 and dishonesty were not found proved insofar as they related to allegation 1.5, and accordingly those allegations were dismissed in that regard.

91.9 The Tribunal agreed with the submissions of Mr Lawrence; it was unsatisfactory for the Applicant, who relied on what was allegedly said to the Court, not to provide a transcript of that hearing as part of the evidence for the Tribunal to consider.

Tribunal's Additional Observations

92. The Tribunal noted, with some concern, the delay by the SRA in investigating this matter. The report to the SRA was first made in March 2013. The Respondent's then solicitors wrote to the SRA on 18 June 2013 and again on 7 August 2013. The SRA responded on 29 August 2013 confirming that the complaint was being considered, and the SRA may need to contact the Respondent in relation thereto. On 25 March 2014 a further letter was sent to the SRA requesting confirmation of the position. The SRA responded on 26 March 2014 stating that the matter was still being investigated. On 2 October 2014, the SRA wrote to the Respondent stating that it was "starting a formal investigation".

93 Given the nature of the allegations before the Tribunal, the Tribunal considered that the allegations should have been formally investigated by the SRA on a much more expeditious basis; the 18 month delay between the report and the formal investigation was excessive. The Tribunal further considered that whilst this may have affected the memory of the witnesses, the delay was not such as would render the proceedings unfair against the Respondent.

Previous Disciplinary Matters

94. None.

Mitigation

95. Mr Lawrence submitted that so far as sanction was concerned, the Respondent was of the view that where an allegation of dishonesty had been found proved against a

solicitor, that solicitor did not deserve to stay on the Roll. In the circumstances, Mr Lawrence had been instructed not to make any submissions as regards sanction.

Sanction

96. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition – December 2015). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

97. The Tribunal first considered the seriousness of the Respondent's proven conduct. The Tribunal found him to be completely culpable for the breaches; the misconduct having arisen as a direct result of his actions. The Respondent's conduct was as a direct result of his attempts to secure a financial advantage for his client. His actions were not spontaneous, but were in furtherance of his client's aims. The Respondent was an extremely experienced solicitor, who, by his actions, had caused great harm to the reputation of the profession and the public; dishonesty had been found proved against him. The Tribunal considered the comments of Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

98. The Respondent had caused immense harm and damage to the reputation of the profession. Not only had he acted dishonestly, but he had taken advantage of third parties. His dishonest conduct was serious, and his explanation had been both incredible and disingenuous. The Tribunal found the Respondent's evidence to be disingenuous and self-serving. Whilst the scheme itself was not inherently improper, and did not necessitate the Respondent acting improperly, he had done so in furtherance of the scheme. His conduct was aggravated by his proven dishonesty, which was deliberate and calculated. It was no excuse for the Respondent, a very experienced and highly reputed solicitor, to say that he had been drawn into acting in the way he acted by the extraordinary pressure to which he had been subjected by the Client. The Tribunal determined that the Respondent, given his extensive experience, knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. The Respondent had displayed very little insight into his misconduct. The Tribunal noted that the Respondent had a previously unblemished career, and was cooperative in full with the Applicant's investigation.

99. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no

> matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

100. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

101. The Tribunal sought the views of the parties as to whether a summary assessment was appropriate. Mr McLaren submitted that the Applicant did not want a detailed assessment. This Tribunal was in a far better position to determine from a position of knowledge, just how much of the costs of this hearing were in fact unnecessary and if so where they should rest with the SRA. Mr Lawrence agreed. He submitted that the issue whether a discount should be applied to reflect the fact that allegations had not been proved was an issue which could only be satisfactorily dealt with by this Tribunal as on a detailed assessment the costs judge simply would not have the knowledge of the case and the way it had developed to enable him or her to resolve that issue.

102. Having considered the submissions, the Tribunal confirmed it would deal with costs by way of a summary assessment.

Applicant's Submissions

103. The Applicant made an application for costs in the sum of £278,770.30. Mr McLaren submitted that the case was properly brought, and the SRA had acted properly, neither over-prosecuting nor erring materially the other way. The SRA had a statutory obligation to bring proceedings against solicitors for professional misconduct.

104. Further, the particulars in relation to misrepresentation as to market value (which were abandoned) did not materially increase the costs. The evidence served by the Respondent, rather than clarifying issues, raised further questions. The Tribunal had a very wide discretion with the ability to order costs even in the absence of any findings of professional misconduct (Rules 18(4)(b) of the Solicitors (Disciplinary Proceedings) Rules 2007). The only allegations which were not found proved were allegations 1.2 and 1.5; very little time was taken at the Tribunal specifically in relation to those two allegations. The quantum of costs was plainly reasonable for a two week hearing in a case of this nature and complexity, and the Applicant should be awarded all, or a substantial amount, of the costs sought.

Respondent's Submissions

105. Mr Lawrence submitted that he would not be in a position to make submissions on costs until he saw the judgment setting out the Tribunal's findings. He invited the Tribunal to reserve the question of costs pending the production of the full judgment. In response Mr McLaren submitted that the question of costs should be dealt with at

the hearing and not deferred. It was not going to assist the Tribunal to wait for further written or oral submissions on costs, when the Tribunal was in a position to make a decision on costs immediately.

106. The Tribunal, having considered the submissions by the parties, determined that it would deal with the issue of costs in the ordinary way, and would not adjourn for further submissions. The Tribunal was fully aware of its reasons, and would assess the costs in the light of those reasons.

107. Mr Lawrence referred the Tribunal to the case of Broomhead v SRA [2014] EWHC 2772, and submitted that as a matter of law, Broomhead showed that the Tribunal were required to consider whether the SRA's costs should be discounted as all allegations were not found proved. He submitted that the Applicant had succeeded on approximately 15% of the misrepresentations it had chosen to plead against the Respondent. Further, not only had important allegations failed, they should never have been pursued. This was a case in which the costs of the SRA, given the Tribunal's findings, should be substantially reduced. As to quantum, Mr Lawrence submitted that the Tribunal ought to make a percentage reduction, and having made that determination, send the matter for detailed assessment.

108. The Tribunal found that the prosecution had been properly brought and that the costs claimed were proportionate. The Tribunal had found 3 of 5 allegations and dishonesty proven. The 2 allegations found not proved had been dealt with very shortly during the hearing. Further, it was appropriate to reduce the costs to reflect the fact that not all of the allegations had been proved, and that the issues in relation to market value had been communicated to the Applicant at an early stage. The Tribunal decided that the appropriate reduction to apply to the costs claimed was 30%. Accordingly, the Tribunal ordered that the Respondent pay costs of £195,000.00.

Statement of Full Order

109. The Tribunal Ordered that the Respondent, PETER RHYS WILLIAMS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £195,000.00.

Dated this 1st day of February 2017
On behalf of the Tribunal

J. A. Astle
Chairman