SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11563-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD CHAN Respondent

Before:

Mr E. Nally (in the chair)
Mr P. Booth
Mrs L. McMahon-Hathway

Date of Hearing: 26 June 2017

Appearances

Jonathan Goodwin, Solicitor Advocate of Jonathan Goodwin Solicitor Advocate Ltd, 69 Ridgewood Drive, Pensby, Wirral CH61 8RF, instructed by Robin Horton, solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

The allegations the SRA made against the Respondent were as follows:

1. He declared to Her Majesty's Revenue and Customs (HMRC) that he (together with his wife) had bought a property for a price lower than that which he paid as follows:

1.1. on 30 September 2009, he bought a house for £525,000, and told HMRC he had paid £165,000;

1.2. on 30 June 2010, he bought an office for £763,750, and told HMRC he had paid £100,000,

resulting in him paying too little in stamp duty land tax ("SDLT"), and being subjected to a penalty by HMRC. In doing so he breached Principles 2 and 6 of the Solicitors Code of Conduct 2011 ("SCC 2011").

2. The Respondent did not tell the SRA of the position with HMRC and that it had imposed a penalty on him. By doing so the Respondent breached Principle 7.

3. The Respondent's firm continued to promote SDLT avoidance schemes, even though he knew HMRC were penalising him for avoiding SDLT, and even though he originally claimed he had bought one property under an SDLT avoidance scheme. In doing so the Respondent breached Principles 2, 4 and 6.

4. Allegation 4: The Respondent failed to comply with notices under a section 44B of the Solicitors Act 1974 dated 22 August 2015 and 10 June 2016. In doing so the Respondent failed to co-operate with the SRA and so breached Principle 7.

The SRA alleged that the Respondent was dishonest in Allegations 1 and 3, but it did not need to prove dishonesty in order to prove the Allegations.

Documents

5. The Tribunal considered all the documents in the case including:

- Application and Rule 5 statement with exhibit RH/1 dated 10 October 2016
- Witness Statement of Christopher Taylor (process server) dated 7 December 2016
- Schedule of Costs

Preliminary Matters

Absence of the Respondent

6. The Respondent did not attend the hearing and had not made any contact with the Tribunal during the proceedings.

7. The Applicant told the Tribunal that the Respondent had been served personally with the proceedings on 6 December 2016, as confirmed in the witness statement of Christopher Taylor. The service of proceedings had included the Rule 5 statement and the exhibits.

8. On 14 February 2017, a letter was sent to the Respondent at that same address which enclosed the Memorandum of the Case Management Hearing that had taken place on 8 February 2017. That Memorandum had contained the date of the substantive hearing. He had also been served a Civil Evidence Notice by email on 24 May 2017. It was submitted that the Respondent had notice of the hearing and had chosen not to attend. In the circumstances, it was in the interests of justice to proceed in his absence.

The Tribunal's Decision

9. The Tribunal considered the representations made by the Applicant. The Tribunal was satisfied on the evidence that the Respondent was aware of the date of the hearing, having been personally served on 6 December 2016.

10. On 8 December 2016, he had been served with the Standard Directions (as revised) by Recorded Delivery at that address. That had contained notification of the Case Management Hearing on 8 February 2017. The Memorandum of that hearing was also sent to the same address, this time by regular post, which the Tribunal office had confirmed had not been returned by Royal Mail. That document contained the substantive hearing date. The Respondent had also received an email containing the Certificate of Readiness, which again contained the substantive hearing date.

11. The Tribunal was therefore satisfied that SDPR Rule 16(2) was engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which stated:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …;
>
> (iii) the likely length of such an adjournment;
>
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
>
> (v) …;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) ...;

(viii) ...;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) ...;"

12. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

13. Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

14. The Tribunal found that the Respondent had deliberately not engaged and had chosen to absent himself from the hearing. There was no prospect of him attending at any future hearing and so no purpose would be served by adjourning the matter. An adjournment would be for several weeks or months and that would be contrary to the need to deal with matters expeditiously. The Allegations related to conduct dating back nearly eight years and any further delay would not be in the public interest, notwithstanding the fact that the Respondent was not currently practising.

15. The Tribunal was satisfied that it was in the interests of justice to proceed with the hearing in the absence of the Respondent and granted the Applicant's application. The Applicant was reminded to draw to the Tribunal's attention to any points that the Respondent might have raised, had he attended.

Factual Background

16. The Respondent was born in January 1971 and was admitted to the Roll on 1 October 1997. At the time of the hearing his name remained on the Roll. He did

not hold a practising certificate. From 1 July 2005 until 22 September 2010 the Respondent was a member of Arc Property Solicitors LLP. From 1 June 2010 until 16 May 2013 he was the senior director of Abode Solicitors Limited ("Abode"), which traded as Arc Property Solicitors. On 4 October 2013, the SRA intervened into Abode.

Office Purchase

17. On 30 June 2010, the Respondent and his wife bought an office in Harrogate ("the office") for £763,750, which became Abode's place of business. Abode acted for the Respondent on the purchase. As the price paid was over the SDLT threshold, the Respondent and his wife should have paid £30,500 in SDLT. However, on the tax return, the Respondent stated that the price was £100,000. This was below the SDLT threshold at the time, so the Respondent did not pay any SDLT.

18. On 14 December 2010 HMRC sent the Respondent a notice of intent to check the SDLT return for the office, and asking for various documents. On 25 January 2011 Abode, using its trading name of Arc, replied, saying that the SDLT return was incorrect, as it contained a draft figure for the consideration and stating that, as the Respondent was now paying the missing SDLT, there was no need to supply the documents:

> "...the SDLT1 erroneously misquoted the consideration. The reason being that the price was still being negotiated when it was first drafted...but not amended on completion to reflect the correct amount."

19. On 23 February 2011 HMRC sent information notices to the Respondent asking for the information and documents it had asked for on 14 December 2010. On 13 April 2011 HMRC wrote to Abode and to the Respondent personally, stating that it still needed to see the documents it had asked for previously. On 27 April 2011, the Respondent provided some of the further details HMRC requested. Those details made it clear that, throughout April and May 2010, the parties had agreed that the price of the office was £763,750, i.e. £650,000 plus VAT. On 11 August 2011 HMRC wrote to the Respondent, concluding that the Respondent had deliberately submitted inaccurate figures on the SDLT return. HMRC imposed a penalty of £16,038.75 in addition to the SDLT and interest due.

20. On 8 September 2011, the Respondent wrote to HMRC as follows:

> "We are advised that at the time the SDLT1 was completed, it was still unclear what the price was, hence the insertion of an arbitrary figure. We are also advised that a figure be inserted so there is no option to leave it blank...the purchase price should have been updated but was not...
>
> Ultimately, we accept an error was made by our agent. We have to also accept part of the blame for not bringing it to your attention but, to be fair, it did not occur to us that a mistake had occurred..."

21. On 22 November 2011 HMRC concluded that the Respondent's conduct fell within the "deliberate without concealment" range of tax avoidance. The appropriate penalty remained £16,038.75. On 19 December 2011 the Respondent replied, disagreeing with HMRC's findings, and offering to pay £10,692.50 in penalties. On 21 March 2012 HMRC refused the Respondent's offer. On 16 April 2012, the Respondent agreed to HMRC's terms. The Respondent stated that "I assume that you will not recommend that details be published". On 31 May 2012 HMRC wrote to the Respondent stating that the factors in favour of the publication remained, and asked the Respondent to comment by 12 June 2012 on this point. On 12 June 2012, the Respondent asked for a decision on publication so he could make an informed decision about compromising the claim. On 15 June 2012 HMRC told the Respondent that it could not make a decision on publication until the penalty had become final. On 29 June 2012 HMRC made a decision to confirm the penalty assessment at £16,038.75 and on 6 July 2012 sent a Penalty Assessment Notice to the Respondent.

22. On 25 July 2012, the Respondent wrote to HMRC appealing the decision. He said that he was a director and shareholder in Abode and that publication would have a negative impact on his reputation. On 24 August 2012, the Respondent confirmed his letter was a notice of appeal. On 3 October 2012 HMRC wrote to the Respondent saying that it would uphold its decision of 29 June 2012. On 25 October 2012, the Respondent paid the penalty of £16,038.75 in full and final settlement.

House Purchase

23. On 30 September 2009, the Respondent bought a house in Hampsthwaite ("the house") for £525,000. Abode acted for the Respondent on the purchase. As the price paid was over the SDLT threshold, the Respondent should have paid £21,000 in SDLT. However, on the tax return, the Respondent stated that the price was £165,000. This was below the SDLT threshold at the time, so the Respondent did not pay any SDLT.

24. On 18 April 2011 HMRC wrote to the Respondent saying it was going to check the SDLT return for his house purchase. As HMRC did not receive a reply, on 25 May 2011 HMRC sent a formal notice to the Respondent. The Respondent provided the papers on 10 November 2011. On 24 June 2011, the Respondent told HMRC that buying the house was exempt from SDLT, because it "benefitted from the grandfathering rules which apply to certain tax avoidance schemes". On 10 November 2011, the Respondent withdrew this explanation. On 22 December 2011, the Respondent told HMRC that his "agent" (Abode) had made a mistake. On 27 January 2012 HMRC wrote to the Respondent imposing a penalty of £10,500. On 8 August 2012, the Respondent wrote to HMRC. The letter was in similar terms to the appeal letter in relation to the office purchase dated 25 July 2012, although it did not refer to the Respondent's reputation. On 5 September 2012 HMRC wrote to the Respondent upholding the decision to impose a penalty. On 8 October 2012, the Respondent paid the penalty in full, under protest.

25. The Respondent subsequently appealed, unsuccessfully, to the Tax Tribunal in relation to publication.

Witnesses

26. None.

Findings of Fact and Law

27. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

28. **Allegation 1 - He declared to Her Majesty's Revenue and Customs (HMRC) that he (together with his wife) had bought a property for a price lower than that which he paid as follows:**

1.1 on 30 September 2009, he bought a house for £525,000, and told HMRC he had paid £165,000;

1.2 on 30 June 2010, he bought an office for £763,750, and told HMRC he had paid £100,000,

resulting in him paying too little in stamp duty land tax (SDLT), and being subjected to a penalty by HMRC. In doing so he breached Principles 2 and 6.

Applicant's Submissions

28.1 The Applicant submitted that the Respondent had declared to HMRC a purchase price for property that was significantly under the price he actually paid on two separate occasions. He had admitted declaring too low a purchase price, and agreed to pay a tax penalty as well as the outstanding SDLT. The Respondent must have known that he had to pay SDLT. This was a standard area of law. The Respondent had interests in a number of properties so must have paid SDLT before. The Respondent knew he had not paid SDLT and did not enquire as to why he had not paid it. HMRC had found that his failure to pay SDLT was deliberate in relation to the office and negligent in relation to the house.

28.2 It was submitted that the Respondent had not acted with integrity, as HMRC had found he had deliberately under-stated purchase prices and was subject to a penalty. He had therefore breached Principle 2. He had not behaved in a way which maintained the trust the public placed in the profession, as the public would expect solicitors to comply with their obligations to HMRC.

Dishonesty (Allegations 1 and 3)

28.3 The Applicant submitted that the Respondent's actions were dishonest in accordance with the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly.

28.4 The Respondent had allowed a false figure to be put on his SDLT returns and sought to reach an agreement with HMRC on the basis that he could conceal it from the SRA. He had suggested to HMRC that he would compromise an appeal on the basis that HMRC would keep his penalty confidential.

28.5 The Respondent must also have been aware that his conduct was dishonest by those standards. He had agreed to pay the outstanding SDLT only when HMRC challenged him. Although he had numerous opportunities, the Respondent had not told the SRA about his penalty. The Respondent made specific submissions to the Tax Tribunal that he wanted to keep matters from the SRA, as the SRA would seek to have him removed him Roll. His conduct was over a period when the SRA was investigating and prosecuting him, and his intention was to prevent this matter being included in those proceedings.

The Tribunal's Decision – The House

28.6 The underlying facts of Allegation 1 were straightforward and not in dispute. The Respondent had purchased the house for £525,000 and had declared £165,000 on the SDLT form. The declared sum was significantly below the sum actually paid and the consequence was that no SDLT was paid.

28.7 The Tribunal noted the explanation concerning the house offered by the Respondent and referred to in the letter from HMRC dated 27 January 2012 concerning the house. He had referred to "errors" on the part of his agent. The Tribunal found this to be highly implausible. He had sought to disassociate himself from his agent without making clear that the 'agent' was in fact the firm of solicitors, specialising in property work, of which he was a senior partner.

28.8 It was inconceivable that the Respondent would not have been aware that he had not been asked to pay SDLT. The mortgage was £446,250 and the final price had been agreed two months before completion. The conveyancing documents would have had to reflect the true price and this would include the Land Registry Title Deeds. The only part of the process that was in the sole control of the Respondent was the completion of the SDLT form, which contained the wrong figure.

28.9 There was no logic to the figure of £165,000 being put on the form, other than the fact that it was just under the threshold for SDLT of £175,000. The Respondent had referred to "grandfathering rules" at one stage in his correspondence with HMRC before subsequently withdrawing it. He had therefore been referring to technical aspects of the rules which belied his explanation that the under-declaration arose out of a genuine error. The Tribunal rejected the explanation that this had been a mistake.

28.10 The Tribunal found the factual basis of the Allegation proved beyond reasonable doubt.

Dishonesty

28.11 The Tribunal applied the two-limb test as set out in Twinsectra, starting with the objective test. The Tribunal found that making a declaration to HMRC that under-stated the true value of a property purchase with the result that SDLT was

avoided would be regarded as dishonest by the ordinary standards of reasonable and honest people.

28.12 The Tribunal considered the subjective test. The Respondent was the principal actor in this transaction. He was the buyer, it was his Firm undertaking the work and the Tribunal had rejected the suggestion of an innocent mistake for the reasons detailed above. The Respondent had given no satisfactory explanation to HMRC for the inaccuracy on the form. The Respondent was an experienced solicitor and the Tribunal was satisfied that he knew exactly what he was doing. He had deliberately misled HMRC with the intention of avoiding SDLT that would have been due on the transaction. The evasive way in which he subsequently dealt with HMRC was indicative of the fact that he knew that his conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people.

28.13 The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly in accordance with the Twinsectra test. It followed from that finding that he had lacked integrity and had therefore breached Principle 2. The trust the public placed in the Respondent and in the profession, was seriously diminished by this conduct. The dishonest avoidance of tax would be regarded as offensive, particularly where it had been committed by a solicitor specialising in property matters. The Respondent had therefore breached Principle 6.

The Tribunal's Decision – The Office

28.14 The Respondent had purchased the office for £763,750 and declared £100,000. The declared sum was, again, significantly below the sum he had actually paid such that no SDLT was paid.

28.15 The figure that the Respondent declared was astonishingly low compared to the true purchase price and it was contradicted by all the conveyancing documents, emails with the seller and considerations of VAT.

28.16 The Respondent had explained that it was an arbitrary figure that was used in the completion of the form and it had been intended that it would be corrected before submission. The Tribunal found this explanation to be fanciful and wholly implausible. The Respondent could have put in a figure that was close to the likely purchase price. The far more likely explanation was that the figure was, once again, just below the SDLT threshold of £125,000.

28.17 The Tribunal again considered the question of dishonesty by applying the Twinsectra test. The declaration to HMRC of a figure that represented a fraction of the true price paid would be regarded as dishonest by the ordinary standards of reasonable and honest people.

28.18 The Tribunal considered the subjective test. The Respondent knew that SDLT would be payable on a purchase in the sum of more than £750,000. There was a tangible financial benefit to him of avoiding payment of that tax. The true price was clear on other documents that were not sent to HMRC. The Respondent had, again, not been straightforward in his explanations to HMRC. The Tribunal had rejected the explanation provided by the Respondent to the effect that it was an administrative

error. It was far too convenient that the 'error' had the effect of saving the Respondent more than £30,000. The Respondent knew full well that his actions were dishonest by the ordinary standards of reasonable and honest people.

28.19 The Tribunal was satisfied beyond reasonable doubt that the Respondent had acted dishonestly in accordance with the Twinsectra test. As with the house purchase, it followed from the finding of dishonesty that the Respondent had lacked integrity and had therefore breached Principle 2. The trust the public placed in the Respondent and in the profession, was seriously diminished by the dishonest avoidance of tax, particularly where it had been committed by a solicitor specialising in property matters. The Respondent had therefore breached Principle 6.

28.20 The Tribunal found Allegation 1 proved in full including dishonesty in respect of both transactions.

29. **Allegation 2 - The Respondent did not tell the SRA of the position with HMRC and that it had imposed a penalty on him. By doing so the Respondent breached Principle 7.**

Applicant's Submissions

29.1 The Respondent's case before the Tax Tribunal was that the SRA would take action against him, if his tax penalty was publicised. He therefore took a positive decision to conceal the tax penalty from the SRA, knowing that it was a matter in which the SRA would be interested. He had sought to negotiate with HMRC to the effect that he would accept penalty if HMRC agreed to keep it confidential.

29.2 If the SRA known about the penalty in time to carry out an investigation and other usual processes, the SRA would have investigated this as part of earlier SDLT scheme allegations. It was relevant to those matters and to the Respondent's attitude to his professional obligations.

29.3 The Applicant submitted that the Respondent therefore breached Principle 7 as he had not dealt with the SRA in an open and co-operative manner.

The Tribunal's Findings

29.4 The Respondent had not notified the SRA of the penalty; indeed, he had taken active steps to prevent the SRA discovering that fact including making an application to the Tax Tribunal.

29.5 The Tribunal considered when the duty was imposed on the Respondent. In the case of the house, HMRC had completed a review and sent the conclusions of that review to the Respondent on 5 September 2012, upholding the original decision. That was the very latest point at which the duty to self-report, pursuant to Outcome 10.3 of the SCC 2011, was engaged and would have crystallised.

29.6 In the case of the office, the very latest that the duty to report that penalty was engaged and crystallised was 6 July 2012, this being the date that the Penalty Assessment Notice was served.

29.7 Outcome 10.3 was a clear regulatory obligation and by failing to discharge that duty the Respondent had breached his legal and regulatory obligations to deal with the SRA in an open, timely and co-operative manner as required by Principle 7.

29.8 The Tribunal found Allegation 2 proved in full beyond reasonable doubt.

30. **Allegation 3 - the Respondent's firm continued to promote SDLT avoidance schemes, even though he knew HMRC were penalising him for avoiding SDLT, and even though he originally claimed he had bought one property under an SDLT avoidance scheme. In doing so the Respondent breached Principles 2, 4 and 6.**

Applicant's Submissions

30.1 The Respondent was aware that HMRC was taking action against those who had avoided SDLT as they had penalised him for doing so in the case of the office and the house. The Applicant submitted that the SDLT schemes that Abode operated ran along similar lines as the office and house transactions. The Respondent was the senior partner and was therefore aware that the Firm was using these schemes. The Respondent's service companies made significant profits from these. The Respondent did not ensure that Abode told its clients of the serious risk that they would be found to have under-declared the price of their properties, that they may be subject to a penalty from HMRC and/or could find that HMRC's decision would be published. The Applicant submitted that if the Firm's clients had known about these matters, they may not have used the schemes.

30.2 The Respondent had therefore failed to act with integrity and had failed to act in the best interests of each client. This was inconsistent with behaving in a way which maintained the trust the public had in the profession. In addition, as referred to above, he had acted dishonestly.

30.3 In response to questions raised by the Tribunal, the Applicant confirmed that no documentary evidence of SDLT schemes operating in the Firm had been presented. The Applicant's case was contained in the Rule 5 statement, which contained a statement of truth signed by the author. The Tribunal, while acknowledging that, expressed concern that it was not in a position to test the evidence absent any witness statements from those directly involved in the schemes or documents from client files in relation to those matters. The Applicant confirmed that Allegation 3 was not withdrawn, but the concerns raised by the Tribunal were noted.

The Tribunal's Decision

30.4 The Tribunal noted the submissions contained in the Rule 5 statement and accepted that they were supported by a statement of truth. However, there was no evidential material to link the Respondent to the SDLT schemes that were being referred to in the Rule 5 statement. The statement did not identify clients who utilised such schemes and there was no evidence of advice being provided, or indeed not provided, as to their operation. There were no exemplified transactions which would have enabled the Tribunal to examine the operation of the schemes.

30.5 The Tribunal could not make adverse findings against a Respondent unless it was satisfied beyond reasonable doubt that the misconduct had taken place. In respect of this Allegation there was no evidential material upon which the Tribunal could make such a finding.

30.6 The Tribunal therefore found Allegation 3 not proved.

31. **Allegation 4 - The Respondent failed to comply with notices under a section 44B of the Solicitors Act 1974 dated 22 August 2015 and 10 June 2016. In doing so the Respondent failed to co-operate with the SRA and so breached Principle 7.**

Applicant's Submissions

31.1 The Applicant submitted that the Respondent had failed to comply with notices issued under s44B on two occasions.

31.2 On 22 August 2014 the SRA had sent him a letter asking for a reply by 8 September 2014. The letter included a s44B notice requesting all documentation and accounting records relating to the conveyance of the property subject of the HMRC penalty notice and subsequent proceedings, in the Tax Tribunal.

31.3 The Respondent had replied on 4 September the Respondent seeking an extension until 30 September 2014. The SRA granted him an extension until 12 September 2014.

31.4 On 12 September 2014 the Respondent had replied, stating that he did not have files regarding his house purchase, as these were with the intervention agents. He did not refer to the files relating to the HMRC proceedings. On 8 October 2014 the SRA requested further information by 23 October 2014. The SRA wrote again on 31 October 2014, the Respondent not having replied to the first letter. An extension was granted until 7 November 2014

31.5 The Respondent still did not reply. The SRA had written to the Respondent on 29 December 2014 asking for a reply by 19 January 2015. The Respondent had, again, not replied.

31.6 On 10 June 2016 the SRA served a notice by email on the Respondent asking for the name of the solicitors who had acted for the vendor when he purchased the house and copies of all documents related to the property. The SRA asked for this information to be provided by 27 June.

31.7 The Respondent had not acknowledged the notice or responded. The SRA had sent a follow-up email on 11 July 2016 asking for a reply by 18 July 2016 but again he had not replied.

31.8 The Applicant had submitted that the Respondent had therefore breached Principle 7.

The Tribunal's Decision

31.9 The Respondent had provided an initial response, in the form of a request for an extension of time and the provision of partial information, to the s44B notice dated 22 August 2014. However, after his letter of 12 September 2014 he had not responded to any of the correspondence from the SRA and the material required by the s44B notice remained outstanding.

31.10 The SRA had served a further notice on 10 June 2016 to which it had received no acknowledgement or response.

31.11 The Respondent was under a duty to comply with s44B notices and had manifestly failed to do so. The Tribunal was satisfied beyond reasonable doubt that he had therefore breached his legal and regulatory obligations to deal with the SRA in an open, timely and co-operative manner, in breach of Principle 7.

31.12 The Tribunal found Allegation 4 proved in full beyond reasonable doubt.

Previous Disciplinary Matters

31.13 On 21 April 2016 the Respondent had appeared before the Tribunal for a sanction hearing. This followed the remittance of the case back to the Tribunal from the High Court following an appeal by the SRA against some of the Tribunal's findings. The table below sets out the matters that were dealt with at the sanction hearing.

	Allegation	Tribunal Findings	High Court Findings
1.1	Failure to disclose material information to lender/purchaser clients Failed to act in the best interests of lender/purchaser clients	Omega Planning – failure to disclose material information, failed to act in best interest, act with independence, public confidence – PROVED Nominee/HW/UC schemes – failure to disclose material information – PROVED Lack of Independence – NOT PROVED Lack of Integrity – NOT PROVED	N/A N/A PROVED PROVED
1.2	Acted where there was a conflict or significant risk of conflict	Acted where there was a conflict – PROVED Omega Planning – independence compromised, failed to act in the best interest of client – PROVED	N/A N/A

Allegation		Tribunal Findings	High Court Findings
		Lack of Integrity – NOT PROVED	PROVED
1.3	Failed to obtain written consent of clients where there was a common interest	Omega Planning – independence compromised, failed to act in best interest, conflict of interest, informed consent – PROVED Lack of Integrity – NOT PROVED	N/A PROVED
1.4	Permitted use of one clients funds for the benefit of another without authority	PROVED	N/A
1.5	Failed to keep accounting records properly written up	PROVED – with regard to all the SDLT schemes	N/A
1.6	Allowed the client account to be used as a banking facility	UPS – PROVED	N/A
2.1	Provided prohibited services through separate business	Provided prohibited services – PROVED Omega not a reputable business – NOT PROVED Public Trust – NOT PROVED Lack of Integrity- NOT PROVED	N/A PROVED PROVED PROVED
2.2	Failed to inform clients of interest in separate business	Failed to inform clients of interest – PROVED Acting in best interest, public trust, material information – PROVED Lack of Independence- NOT PROVED Lack Integrity – NOT PROVED	N/A N/A PROVED PROVED
2.3	Failed to ensure compliance with accounts rules	UPS - PROVED	N/A
2.4	Failed to remedy breaches of the accounts rules on discovery	ITS and UPS – PROVED	N/A
2.5	Paid non-client money into office account	UPS – PROVED	N/A

Allegation		Tribunal Findings	High Court Findings
2.6	Failed to deliver bills/written notification of costs to the paying party	UPS – PROVED	N/A
2.7	Withdrew money from client account contrary to SAR	UPS –PROVED	N/A
2.8	Failed to keep accounting records properly written up	UPS – PROVED	N/A
2.9	Failed to appropriately record all dealings with client money	UPS – PROVED	N/A
2.10	Failed to appropriately record dealings with office money	UPS – PROVED	N/A
2.11	Current balance for each client ledger account was not readily ascertainable	PROVED	N/A
2.12	Failed to show the cause of differences in the client bank account reconciliation statement	PROVED	N/A
2.13	Failed to inform clients commissions and/or financial benefits	Failed to inform clients – PROVED Compromised independence, act in best interest, public trust – PROVED Lack of Integrity NOT PROVED	N/A N/A PROVED
3.2	Disposed of confidential client papers in a public waste bin	PROVED	N/A
4.1	Involved themselves in transactions to avoid SDLT in circumstances where the schemes were of a dubious nature	NOT PROVED	PROVED

31.14 The Tribunal had ordered that the Respondent be suspended from practice as a solicitor for the period of 3 years commencing on the 29 September 2015 and it had further ordered that he pay costs in the sum of £5,500.00, such costs to be paid on a joint and several basis with the Second Respondent in those proceedings.

The Tribunal had further ordered that the Respondent be subject to conditions imposed by the Tribunal as follows:-

The Respondent may not:

- Practise as a sole practitioner or sole manager or sole owner of an authorised body;

- Practise as a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other recognised body;

- Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

- Hold client money and not act as a signatory on client account.

Mitigation

32. The Respondent had not presented any mitigation.

Sanction

33. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

34. The Tribunal assessed the level of culpability. The motivation for the misconduct was personal financial gain. It was planned as it had taken place on two separate occasions and the Respondent, who was an experienced practitioner with 15 years of post-qualification experience, had sought to mislead the SRA.

35. The Respondent had direct control and full personal responsibility for the accurate completion of the forms. The Tribunal noted his attempt, in correspondence to HMRC, to pass on his responsibility onto others.

36. In assessing the harm caused, the Tribunal noted that although stamp duty had eventually been paid together with penalties, the initial avoidance would have cost the taxpayer in excess of £50,000. The reputational damage to the profession of a solicitor making a false representation in order to avoid paying taxes was severe.

37. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "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"."

38. In addition, the misconduct had been deliberate, calculated and repeated and continued over a period of time. There was active concealment of wrongdoing and the Respondent clearly knew that he was in material breach of his obligations. He had dissembled as to the nature of his relationship with the Firm and then failed to respond to the section 44B notices which were served after the hearing before this Tribunal in 2014. The Tribunal further noted that the previous matters before the Tribunal took place at a similar period in time to these matters.

39. In mitigation, the Tribunal noted that the Respondent had eventually paid the stamp duty, penalties and interest. However, this mitigating factor was diluted by the fact that he had only paid the penalties under protest and after much argument with HMRC. The Respondent had demonstrated no insight as evidenced by his email to the SRA of 11 September 2014 in which he invited them to take no further action. The Tribunal also noted that the Respondent had not engaged with the proceedings.

40. The misconduct was so serious that it was inappropriate to make no order, impose a reprimand or a fine. There were no restrictions which could be placed on the Respondent's practising certificate which would be sufficient to protect the public from harm or maintain the reputation of the profession. The high level of culpability and harm in this case meant that the only appropriate sanction was the Respondent's removal from practice. The Tribunal considered whether there were any exceptional circumstances such as would enable it to impose a suspension. The Respondent had not presented any and the Tribunal found there to be none. The only appropriate sanction in all the circumstances, having regard to the need to protect the public and the reputation of the profession, was a strike off.

Costs

41. The Applicant applied for costs against the Respondent. The cost schedule totalled £22,772.40. The Applicant invited the Tribunal to make a reduction in the element claimed for attendance at the hearing as it had gone shorter than originally estimated. The Tribunal was invited to carry out a summary assessment of costs.

42. The Tribunal reviewed the cost schedule carefully. It was appropriate to reduce the perusal of papers, review of application and preparation for hearing by 15 hours and to reduce the time claimed for drafting by 7 hours. This better reflected the time that would reasonably have been incurred in preparing for the hearing, particularly in light of the fact that one of the Allegations had not been proved.

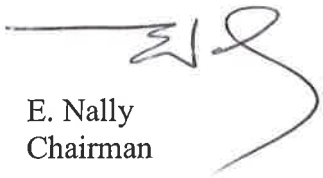
43. The Applicant had invited the Tribunal to reduce the time estimated for the attendance at the final hearing as the matter had taken one day instead of the estimated two days and the Tribunal made the appropriate reduction to take this into account. The appropriate level of costs was therefore £18,020.40, a reduction of £4,752.

44. The Respondent had not filed a statement of means and there was no basis to reduce costs further on the grounds of ability to pay. The Tribunal therefore ordered that the Respondent pay the Applicant's costs fixed in the sum of £18,020.40.

Statement of Full Order

45. The Tribunal Ordered that the Respondent, RICHARD CHAN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

Dated this 2nd day of August 2017
On behalf of the Tribunal



E. Nally
Chairman