

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11724-2017

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEWART STOCKER

Respondent

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Before:

Mr R. Hegarty (in the chair)

Mr P. Lewis

Mrs L. McMahon-Hathway

Date of Hearing: 23 January 2018

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## Appearances

Mr Inderjit Johal, Counsel, employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

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## JUDGMENT

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## **Allegations**

1. The allegations against the Respondent, Stewart Stocker, made by the SRA were that:-
  - 1.1 On 10 January 2017, he:
    - 1.1.1 sent an identity certificate of satisfaction, loan facility letter and legal mortgage over a property to J Solicitors, in which he confirmed that his client (“Mrs F”) had signed the documents in his presence when this was not true;
    - 1.1.2 in respect of the identity certificate of satisfaction, he certified that he had witnessed the execution of legal documents for each borrower (“Mrs F” and “Mr A”) separately and independently of the other, when this was not true;

and in doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011.
  - 1.2 On 10 January 2017, he attempted to mislead J Solicitors by stating that his clients (“Mrs F” and “Mr A”) had both attended his office in person to sign documents, when this was not true as “Mrs F” had not signed the documents in his presence. He thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.
2. Dishonesty is alleged with respect to the allegations at paragraphs 1.1 and 1.2 but dishonesty is not an essential ingredient to prove those allegations.

## **Documents**

3. The Tribunal reviewed all the documents including:

### **Applicant**

- Rule 5 Statement dated 3 October 2017 with exhibit LPT1
- Royal Mail Proof of Delivery on 6 October 2017
- Email from the Applicant to the Respondent dated 13 November 2017
- Email from the Applicant to the Respondent dated 21 November 2017
- Witness Statement of Mr Scott Marshall dated 13 December 2017 with exhibits SM1 – SM3
- Letter from the Applicant to the Respondent by way of Civil Evidence Act Notice dated 18 December 2017
- Applicant’s Statement of Costs as at date of issue on 3 October 2017
- Applicant’s Statement of Costs as at date of final hearing

### **Respondent**

- Email from the Respondent to the Tribunal dated 5 November 2017
- Email from the Respondent to the Applicant dated 16 November 2017
- Letter from the Respondent to the Applicant dated 20 December 2017

## Preliminary Issue

4. The Respondent was not present and for the Applicant Mr Johal made an application for the Tribunal to proceed with the substantive hearing in his absence. He submitted that notice of the hearing had been served on the Respondent within the Standard Directions dated 4 October 2017 at Direction 1.1 which informed him that the dates for the substantive hearing were 23 and 24 January 2017. At paragraph 16 of the Standard Directions he was informed that the Tribunal had discretion to proceed in his absence if he did not attend. Before the Tribunal was a Royal Mail Proof of Delivery document indicating that proceedings had been served on 6 October 2017 and someone called “Ellie” had signed for them. It was not known if she was a relative of the Respondent but this was proof that the documents had been served at his last known address. In his e-mail of 5 November 2017 to the Tribunal, the Respondent had confirmed that he had received the Rule 5 Statement and supporting papers and referred to his understanding that the Tribunal would proceed in his absence. Mr Johal also pointed out that a letter written by the Respondent to the Applicant on 20 December 2017 had been sent from the same last known address at which the documents had been served and so he was still residing there. The Tribunal office had also e-mailed him and the Applicant more recently in 17 January 2018 to inform him that the start time of the hearing had been put back by couple of hours. Mr Johal cited 4 case authorities relating to its power to proceed in the absence of the Respondent. These were R v Hayward, Jones and Purvis [2001] QB 862, CA, R v Jones (Anthony) [2003] 1 AC 1, Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 and General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162 . In deciding whether to exercise its discretion to proceed in the absence of the Respondent, the Tribunal had to be fair to both parties including to the regulator. It had to consider whether the Respondent had waived his right to attend the proceedings, whether an adjournment would be likely to secure his attendance in future, whether it was in the public interest to proceed and the desirability of a substantive hearing taking place within a reasonable time of the events to which it related. The Tribunal also had regard to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rule 2007 which provided:

“If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing.”

The Tribunal was satisfied that the Respondent had been properly served with the proceedings and he had acknowledged that he was aware of the hearing date and indicated that he would not attend and that the matter would proceed in his absence. Thus he had waived his right of attendance. There was no indication that if the Tribunal adjourned the hearing the Respondent would attend at a future date. In all the circumstances the Tribunal determined that it would proceed and hear the substantive application in his absence.

## Background

5. The Respondent was born in 1980 and was admitted to the Roll in 2008. The Respondent no longer held a Practising Certificate.

6. The Applicant's records showed that the Respondent was a member of Lauriston Sagar LLP ("the firm") in London, from 1 July 2015 to 18 May 2017.
7. The Respondent acted for Mr A and his mother, Mrs F, who were borrowers in a property transaction. J Solicitors LLP ("J Solicitors") acted for R Ltd, the company advancing the loan.
8. On 4 January 2017, J Solicitors was instructed by R Ltd in connection with a high-value prospective loan and mortgage in the sum of £945,000. The loan would be advanced by R SPV2 Limited ("R Ltd"), a special purpose vehicle, which was created by R Finance Ltd. The loan term was for 15 months and would be secured by way of a first legal charge over a buy to let property owned by Mr A and Mrs F in Bromley, Kent. The purpose of the loan was for the borrowers to raise funds to enable a company of which both borrowers were officers to purchase a commercial property in London. The company was DF Ltd. Contracts had already been exchanged and completion was due to take place on or before 16 January 2017.
9. J Solicitors sent pre-loan enquiries to the Respondent on 4 January 2017 and the Respondent replied to the enquiries on the same date. The Respondent also advised Mr A that Mrs F would need to sign all documents.
10. On 5 January 2017, J Solicitors sent legal documents to the Respondent relating to the loan and the Respondent sent the documents to Mr A. The documents included a legal charge, certificates and a Facility Letter.
11. On 6 January 2017, the Respondent received a telephone call from Mr A during which Mr A informed the Respondent that Mrs F was still in Nigeria but would be returning the following week. The Respondent recorded in his telephone attendance note that Mr A told him he had sent documents by email to Mrs F to review and sign. The Respondent also recorded in his telephone attendance note that he made Mr A aware that he would need to discuss the terms with Mrs F and that he would need "for them to sign in my presence when she returns next week".
12. On the same date, the Respondent sent an email to J Solicitors attaching various documents. The Respondent also confirmed that he would arrange for his clients to attend his office in order to sign the relevant documentation.
13. On 9 January 2017, R Ltd contacted J Solicitors by email and stated the following:

"Just a quick heads up re Mrs F, we understand she had provided Power of Attorney to her solicitor.  
Given we were expecting to meet Mrs F on site with Mr A we're not comfortable that she is currently overseas. We will require that she signs documentation in the UK with her sols. I'm not clear when she is expecting to arrive back in the UK and will seek clarity. You may wish to update the solicitors accordingly."
14. R Ltd also stated in their email to J Solicitors that they were looking to complete by 16 January 2017 and that they were not comfortable accepting documents signed under a Power of Attorney.

15. J Solicitors received a further email from R Ltd on 9 January 2017 in which they stated:

“Apparently, Mrs F is away due to health. She spends winter in Nigeria as she suffers mobility issues.

She had no intention of returning to the UK hence providing PoA, not until weather warms up here.

Whilst Mr A is aware of our stance he’s asking that we accept docs signed. I’ve spoken with “S” and he is steadfast.

Is there any other way to resolve this? I need to advise the customer and broker.”

16. Mr A returned signed documents to the Respondent on 9 January 2017 and he attended the Respondent’s office to sign the legal charge and facility agreement on 10 January 2017. The Respondent recorded in his attendance note, that Mr A attended his office to sign the legal charge and facility agreement in his presence and that he also brought in originals returned by Mrs F. During this attendance, the Respondent telephoned Mrs F whilst Mr A was in the office and went through the terms of the Facility Agreement and legal charge. The Respondent also recorded in his attendance note that Mrs F and Mr A requested that he send the signed documents to R Ltd’s solicitor and that they both understood that the Respondent would need to see them again to re-execute the documents, when Mrs F returned from Nigeria. It was further recorded in the attendance note Mrs F would be returning the following night.
17. The Respondent sent an email to J Solicitors on 10 January 2017 attaching three legal documents and he confirmed that he would send the originals in the post.
18. The first document was entitled “Identity - Certificate of Satisfaction Witness to Complete”, which the Respondent had signed and dated 10 January 2017. In that document, the Respondent confirmed:
- He was a solicitor.
  - He had witnessed the signing of the mortgage documents in respect of the loan and was satisfied that the persons who signed the said documents were the stated borrowers in the Facility Agreement and Legal Mortgage, and sole legal and beneficial proprietors of the stated securities.
  - He had explained the full nature and effect of the mortgage documentation to Mr A and Mrs F and that they understood the full nature and effect of entering into both the Legal Mortgage and the terms of the Facility Agreement relating to the loan.
  - He had explained the terms and witnessed the execution of the legal documents for each borrower separately and independently of the other with no other party present in the room aside from himself and the individual borrower in each case.
  - He had seen passports, bank statements and a driving licence to assist in identification.

19. The second document was the loan “Facility Letter” dated 5 January 2017, which set out the terms and conditions for the provision of the loan. The Respondent also signed this document confirming that the borrowers (his clients) had signed the document in his presence.
20. The third document was entitled “Legal Mortgage over Property”, which the Respondent signed confirming that the borrowers had signed this document as a deed in his presence.
21. J Solicitors contacted the Respondent on Tuesday 10 January 2017 to ascertain how the documents had been executed. It was recorded in J Solicitors’ file note that the Respondent had said both borrowers attended his office on Monday (9 January 2017). It was also recorded in J Solicitors’ file note that the Respondent, when asked if he had given legal advice to each borrower separately, said that they were both in the office at the same time when he gave advice and that they were not seen separately.
22. On 10 January 2017, R Ltd sent an email to J Solicitors explaining that Mr A had confirmed that his mother, Mrs F, was booked on a flight and would arrive in the UK the following day around 6 p.m. R Ltd also confirmed in their email that Mr A and Mrs F would sign the revised documentation the following day at the solicitors.
23. On 11 January 2017, the Respondent sent an email to J Solicitors in which he stated that as a result of concerns expressed by J Solicitors/their client in respect of the signing of the legal documents, he had asked both Mr A and Mrs F to attend his office the following day at 11 a.m. in order to re-sign the same again in his presence and that he would forward the documents once they had been re-signed.
24. On 12 January 2017, the Respondent sent an email to J Solicitors confirming that his clients would be attending his office “in the next 30 minutes or so to re-execute the legal documentation” in his presence. R Ltd also sent an email to J Solicitors on the same date in which they stated the following:

“...I can only convey what the client confirmed to me on the phone this morning. That the docs were DHL’d to Mum in Lagos, she signed and DHL’d back. Son visited Sols to sign at his solicitor and Mum was on a conference call with Sols and son, not present.

We later insisted she comes back to the UK and a flight was booked and she was ready to meet [J] last night and then to re-sign docs this morning with son at the solicitors.

I think the customers solicitor needs to explain himself/his comments?”
25. Mr A and Mrs F attended the Respondent’s firm on 12 January 2017 and they re-signed the documents. The Respondent returned the re-executed legal documents to J Solicitors by email during the afternoon of 12 January 2017 and by post. The documents consisted of certificates, signed Facility Letter, signed Legal Charge, Solicitors Certificate and certified identification. The Respondent also confirmed in this email that the legal documentation had been re-executed by both of his clients in his presence.

26. On 12 January 2017, J Solicitors recorded in a file note that they received a telephone call from Mr SM, who had attended the Respondent's office with Mr KR. Mr SM was R Ltd's Managing Director and Mr KR was R Ltd's Finance Director. It was recorded in the file note that the Respondent admitted to Mr SM that he had lied to J Solicitors when he confirmed that he had seen both clients, as he had only seen Mr A and witnessed Mr A's signature. It was also recorded that the Respondent appreciated that he had "done wrong" when he confirmed that he had witnessed both signatures. Mr SM also expressed concerns about the transfer of the property into both names and whether Mrs F had received legal advice. As a result, R Ltd were going to consider their position, as they were concerned that the transaction could unravel. In fact, R Ltd did not proceed with the transaction and they informed J Solicitors that they were uncomfortable with a number of factors, including the conduct of the solicitor.
27. On 17 January 2017, J Solicitors reported the Respondent to the Applicant. R Ltd had aborted the loan transaction and J Solicitors expressed concern that the loan documentation was sent to them in their capacity as solicitors acting for R Ltd with a view to completing the loan on a false basis.
28. The Applicant sent a letter to the Respondent on 3 April 2017 and the Respondent's then representative, Jayne Willetts & Co Solicitors replied in a letter dated 28 April 2017. In their reply, Jayne Willetts & Co stated that Mr A had attended the Respondent's office on 10 January 2017 where he brought with him the original documents that Mrs F had signed and returned from Nigeria.
29. The 28 April 2017 letter stated that the Respondent did not accept that J Solicitors' telephone note was an accurate record of the conversation on 10 January 2017. The letter also stated that neither Mr A nor Mrs F attended the Respondent's office on 9 January 2017, as Mr A attended in person on 10 January 2017 and Mrs F by telephone conference. Jayne Willetts & Co further stated that there seemed to have been a misunderstanding as to what was discussed on 10 January 2017.
30. The 28 April 2017 letter stated that whilst the Respondent did not have a note of the telephone conversation on his file, he recalled a very brief conversation with the fee earner at J Solicitors in respect of the transaction in general and the signing of the documentation. The letter further stated:

"[The Respondent] recalls that he said that Mr A had been in his presence when he witnessed his signature but that the advice to Ms F had been given to her by telephone and that she was not in his presence as she was still in Nigeria".
31. The letter also stated that the earlier documents were signed in escrow as a preliminary measure because of tight deadlines and that it was always intended by the Respondent and his clients that the transaction could not proceed without Mrs F being physically present in his office in order to sign the documents. It was also stated on behalf of the Respondent that he did not accept that he had acted dishonestly.

32. The Respondent accepted that with hindsight, he made a mistake in sending the documentation to J Solicitors on 10 January 2017 without a clear indication that the documents had been signed in escrow and that Mrs F would be attending his office the very next day. Jayne Willetts & Co further stated that it was a pre-condition of proceeding to completion for both the Respondent and his clients that Mrs F should attend in person at his office to sign the documents and this pre-condition was fulfilled on 12 January 2017.
33. In relation to Mr SM's and Mr KR's attendance at the Respondent's offices on 12 January 2017, the 28 April 2017 letter stated that the representatives from R Ltd asked the Respondent about the signing of the documents and the Respondent confirmed that the documents had been re-signed that day, as they had previously been signed by Mr A in the office with Mrs F attending by telephone.
34. In a witness statement dated 2 October 2017, Mr "WM" a partner at J Solicitors, who acted for R Ltd, confirmed that his file note was an accurate record of the conversation that he had with Mr SM, R Ltd's Managing Director.
35. In response to the Respondent's claim that the documents were signed in escrow, Mr WM also stated:

"Had I been aware of this it would have rendered the current legal mortgage defective in relation to the female borrower (sic) position as not validly witnessed by a party who actually witnessed her signature. The facility letter would also have not been validly witnessed as required by my client and under the document itself. These legal documents sent to [the Respondent] would have therefore still have had to be signed by her and correctly witnessed by the solicitor in her presence before completion could take place. If the email of the 10 January was sent with this in mind and understood it would have not progressed the transaction any quicker due to the defective nature of the documents supplied and the need for the usual signature formalities to have been completed in relation to the female borrower."

## Witnesses

36. **Mr Warren Martin** (Mr WM) gave evidence. He confirmed the truth of his witness statement dated 2 October 2017. He was a solicitor and a fixed share partner at J Solicitors in Manchester. He had called the Respondent on 10 January 2017 after receiving his email enclosing the three documents. He had made the telephone call because he, his client R Ltd and the broker involved were aware of confusion regarding the whereabouts of the female borrower. He was instructed to contact the Respondent direct to find out who had attended his offices for the execution of the documents, when, and if it was confirmed that they had both attended, if both clients had given been legal advice at the same time in the same room. The Respondent said that both clients had attended on the Monday, 9 January 2017. The witness was 100% sure that this was said because he had asked a secondary question about how they had been advised. The Respondent confirmed that he had seen them both at the same time in his office. This was a very important because in the Identity – Certificate of Satisfaction it was stated that the Respondent had explained the terms and witnessed the execution of the legal documents for each borrower separately and independently



of the other with no other party present in the room. The witness was concerned because it had been understood that the property to be charged was in the possession of both clients for some time but in fact the title had been transferred on 9 September 2016 from the sole name of Mrs F into the joint names of Mrs F and her son Mr A. The transfer was for no consideration. It was of particular concern as to whether Mrs F had been fully advised and so it was important to find out if she had been seen alone by the Respondent because it was felt that there might be some kind of influence over her. During the conversation, when asked to confirm that he had met the clients separately the Respondent said that it was not the case; they were seen together in his office. The witness recorded this in his file note of 10 January 2017. He had dictated the note almost straight after the telephone conversation that afternoon but it took a couple of days to be typed up. He stood by the accuracy of the note. The witness was referred to his statement where he recorded that he had received a telephone call from Mr SM the Managing Director of R Ltd on the afternoon of 12 January 2017. The witness stated that this was on Thursday of that week and so things had moved on. In the days between the witness's conversation with the Respondent on 10 January 2017 and the telephone call, Mr SM had been in London for another appointment and decided to attend Respondent's offices unannounced to clarify the position regarding Mrs F. The witness stated that he had said that this was not necessarily the right thing to do as she was someone else's client but Mr SM visited and had a meeting with the Respondent. The witness was told there had been a frank conversation with the Respondent. His conversation with Mr SM was one-sided; the witness just listened to what was said. It was for Mr SM to consider where what happened had left them and their conversation ended. The witness confirmed the accuracy of his file note recording the conversation with Mr SM. The witness was at home when he received the call because he was not well and it was made between mobile phones. He remembered that Mr SM conveyed the position that only the male borrower had ever attended the Respondent's office for the execution of the documents. The documents had been sent to Mrs F not by e-mail but by DHL and then made their way back with the signatures. The witness stated that he probably dictated the file note on the following day, Friday. That day he had also received the second set of documents from the Respondent save that in accordance with his instructions to the Respondent he was only sent a certified copy of the legal charge, the charge being retained for registration.

37. **Mr Scott Marshall** (Mr SM) gave evidence. The witness was the Managing Director of R Ltd trading as R Finance. He confirmed the truth of his statement dated 13 December 2017. The witness was referred to his statement where he described meeting with the Respondent at his office on 12 January 2017. He had visited the Respondent because he had made enquiries about loans obtained by Mr A. R Ltd was a member of National Hunter group which enabled the witness to speak to underwriters at other firms. He was suspicious and had spoken to the head of underwriting at a mortgage company with which Mr A was an existing customer and he seemed to be paying his mortgage. Due diligence took place. The witness spoke to another lender who had previously provided a loan to Mr A and his contact there confirmed that there was nothing untoward. He also spoke to the lender which was to provide the balance of the purchase price of the property which Mr A and Mrs F were to buy. Everything checked out. The witness was in London in any event for a board meeting of the Association of Short Term Lenders ("ASTL") on 12 January 2017. There were alarm bells because the loan was to be secured on an unencumbered buy

to let property which was a big risk area for fraud. (The witness said in his statement that this was a risk particularly where there was a recent transfer or undervalued transaction showing on the Land Registry office copies that is less than six months before a lending transaction.) The property had been in the sole name of the mother Mrs A but recently transferred to joint names for no consideration. The witness did not understand the background to the transaction. He had to make sure that if he was lending to mother and son she was fully aware of what was going on. In his witness statement, the witness said that R Ltd limited had instructed an agent (JN) to meet with the borrowers with their original documents at their home address. His agent had telephoned to check that both clients would be present. Only the son turned up; the agent was told that Mrs F was overseas in Nigeria and had been for a time. The witness therefore had conflicting information; another lender said that Mr A was acceptable as a customer but the transaction rang alarm bells. The witness had already been told that the customers had purportedly on Monday or Tuesday of that week been in the Respondent's office but the agent had been told that Mrs F was away. This was an important transaction; it was R Ltd's biggest deal to that point. They had to be sure if this was a genuine transaction. There was concern about the transfer of the property to be charged into joint names; there was concern that it was unencumbered and Mrs F was supposed to be at the meeting with R Ltd's agents but didn't turn up whereas they were informed that both borrowers had attended their solicitor's office. The witness wished to grow the business so he wanted to see if he could make the deal happen.

38. The witness stated that while he was at the ASTL meeting he telephoned the Respondent to ask if he (and a colleague, the Finance Director) could come and the Respondent agreed. They attended at around 4 p.m. The witness suspected that the premises were a service office. They asked for the Respondent at reception but rather than being shown to his office, or a boardroom they were shown to a communal kitchen in the basement with a bar stool and table. They proceeded to check what had happened leading up to that point. The Respondent told them that the mother Mrs F was not present in his office and that he was sorry that he had not told the truth. He was sweating and nervous. He told them that the documents were e-mailed to Mrs F in Nigeria; she printed them out and went to a public notary (to swear them) and the documents were then DHL'd back to the Respondent's offices and the son came in and the Respondent witnessed when the son signed the documents. The witness had some uncertainty about the various dates before his meeting with the Respondent because he was unable to retrieve them from his electronic diary that far back. The witness stated that he wished to see if the transaction could go through and he asked for a copy of the DHL airway bill and the Respondent promised to send him a copy (but did not do so). The witness then went into a corner of the room with the Finance Director and called Mr WM, R Ltd's solicitor. The witness told Mr WM exactly what the Respondent had said to him and the Finance Director. Mr WM had said that they should not be involved in the matter at all, the borrowers' lawyer had lied to them and they should walk away. They made the decision at that point not to proceed but did not tell the Respondent. The witness said that he looked forward to receiving an e-mail from the Respondent and they then left the building.

## **Finding of Fact and Law**

39. 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.

40. **Allegation 1.1 - On 10 January 2017, he [the Respondent]:**

**1.1.1 sent an identity certificate of satisfaction, loan facility letter and legal mortgage over a property to J Solicitors, in which he confirmed that his client ("Mrs F") had signed the documents in his presence when this was not true;**

**1.1.2 in respect of the identity certificate of satisfaction, he certified that he had witnessed the execution of legal documents for each borrower ("Mrs F" and "Mr A") separately and independently of the other, when this was not true;**

**and in doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011.**

**Allegation 1.2 - On 10 January 2017, he [the Respondent] attempted to mislead J Solicitors by stating that his clients ("Mrs F" and "Mr A") had both attended his office in person to sign documents, when this was not true as "Mrs F" had not signed the documents in his presence. He thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.**

**Allegation 2 - Dishonesty is alleged with respect to the allegations at paragraphs 1.1 and 1.2 but dishonesty is not an essential ingredient to prove those allegations.**

40.1 For the Applicant, Mr Johal submitted that in respect of the allegation of dishonesty the test which the Applicant applied was now that set out in Ivey (Appellant) v Genting Casinos (UK) LTD t/a Crockfords (Respondents) [2017 UKSC 67] rather than the case law referred to in the Rule 5 Statement. The Applicant had written to the Respondent informing him of the development. The Tribunal noted that effectively the Rule 5 Statement was being amended to substitute the latest test for dishonesty for that set out in the Statement. Mr Johal submitted that there had been no formal answer to the allegations filed by the Respondent but by e-mail dated 16 November 2017 the Respondent had denied the allegations. This had occurred subsequently to his e-mail dated 5 November 2017 to the Tribunal in which he had stated that he had decided that he would "not defend or challenge" the Rule 5 Statement and supporting documents. In a letter dated 20 December 2017 which was a response to a letter of the Applicant dated 18 December 2017 constituting a Civil Evidence Act notice, the Respondent had gone through each paragraph of the Rule 5 Statement and said whether he agreed it or not. The Tribunal would have to decide whether it could accept his admissions. The Applicant was not sure if he intended to admit the allegations by way of that letter. The Tribunal determined that it would treat the allegation of dishonesty as denied. The Applicant

accepted that in any event it had to prove all the allegations and Mr Johal indicated that he would do so on the basis that all allegations were denied. The Applicant had written to the Respondent asking him to clarify his position but he had not responded.

- 40.2 Mr Johal referred to the background facts to the application which are set out in the Factual Background section of this judgment above. Time was pressing for completion of the loan to take place and Mr Johal submitted that it was clear to the Respondent that he had to witness the signatures of both his clients in his presence. This was apparent from his telephone note dated 6 January 2017 when he recorded attending Mr A in the following terms:

“Made me aware that [Mrs A] is still in Nigeria but will be returning next week.

He informed me that he e-mailed documents to her to review and sign. I made him aware that I will need to discuss the terms with her and that upon reviewing the same will need for them to sign in my presence when she returns next week...”

In an e-mail dated 6 January 2017, the Respondent informed Mr WM that he would arrange for his clients to attend his office in order to sign the relevant documentation. On 10 January 2017, the Respondent witnessed the signatures of both his clients on the loan and mortgage document when only Mr A was in his office and Mrs F was in Nigeria. In an attendance note of 10 January 2017 the Respondent recorded:

“[Mr A] at 11:00am

[Mr A] attended office to sign the legal charge and facility agreement in my presence. He brought in originals returned to him by Mum.

Called [Mrs F] whilst [Mr A] in the office and went through the terms of the facility and legal charge and she understood the same.

Both [Mrs F] and [Mr A] requested me to send the signed documents to [R Ltd’s] Solicitor at this stage. They both understood that I will need to see them again this week when [Mrs F] returns from Nigeria to re-execute the documents. I was told that [Mrs F] would be returning tomorrow night.”

Mr Johal submitted that the Respondent returned the completed documents by e-mail to Mr WM on 10 January 2017 informing him that the originals were in the post and asking him to confirm that all requirements were now satisfied.

- 40.3 Mr Johal took the Tribunal to the relevant documents. The Identity – Certificate of Satisfaction included at paragraph 3:

“I have witnessed the signing of the mortgage documents in respect of the above loan and I am satisfied that the person (sic) who signed the said documents are the stated borrowers in the Facility Agreement and Legal Mortgage and sole legal and beneficial proprietors of the above stated securities.

...

... I confirm that I explained the terms and witnessed the execution of the legal documents for each borrower separately and independently of the other with no other party present in the room aside from myself and the individual borrower in each case.”

The document was signed by the Respondent and dated 16 January 2017 when Mrs F was in Nigeria and so this statement was clearly not true. The loan facility letter document was also before the Tribunal. It again had been witnessed by the Respondent and both clients’ signatures were witnessed as having been signed in his presence. The Legal Mortgage was stated to have been signed as a deed in the presence of the Respondent who again had witnessed both signatures on that basis. Mr Johal submitted that Mr WM decided to telephone the Respondent on 10 January 2017 to confirm how the documents had been executed. R Ltd was concerned about the possibility of undue influence being exercised over Mrs F because of the recent transfer of the property to be mortgaged from her sole name to joint names with her son Mr A and R Ltd wanted to be sure that the Respondent had advised his clients separately. A file note made by Mr WM on 10 January 2017 recorded his conversation with the Respondent and included:

“He said that both borrowers attended his office but it was on Monday and he just hasn’t had the time to send it over until Tuesday afternoon... He said they were both in the office at the same time and were not seen separately...”

Mr Johal submitted that the Monday referred to was the day before the note was drafted 9 January 2017. Mr Johal submitted that the Respondent in his 20 December 2017 letter disputed that he had said the clients were both in his presence. On 11 January 2017, Mrs F returned to the UK at R Ltd’s insistence. Both clients attended the Respondent’s offices on 12 January 2017 to re-execute the documents and then they were sent to R Ltd. On that same day 12 January 2017, Mr SM the Managing Director of R Ltd and Mr KR its Finance Director attended the Respondent’s offices and had a conversation with him during which the Respondent admitted he had lied to Mr WM when he said that both clients had signed in his presence. It was not clear if the Respondent disputed that evidence but Mr Johal relied on the evidence of Mr WM about the conversation. After their meeting with the Respondent Mr SM called Mr WM who recorded in a file note dated 12 January 2017 details of the conversation, specifically the Respondent’s admission to Mr SM and Mr KR that he had lied to Mr WM. The file note included:

“He said that he lied when he came back to WM confirming that he has seen both and he had only seen the male borrower.”

- 40.4 Mr Johal submitted that R Ltd decided not to proceed with the loan because of the Respondent’s conduct. By letter dated 17 January 2017, Mr WM complained to the Applicant about the Respondent’s conduct. The Applicant sent an “Explanation With Warning” letter to the Respondent on 3 April 2017 and it was to this letter that Jayne Willetts & Co Solicitors replied on 28 April 2017 as referred to in the Factual Background to this judgment. The Respondent denied the allegations and

claimed that he had sent documents on 10 January 2017 to Mr WM in escrow making the mistake of not making that clear. He denied that he had told Mr WM that he had said that both clients had been in his presence. Mr Johal clarified for the Tribunal that it was not part of the Applicant's case whether Mrs F ever attended the Respondent's offices but it understood that that was what had happened. Mr Johal referred the Tribunal to the Rule 5 Statement and the evidence including the oral evidence of Mr WM and Mr SM who were witnesses of truth whose evidence had been frankly given.

- 40.5 The Respondent was not present at the hearing but the Tribunal had before it written communications which he had sent either to the Applicant or to the Tribunal. It also had regard to the letter dated 28 April 2017 written by Jayne Willetts & Co for the Respondent and to his e-mail to the Tribunal of 5 November 2017 in which he said:

“I confirm that I have received the Rule 5 Statement together with supporting documents from the Solicitors Disciplinary Tribunal. However, I have decided that for my own health reasons I will not defend or challenge the same. I do want have on record that I maintain that there has not been any blatant dishonesty on my part, although I can understand that my actions were not clear and with the benefit of hindsight can see this.”

In his e-mail of 16 November 2017, the Respondent stated:

“I confirm that I do not admit any of the allegations at paragraphs 1.1, 1.2 and 2 of the Rule 5 Statement.”

In his letter of 20 December 2017 to the Applicant, he responded paragraph by paragraph to the Rule 5 Statement, stating regarding paragraphs 1.1.1, 1.1.2 and 1.2 “This is agreed” and regarding paragraph 2:

“This is not agreed. I maintain that though my actions were (sic) they were not dishonest (sic).”

Regarding the e-mail which J Solicitors received from R Ltd on 9 January 2017 in which they referred to Mrs F being away in Nigeria, the Respondent stated in the 20 December 2017 letter:

“I agree that Mrs F was in Nigeria. However, my understanding (sic) that she was always to return to the UK to sign the documentation in person as required....”

He also stated regarding Mr WM's telephone call to him on 10 January 2017:

“It is agreed that I spoke to J Solicitors but disagree that I said that both were in my physical presence as Mrs F was not when signing her documentation.”

Regarding his meeting with Mr SM and Mr KR the Respondent stated in his 20 December 2017 letter:

“It is agreed that SM and KR turned up at my office unannounced and without any prior appointment. I confirmed to SM and KR that there had been a misunderstanding regarding my conversation with J Solicitors and further confirmed that Mrs F had been given advice by me through a telephone conference. Mrs F has always been thoroughly represented during her transactions and refute (sic) any allegations that have been made by SM in this regard.”

40.6 In concluding the letter of 20 December 2017, the Respondent wrote:

“Though inexcusable, my workload following Christmas 2016 was unmanageable and my mental health had been suffering for a number of months prior to the date of this allegation. In hindsight, my thinking was not clear and should not have (sic) allowed myself to be pushed to witness Mrs F without her being in my actual presence. I would like to state that I maintain that there was not any malicious or blatant dishonesty or any conspiracy to defraud whatsoever.

I agree that my actions were not the standard of a solicitor and regret immensely that I am in this position which has been both personally and professionally upsetting and damaging. I would urge for the fact that I have today had a clear record to be taken (sic) into account. I have also ceased to work in the legal profession since May 2017.”

40.7 The Tribunal considered the evidence including the oral evidence and the submissions for the Applicant. The Respondent was not present at the hearing but the Tribunal had before it written communications which he had sent either to the Applicant or to the Tribunal. Generally the Tribunal noted that the Respondent’s letter dated 20 December 2017 was the most comprehensive response and preferred it to the version of events that he had given in a letter from his then legal representative on 28 April 2017.

40.8 In respect of allegation 1.1.1 and his confirmation in the documents sent by the Respondent to R Ltd’s solicitors that Mrs F had signed the three documents in his presence when this was not true, the Respondent’s position had changed regarding the allegations except that of dishonesty which he denied throughout. In his e-mail dated 5 November 2017 Respondent said he would not defend or challenge the Rule 5 Statement and supporting documents. In his e-mail dated 16 November 2017 he confirmed that he denied all the allegations. In his letter of 20 December 2017 he accepted that Mrs F was in Nigeria at the material time. The Tribunal found that Mrs F was not present or even in the country when the Respondent witnessed her signature on the three documents and so he could not possibly have witnessed a signature written in his presence. The Tribunal found the facts underlying allegation 1.1.1 to be made out and that by his actions the Respondent had been in breach of Principle 2 requiring a solicitor to act with integrity and Principle 6 requiring a solicitor to behave in a way which maintains the trust the public places in a solicitor and in the provision of legal services and therefore the Tribunal found allegation 1.1.1 proved to the required standard on the evidence.

- 40.9 In respect of allegation 1.1.2 where it was alleged that the Respondent certified on the Identity Certificate of Satisfaction that he had witnessed the execution of legal documents for each borrower separately and independently when this was not true, the Respondent admitted in the 20 December 2017 letter that Mrs F was not present when he witnessed this document and the Tribunal was satisfied that in his telephone conversation with Mr WM he suggested that she was present and in the room at the same time as her son and so in any event his certification was wrong. The lenders were particularly concerned that this requirement of separate advice should be fulfilled because there was concern that there might have been duress in respect of Mrs F. In his 20 December 2017 letter, the Respondent accepted that he had breached Principles 2 and 6 and he agreed the facts as alleged. Furthermore the Tribunal had heard evidence from the witnesses that he had admitted to them that Mrs F was not present and it was known that the reason was she was not in the country. The certification was therefore wrong that the clients were separately and independently advised. The Tribunal was satisfied that by his actions that the Respondent had breached Principles 2 and 6. The Tribunal found allegation 1.1.2 proved on the evidence to the required standard.
- 40.10 In respect of allegation 1.2 relating to the Respondent's telephone conversation with Mr WM, the Tribunal found that the Respondent had assured Mr WM that both clients had attended in person to sign the documents when Mrs F was not in the country and could not possibly have attended his office. The Respondent said that he did not recollect the conversation but the Tribunal had heard the evidence of Mr WM and it accepted his evidence that the conversation took place. In one of his communications the Respondent agreed with the allegation but in the letter from Jayne Willetts & Co it was stated that on Tuesday, 10 January 2017 the Respondent did:

“recall a very brief conversation with [WM] at [J] Solicitors in respect of the transaction in general and the signing of the documentation [The Respondent] recollects that he said that Mr [A] had been in his presence when he witnessed his signature but that the advice to Mrs [F] had been given to her by telephone and she was not in his presence as she was still in Nigeria.”

The letter continued that the next day when he received a voicemail from the mortgage broker stating that J Solicitors had raised a concern regarding the signing of the documentation and whether Mrs F had been in his presence when she signed it, the Respondent assumed that there was a misinterpretation of his conversation with J Solicitors and he sent an e-mail to Mr WM late that evening to confirm that both clients were attending his office at 11 a.m. the next day 12 January 2017 so they could both sign the documents whilst in his presence. The Tribunal found that the two witnesses who had given evidence were credible and that their evidence apart from some minor and unimportant variations was consistent. Mr Marshall stated that he had called the Respondent before visiting him but had not referred to it in his statement but this was not an issue of substance. The Tribunal found that allegation 1.2 was proved on the evidence to the required standard.



## Dishonesty

40.11 In respect of the allegation of dishonesty allegation 2, earlier authorities for the test for dishonesty to be applied in the Tribunal had been set out in the Rule 5 Statement but had now been overtaken by the decision of the Supreme Court in the case of Ivey. The Applicant had alerted the Respondent to the test upon which it would base its allegation of dishonesty at the hearing and the Tribunal confirmed that it was following the Ivey case. At paragraph 74 of the Ivey judgment it was stated:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable, the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the Fact-Finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

At the conclusion of his evidence, Mr SM had begun to express additional concerns about the case. The Tribunal and indeed Mr Johal informed the witness that what he wished to add did not form part of the case against the Respondent which the Tribunal had to determine.

40.12 The Tribunal noted that the Respondent had been pushed into a corner, taking over a matter in which completion had already been fixed and there was pressure to meet the date. He was aware that Mrs F was not in the country and he gave certifications and information to the contrary. Once he was questioned he took steps to have the documents re-executed with Mrs F attending his office. The Tribunal took this to indicate that he was aware that he should not have acted as he did. The Respondent had accepted what he had done in his letter of 20 December 2017 but he continued to deny dishonesty. However he had not provided any evidence to support his version of events which was, in respect of allegations 1.1.1 and 1.1.2, that the documents had been sent to J Solicitors in escrow because of time pressures. The Tribunal could not determine the relevance of escrow to the situation. The Respondent sent three documents to J Solicitors attesting the documents on bases which were not true. In respect of allegation 1.2, the Respondent asserted that there had been a misunderstanding between him and Mr WM in a telephone conversation on 10 January 2017. The Tribunal had found as a fact that Mr WM’s version of the conversation was correct and that there had not been any misunderstanding on his part. So again the Respondent had made an untrue statement. Ordinary decent people would consider such conduct to be dishonest. The Respondent simply said that there had not been any “blatant dishonesty” on his part whatever that might mean. The Tribunal found the allegation of dishonesty proved on the evidence to the required standard in respect of both aspects of allegation 1.1 and allegation 1.2 and therefore found allegation 2 proved.

### **Previous Disciplinary Matters**

41. None.

### **Mitigation**

42. The Respondent was not present to offer any formal mitigation but the Tribunal noted that in his e-mail 5 November 2017 to the Applicant he had stated that he had not been practising as a solicitor or been working in the legal profession since resigning and leaving his last firm on 16 May 2017 and had decided to come out of the legal profession altogether. In his letter of 20 December 2017, he offered what amounted to personal mitigation in the final two paragraphs of the letter which are quoted above and where he asked the Tribunal to take into account that he had a clear record to date.

### **Sanction**

43. The Tribunal had regard to its Guidance Note on Sanctions. The Tribunal assessed the seriousness of the Respondent's misconduct. The Tribunal considered that the Respondent was fully culpable for what he had done. It appeared that his motivation was to complete the property purchase for his clients in time. His misconduct was spontaneous rather than planned; these were existing clients for whom he had conducted 14 other transactions and they wanted the documents in this one passed to the other side urgently. The Respondent acted in breach of a position of trust in that he was trusted by the lender which had a reasonable expectation, although they were not his clients, that as a solicitor he would execute the documents with his clients in the manner that they prescribed. The Respondent had direct control of and responsibility for the circumstances which gave rise to the misconduct. He was quite an experienced solicitor admitted in 2008. The Tribunal had not been presented with any evidence of financial harm; the loan transaction did not proceed. However considerable harm had been caused because activity such as this was harmful to the whole conveyancing system and to the reputation of the profession. The harm was reasonably foreseeable; the Respondent must have been aware that as a result of his actions the mortgage could have completed based on a falsehood. As to aggravating factors, dishonesty had been found proved and the Respondent repeated his misconduct, having given a false attestation on the three documents, the subject of allegation 1.1 he then attempted to mislead J Solicitors by what he told Mr WM on the telephone. There was also concealment of the wrongdoing. He ought reasonably to have known that his conduct was in material breach of obligations to protect the public and the reputation of the legal profession. The main harm was to the reputation of the profession. As to mitigating factors, the Respondent had a previously unblemished career and the misconduct related to one transaction only. The Respondent showed a certain amount of insight in that he told Mr SM that what he had done was wrong, that the clients were coming in the following day to re-execute the documents and he said that he was sorry. In his letter of 20 December 2017, the Respondent referred to his conduct as "inexcusable" but one could not say that he had made open and frank admissions at an early stage or shown any real degree of cooperation with the Applicant as he had changed his position as the case proceeded. The Tribunal considered that this conduct was far too serious for no order, a reprimand or a fine or even for a period of suspension and/or restriction. As the

Guidance Note on Sanctions indicated the most serious misconduct involved dishonesty and a finding that an allegation of dishonesty had been proved would almost invariably lead to striking off save in exceptional circumstances. The Respondent had made reference in his 20 December 2017 letter to his mental health having suffered but he had produced no medical evidence and the Tribunal could find no exceptional circumstances so that striking off was an appropriate and proportionate sanction.


### Costs

44. Mr Johal applied for costs to be awarded to the Applicant in the amount of £7,272.00. His schedule of costs totalled £7,805.70 but he had reduced it to take account of the shorter than estimated hearing time. The Respondent had been invited in the Standard Directions to submit a statement of means if he wished them to be taken into consideration but had not done so. The Tribunal considered the Applicant's statement of costs as at the date of issue on 3 October 2017 and the updated statement as at the date of this hearing. The earlier statement included 18.5 hours work by the Applicant covering reviewing documents (3 hours 30 minutes), drafting the Rule 5 Statement (13 hours) and preparing exhibits to the Rule 5 Statement (2 hours). The Tribunal considered this time to be excessive and reduced it to 8 hours including 4 hours 30 minutes for drafting the Rule 5 Statement and preparing the exhibits. The total amount awarded in respect of the earlier statement of costs was therefore £2,042.00. In respect of the statement of costs as at the date of final hearing, the Tribunal reduced the amount of time taken to prepare one of the witness statements, reviewing documents and considering documents received from the witness from 4 hours to 3 hours to be consistent with the amount claimed in the statement of costs at date of issue for the other witness statement and reduced the advocate's time for preparing for the hearing from 7 hours to 3 hours. As Mr Johal pointed out a reduction also had to be made for time attending the hearing from 7 hours to 4 hours. Overnight accommodation for witnesses would no longer be required as the matter was concluded in one day. The Tribunal awarded costs to the Applicant in the amount of £4,980.00.

### Statement of Full Order

45. The Tribunal Ordered that the Respondent, Stewart Stocker, 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 £4,980.00.

Dated this 8<sup>th</sup> day of February 2018  
On behalf of the Tribunal

  
R. Hegarty  
Chairman

Judgment filed  
with the Law Society  
on 09 FEB 2018