

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11816-2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

RICHARD GREGORY BARCA

Respondent

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**Before:**

Mr J. P. Davies (in the chair)

Mr J. Evans

Mrs L. Barnett

Date of Hearing: 8-9 January 2019

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**Appearances**

Yash Bheeroo, Counsel of 3 Verulam Buildings, Gray's Inn, London, WC1R 5NT for the Applicant.

The Respondent appeared and was represented by Geoffrey Williams QC of Farrar's Building, Temple, London, EC4Y 7BD.

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**JUDGMENT**

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## Allegations

1. The allegations against the Respondent were that:

1.1 The Respondent acted in an own interest conflict or where there was a significant risk of an own interest conflict in respect of his client, Mrs JWB, in circumstances where he loaned her £27,000 through his company Safechase Ltd, at an annual interest rate of 60%, the loan being secured by a legal charge over Mrs JWB's property. Mrs JWB defaulted on repayment of the loan which led to the Respondent obtaining possession of the property and selling it from which he received £76,564.30 from the proceeds of sale.

Consequently, the Respondent took unfair advantage of Mrs JWB and acted in breach of all or alternatively any of:

1.1.1 up until 5 October 2011, Rules 1.02, 1.03, [withdrawn], 1.06 and 3.01 of the Solicitors Code of Conduct 2007 and;

1.1.2 from 6 October 2011 acted in breach of Principles 2, 3, [withdrawn] and 6 of the SRA Principles 2011 and Outcomes [withdrawn] and 3.4.

1.2 The Respondent made the following misleading claim in a witness statement dated 14 January 2014 which was served in litigation bought by R Solicitors on behalf of their client Mr O and in which they sought to contest the validity of a legal charge over Mrs JWB's property which was made in favour of the Respondent's company, Safechase:

“the charge was registered in respect of a loan made to Mrs JWB at her request and at a time when I did not act for her in any capacity”

That claim was misleading as the Respondent was acting for Mrs JWB in defending possession proceedings at the time that he made the loan to her and at the time that the legal charge was registered.

1.2.1 Consequently the Respondent acted in breach of all or alternatively any of SRA Principles 1, [withdrawn] and 6 and [withdrawn].

1.3 The Respondent acted on behalf of Mr K in litigation on the instructions of a third party without ever confirming those instructions with Mr K and without seeing any written authority from Mr K that he could act on the instructions of the third party.

1.3.1 Consequently the Respondent breached all or alternatively any of Principles 4, 5 and [withdrawn] of the SRA Principles 2011 and [withdrawn].

1.4 [Withdrawn].

The Respondent admitted all the allegations.

## Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

### Applicant:

- Application dated 23 April 2018 together with attached Rule 5 Statement and all exhibits
- Applicant's Statements of Costs dated 23 April 2018 and 18 December 2018

### Respondent:

- Witness Statement of Richard Gregory Barca (the Respondent) dated 14 December 2018
- Various Character References
- Statement of Estimated Assets and Liabilities in bankruptcy of Mrs JWB

## Preliminary Issues

### Application to Withdraw Allegations

3. Mr Bheeroo confirmed there had been discussions between the parties during the first morning of the hearing and as a result of this, the Applicant sought to withdraw certain allegations, details of which were provided to the Tribunal. These related to withdrawing breaches of particular pleaded Rules, Principles and Outcomes, and also the withdrawal of an allegation of dishonesty. Mr Bheeroo confirmed that the Respondent had agreed to make admissions to the remaining Rules, Principles and Outcomes and that the Applicant accepted these pleas.
4. Mr Williams QC, for the Respondent confirmed this was the agreed position.
5. The Tribunal considered carefully all of the documents before it, including the Respondent's witness statement dated 14 December 2018, and bore in mind that it was an independent Tribunal acting in the public interest. The Tribunal considered the nature of the allegations that were sought to be withdrawn, and also considered the admissions which the Respondent had made together with the explanations given in his statement. The Respondent had admitted breaching Rules 1.02, 1.03, 1.06 and 3.01 of the Solicitors Code of Conduct 2007. He also admitted breaching Principles 1, 2, 3 and 6 of the SRA Principles 2011 and Outcome 3.4.
6. Having given all these matters consideration, the Tribunal concluded that those allegations which were withdrawn had been appropriately withdrawn in light of the admissions made and the explanations given in the Respondent's witness statement. The Tribunal was satisfied that it was in the public interest to allow the withdrawal of allegations as sought by the Applicant and granted the application.

### **Factual Background**

7. The Respondent, born in 1955, was admitted to the Roll on 15 July 1986.
8. The Respondent was a Member of Wilson Barca LLP of Carlisle Buildings, 18 Carlisle Street, London, W1D 3BX (“the firm”).
9. Following receipt of a complaint from R Solicitors about an own interest conflict existing between the Respondent and his client, Mrs JWB, the SRA carried out an investigation at the firm which began on 7 March 2016.
10. A Forensic Investigation Report dated 6 June 2016 was produced which recorded that in January 2011 the Respondent loaned his client Mrs JWB £27,000 through his company, Safechase Ltd (Safechase) at a time when he was also defending her in possession proceedings.
11. Mrs JWB was in financial difficulties at the time and was facing possession proceedings bought by her mortgage lender. The terms of the loan were onerous and the Respondent failed to ensure that Mrs JWB took independent legal advice in respect of it. Mrs JWB defaulted on the loan repayments and Safechase repossessed her house as mortgagees in possession in December 2012. Safechase sold Mrs JWB’s house in January 2014 for £235,000. From this amount the Respondent received £76,864.30.
12. In 2012 the Respondent acted in defending Mrs JWB in respect of a Judgment debt which had led to an application for an interim Charging Order over her house in favour of Mr O, her brother. The Respondent was unsuccessful in defending Mrs JWB. Mr O, through his solicitors, R Solicitors, obtained a final Charging Order but this ranked below Safechase’s Legal Charge which had been registered in 2011. In the litigation brought by R Solicitors, they sought to challenge the validity of Safechase’s Legal Charge.
13. Having obtained the Respondent’s client files in respect of the litigation brought by Mr O against Mrs JWB, it became apparent to the SRA that the Respondent had claimed in a witness statement that he had not acted for Mrs JWB in any capacity when he had loaned her the £27,000. The witness statement was filed with the Croydon County Court and served on R Solicitors.
14. In June 2015, the SRA received a complaint by Mr K that the Respondent had acted for him in litigation without his knowledge. The Respondent had acted in litigation brought by JF Ltd against Mr K in respect of an outstanding debt. The proceedings led to a judgment against Mr K on 19 June 2013 for £67,777.41 and a Charging Order on his house in March 2015. Mr K only discovered that the Respondent acted for him in early 2015 and had to pay £75,000 to remove the charge. The Respondent had taken instructions in respect of the litigation from a Mrs PS, the Respondent’s sister.

#### Allegation 1.1

15. In January 2011 Mrs JWB was facing possession proceedings brought by Santander in respect of her home at S Road. E Solicitors acted for Santander.

16. In 2007, a Suspended Possession Order had been made against Mrs JWB and she had again fallen into arrears in respect of her mortgage payments.
17. At a Court hearing on 10 January 2011 Mrs JWB had been ordered to pay all her outstanding arrears by 14 January 2011. She was in arrears in the amount of £22,585.73.
18. Mrs JWB instructed the Respondent to act on her behalf in or around 13 January 2011, when she gave him permission to contact Santander and E Solicitors to speak to them about her arrears.
19. The Respondent wrote to Santander on 13 January 2011 informing them that he had been instructed by Mrs JWB. He asked for information and requested that they extend time for payment under the Suspended Possession Order until 17 January 2011.
20. Mrs JWB also owed FC the sum of £3,156.55.
21. On 13 January 2011 Santander agreed to extend the time limit for payment until 17 January 2011. The Respondent subsequently agreed to loan Mrs JWB the sum of £27,000 which was to go towards paying the outstanding arrears on her mortgage and the outstanding monies to FC.
22. Although there was no separate loan agreement, the loan was evidenced in a Mortgage Deed dated 17 January 2011 between Mrs JWB as mortgagor and Safechase as mortgagee. The Respondent was the sole director and shareholder of Safechase. The address of the company was the same as the firm.
23. The clauses of the Mortgage Deed included the following:
  - The mortgagee agreed to lend the client £27,000 in return for a second Legal Charge on the property at S Road as part security for the repayment of the loan;
  - The mortgagor agreed to pay monthly payments in respect of the 1<sup>st</sup> Legal Charge in favour of Santander;
  - Interest on the loan of £27,000 would be at 60% per annum until repaid.
24. The Respondent witnessed Mrs JWB's signature on the Mortgage Deed.
25. The heading of the mortgage deed included the following statement:

"THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD TAKE INDEPENDENT LEGAL ADVICE BEFORE SIGNING AND SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND. IF YOU SIGN AND THE MORTGAGEE [sic] IS NOT PAID YOU MAY LOSE THE ASSET(S) CHARGED".
26. Mrs JWB did not take independent legal advice and nor did the Respondent ensure that she did so.

27. Although the Mortgage Deed referred to Safechase agreeing to lend £27,000 to Mrs JWB, in fact the monies came from the Respondent's own resources and not from Safechase. The Respondent raised the money by re-mortgaging his own home. The monies had then been passed through Safechase although the loan was not recorded in Safechase's accounts.
28. The Respondent also witnessed Mrs JWB's husband's (Mr B) signature on a deed dated 17 January 2011. In the deed Mr B confirmed that he did not have any interest in Mrs JWB's property, agreed to subordinate any claim on the property to Safechase and agreed to vacate the property if required by Safechase.
29. The Respondent witnessed Mr B's signature on the deed and in doing so he confirmed that he had fully explained the nature, content and effect of the deed.
30. The monthly interest payment on the loan to the Respondent was £1,350. Mrs JWB was also required to pay the monthly mortgage payments to Santander in the approximate sum of £947.28. A simple income calculation found on the client file for Mrs JWB and Mr B showed a disposable monthly income of £1,887.86 after expenditure.
31. It did not appear that Mrs JWB could afford to pay both the Santander loan payments as well as the interest on the loan to the Respondent. During his review of the client files the FI Officer did not find any evidence that suggested that the feasibility of Mrs JWB being able to afford the loan was considered.
32. The Respondent's firm paid the outstanding arrears to Santander and to FC on 17 January 2011.
33. The Respondent issued an invoice to Mrs JWB on 18 January 2011 for £670 for "acting on your behalf with regard to dealing with re-possession...."
34. The Legal Charge in favour of Safechase against Mrs JWB's property was registered at the Land Registry on 20 January 2011.
35. Mrs JWB was late in making payments of interest to the Respondent in respect of the loan. The Respondent sent her a letter on 1 March 2011 pointing out that the payment due on 17 February 2011 had been missed and that a further payment was due on 17 March 2011.
36. A manuscript note on the client file recorded:

"Current loan with Abbey 150,000. Sale price of £270,000 assume will sell @ 250k. If she does not pay Richard interest by 17 March Richard will institute proceedings".
37. Mrs JWB only made two payments in respect of the Respondent's loan and the Respondent sent her further correspondence in respect of the payments in May and September 2011.

38. The letter sent in September 2011 referred to no payments having been received by the Respondent since two instalments in March. The letter threatened that unless Mrs JWB made contact with the office within the next two working days, proceedings would be taken for repossession of her home without further notice.
39. Mrs JWB also fell into arrears with her mortgage payments to Santander. E Solicitors sent correspondence to the Respondent in January and February 2012 informing him that they had asked the court to set an eviction date and had obtained a Warrant for Possession.
40. The Warrant was suspended after the mortgage arrears were paid by a third party. The Respondent wrote to Mrs JWB in March 2012 informing her that the Warrant of Possession had been suspended and again reminded her that the Safechase loan had not been maintained since March 2011 and that interest was accruing at a rate of £44.38 per day. Mrs JWB was requested to make proposals to settle the loan failing which the Respondent threatened to commence possession proceedings.
41. On 6 March 2012 Mr O obtained a judgment in default in the sum of £133,521 against Mrs JWB and others. The Judgment related to a claim for money owed jointly and severally by Mrs JWB and others in connection with the sale of Mr O's property. Mr O obtained an interim Charging Order on 18 June 2012 over Mrs JWB's property.
42. Mrs JWB instructed the Respondent to act on her behalf in setting aside the Judgment. The application to set aside the Judgment was unsuccessful and the Charging Order was made final on 21 December 2012.
43. Safechase repossessed Mrs JWB's property on 8 December 2012. The Respondent wrote to Santander in December 2012 and again in March 2013 seeking a redemption statement on behalf of their client Mrs JWB to discharge the mortgage. The Respondent informed Santander that Safechase had foreclosed on the mortgage due to non-payment of the interest. Santander replied on 22 March 2013 with a redemption figure of £144,192.34.
44. On 22 January 2013 Mrs JWB was adjudged bankrupt. WH acted for the Trustee-in-bankruptcy.
45. From the FI Officer's review of the file, it appeared that Safechase had initially proposed to buy Mrs JWB's property for £235,000 which was the price that was agreed with Mrs JWB before she was adjudged bankrupt. Safechase ultimately sold the property for £235,000 to a Mr G on 10 January 2014 subject to a tenant in occupation.
46. A completion statement sent by the Respondent to R Solicitors on 18 March 2014 set out that Safechase received £79,564.30 for redemption of their Legal Charge over Mrs JWB's property. The FI Officer calculated that this amount contained an overpayment to Safechase and that the total amount properly due to Safechase was £76,564.30. That sum comprised £27,000 for the principal sum of the loan and interest of £49,564.30.
47. R Solicitors received a total of £7,004.40 on behalf of Mr O from the sale of the property.

48. On a review of the Respondent's client file, a buy back contract for the property dated 9 January 2014 between the Respondent as buyer and Mr G as seller was discovered. The contract set a completion date for 9 May 2014 and a purchase price of £240,000. The contract was signed by the seller and had the buyer's solicitors as the firm. It appeared that the contract was not affected as Mr G remained the proprietor of the property.
49. Mrs JWB had been in financial difficulties since 2007 when Santander obtained a Suspended Possession Order against her property as she was in arrears in the amount of some £6,500. Her financial position at the time when she instructed the Respondent in 2011 was that she was in arrears in respect of her mortgage of over £22,000.
50. Although the Respondent informed the FI Officer that he was not enthusiastic about making the loan, he had re-mortgaged his house to obtain the funds for the loan.
51. The Respondent very shortly after making the loan threatened Mrs JWB with possession proceedings and eventually repossessed her property almost 2 years after making the loan, despite Santander, the first Legal Charge holders deciding not to execute a Warrant of Possession some months earlier.
52. The Respondent sold the property and recouped his loan of £27,000 but he also personally benefited by receiving over £49,000 in interest. It did not appear that the Respondent or Mrs JWB had carried out any serious enquiries into whether there was an alternative source of funding available to Mrs JWB on less onerous terms.

#### Allegation 1.2

53. R Solicitors wrote to the firm on 4 July 2013 in respect of the loan made to Mrs JWB through Safechase and the consequent charge over her property. In their letter, R Solicitors referred to the Respondent being the sole director of Safechase and pointed out that Safechase's filed accounts did not record the loan. R Solicitors referred to being informed that Safechase's charge secured some £90,000.
54. R Solicitors also stated in their letter that their client was concerned that the loan was a sham and they requested evidence of the loan and other information. They also requested a copy of Safechase's possession order and an explanation as to why it wasn't provided to Mr O. They required a response to their letter within 7 days failing which they stated they would make an application to the Court. They also stated their client reserved his position in respect of filing a complaint with the SRA.
55. On 23 August 2013 R Solicitors made an application to the Court in which they challenged the validity of Safechase's charge. They served a copy of the sealed application notice on the firm with a letter dated 30 October 2013. The application was listed for a hearing on 16 January 2014.
56. R Solicitors wrote to the Respondent on 3 January 2014 in his capacity as director of Safechase. In that letter they referred to not having received an Acknowledgment of Service and enquired as to whether the Respondent was going to lodge any evidence for the forthcoming hearing. There was no response and R Solicitors sent a further letter dated 10 January 2014.



57. The firm wrote to R Solicitors on 13 January 2014 informing them that the property had been sold by the mortgagee in possession. The letter also asserted that R Solicitors' application was misconceived and that evidence would be filed in respect of it later that day.

58. On 14 January 2014 the firm filed a witness statement made by the Respondent with both R Solicitors and the Croydon County Court. In that witness statement the Respondent asserted that the Claimants were seeking to add his name and Safechase as parties to the proceedings without an application and he claimed that their application was misconceived. The Respondent also submitted that the Court did not have jurisdiction to set aside a properly executed and registered Legal Charge. In the witness statement, the Respondent stated:

"9. .... the charge was registered in respect of a loan made to Mrs [JWB] at her request and at a time when I did not act for her in any capacity, nor was I even aware of these proceedings".

The Respondent signed a Statement of Truth in the witness statement confirming: 'I believe the contents of the witness statement to be true'.

59. On 15 January 2014 R Solicitors wrote to the firm informing them that they were agreeable to withdrawing the application. They stated:

"We are disappointed that in spite of letters to you as long ago as July 2013 and in spite of your firm and Safechase Limited (Safechase) being on notice of a dispute with regards to its charge you only engaged with us on 13 January 2014. Your letter of yesterday afternoon (14:44) was the first time that you informed us that you did not act for Mrs JWB. Your evidence and reply to the application was served at 17.01 yesterday. Until we had been notified of the sale and had received a response from you with regards to the substance of the Safechase charge the matter required clarification by the court .....

..... given that the property has now been sold it appears that the hearing tomorrow cannot be effective and we agree to withdraw the application with no order as to costs...."

60. The Respondent was being pursued by R Solicitors about the validity of Safechase's Legal Charge over Mrs JWB's property for several months since July 2013. R Solicitors had made an application to the Court challenging the validity of the Charge in July 2013 and had served the application on the Respondent in October 2013.

61. The letter to E Solicitors dated 13 January 2011 referred to Mrs JWB as "our client" thereby confirming that the firm had been instructed by Mrs JWB by that date at the latest. The loan was made by the Respondent to Mrs JWB after that date and although there did not appear to be a separate loan agreement, the loan was evidenced by the Mortgage Deed dated 17 January 2011, with the firm making payments to Santander and FC also on 17 January 2011. The Legal Charge was registered in favour of Safechase on 20 January 2011.

Allegation 1.3

62. In November 2011 Mrs PS instructed the Respondent in respect of a letter before action received from JF Ltd relating to an outstanding debt. She also sought advice generally on the potential proceedings.
63. The client file opening form recorded PS as being the client and the client ledger was also in her name. The Respondent sent a client care letter to Mrs PS on 28 November 2011 at her address.
64. Mrs PS provided the Respondent with a Claim Form and the Particulars of Claim dated 26 April 2012 in which Mr K was named as the defendant and JF Ltd as the Claimant. The claim was for £59,946.58 and related to Mr K being a guarantor for a cheque in the sum of £59,946.58 which was given to JF Ltd by Mrs PS. This related to a loan made by JF Ltd to Mrs PS. She had failed to keep up with repayment of the loan to JF Ltd and they had taken proceedings against Mr K, Mrs PS being a bankrupt.
65. Mrs PS asked the Respondent to act on behalf of Mr K. The Respondent did not contact Mr K to confirm those instructions with him.
66. On 4 April 2012 the Respondent wrote to Mrs PS referring to the retainer letter that was sent to her in November 2011 and enclosed a further copy of it. The Respondent requested Mrs PS to ask Mr K to sign, date and return the retainer letter. The Respondent did not receive a signed retainer letter from Mr K. The further copy of the retainer letter was dated 28 November 2011 but stated that it was "re-sent 5 April 2012". It was addressed to Mr K but appeared to have been sent care of Mrs PS at her address.
67. The firm filed an Acknowledgment of Service on Mr K's behalf on 5 April 2012, indicating that Mr K intended to defend the claim.
68. The Respondent filed a defence on behalf of Mr K on 4 May 2012 which made various denials and admissions in respect of the facts, and made assertions in respect of Mr K's knowledge. The following Statement of Truth in the defence was signed by the Respondent:
- "The Defendant believes that the facts stated in this Defence are true.
- I am authorised to sign the Defence on his behalf."
69. The Respondent signed the Statement of Truth, having never confirmed with Mr K any of the facts set out in the document or that he authorised him to act on his behalf.
70. The Respondent was required to file an Allocation Questionnaire with the court by 1 June 2012. He failed to do so, and the court made an Unless Order on 14 June 2012 that the Defendant was to serve the Allocation Questionnaire by 25 June 2012, failing which his defence would be struck out.
71. The Respondent lodged the Allocation Questionnaire on 8 August 2012 stating that the reason for the late filing was the death of Mrs PS's brother in law and husband and the

inability to take instructions from her. The Respondent did not take instructions from the defendant in the case, Mr K.

72. On 24 August 2012 the Court made an Order giving Judgment in default to the Claimant because of the failure to comply with the order of 14 June 2012. The Judgment was subsequently set aside by consent on 6 December 2012. Directions were given for the progress of the trial on 27 January 2013 including the provision of witness statements by 1 April 2013.
73. The trial took place on 18-19 June 2013 and the Court gave Judgment for the Claimant in the sum of £59,964.58 plus interest of £7,830.83 and costs of £7,045. Mr K did not attend the trial and he was not represented.
74. There was then further correspondence in August 2013 between the solicitors for the Claimant and the Respondent about costs and the amount of the claim.
75. On 4 November 2014 the Court made an interim Charging Order over Mr K's property in favour of JF Ltd in the amount of £75,836.41.
76. The interim Charging Order came to the attention of Mr K in January 2015 and he instructed G Solicitors to obtain the file from the firm. G Solicitors provided the file to Mr K having obtained a copy from Mrs PS who the Respondent had given it to.
77. The Charging Order was made final on 3 March 2015 and Mr K settled J F Ltd's claim in May 2015 for £75,000.
78. On 7 June 2015, Mr K wrote to the Respondent asking for a letter of authority for the firm having acted on his behalf. On 11 June 2015, the Respondent sent an email to Mr K stating:

“..your sister stated that she had authority to deal with the matter.....please address your complaint to her”.
79. There was then further correspondence between Mr K and the Respondent on 14 June 2015. Mr K again asked why the Respondent had acted on his behalf on the instructions of a third party. The Respondent replied, amongst other things:

“... you need to sue her then”.
80. Mr and Mrs K complained to the SRA on 14 June 2014. They informed the SRA that they received a letter from JF Ltd in 2011 threatening proceedings and that this was handed to Mrs PS. They said they had never instructed or contacted the firm and the firm had never corresponded with them, but had dealt with Mrs PS although the firm was acting on their behalf since 2011.
81. On 8 March 2016 in a conversation with the FI Officer regarding the complaint made by Mr K, the Respondent said Ms PS was a well-educated client and that he took her word that she had her brother's consent to act. He accepted that he should have sought direct instructions.

82. In the Respondent's response to the SRA's allegations dated 19 July 2017 he stated:
- Mrs PS had instructed him to send all correspondence to her brother via her, as he wished to keep his guarantee of the loan secret from his wife;
  - He advised Mrs PS that he did not believe that Mr K would win the claim at trial and that he should negotiate a settlement with JF Ltd;
  - That he stopped representing Mr K after the default Judgment was set aside in December 2012 and was not acting at the time of the trial;
  - He had good reason to believe that Ms PS had authority to give him instructions and had no reason to doubt it.

#### Witnesses

83. No witnesses gave evidence.

#### Findings of Fact and Law

84. The Tribunal had carefully considered all the documents provided and the submissions of both parties. 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.
85. **Allegation 1.1: The Respondent acted in an own interest conflict or where there was a significant risk of an own interest conflict in respect of his client, Mrs JWB in circumstances where he loaned her £27,000 through his company Safechase Ltd, at an annual interest rate of 60%, the loan being secured by a legal charge over Mrs JWB's property. Mrs JWB defaulted on repayment of the loan which led to the Respondent obtaining possession of the property and selling it from which he received £76,564.30 from the proceeds of sale.**

**Consequently, the Respondent took unfair advantage of Mrs JWB and acted in breach of all or alternatively any of:**

**1.1.1 up until 5 October 2011, Rules 1.02, 1.03, [withdrawn], 1.06 and 3.01 of the Solicitors Code of Conduct 2007 and;**

**1.1.2 from 6 October 2011 acted in breach of Principles 2, 3, [withdrawn] and 6 of the SRA Principles 2011 and Outcomes [withdrawn] and 3.4.**

- 85.1 The Respondent admitted Allegation 1.1. The Tribunal found this allegation proved on the Respondent's admissions and on the documents provided.
- 85.2 The Tribunal was satisfied that the Respondent had failed to act with integrity and had thereby breached Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code") and Principle 2 of the SRA Principles 2011 ("the Principles"). He had loaned Mrs JWB money at a very high rate of interest when she was vulnerable and he had not ensured

that she had taken independent legal advice in relation to the loan. He had taken advantage of her financial situation and used it to his own benefit. Although the Respondent had contended that he expected the loan to be a short term loan, he knew that interest was accruing at a rate of £44.38 per day and he had allowed that to continue for almost two years, even after Mrs JWB defaulted on her payments. As a result of his conduct the Respondent had benefited by over £49,000.

- 85.3 The Tribunal was satisfied the Respondent had also allowed his independence to be compromised and had thereby breached Rule 1.03 of the Code and Principle 3 of the Principles. The Respondent had charged an astonishingly high rate of interest on the loan and had secured the loan against Mrs JWB's home in the knowledge that he would be able to take possession proceedings to recover his funds if necessary. This conduct had been in his personal interest. Securing the loan against Mrs JWB's home ensured the Respondent would be able to recoup the money he had loaned to her. The Respondent had therefore allowed his independence to be compromised as he had acted in his own interests.
- 85.4 The Tribunal was satisfied that the Respondent had acted where there was a clear conflict of interests between Mrs JWB's interests and his own. He had therefore breached Rule 3.01 of the Code and Outcome 3.4. It was not in Mrs JWB's interests to take out a further loan on terms which she could not afford, and agree to an additional charge being placed on her property without being legally advised independently. However, it was in the Respondent's interests to charge a high rate of interest on the loan and secure it on a property which had sufficient equity to meet any liability incurred under the loan. There was a clear conflict in these two interests.
- 85.5 The Tribunal was satisfied that the Respondent's conduct did not maintain, and was likely to diminish the trust the public placed in him or in the provision of legal services/the legal profession. He had therefore breached Rule 1.06 of the Code and Principle 6 of the Principles. The public did not expect a solicitor to act where there was a conflict of interest and certainly did not expect a solicitor to benefit financially to a client's detriment.
- 85.6 The Tribunal found Allegation 1.1 proved.
86. **Allegation 1.2: The Respondent made the following misleading claim in a witness statement dated 14 January 2014 which was served in litigation bought by R Solicitors on behalf of their client Mr O and in which they sought to contest the validity of a legal charge over Mrs JWB's property which was made in favour of the Respondent's company, Safechase:**

**“the charge was registered in respect of a loan made to Mrs JWB at her request and at a time when I did not act for her in any capacity”**

**That claim was misleading as the Respondent was acting for Mrs JWB in defending possession proceedings at the time that he made the loan to her and at the time that the legal charge was registered.**

- 1.2.1 Consequently the Respondent acted in breach of all or alternatively any of SRA Principles 1, [withdrawn] and 6 and [withdrawn].**

86.1 The Respondent admitted Allegation 1.2. Accordingly, the Tribunal found Allegation 1.2 proved both on the Respondent's admissions and on the documents provided.

86.2 The Tribunal was satisfied that the Respondent, in making a misleading claim in a witness statement sent to the Court and to solicitors acting for the other side, had failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the Principles. Members of the public expected solicitors to make accurate statements, particularly during the course of litigation, and failing to do so was behaviour that did not maintain the trust the public placed in the Respondent and in the provision of legal services. The Respondent had thereby also breached Principle 6 of the Principles.

87. **Allegation 1.3: The Respondent acted on behalf of Mr K in litigation on the instructions of a third party without ever confirming those instructions with Mr K and without seeing any written authority from Mr K that he could act on the instructions of the third party.**

**1.3.1 Consequently the Respondent breached all or alternatively any of Principles 4, 5 and [withdrawn] of the SRA Principles 2011 and [withdrawn].**

87.1 The Respondent admitted Allegation 1.3. Accordingly, the Tribunal found Allegation 1.3 proved both on the Respondent's admissions and on the documents provided.

87.2 Whilst the Respondent had initially received instructions from Mrs PS, he had failed to consult or confirm those instructions with Mr K direct. The Respondent had signed and filed a witness statement on behalf of Mr K without checking the content of that statement with Mr K direct and he had not provided advice to Mr K direct about the merits of the case. The Tribunal was satisfied that, as a result of this, the Respondent had not acted in the best interests of Mr K and he had failed to provide Mr K with a proper standard of service. This was a breach of Principles 4 and 5 of the Principles.

#### **Previous Disciplinary Matters**

88. The Respondent had appeared before the Tribunal previously on 28 May 2015.

#### **Mitigation**

89. Mr Williams, on behalf of the Respondent, referred the Tribunal to the Respondent's witness statement which provided the background to the admissions that had been made.

90. In relation to Allegation 1.1, concerning Mrs JWB, Mr Williams stated that Mrs JWB had been a childminder employed by the local authority. Her home was essential for her income and she needed a garden in order to be able to continue with her childminding work.

91. Mr Williams stated that matters had come to a head financially in 2011 when Mrs JWB was required to pay all of the outstanding arrears within four days otherwise she would have lost everything. She was introduced to the Respondent by a financial adviser. The Respondent had informed her at that time that her position was hopeless and she would need to obtain short time finance to stave off the immediate possession. Mr Williams stated that Mrs JWB had provided the Respondent with a letter from J Trust confirming a bridging loan would be available in due course. The Respondent had concluded she needed short-term finance urgently and having made some enquiries on her behalf in relation to this, he found that the interest was likely to be 100% with extremely high facility fees being charged making it disproportionately expensive for her. Mrs JWB had asked the Respondent to provide a loan to her but he had initially refused. Mr Williams stated that she continued to plague the Respondent to lend her the money, placing much emotional pressure on him stating she had nowhere else to turn to.
92. Mr Williams stated that the Respondent eventually agreed to lend Mrs JWB £27,000 to help her keep her home. This was the first time he had ever done this and he had raised the money by increasing the mortgage on his own home. Mr Williams reminded the Tribunal that it was not uncommon to use a company for this purpose to formalise an agreement. The Respondent had not hidden the fact that Safechase Ltd shared the same address as him and Mrs JWB was fully aware that the Respondent had provided the funds. Mr Williams stated she was under no illusion at all. Mr Williams stated that the mischief in this matter was that the Respondent should have ensured Mrs JWB had received independent legal advice and whilst he told her to do this verbally, she had refused to do so.
93. Mr Williams reminded the Tribunal that the Respondent had repeated the advice for Mrs JWB to take independent legal advice as it was stated at the top of every page of the Mortgage Deed he had drafted. Mr Williams submitted that even if Mrs JWB had taken independent legal advice, it would have made no difference to her position as she would have still proceeded with the loan from the Respondent. In hindsight, Mr Williams stated that the Respondent now accepted he should not have provided the loan but had he not done so, Mrs JWB's home would have been taken from her. The Respondent had managed to preserve her home and her livelihood.
94. In relation to the interest rate charged, Mr Williams stated that the Respondent had always intended the loan would only be in place for 2 to 3 months and he had charged a rate that he thought a short-term lender would charge. He had initially been reassured by Mrs JWB and her partner that they could afford the repayments. The Respondent had also expected finance from J Trust to become available. He had sent various reminder letters to Mrs JWB to try and encourage her to take action by obtaining finance elsewhere. Mr Williams stated that it had transpired Mrs JWB had not cooperated with the J Trust and therefore had not received the funds anticipated from them. Eventually, Mrs JWB was declared bankrupt due to her failure to pay Council Tax.
95. Mr Williams stated that matters were made worse by Mr O obtaining a judgment against Mrs JWB and applying for a Charging Order over her property. Mr Williams submitted that had the Respondent known about this potential debt, he would not have loaned any funds to Mrs JWB. He had tried to help her but it was all to no avail and once bankruptcy proceedings were commenced it became clear that something would have to be done. A buyer for her property was found by a friend of Mrs JWB who was

willing to purchase the property at the market rate and allow Mrs JWB to remain in the property as a tenant. Mr Williams stated that the Respondent had ensured the property was sold for a proper price and had also enabled Mrs JWB to stay at the property.

96. Mr Williams stressed that the Respondent would not get himself into this position again and would not give in to pressure from clients. He had been motivated by a desire to help Mrs JWB and indeed, he continued to receive her full support even now as she had been willing to give evidence before the Tribunal.
97. On questioning from the Tribunal Mr Williams confirmed that Mrs JWB was made bankrupt with debts of over £1 million. The Tribunal was provided with a Statement of Estimated Assets and Liabilities in her bankruptcy as at 26 April 2013 which set out a list of the debts. Mr Williams reminded the Tribunal that the Respondent had not been aware of the extent of the debts when he made the loan, as Mrs JWB had not been transparent with him at the outset. Had he known the truth, Mr Williams submitted the Respondent would not have made the loan. Mr Williams also submitted that the amount she owed to the Respondent was a drop in the ocean compared to her liabilities. He submitted that the Respondent's loan did not have any material impact on her overall finances. Mr Williams reminded the Tribunal that had the Respondent waived the interest due on the loan, he could not have returned this money to Mrs JWB as she was bankrupt by then. He also did not wish to be seen to have benefited certain creditors. He submitted that any concession made by the Respondent would not have helped or had any impact on Mrs JWB's position.
98. In relation to Allegation 1.2, Mr Williams submitted the Respondent had reacted to a statement made by another firm of solicitors, and in doing so he had made an honest mistake. Mr Williams submitted the Respondent did not check the statement properly and indeed, Mr Williams pointed out that there was an error in the date of the statement which gave the incorrect year. This confirmed the Respondent had not taken the care he should have done when preparing it. Mr Williams submitted that the Respondent had omitted to include the word "in" after the word "capacity" in the statement made, which would have made it accurate. It should have said:

"9..... the charge was registered in respect of a loan made to Mrs [JWB] at her request and at a time when I did not act for her in any capacity in, nor was I even aware of these proceedings".

Mr Williams submitted that by adding the word "in" where indicated, it was quite clear that the Respondent was referring to acting for Mrs JWB in the proceedings before the Croydon County Court. He submitted the statement had been prepared at the last minute by the Respondent, which is why errors were made.

99. In relation to Allegation 1.3, Mr Williams submitted that Mrs PS was an established client and the Respondent had trusted her integrity and honesty. Mr Williams submitted Mr K had been out of the country at the material time and the Respondent had genuinely believed he had the authority to act on behalf of Mr K and had been properly instructed. The Respondent had advised Mrs PS on the best course of action and had never set out to deliberately breach his professional obligations.



100. Mr Williams confirmed that the Respondent had worked as a clerk before being admitted to the Roll in 1986. He provided the Tribunal with details of the Respondent's personal background and referred the Tribunal to the character references provided, some of which were from senior members of the legal profession, and all of which spoke highly of the Respondent.
101. Mr Williams reminded the Tribunal that these matters were historic and that nothing similar had arisen since that time. He submitted there was no risk of repetition, the Respondent was wholly contrite and had made appropriate admissions which reflected his respect for his profession. Mr Williams submitted that the Respondent had fully cooperated and engaged with these proceedings, being frank and consistent throughout with his explanations. He had made a number of admissions approximately a month earlier but due to the festive period, discussions had only really been progressed on the morning of the first day of the hearing.
102. In relation to the Respondent's previous appearance before the Tribunal, Mr Williams submitted this was a matter of great embarrassment to the Respondent. The matters dealt with related to a short period from May to July 2012, the hearing had taken place in 2015 and the Respondent had received a Reprimand. Mr Williams stated that there had been some medical issues at that time and he asked the Tribunal to put that matter to one side as the matters complained of were not similar to these allegations.
103. Mr Williams submitted that a financial penalty was the appropriate sanction in this case. It would satisfy the public interest and would meet the expectations of a reasonably informed member of the public who understood all the facts of this case.

### **Sanction**

104. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
105. The Tribunal was mindful that the allegations had been proved on the Respondent's admissions made on the morning of the first day of the hearing, as well as on the documents provided. Had a contested trial taken place, it had been expected that the Tribunal would hear from several witnesses in relation to evidence and facts which were not agreed. In addition, a number of documents provided had been challenged by Civil Evidence Act Notices and Counter notices. As a result of the compromise achieved regarding the allegations, the Tribunal did not hear from any of the witnesses and accordingly did not make any findings of fact on their proposed evidence or indeed on the documents that were challenged.
106. With this in mind, the Tribunal firstly considered the Respondent's culpability. The motivation for the Respondent's conduct in relation to Mrs JWB was to help her stay in her home and retain her livelihood, but at the same time the Respondent had a financial motivation as he had ultimately gained over £49,000 from the interest on the loan he made to her. The Tribunal accepted the Respondent's submissions that he had anticipated the loan would be for a short period of time, but equally there was a very high rate of interest over that period which was of benefit to him. He had not ensured Mrs JWB had received independent legal advice and he had placed his own interests

above hers as he continued to benefit while the loan was outstanding. Whilst the Respondent may have ensured that Mrs JWB continued to have a home, he was adding to her financial difficulties with the high interest loan he had given to her.

107. The Tribunal took the view that the Respondent should not have made the loan in the first place. The Tribunal also took the view that having made the loan, the Respondent should not have allowed the loan to continue as long as it did, and he should have taken action to foreclose the loan as soon as Mrs JWB defaulted on her repayments. The Tribunal was satisfied that the misconduct was not planned. However, the Respondent had acted in breach of a position of trust as Mrs JWB had been a vulnerable client, in a property that was about to be repossessed and he had acceded to her requests to lend her money without insisting she received independent legal advice. The Respondent had control of the circumstances as the loan was provided from his personal resources, and indeed was obtained from re-mortgaging his own property. The Respondent was a very experienced solicitor at the time these events took place and should have known better. His level of culpability was therefore high.
108. The Respondent had not acted deliberately in relation to the misleading claim in the witness statement. Rather, that was spontaneous and due to a careless mistake he had made. His level of culpability in relation to that was therefore low.
109. In relation to Mr K, the Respondent had genuinely believed that Mrs PS had been authorised to give him instructions on behalf of Mr K, but he did have control over the circumstances in that he should have contacted Mr K direct. He was an experienced solicitor and should have known that it was not acceptable to take instructions from a third-party and to file court documents through an agent without any direct instructions from the client either through email, letter or a telephone call. The Respondent should have known that he should confirm the instructions with the actual client in litigation and obtain a written authority from him. His level of culpability was therefore also high.
110. In relation to the issue of harm, the Tribunal was informed that Mrs JWB was able to remain in her home and earn a living and therefore there had been a positive impact on her. However, the Tribunal bore in mind the submissions of the Applicant that the Tribunal had no information as to when Mrs JWB's debts of over £1million had arisen. In 2011 when the Respondent made the loan, she had not been declared bankrupt. It was therefore possible that at that time, all of her debts could have been paid. The Tribunal concluded that while some immediate short time benefit had been gained by Mrs JWB in not having her house repossessed, her overall and ongoing financial situation had worsened through the high interest rate charged by the Respondent. The Tribunal was also informed that Mrs JWB ultimately remained in her house as a tenant even though it had to be sold due to her bankruptcy. As the Respondent had ultimately personally benefited by some £49,000 due to his conduct, the level of harm caused was high.
111. In relation to the harm caused by making a misleading claim in a witness statement served in litigation, the Respondent had caused harm. R Solicitors had incurred costs as a result of the Respondent not informing them of the position earlier in the litigation. The Tribunal was satisfied that some harm had been caused to R Solicitors and/or their

client as a result of this. He had also caused harm to Mr K by dealing with the litigation against him without taking instructions directly from him.

112. The Tribunal concluded that there had been harm caused to the reputation of the legal profession. Whilst the Respondent may not have intended that harm, he should have foreseen that it might reasonably be caused by his conduct.

113. The Tribunal then considered the aggravating factors in this case and identified those as follows:

- The Respondent's conduct in relation to Mrs JWB had taken place over a period of almost 2 years, over which the Respondent continued to benefit from the 60% interest rate he had charged on the loan to Mrs JWB.
- The Respondent was aware that Mrs JWB had had financial issues in the past as she had consulted him about a Suspended Possession Order from 2007. This made her a vulnerable client as she was at risk of losing her home as well as her livelihood.
- The Respondent had benefited by over £49,000 in interest as a result of the loan he gave to Mrs JWB without ensuring she had received independent legal advice.
- The Respondent did not deal promptly with correspondence from R Solicitors, thereby allowing further unnecessary costs to be incurred by them.
- The Respondent ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.
- The Respondent had appeared before the Tribunal on 28 May 2015 where he had also been found to have breached Principle 6 of the Principles. On that occasion he had been given a Reprimand and ordered to pay costs of £2,600.

114. The Tribunal then considered the mitigating factors and identified those as follows:

- The Tribunal was informed that the Respondent was wholly contrite.
- There were a number of good character references.
- The Respondent had cooperated with both his regulator and these proceedings
- He had made admissions.

115. The Tribunal concluded that Mrs JWB had been a vulnerable client whose professional life and associated livelihood was in jeopardy when she consulted the Respondent as she was at risk of losing her home. The Respondent could and should have known better than to offer a loan to her in such an emotionally heightened and charged environment, without insisting that she took independent legal advice. This would have afforded her independence, objectivity and a period of reflection. Even if Mrs JWB

had refused to accept his advice, the Respondent should have instructed other solicitors to act for her. This was a common solution which was enshrined in the SRA Principles.

116. In failing to ensure Mrs JWB received independent legal advice, the Respondent had compromised his integrity. He had conflated objectivity with subjectivity as clearly evidenced by the contractual interest rate that he had determined and ultimately benefited from by over £49,000. The Respondent was Mrs JWB's legal adviser, not her financial adviser and had acted where there was a clear conflict of interest. This was serious misconduct.
117. In relation to the matters concerning Mr K, the Respondent had acted in a cavalier fashion by failing to ensure he had taken proper instructions from Mr K. The Respondent had also failed to check through a witness statement that he had used in litigation. Neither of these were acceptable conduct from a solicitor.
118. The Tribunal concluded that the conduct in this case was too serious for either no order or a Reprimand. However, the Tribunal was satisfied that the Respondent was not a risk to the public and therefore it was not necessary to interfere with his ability to practice. The Tribunal concluded that a Fine was the appropriate and proportionate sanction in this case. It would reflect the seriousness of the misconduct and maintain public confidence in the profession.
119. When considering the level of that Fine, the Tribunal took into account all the aggravating and mitigating factors, as well as the character references provided. The Tribunal was satisfied that the Respondent's misconduct was not at the lower levels as it was considered to be very serious. In relation to Mrs JWB the Respondent had ultimately benefited from his actions and the Tribunal had found he had acted with a lack of integrity. There had been three separate allegations relating to 3 separate matters and this was the Respondent's second appearance before the Tribunal.
120. The Tribunal assessed the Respondent's conduct to be very serious and concluded that the appropriate Fine in this case was £20,000. The Tribunal Ordered the Respondent pay a Fine of £20,000.

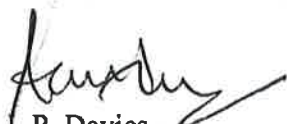
#### **Costs**

121. Mr Bheeroo, on behalf of the Applicant, confirmed that costs had been agreed between the parties in the sum of £26,000. Mr Williams, on behalf of the Respondent, confirmed this was agreed.
122. The Tribunal was satisfied, having considered the Applicant's Statements of Costs that the sum of £26,000 was a reasonable and proportionate figure, given that the hearing had taken less time than had originally been estimated. The Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £26,000.

**Statement of Full Order**

123. The Tribunal Ordered that the Respondent, RICHARD GREGORY BARCA, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £26,000.00.

Dated this 27<sup>th</sup> day of February 2019  
On behalf of the Tribunal



J. P. Davies  
Chairman

Judgment filed  
with the Law Society  
on 28 FEB 2019

