SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11834-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BALJINDER HAYRE Respondent

Before:

Mr A. Ghosh (in the chair)
Mr P. Lewis
Dr P. Iyer

Date of Hearing: 29 and 30 January 2019

Appearances

Gareth Thomas, counsel, Capsticks Solicitors LLP, 1 St George Street, London, SW19 4DR, for the Applicant

The Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 20 August 2018 and were that, whilst the sole principal (spelt in the Rule 5 Statement as "principle") of, and practising as, a solicitor for Hayre & Co, Manor Row, Bradford ("the Firm"):

1.1 On or about 16 January 2008, he filed at the Land Registry an incorrect plan, which encumbered his client's (Company X) land, as opposed to the plan which was approved and signed by his client; and in doing so breached rules 1.04 and 1.05 of the SRA Code of Conduct 2007 ("the 2007 Code").

1.2 Between 10 October 2009 and 13 November 2016, he:

1.2.1 Falsified file attendance notes and/ or the contents of file attendance notes;

1.2.2 Relied on the file notes above in his defence of a civil claim brought by Company X;

and in doing so failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011 ("the 2011 Code") and breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

1.3 Between 18 December 2006 and 16 January 2008 he acted for Company X and NK where there was a conflict, or a significant risk of conflict; and in doing so breached rules 1.04, 3.01, 3.07 and 3.08 of the 2007 Code.

1.4 In the alternative to paragraph 1.2 above, between on or around 2 November 2007 and 16 January 2008, he:

1.4.1 Acted for Company X and NK where there was a conflict, or a significant risk of conflict; and in doing so breached rules 1.04, 3.01, 3.07 and 3.08 of the 2007 Code;

1.4.2 Failed to advise Bank A of a conflict, or risk of conflict, arising between Bank A and Company X and in doing so breached rules 1.02, 1.04 and 3.16 of the 2007 Code;

1.4.3 Acted for Company X and Bank A where there was a conflict, or a significant risk of conflict; and in doing so breached rules 1.04, 3.01, and 3.16 of the 2007 Code.

2. In respect of allegation 1.2 (above) it was alleged that the Respondent acted dishonestly, however, it was submitted that proof of dishonesty was not an essential ingredient of the allegation of misconduct.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Rule 5 Statement dated 20 August 2018 and exhibit KP1 (forming the hearing bundle of 574 pages)
- 'Guide to evidence: attendance notes'
- Summary submissions on behalf of the Applicant
- Schedules of Costs dated 23 January and 30 January 2019

Respondent

- Respondent's Answer to Rule 5 Statement dated 29 August 2018
- Application for an adjournment dated 11 January 2019 (with supporting letter)
- Email correspondence with the Applicant (copied to the Tribunal) dated from 17 to 25 January 2019 relating to attendance at the hearing

Preliminary Matters

4. On 11 January 2019 the Respondent had applied for an adjournment of the substantive hearing. This was due to ill-health and was supported by a General Practitioner's ("GP's") letter dated 20 December 2018 stating that the Respondent was receiving treatment for depression with agoraphobic features triggered by professional and personal issues. The Respondent's GP stated that in the GP's opinion the Respondent was unfit to attend a professional standards hearing in January 2019 and that doing so would be likely to worsen his condition and delay his recovery. The GP also stated that the Respondent may be sufficiently recovered to attend the hearing in between 6 and 12 months. The Applicant consented to the application, and proposed that the Tribunal should make directions for additional medical information to be provided.

5. On 15 January 2019 the Tribunal refused the adjournment application. The Tribunal's Practice Direction on Adjournments states that a reasoned opinion of a medical adviser should be adduced in support of an application for an adjournment on medical grounds. The Respondent had provided only a brief letter from a GP which indicated that the Respondent was suffering from "moderately severe reactive depression". The GP's letter provided insufficient detail as to the basis for the diagnosis and for the view that the Respondent may be unfit to attend the hearing and did not constitute a reasoned medical opinion. There was no mention in the letter of any clinical or mental state examination having been carried out. The allegations in the Rule 5 Statement were extremely serious, including, as they did, an allegation of dishonesty, and it would not be in the public interest to delay the hearing.

6. Application to Proceed in the absence of the Respondent

6.1 Applicant's Submissions – The Applicant submitted that the hearing should proceed in the Respondent's absence. Mr Thomas referred the Tribunal to the case of R v Jones [2002] UKHL 5 and the comments from Lord Bingham that the discretion to proceed in absence should be exercised with caution and the possibility of prejudice to the Respondent should be considered. Mr Thomas stated that the Applicant sought to prove allegations based in part on findings of the High Court in Leeds. Such findings were not conclusive proof and the Respondent would accordingly have scope to seek to

contest the allegations made. Mr Thomas stated that set against that, the recent history of the Respondent's engagement was relevant to the Tribunal's decision.

6.2 On 20 December 2018 Ms Pearson of Capsticks Solicitors, for the Applicant, had written to the Respondent in response to issues he had raised about his current health. Consent was sought for the Applicant to write to the Respondent's doctor for information about his fitness to engage in the proceedings. Ms Pearson informed the Respondent that if he did not attend the hearing or provide medical evidence in support of his inability to attend, the Tribunal might proceed in his absence. On 10 January 2019 Ms Pearson again wrote to the Respondent and highlighted the Tribunal's Practice Note on Adjournments. Consent was sought for the Respondent to be examined by an independent medical practitioner instructed by the Applicant. The Respondent did not return the consent form which had been sent to him.

6.3 The Respondent acknowledged, by email, the Tribunal's refusal of his request for an adjournment. Mr Thomas, for the Applicant, submitted that this was significant as this confirmed that the Respondent was aware of the deficiencies in the medical evidence supplied.

6.4 On 24 January 2019 the Respondent wrote to the Applicant, copied to the Tribunal, and stated that his grandfather had passed away the previous day, that he was assisting the family with arrangements and that the funeral would take place the following week. He stated that in light of this, and the previously disclosed medical diagnosis, he could not confirm his attendance at the hearing until he had revisited his GP. He stated that he did not anticipate attending as his mind and emotions were focused on immediate events in his family. In reply, on the same day, Ms Pearson sent an email which included a suggestion that some supporting evidence should be supplied to the Tribunal in support of any application to adjourn. She also stated that in the absence of a successful adjournment application, the Applicant would be applying to proceed with the hearing in his absence. The Applicant had heard nothing further by the date of the hearing and had no firmer evidence either about the Respondent's health or about the funeral. Mr Thomas noted that no evidence of any type had been provided about the bereavement mentioned by the Respondent.

6.5 Mr Thomas submitted that the Tribunal should also consider fairness to the Applicant. One witness had made arrangements to travel from Yorkshire to give evidence. He also submitted that there was a public interest in such hearings being heard within a reasonable timeframe and the Applicant thereby being able to actively regulate the profession in order to maintain public confidence in it. He submitted that the question for the Tribunal was whether the Respondent was too ill to attend or had chosen not to do so. He stated that the Respondent had not confirmed emphatically that he would like to participate and that an adjournment for a specified period would secure his attendance. Mr Thomas submitted that the Respondent had filed his Answer to the allegations and participated in an earlier Case Management Conference during which his tone was that he sought to settle the proceedings by way of an Agreed Outcome. Mr Thomas stated that if the Tribunal was not satisfied that the medical evidence supplied was adequate the Applicant would ask to proceed in the Respondent's absence.

6.6 The Respondent's Position - As summarised by Mr Thomas, in the email copied to the Tribunal on 24 January 2019 the Respondent stated that he did not anticipate being in attendance at the hearing. He stated that his grandfather had passed away very recently and the funeral date was yet to be confirmed. He stated that given the anticipated impact of the hearing mentally and emotionally, he wished to see his GP before confirming his attendance.

The Tribunal's Decision

6.7 The Tribunal retired to consider the Applicant's application to proceed in the Respondent's absence. It gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal was satisfied that the Respondent had been served with notice of the hearing. Under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") the Tribunal had the power, if satisfied service had been effected, to hear and determine the application in the Respondent's absence.

6.8 The Tribunal considered the factors set out in Jones in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal also considered the case of General Medical Council v Adeogba [2016] EWCA Civ 162 which applied the judgment in Jones in a regulatory context. It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

(i) the tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

(ii) the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

(iii) it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

(iv) there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

6.9 The Tribunal decided that it should exercise its power under Rule 16(2) to hear and determine the application in the Respondent's absence. The Tribunal concluded that the Respondent had voluntarily absented himself from the hearing and had provided no indication that he was likely to attend a future hearing if the matter were to be adjourned. The medical evidence supplied was inadequate. He had been notified of this by the Tribunal on 15 January 2019 and he had submitted nothing further, nor given any indication he had sought or would seek to do so. . The Applicant had arranged for

one witness to attend the hearing and one to be available to give evidence by phone; they were likely to be inconvenienced by delay. The recent demise of the Respondent's grandfather and the Respondent's involvement in the funeral arrangements were insufficient reasons for adjourning the hearing, having regard to the criteria set out in the Adeogba judgment. In all the circumstances, the Tribunal was satisfied that it was appropriate, and in the public interest, for the hearing to proceed in the Respondent's absence.

7. Amendments to Rule 5

7.1 Applicant's Submissions - At the outset of the hearing Mr Thomas applied for what he described as a 'tidying up' amendment to be made to the Rule 5 Statement. He proposed that after allegation 1.2.1 as drafted should be added:

> "...and in doing so breached rules 1.02 and 1.06 of the 2007 Code".

The application was made as allegation 1.2 spanned the period 10 October 2009 to 13 November 2016 during which the 2007 and 2011 SRA Codes of Conduct were both in force at different times. It was submitted that the proposed amendment removed any ambiguity over which Code the allegation in 1.2.1 was said to breach and that no unfairness was caused to the Respondent because the terms of the two Codes were virtually identical and he was well aware of the allegations against him.

7.2 On the second day of the hearing Mr Thomas made a further application to amend the Rule 5 Statement. He sought permission to amend allegation 1.1 so that the filing of the allegedly incorrect plan at the Land Registry was stated to be on an unknown dated after 2 November 2007 rather than on 16 January 2008 as currently drafted. He also sought to further amend allegation 1.2 so that the allegation covered the period from 1 October 2009 rather than 10 October 2009 as currently drafted. These amendments were again submitted to be tidying up exercises. Mr Thomas further submitted that the dates within the allegations were not themselves material averments and the Applicant was not seeking to bolster its case, it was merely seeking to assist the Tribunal and provide clarity.

The Tribunal's Decision

7.3 Under Rule 11(4)(c) of the SDPR the Tribunal may agree to the amendment of any application or allegation or the correction of any matter. The Tribunal considered the sloppy drafting of the Rule 5 Statement to be regrettable, and all the more so as the profession's regulator should be setting an example. However, since the clarifying amendment as to which Code was alleged to have been breached in allegation 1.2.1 was innocuous and as the Respondent would not be disadvantaged, given that the terms of both Codes were so similar, the Tribunal granted the permission for the amendment to be made.

7.4 The two additional applications made on the second day of the hearing were refused. The Tribunal was concerned about the timing of the application and the fact that the Respondent did not have notice of it. The Applicant had had ample time to clarify its Rule 5 Statement. The Tribunal considered that if the Applicant was correct and the dates were not material averments then the amendment was not necessary, and if in fact

they were material averments the Respondent would be prejudiced by such a late amendment without notice.

8. Admission of new documents

8.1 On the second day of the hearing the Applicant applied for additional documents to be admitted into evidence. Under Rules 13(10) and 21(2) of the SDPR the Tribunal may permit documents to be admitted into evidence where the relevant rules concerning service have not been complied with. The application related to documents referred to by the judge in the civil proceedings which were not included in the Tribunal hearing bundle. The application was made in response to questions from the Tribunal and were submitted to be made to help remove ambiguity over which document the Respondent had stated he had received from his client and submitted to the Land Registry.

8.2 The Tribunal did not consider that the documents should be admitted as the Respondent had no notice of the application. The Applicant had had ample time in which to ensure that all relevant documentation was served upon him and was included in the hearing bundle. No good reason for the late timing of the application was provided.

Factual Background

9. The Respondent was admitted to the Roll on 1 March 2002. He was the owner and sole principal (referred to in the Rule 5 Statement as "principle") of the Firm. At the date of the hearing his practising certificate was subject to conditions imposed on 9 April 2018.

10. In December 2006 the Respondent was instructed by Mr RK, on behalf of Company X, to purchase a plot of land ("the Land") for £1.7 million. The purchase was completed on 9 November 2007. Between 18 October 2006 and 16 June 2008, the Respondent was further instructed to execute a sub sale of part of the Land ("the Plot") to Mr NK, a third party not related to RK. The sub sale was completed on 9 April 2008. Bank A was the lender for both RK and NK. The Respondent acted for the bank in both transactions.

11. The Respondent filed a plan with the Land Registry which encumbered the Land by restricting several points of access which now lay within the Plot owned by NK. There was a dispute between the Respondent and his client about whether this was on instruction or in error. Company X subsequently pursued a claim against the Firm for professional negligence. The civil trial took place between 10 and 13 November 2015. Mr Justice Saffman found in favour of Company X and handed down his Judgment on 22 January 2016 ordering damages to be paid by the Firm to Company X in the sum of £229,970.

12. The Respondent was unable to obtain an indemnity from his professional indemnity insurers due to a number of adverse findings made by Saffman J in relation to the Respondent's evidence. The Firm subsequently entered into voluntary insolvency.

Witnesses

13. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of the one witnesses who gave live evidence, RK. The

absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

14. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with regard to the Respondent's right to a fair trial and to respect for his right to respect for his private and family life under Articles 6 and 8 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. **Allegation 1.1: On or about 16 January 2008, the Respondent filed at the Land Registry an incorrect plan, which encumbered his client's (Company X) land, as opposed to the plan which was approved and signed by his client; and in doing so breached rules 1.04 and 1.05 of the SRA Code of Conduct 2007 ("the 2007 Code").**

The Applicant's Case

15.1 RK stated that he provided the Respondent with a copy plan on 1 November 2007 and that this plan had been signed by him to confirm that he was happy with the apportioning of the land for the sub sale to NK. The signed copy of the plan permitted unencumbered access to the Land to be retained by Company X. Mr Thomas submitted that RK's evidence on this point made commercial sense from a property development perspective. The Applicant's case was that the Respondent annexed an alternative, unsigned, copy of the plan to the TP1 (the Land Registry form for transferring part of a registered title) and filed this at the Land Registry on 16 January 2008. The incorrect plan encumbered Company X's portion of the Land on three bases. Firstly, it precluded vehicular access from the north of the Land. Secondly, it rendered an area of the Land to the south of the Plot (namely a car park) inaccessible as access to the car park had been transferred to NK. Thirdly, there was no connecting right of way between the northern and southern part of the Land.

15.2 The Applicant described the Respondent's position as being that he advised RK about the adverse implications of reliance upon the plan, and that RK had provided instructions to proceed with the sub sale in any event. Mr Thomas submitted that had a client insisted on a course of action with such clear drawbacks, it would have been even more important for the Respondent to obtain a signed copy of the relevant plan in order to evidence such uncommercial instructions. This was submitted to be a factor undermining the Respondent's account.

15.3 RK disputed that any such advice was given by the Respondent. RK's evidence was that no developer with any common sense could ever have given the instructions to proceed with a sale which would encumber the land to such an extent. RK's evidence was that he did not become aware that the Land was encumbered until he began a project to redevelop the site and was approached by a third party to purchase the Land. The third party conducted a search against the Land Registry title and the issues surrounding rights of access were revealed. RK stated that he was unable to develop the site as planned as the south of the Land was effectively 'landlocked'. RK was unable

to sell the Land and/or develop the site causing financial difficulties and leading to the claim being brought against the Firm.

15.4 The Applicant contended that by filing the wrong plan with the Land Registry the Respondent had significantly diminished the value of the Land. This was the basis of the civil claim from RK. In those proceedings the Respondent argued that he had advised RK that the plan encumbered the Land during a meeting on 2 November 2007 and that RK had provided him with instructions to proceed in any event. Saffman J concluded that the advice had not been given, that RK had furnished the Respondent with a signed plan and the Respondent had attached the incorrect plan to the TP1. Saffman J asked whether it was likely that RK would ignore the advice the Respondent claimed to have given and concluded it was not. Mr Thomas submitted that this inherent implausibility undermined the Respondent's account.

15.5 The Respondent had confirmed to Bank A on 1 November 2007 that the title to the Land was clear. It was submitted by Mr Thomas, as had been commented upon by Saffman J, that this appeared to be inconsistent with any belief that the land in question would be encumbered by the sub-sale. Saffman J noted that the Respondent had a continuing obligation to Bank A, for whom he acted in the purchase of the Land and sale of the Plot, and that when completing the sub-sale, which was funded through borrowing from Bank A, he had not informed the bank of the encumbrances. Saffman J stated that this may suggest that the Respondent was not aware that Bank A's position would be prejudiced by the terms of the sub-sale. The Applicant's position was that the Respondent did not consider that the Land would be encumbered; he simply attached the wrong plan to the TP1.

15.6 By filing the incorrect plan at the Land Registry, rather than the copy plan approved and signed by his client RK, the Respondent failed to act in his client's best interests and to provide an adequate standard of service to his client in breach of Rules 1.04 and 1.05 respectively of the 2007 Code. The Respondent's actions were alleged to have led to his client suffering a financial loss and as summarised above RK's firm was awarded £229,970 in the civil proceedings.

15.7 Mr Thomas made submissions about the extent to which the Tribunal was entitled to make findings based on the judgment in the High Court proceedings which applied to all of the allegations. They are set out here, only once, to avoid unnecessary duplication. Mr Thomas stated that the Applicant relied upon Rule 15(4) of the SDPR which provided that a certified civil judgment could be relied upon as prima facie evidence of the facts found proved. Mr Thomas submitted that reliance could be placed on the findings given the detailed four day hearing during which both the Respondent and RK were cross examined at length.

The Respondent's Case

15.8 The Respondent's position was set out in his Answer, and also in his witness statement produced for the civil proceedings dated 17 December 2014, in the transcript of his oral evidence in the civil proceedings on 11 and 12 November 2015 and in his two responses to the Applicant explaining his conduct dated 8 March and 4 May 2017.

15.9 He denied that he filed the wrong plan at the Land Registry. The Respondent's case was that he filed the plan that RK had provided him, and that he had warned his client about the implications of the boundary line as drawn. In his Answer he referred to a site plan published on 22 July 2007 as part of a planning application lodged with Bradford Council in September 2007. The Respondent submitted that this plan showed the same boundary as shown on the plan he had filed with the Land Registry on RK's instructions in early 2018. His submission was that this corroborated his account that RK had provided and approved a plan which encumbered the Land. The Respondent described RK's explanation of this at the civil trial as being that the architect responsible for the planning permission plan was incompetent. The implication was that this lacked credibility and supported the Respondent's version of events.

15.10 In his witness statement produced for the civil proceedings the Respondent went into more detail. His case was that he was first made aware of the sale of the Plot on 10 October 2007, by which time contracts had been exchanged on the sale of the Land. The Respondent stated that by letter dated 18 October 2007 he wrote to RK and requested a boundary plan showing the land to be transferred to NK. The Respondent stated that on 2 November 2007 RK visited his office and provided a marked up plan which had been agreed with NK and his architect and which was in accordance with the re-development plans. The Respondent's evidence was that during that meeting he advised RK about the encumbrances, and this was also recorded in the attendance note of that date to which he referred in the civil trial. The Respondent's evidence was that RK had said the Respondent was blowing the issue up out of all proportions and any issues could be resolved with NK.

15.11 In the civil trial the Respondent relied upon attendance notes and copy letters which recorded his advice to RK and RK's instruction that due to his relationship with NK and the impending redevelopment the issues raised by the Respondent about the encumbrances 'would not cause him any issues'. In his witness statement the Respondent described RK's denial of their discussion of 2 November 2007 and his claim not to have received the letter sent on that date to the address he had routinely used for correspondence as 'unreal'. The Respondent's case was that RK was adamant he would proceed with the transaction irrespective of his advice.

15.12 In his letter to the Applicant of 8 March 2017 the Respondent stated that whilst he respected the decision of Saffman J he fundamentally disagreed with his findings. He maintained that his attendance notes were not fabricated to conceal his conduct. He made reference to evidence that Saffman J did not allow to be produced concerning alleged fraud in the transaction. The Respondent considered that the transaction and the refusal by RK to take independent legal advice when it was recommended were part of a coordinated plan to defraud the relevant bank through the discharge of the security. The Respondent's submission was that his own actions in bringing the suspected fraud to the attention of the relevant bank demonstrated his own honesty, integrity and professional standards. He reiterated that the plan lodged by him was in accordance with RK's instructions and was almost identical to the one lodged with Bradford Council for planning purposes by RK.

15.13 In his letter to the Applicant of 4 May 2017 the Respondent stated that he did not have the financial means to appeal the civil judgment despite being advised by an independent solicitor that he had grounds to do so.

The Tribunal's Decision

15.14 The Tribunal considered that the ambiguity, resulting from the SRA's sloppy preparation of its Rule 5 Statement, as to when the Respondent was alleged to have filed an incorrect plan with the Land Registry to be unfortunate, but accepted Mr Thomas's submission that the specific date was not a material averment. If the Respondent had supplied the incorrect plan to the Land Registry, as alleged, and contrary to his client's instructions, then the precise date on which he did so was immaterial.

15.15 The Tribunal had regard to Rule 15(4) of the SDPR which states:

> "The judgment of any civil court in any jurisdiction may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based shall be admissible as proof but not conclusive proof of those facts."

The findings of Saffman J against the Respondent contained in his judgment of 22 January 2016 were accordingly considered as proof, but not conclusive proof, of the facts as found. Saffman J had reached what he described as a regrettable finding that the Respondent had misrepresented his dealings with his client on 2 November 2007 in particular. Contrary to the Respondent's evidence and submissions Saffman J concluded that on this date RK had provided him with a signed plan. He found it was a signed version of the plan without encumbrances. He found that the Respondent had attached the wrong, unsigned, plan to the TP1 which was sent to the Land Registry.

15.16 The Tribunal heard evidence from RK. His evidence before the Tribunal mirrored that he had given in the civil proceedings: he stated that he had signed the plan he had provided to the Respondent on 2 November 2007 at the Respondent's request. He confirmed that the plan which the Respondent filed was not the one that he had signed and given to the Respondent. His evidence (in the civil trial) had been that he would never have agreed to the sale of a sub plot which encumbered his retained land as it was nonsensical from a development perspective. RK's evidence to the Tribunal was that he had sold a nightclub business which is where the funds for the proposed redevelopment came from. The Tribunal accepted he had some experience of commercial property matters.

15.17 The Tribunal accepted the submission made by Mr Thomas that had the Respondent been as concerned as he said he was about the encumbrances to the retained land caused by the boundary on the plan, he would have insisted that RK sign the plan or otherwise confirm his instructions in writing. The Tribunal also accepted that the fact the Respondent did not advise Bank A of the encumbrances which affected the value of the retained land, despite his clear obligation to do so when acting for the bank, indicated that the Respondent did not consider that the retained land to be so encumbered.

15.18 The Tribunal found that the Respondent's points made in rebuttal of the allegations and the findings of Saffman J lacked credibility. Taking account of the findings of Saffman J, noting that this followed a detailed four day trial, the live evidence of RK and the accepted fact that RK's instructions as portrayed by the Respondent would not make any sense from a property development perspective, the fact that the Respondent

on his own account had been concerned by the implications of the plan he had been given but had not asked RK to sign the plan or confirm his instructions in writing and the Respondent's failure to advise Bank A of the encumbrance, meant the Tribunal was satisfied beyond reasonable doubt that the Respondent had filed the incorrect plan with the Land Registry. He had not filed the signed plan he had been provided with by RK.

15.19 The 2007 Code was in force when the plan was filed, even though the Applicant could not identify the exact date of filing. The Tribunal found that filing the incorrect plan which was not the one provided by the client inevitably amounted to a breach of rules 1.04 and 1.05 in that he had not acted in his client's best interests or provided an adequate standard of service. The Tribunal found the breaches proved beyond reasonable doubt.

16. **Allegation 1.2: Between 10 October 2009 and 13 November 2016, the Respondent:**

1.2.1 falsified file attendance notes and/ or the contents of file attendance notes and in doing so breached rules 1.02 and 1.06 of the 2007 Code

1.2.2 relied on the file notes above in his defence of a civil claim brought by Company X;

and in doing so failed to achieve Outcome 5.1 of the 2011 Code and breached Principles 2 and 6 of the Principles.

The Applicant's Case

16.1 During the civil proceedings the Respondent produced and relied upon a number of attendance notes. He went on to give oral evidence to the Court based upon the information contained within those notes. The Applicant relied on the conclusion of Saffman J that a significant proportion of the evidence provided by the Respondent contained within the attendance notes was not credible.

16.2 Within his Judgment, Saffman J noted the Respondent's delay in providing RK's legal file to him. Company X first requested a copy of the file on 1 October 2009 and this was not made ready for collection until 16 December 2009. Upon discovering that the file was incomplete, Company X wrote to the Respondent again to request access to the full file. The Respondent did not provide the outstanding correspondence until 10 February 2010 (following a threat to refer him to the SRA, made on 29 January 2010). Saffman J stated in his judgment that he was "troubled that it did take so long for the file to be made available for collection…and that ultimately it took the threat of a referral to the SRA to produce it. The delay would have furnished [the Respondent] with opportunity to add fictitious notes and letters to the file".

16.3 During the trial, the Respondent was asked to explain where the original purchase file was. The Respondent's evidence to the Court was that he did not notice that the original file was missing until it was requested by his solicitors in preparation for his defence to the civil proceedings in 2014. The Respondent gave evidence to the Court that the file had been stored on a window sill in the office since 2009 and it was only when he had to provide the file to his defence solicitors in 2014 that he realised that it had been stolen

during a burglary 2012. Saffman J found that in his view it was "incredible that a solicitor should jump to that conclusion rather than simply that the file was lost".

16.4 Various attendance notes were considered in detail during the civil proceedings and the Applicant relied upon Saffman J's findings in respect of them. Mr Thomas noted that the civil trial lasted four days and that Saffman J heard from both the Respondent and RK at length. He submitted that the Tribunal could therefore place considerable weight on Saffman J's conclusions. Mr Thomas referred the Tribunal to various alleged falsifications in attendance notes of various dates, by reference to the notes themselves, the Respondent's own evidence about them, the account provided by RK and the conclusions drawn by Saffman J. This judgment summarises key elements of this history only in the paragraphs which follow.

Telephone attendance notes dated 18 December 2006

16.5 There were two attendance notes dated 18 December 2006. The first recorded a telephone conversation between the Respondent and NK where NK withdrew as the original purchaser of the Land and informed the Respondent that Company X was to purchase the site instead. Nothing was recorded in relation to any proposed sub sale. The second note recorded an incoming telephone call from RK where instructions were received on behalf of Company X to purchase the Land. A follow up meeting was arranged with RK for 4 January 2007 to review the contract. Again, nothing was mentioned in relation to any sub sale.

16.6 It was RK's evidence that instructions in relation to both the purchase and the sub sale were given during a face-to-face meeting with the Respondent and Mr AK on 18 December 2006. AK provided a statement as part of the civil proceedings which corroborated RK's evidence that a joint meeting was held at the Respondent's offices on 18 December 2006 and that the sub sale was discussed at this time. The Respondent conceded during his oral evidence that his first note was not entirely accurate as it recorded his telephone conversation being with NK when in fact it was with AK. No further admissions were made. The Respondent's position during his evidence was that he only became aware of the sub sale in October 2007.

Attendance note dated 4 January 2007

16.7 In an attendance with timed at 10:25 on 4 January 2007 the Respondent recorded that the purpose of the meeting with RK was to 'run through the contract because of the complexity of the matter'. His case was that it was at this meeting that he first asked RK to check the site plan, and RK confirmed that it was accurate. RK's evidence was that the note was fabricated to represent discussions which did not happen in order to give the impression that he wished for the transaction to go ahead regardless of any issue arising. Saffman J noted that a substantive meeting on 18 December 2006 was more in-keeping with other correspondence on the file, for example a letter from the Respondent to the seller's solicitors dated 21 December 2006 which confirmed that the contract was 'approved subject to amendments made being incorporated'. This aligned with instructions having been received before 4 January 2007 (and more likely than not on 18 December 2006). The Respondent also wrote to the seller's solicitors on 3 January 2007 with pre-contract enquiries, and this letter stated that upon receipt of satisfactory replies "we can confirm that we will be in a position to proceed to an

exchange of contracts by 5 January". This correspondence also pre-dated the meeting of 4 January and presumes that exchange could follow the day afterwards despite the "complexity" of the transaction referred to in the contested note.

16.8 The attendance note of the meeting on 4 January 2007 was timed at 10:25 and the meeting was said to have lasted for 54 minutes. Mr RA (the property agent for the transaction) provided evidence that the Respondent sent a fax to him at 10:39 on 4 January 2007 which proposed contracts exchanging on 5 January 2007. When questioned about this matter during the civil proceedings, the Respondent was unable to recall having left the meeting to send a fax and instead he stated that the time on his fax machine was wrong, an explanation which Saffman J said "did not cast the Defendant in a flattering light".

Telephone attendance note dated 10 October 2007

16.9 The Respondent stated that the first time he became aware of the sub sale was on 10 October 2007 during a telephone call with RK. He also stated that it was during a conversation on this date that he was also informed that NK (the purchaser of the Plot) was a director of Company X (the seller of the Plot). The note records that during the call Respondent advised RK that it was "imperative" that RK and/or NK sought independent legal advice in relation to the transaction. RK denied that this conversation took place at all. During the civil proceedings Saffman J commented that it appeared unusual that following this alleged conversation, the Respondent then waited until 30 October 2007 to write to NK advising him to seek independent legal advice in relation to the sub sale.

Telephone attendance notes dated 11, 12 and 19 October 2007

16.10 Three further notes were relied upon which purported to record the Respondent giving RK advice about the risk of conflict and the need for independent legal advice to be taken. RK denied that the conversations took place and that he was ever advised to take independent advice. The note of 11 October 2007 was followed, on the Respondent's account, by a letter of the same date which made the same points about the need for RK to take legal advice. Again it was RK's evidence that no such letter was received.

Attendance note dated 2 November 2007

16.11 There were several notes dated 2 November 2007. In one note timed at 16:25 the Respondent recorded that RK handed him the site plan and he advised RK that the sub sale would encumber the Land. The note further recorded that RK then provided specific instructions for the Respondent to proceed with the transaction in any event. It was RK's evidence that on this date he provided the Respondent with an alternative (signed) plan which did not encumber the Land. During the civil proceedings and as part of the Respondent's defence bundle, he provided another copy of the attendance note dated 2 November, timed at 16:25. Saffman J identified that this was not identical to that which had appeared in the file previously provided to the Claimant's legal representatives. Saffman J noted that the description in the subject line was different, the client number had changed, the length of the meeting had been extended, the format of the contents was different, some additional text had been included and the new note was timed at 13:25 (not 16:25). Saffman J remarked that he found these differences

"exceedingly troubling". During his evidence, the Respondent's explanation for the differences was that the previous note was a "draft" and that the one he had recently provided was the "perfected version". Saffman J remarked that the Respondent's explanation was a "matter of great concern". Saffman J concluded his review of the attendance note of 2 November by saying "It is a sad and highly regrettable finding that the attendance note of 2 November misrepresents the true position as I find it to be and it is not a conclusion that I reach lightly."

16.12 Other notes dated 2 November were also discussed in Court. One of which was conceded by the Respondent as being misdated (he stated that it should have been 1 November 2007). The Respondent was then challenged on this explanation as the timing of the note coincided with another already on file dated 1 November and so the meeting could not have taken place at the same time. In response to this, the Respondent stated that the times may be incorrect as he "did not wear a watch". This was an explanation Saffman J described as being "lamely" provided.

16.13 During the civil proceedings the Respondent produced a letter dated 2 November 2007 which had purportedly been sent to RK outlining his advice in relation to the encumbered land. The letter also enclosed copy transfers for RK to sign. It was RK's evidence that he never received this letter and that he was given the copy transfers to sign during the meeting of 2 November at the Respondent's offices.

Telephone attendance note dated 5 November 2007

16.14 This note recorded RK confirming safe receipt of the aforementioned letter of 2 November 2007 and providing instructions for the Respondent to continue to act irrespective of the encumbrances and conflicts issues. RK's evidence was that he never received this letter and that he took the transfers away with him following the meeting on 2 November.

16.15 The Applicant's case was that between 1 October 2009 and 10 February 2010 the Respondent falsified these file notes and/or their contents to represent discussions, advice and/or instructions which had not taken place. He subsequently relied upon this information in defence to the civil proceedings. Saffman J considered the contents of the records and drew the conclusion that the "integrity of the notes is materially compromised".

16.16 By falsifying attendance records and/or the contents of attendance records, and by subsequently relying upon these records as part of his defence to civil proceedings, the Respondent's actions were submitted to display a failure to act with integrity. It was submitted his actions lacked moral soundness, rectitude and steady adherence to an ethical code in breach of Principle 2 of the SRA Principles. The Applicant relied on Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, in which it was said that integrity connotes adherence to the ethical standards of one's own profession.

16.17 By going on to rely on falsified notes during subsequent civil proceedings, whilst under oath, in Court it was submitted that the Respondent knowingly deceived and/or misled the Court in breach of Outcome 5(1) of the 2011 Code. It was further submitted that misleading the Court had the capacity to undermine the public's confidence in the legal

profession. In relying upon falsified evidence, the Respondent was submitted to have breached Principle 6 of the SRA Principles in that he acted in a manner which would undermine the trust placed in him by the public as a legal professional. Mr Thomas submitted that the public would be scandalised that a solicitor relied upon false material in any court whether as a solicitor or in any private dispute.

16.18 To the extent that the Respondent's actions took place before 6 October 2011 (the date on which the 2011 Code took effect) the Applicant alleged that they breached the relevant rules in the 2007 Code. As noted in paragraph 17 above, the Tribunal had granted permission for the wording of allegation 1.2.1 to be amended so that it alleged that he "falsified file attendance notes and/or the contents of file attendance notes and in doing so breached rules 1.02 and 1.06 of the 2007 Code". Rule 1.02 of the 2007 Code required that a solicitor "must act with integrity" and Rule 1.06 required that "you must not behave in a way that is likely to diminish the trust the public places in your or the legal profession". The Applicant submitted that falsifying attendance notes, to the extent that took place before 6 October 2011, in the circumstances summarised above amounted to a clear breach of these rules.

16.19 Mr Thomas stated that it was the Applicant's case that whilst some of the events described under this allegation predated the 2007 Code coming into force, the falsification was alleged to have happened once it was in force. The Applicant's case was that it was prompted by the request made by Company X for the file in October 2009 and that the Respondent had an obligation to provide an accurate copy of the file upon request.

Dishonesty alleged in respect of allegation 1.2

16.20. The Applicant alleged that the Respondent acted dishonestly in respect of this allegation, however, it was submitted that proof of dishonesty was not an essential ingredient of the allegations of misconduct. The Applicant relied upon the test for dishonesty set out by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, summarised by the Applicant as acting dishonestly by the ordinary standards of reasonable and honest people.

16.21 The Respondent was alleged to have acted dishonestly by the ordinary standards of reasonable and honest people by falsifying the contents of attendance records, and subsequently relying upon such contents before the Court. It was submitted that not only was his conduct in making those records and/or statements dishonest by the ordinary standards of reasonable and honest people but he also must have been aware that it was dishonest by those standards for the following reasons:

16.21.1 The Respondent relied upon this information whilst giving evidence under oath;

16.21.2 The Respondent had the opportunity to review the attendance notes and correct any inaccurate and/or misleading information before providing his witness statement. He also then had a further opportunity to correct this whilst giving oral evidence before the Court;

16.21.3 The Respondent provided "finalised" attendance notes which differed from the draft versions previously produced to the Claimant's legal representatives which indicated that he knowingly made amendments to the records which were false.

The Respondent's Case

16.22 The Respondent denied the allegation. In his Answer he maintained that his file notes and their contents were accurate. He stated that a copy of his file was produced to RK's solicitors many years before November 2016 (the end date in the allegation) and was accurate when produced. The Respondent's contention was that RK was well versed in fabrications and adopted a method to suit his story. He stated that RK had been on remand for two years for assisting the suspect in a serious criminal matter in 2012, the implication being he was a less credible witness than the Respondent. The Respondent stated that he himself had never appeared in court before the civil trial where he was cross-examined by a QC for almost two days whereas he submitted that RK was well versed in such situations. He repeated his submissions that the transaction was part of a fraud involving RK, NK and AK in ways that the Respondent stated he did not fully understand but which had the hallmarks of fraud and which he reported to the relevant bank. He stated that his account of his actions in this regard would be corroborated by an individual he named at the bank.

16.23 The Respondent's witness statement set out a detailed account of the meetings, phone calls and letters involving RK, Company X and others. His account did not differ from the overview provided by the Applicant, as the Applicant's case was based on the notes he had produced, except, of course, inasmuch as his case was that all the notes were genuine.

16.24 The Respondent described in his witness statement that a notice to complete had been served by the vendor of the Land, and that by this time RK had informed him that he did not yet have a mortgage offer. The Respondent's case was that financial and time pressure was one of the reasons why RK gave instructions to proceed with the sale of the Plot notwithstanding the Respondent's advice about encumbrances and the impact on the retained land. The points that are summarised above in paragraphs 27.11 and 27.12 about RK's reliability in relation to allegation 1.1 also applied to allegation 1.2.

Dishonesty alleged in respect of allegation 1.2

16.25 Having denied that his attendance notes or their contents were fabricated, the Respondent thereby denied any dishonesty. He noted that Saffman J had not made any finding of dishonesty. He described the finding of the judgment as being that he had been negligent rather than dishonest. The fact that certain matters were excluded from the civil trial, the allegedly fraudulent Electronic Notice of Discharge which the Respondent alleged RK sought to make fraudulent use of for example, further reduced the weight the Tribunal should place on the civil judgment.

The Tribunal's Decision

16.26 The Tribunal again accepted Mr Thomas' submission that the falsification of attendance notes and their contents was the material element of the allegation irrespective of the precise range of dates within which they were said to have been created.

16.27 The Tribunal accepted the findings of Saffman J that the Respondent had misrepresented the true position in his attendance note of 2 November 2007. In his judgment in the civil case Saffman J had set out in detail the reasons for his findings. He had found elements of the Respondent's account to be implausible and differences in versions of attendance notes to be "exceedingly troubling". He had described the Respondent's conclusion that his client's file had been stolen in a targeted burglary to be "incredible". He had been "troubled" that it took the Respondent so long to provide his client's file when it was requested and noted that this "would have provided [the Respondent] with opportunity to add fictitious notes and letters to the file". In summary, Saffman J had concluded that the integrity of the attendance notes and other records relied upon by the Respondent had been "materially compromised".

16.28 The Tribunal found that the account provide by RK was accurate. His statement was unchallenged and his evidence about the instructions he gave as someone with property experience was very much more persuasive than the Respondent's account which was that financially nonsensical instructions were given by his client (of which he had not obtained written confirmation).

16.29 The Tribunal also considered that the Respondent's reliance on an attendance note of a meeting on 4 January 2007 which covered the period when another witness stated that he received a fax from the Respondent further undermined the Respondent's credibility. The delay in providing the legal file to RK's solicitors on request also undermined the Respondent's credibility. The Tribunal did not consider that the Respondent's vague allegations of fraud and attacks on RK engaged with the deficiencies in his own account or did anything to bolster his own credibility.

16.30 In the light of these findings, which were consistent with and reinforced the findings reached by Saffman J and accepted as proof of the facts found under Rule 15(4) of the SDPR, the Tribunal was sure to the requisite standard that the Respondent had falsified attendance notes and their contents. It was not in dispute that he had relied upon the notes in the civil proceedings and so inevitably the Tribunal found that he had relied on the falsified notes in defence of the civil claim.

16.31 With regard to the allegation concerning lack of integrity in breach of Rule 1.02 of the 2007 Code, since, for the reasons set out below, the Tribunal found that the Respondent had been dishonest, it followed that he had lacked integrity and had acted in breach of the Rule. The falsification of documents involved such a clear lack of probity and trustworthiness that the Tribunal similarly found beyond reasonable doubt that his conduct was likely to diminish the trust the public placed in him or the legal profession in breach of Rule 1.06 of the 2007 Code.

16.32 By the time of the civil trial, and the Respondent's reliance on the falsified notes in the civil proceedings, the 2011 Code and the Principles were in force. The Tribunal found beyond reasonable doubt that by relying on the false documentation in the civil

proceedings the Respondent had failed to achieve Outcome 5.1 of the 2011 Code which required that a solicitor must not attempt to deceive or knowingly or recklessly mislead the Court. The Tribunal found beyond reasonable doubt that such conduct displayed a very clear lack of integrity in breach of Principle 2 which was in any case a concomitant of the Tribunal's finding that the Respondent had acted dishonestly. The Respondent's conduct was likely to undermine the trust placed by the public in him and in the provision of legal services in breach of Principle 6.

Dishonesty alleged in respect of allegation 1.2

16.33 When considering the allegation of dishonesty, the Tribunal applied the test for dishonesty in Ivey. That test was set out as follows in the judgment of Lord Hughes at paragraph 74:- "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."

16.34 The Tribunal noted that the civil judgment contained no express finding of dishonesty. However, the Tribunal agreed with the submission of Mr Thomas that if the Tribunal accepted the findings of Saffman J and found the factual findings he had made proved to the requisite standard, then a finding of dishonesty could be inferred from those facts.

16.35 As a result of the civil finding that he had misrepresented the true position in his attendance notes and that the integrity of his attendance notes was compromised, the effect of Rule 15(4) of the SDPR and the further corroborating factors and assessments of credibility listed above in relation to allegation 1.2, the Tribunal had found that the Respondent had falsified attendance notes and/or their contents and had relied on them in Court. The Tribunal found that the Respondent was well aware that such conduct was unlawful and wrong.; he had gone to considerable lengths to seek to persuade the civil court that he had not acted as alleged and had maintained this position throughout extended cross-examination. The findings made by Saffman J and by the Tribunal intrinsically involved deliberate concealment of the true position. The Tribunal found beyond reasonable doubt that ordinary, decent people would regard the Respondent's actions as dishonest.

17. **Allegation 1.3: Between 18 December 2006 and 16 January 2008 the Respondent acted for Company X and NK where there was a conflict, or a significant risk of conflict; and in doing so breached rules 1.04, 3.01, 3.07 and 3.08 of the 2007 Code.**

The Applicant's Case

17.1 The Respondent was instructed to act by the following parties in relation to the Land and the Plot:

17.1.1 Company X – purchaser of the Land and seller of the Plot

17.1.2 NK – purchaser of the Plot

17.1.3 Bank A – mortgagee for both parties.

17.2 The Applicant's case was that there was a potential client conflict given that the Respondent acted for two parties during a conveyance who were at 'arm's length' (i.e. they operated separately from one another) in breach of Rule 3.07 of the 2007 Code. In relation to the sale of the Plot, the Respondent was acting for the buyer (NK) and seller (Company X).

17.3 The Respondent had asserted that he believed the parties were not at arm's length and therefore he was able to act for both in compliance with the 2007 Code by virtue of Rule 3.08. In his defence to the Claim and the evidence contained within his attendance notes relied on in those proceedings, the Respondent stated that it was his understanding that NK was a director of Company X and that the parties' interests were therefore aligned. He stated that he therefore believed the relationship between the parties permitted him to continue to act for both parties with their explicit consent. Mr Thomas submitted that had Company X and NK not been at arm's length, had NK been a director as the Respondent had claimed he was told, then rule 3.08 may have offered scope for him to continue to act. However, Mr Thomas submitted that in light of the Companies House search results, the evidence from RK and from AK, this could be discounted. He referred the Tribunal to the Respondent's witness statement in the civil proceedings in which the Respondent acknowledged that NK was not in fact a director of Company X. Mr Thomas submitted that it would have made no sense for RK to tell such an easily discoverable lie. He also submitted that the fact that after the alleged error with the plans was discovered NK would not agree to rectify the plans supported the contention that he was always acting at arm's length and entirely separately.

17.4 The Respondent relied upon a telephone attendance note dated 10 October 2007 which recorded RK advising the Respondent that NK was a director of Company X. The note stated that the Respondent flagged that an issue of conflict may arise and that one or both parties should seek independent advice. However, RK's evidence was that NK has never been a director of Company X which the Applicant submitted had been corroborated by a Companies House check.

17.5 An attendance note dated 11 October 2007 of a meeting between the Respondent and RK recorded another discussion of the conflict issue. The Respondent recorded that he advised RK that the Plot "needed to be sold at arms-length whether or not NK was a director and that he was unwilling to discuss this aspect of the transaction any further". The note indicated that the Respondent was willing to continue acting for both parties once in receipt of consent. RK denied that the conversation described by the Respondent took place. During the civil proceedings AK provided a witness statement which also stated that the Respondent was never told that NK was a director of Company X.

17.6 The Applicant submitted that as Company X and NK, the parties to the sale of the Plot, were at arm's length, by failing to cease to act, the Respondent was in breach of Rules 1.04, 3.01 and 3.07 of the 2007 Code which related to acting in the best interests

of each client, not acting if there is a conflict of interest and not acting for more than one party in conveyancing, property selling or mortgage related services other than as permitted by, and in accordance with the relevant further rules.

The Respondent's Case

17.7 In his Answer the Respondent admitted allegation 1.3. He stated that at the time he had relatively little legal experience. His belief at the time had been that having advised the parties that they should take independent legal advice, and followed this up in writing, then provided the parties consented to him acting for both parties he was entitled to do so. He stated that Bank A had consented to him acting for both parties. AK was the son of NK (the purchaser of the Plot) and was also Head of Commercial Banking at Bank A. The Respondent stated that RK and AK discussed the transactions on many occasions and both knew that he was acting for both parties and Bank A. As noted above, the Respondent's contention was that the failure to take the independent advice he stated he recommended was part of the orchestrated fraud perpetrated by AK, NK and RK as doing so would have compromised their fraud.

The Tribunal's Decision

17.8 The Tribunal disregarded the period prior to 1 July 2007 as the 2007 Code in respect of which the breaches were alleged did not come into force until then. The allegation was admitted. The Tribunal concluded that the admission was properly made and found that the allegation was proved beyond reasonable doubt. Even if NK had been a director of Company X there would still have been a conflict of interest given the fiduciary duty of a director to the company and the fact that the sale of the Plot was to NK in his personal capacity. In any event, the Respondent had accepted that he had been under a misapprehension about the conflict rules under the 2007 Code and that given the conflict between Company X and NK in respect of the sub sale, even on his own account, he was unable to act without breaching the rules from the 2007 Code cited by the Applicant.

18. **Allegation 1.4: In the alternative to paragraph 1.2 above, between on or around 2 November 2007 and 16 January 2008, the Respondent:**

1.4.1 Acted for Company X and NK where there was a conflict, or a significant risk of conflict; and in doing so breached rules 1.04, 3.01, 3.07 and 3.08 of the 2007 Code;

1.4.2 Failed to advise Bank A of a conflict, or risk of conflict, arising between Bank A and Company X and in doing so breached rules 1.02, 1.04 and 3.16 of the 2007 Code;

1.4.3 Acted for Company X and Bank A where there was a conflict, or a significant risk of conflict; and in doing so breached rules 1.04, 3.01, and 3.16 of the 2007 Code.

The Applicant's Case

18.1 In the attendance notes he relied on in the civil proceedings and in his oral evidence in those proceedings, the Respondent's account was that he was aware that the Land would be encumbered by the sub sale of the Plot and that he brought this directly to RK's attention on 2 November 2007.

Conflict or a significant risk of conflict between Company X and NK

18.2 The Applicant submitted that irrespective of whether or not the Respondent understood the transaction between Company X and NK to be 'not be at arm's length', if a conflict or significant risk of conflict arose under Rule 3.08, the Respondent was under a duty to cease to act. On the basis of the Respondent's attendance note dated 2 November 2007, he was aware that the proposed sale of the Plot to NK and the plan allegedly discussed during this meeting would encumber (and therefore devalue) the Land to the detriment to Company X. The conflict would therefore have become apparent as soon as this fact was discovered. It was alleged that the Respondent was therefore, on his own account, aware of the conflict or a significant risk of a conflict arising between Company X and NK from at least this date. It was submitted that as soon as the Respondent was aware of this conflict or significant risk of a conflict he was under an obligation to cease to act for one of both of the parties, and in not doing so he breached Rules 1.04, 3.01 and 3.08 of the 2007 Code. These provisions related to acting in the best interests of each client, not acting if there is a conflict of interest and not acting even where the transaction is not at arm's length where there was a conflict or a significant risk of one.

Failure to advise Bank A of a conflict, or risk of conflict, arising between Bank A and Company X and acting for Company X and Bank A where there was a conflict, or a significant risk of conflict

18.3 On 1 November 2007 the Respondent produced and signed an unencumbered certificate of title for the Land and provided this to Bank A. The certificate of title was submitted under Rule 6(3) of the Solicitors Practice Rules 1990 which placed an obligation on the Respondent to inform Bank A of any matter which would render the certificate 'untrue or inaccurate'. The lender would have placed reliance on the certificate of title. The Respondent, on his own account, had become aware, from at least 2 November 2007 that the sub sale proposed by Company X would encumber the Land which Bank A was lending security over. As the encumbrance would cause the Land to devalue, Bank A's security was put at risk and therefore their interest in the transaction going ahead was in conflict with the instructions of Company X.

18.4 The Applicant stated that Bank A reviewed their file which dated from 29 October 2007 to 2014 (when the charge was repaid in full) and confirmed that at no point did the Respondent advise them of any risk of conflict and/or advise them to seek independent legal advice in relation to the security. Given the conflict or significant risk of conflict the Respondent was under an obligation to advise Bank A to seek independent legal advice and in not doing so he was submitted to have failed to act in their best interests in breach of Rule 1.04 of the 2007 Code.

18.5 Acting for borrower and lender was permitted under the 2007 Code subject to conditions provided under Rule 3.16. One restriction was where a conflict of interest exists or arises (Rule 3.17(2)(a)). The Applicant's case was that on the Respondent's account, a conflict arose which meant that he should have ceased to act for one, or both of the parties, and he continued to act despite the presence of the conflict which was not in the best interests of Bank A, his client. It was submitted that he therefore acted in breach of Rules 1.04, 3.01 and 3.16 of the 2007 Code.

The Respondent's Case

18.6 For the same reasons summarised in relation to allegation 1.3, the Respondent admitted this allegation. His position was that as a relatively inexperienced solicitor he had a misapprehension about the rules regarding the risk of conflict and when, having advised a client to seek independent legal advice and received the client's consent to continue acting, he was permitted to continue to do so.

The Tribunal's Decision

18.7 This allegation was pleaded in the alternative to 1.2. As the Tribunal had found allegation 1.2 proved, no findings were made in respect of this alternative allegation.

Previous Disciplinary Matters

19. There were no previous Tribunal disciplinary findings.

Mitigation

20. The Tribunal noted that the Respondent had made limited early admissions, to allegation 1.3 and allegation 1.4 (pleaded in the alternative to allegation 1.2). He had also accepted in his Answer that if proved the conduct alleged would lead to strike off from the Roll which demonstrated a degree of insight. He had an otherwise unblemished disciplinary record.

21. In his Answer the Respondent stated that he had applied to remove his name from the Roll in June 2018 but this had been refused by the Applicant as his case had been referred to the Tribunal. The Respondent described the financial and emotional impact of the civil claim and the Applicant's investigation and proceedings on him.

Sanction

22. The Respondent had been found to have been dishonest. In the Judgment of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) it had been held by Coulson J., with the concurrence of Laws LJ., that "save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll....that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances... In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary... or over a lengthy period of time ...whether it was a benefit to the solicitor, and whether it had an adverse effect on

others." It was clear to the Tribunal that this case was very far removed from the residual category referred to by Laws LJ in Sharma. The Tribunal considered its Guidance Note on Sanctions (6th Edition). The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

23. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was to avoid a claim by a disgruntled client and to avoid potential disciplinary proceedings and that his actions were planned. The Respondent had taken steps to construct falsified documents to corroborate his account of events. His misconduct extended over a significant period of time as it involved not only the falsification of the attendance notes and other documents but also the subsequent reliance on them in the civil trial. Whilst he was relatively inexperienced, the need to avoid misrepresenting client instructions and presenting an inaccurate position to the Court was so fundamental that the Respondent must have been aware his actions were unacceptable. The Tribunal assessed the Respondent's culpability as high.

24. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that the Respondent had dishonestly falsified attendance notes and relied upon them in Court to resist a claim from his former client. The harm to RK was therefore significant; had the Respondent reacted to his error in sending the wrong plan to the Land Registry differently, the impact on RK and Company X would potentially have been much reduced. The harm to the profession from such conduct was also potentially significant.

25. The misconduct found to be proved was aggravated by the fact that the allegations included dishonest conduct. The misconduct also extended over a considerable period of time and was deliberate. The seriousness of the conduct was aggravated by the fact the Respondent knew, or ought to have known, that such actions were potentially very harmful to the reputation of the legal profession. The misconduct was also aggravated by the extensive steps taken by the Respondent to seek to conceal his initial error and misrepresent events.

26. The Tribunal noted that the Respondent had no prior disciplinary findings against him and had made an early partial admission.

27. The Tribunal had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

The Respondent's conduct had fallen very far short of the standard of conduct referred to by Sir Thomas Bingham. The Respondent had been found to have been dishonest and there were no exceptional circumstances such that the case might be held to fall into the residual category referred to in the judgment in Sharma. No lesser sanction than striking off the roll was therefore appropriate.

Costs

28. The Respondent had not provided evidence of his means, as required by the Tribunal's Standard Directions where the Tribunal is invited to take them into account when considering costs. He had, however, made submissions about costs in his Answer. In his Answer he stated that he had indicated to the Applicant since June 2018 that he was willing to accept the sanction of strike off. He stated that he had sought to reach an Agreed Outcome since that date. He stated that due to the financial impact of the civil proceedings he had been unable to appoint a representative in the Tribunal proceedings. He invited the Tribunal to take into account his efforts to do what he described as everything in his power to conclude the matter since June 2018 without the need for a hearing. In an application for an adjournment dated 11 January 2019 the Respondent had invited the Tribunal to make a costs order which would not be enforced without leave of the Tribunal due to his limited means.

29. On behalf of the Applicant Mr Thomas applied for costs in the sum of £23,212.50 as set out in a Schedule of Costs dated 23 January 2019. In support of the application for costs, the Applicant relied on the fact that all of the allegations made by the Applicant had been found proved and that whilst the Respondent had made various observations about costs at different times he had had the opportunity to produce evidence of means for the Tribunal's consideration and had failed to do so.

30. Whilst the Tribunal considered it proper to award costs to the Applicant, the amount of costs to be awarded was examined carefully. Within the Schedule of Costs dated 23 January 2019 a round figure of 70 hours was included for all pre-issue activity and 102 hours for post issue activity. The Applicant sought the Tribunal's leave to amend the Rule 5 Statement on the first day of hearing - the need for such amendment having come to the attention of the Applicant's advocate on the first day of the hearing. A further application was made to amend the Rule 5 statement on the second day of the hearing accompanied by an application to admit additional documents despite the absence of the Respondent. The Tribunal considered that but for these issues the hearing would have concluded within one day. None of the issues which required the amendment of the Rule 5 statement had come to light sooner or during the 102 hours of post issue activity.

31. The costs claimed by the Applicant were in excess of £23,000. The material relied on by the Applicant in support of its case consisted overwhelmingly of documentation reproduced from civil proceedings and the judgment in those proceedings.

32. The Tribunal asked whether any more detailed information was available. Almost three hours after these questions from the Tribunal, a further Schedule of Costs, dated 30 January 2019, was provided on behalf of the Applicant. Mr Thomas stated that as the fixed fee covered all preparatory work and work up to and beyond the hearing there was no hourly rate for particular individuals. He invited the Tribunal to consider the overall costs claimed, and the hours which had been spent on the case. The total hours included on the updated schedule were 252. The activities about which the Tribunal had enquired were contained within combined totals for various activities of 117.5 hours for pre-issue work and 80.3 hours for post-issue work. Mr Thomas submitted that a significant amount of time was incurred liaising with the Respondent and that the Applicant made assiduous efforts to engage with him as far as was appropriate. He

stated that any costs incurred in obtaining the transcript from the civil proceedings were absorbed within the fixed fee. He stated that further information about which fee earner had completed which task was not available in a readily accessible format and in any event was unlikely to assist the Tribunal given the fixed fee applicable to all work completed.

33. The Tribunal assessed the costs for the hearing. Having read all of the documents in the case and listed to all the submissions made carefully, the Tribunal considered that 252 hours was a wholly excessive number of hours for the case. The case brought by the Applicant was straightforward and predicated on a previous civil judgment. The Tribunal considered that the 117.5 hours claimed for pre-issue activity was disproportionate. Resting in large part on a previous judgment, the case required very limited investigation or preparation of statements. There were only two witnesses for the Applicant, and the statements prepared for both were brief. The necessary documents were in large part also taken from the prior civil proceedings. There were five allegations in total which related to a narrow factual matrix. Key points within the factual matrix had been the subject of findings made by the judge in the civil proceedings in a relatively straightforward 23 page judgment.

34. In addition, the Tribunal considered that the 80.3 hours claimed for post-issue activity including preparation for the hearing was disproportionate due both to the complexity of the case, the amount of material involved and the state of readiness of the case. The Tribunal considered this led to the hearing taking an additional day to complete. The Respondent's non-attendance meant that no unforeseen developments entailing additional work could be attributed to him. There was a lack of clarity about key dates in the Rule 5 Statement and the supporting documentary evidence. Applications were made on both days of the hearing to amend the Rule 5 Statement following reflection by counsel for the Applicant. A significant amount of Tribunal time was wasted whilst counsel resolved his instructions on routine matters. The Tribunal was not assisted by the poor quality of the drafting of the Rule 5 Statement which fell well short of the standard expected of the Regulator of the profession.

35. In all the circumstances, the Tribunal considered that the reasonable and appropriate level of costs was £7,470.30. This included the sums claimed for the court transcripts and the Applicant's investigation costs. The Tribunal noted that the Respondent had not provided evidence of means and therefore, in accordance with the Guidance Note on Sanctions and Practice Direction number 6, no reduction was made on this basis. The Tribunal also noted that the Applicant was under no obligation to conclude an Agreed Outcome and in any event it had not been provided with details of discussions on this subject and accordingly no reduction was made on this basis. The Tribunal considered that an order that the costs award may not be enforced without leave of the Tribunal would increase the costs ultimately payable by the Respondent and noted Mr Thomas' submission that the Applicant was a public body which would have regard to all circumstances when considering enforcement of any costs awarded. No such order was made. The Respondent was ordered to pay the costs of and incidental to this application and enquiry fixed in the sum of £7,470.30.

Statement of Full Order

36. The Tribunal ORDERED that the Respondent, BALJINDER HAYRE, 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 £7,470.30.

Dated this 27th day of February 2019
On behalf of the Tribunal

A. Ghosh
Chairman