

The Respondent appealed the Tribunal's decision dated 10 September 2020. The appeal was heard by Morris J on 14 July, 15 July and 2 August 2021 and Judgment handed down on 11 October 2021. The Respondent's appeal was dismissed.

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11839A-2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ZULFIQAR ALI

Respondent

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Before:

Mrs A. Kellett (in the chair)

Mr M. N. Millin

Mr P. Hurley

Date of Hearing: 6 to 8 July 2020

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### **Appearances**

Grace Hansen, counsel, of Capsticks Solicitors LLP of 1 St Georges Road, London, SW19 4DR, for the Applicant

Alex Di Francesco, counsel, of 25 Bedford Row, London, WC1R 4HD, for the Respondent

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## **JUDGMENT**

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## **Allegations**

1. The allegations made by the Applicant against the Respondent in an (amended) Rule 5 Statement dated 8 April 2020 were that
  - 1.1 Whilst acting in relation to a property development scheme at Property P the Respondent caused and/or permitted client money, which included purchaser's deposit money, to be paid into his office account and thereby breached Rule 13.1 and/or 14.1 of the SRA Accounts Rules 2011 ("the SARs").
  - 1.2 The Respondent made payments out and facilitated transactions which were dubious and/or bore the hallmarks of fraud when acting on behalf of his client IC in relation to a property development scheme at Property P. The Respondent transferred a minimum of £828,796 of purchaser's deposit monies to IC notwithstanding that he was aware that IC did not own Property P and that purchaser's deposit monies were being placed at risk. The Respondent thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("the Code").
  - 1.3 On 30 January 2015 and/or on or around 1 April 2015 the Respondent advised Person A (an undercover reporter posing as an immigration client) regarding methods for circumventing the UK immigration system, namely by entering into a sham marriage. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.
  - 1.4 On 30 January 2015 and/or on or around 1 April 2015 during a surreptitiously recorded conversation with Person A, the Respondent stated that he could prepare and/or submit paperwork in support of Person A and/or others' marriage and U.K. residency, notwithstanding that the Respondent was aware that the marriage would be bogus and arranged for the purpose of circumventing the UK immigration system. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.
2. Dishonesty was alleged as an aggravating factor with respect to allegations 1.3 and 1.4.

## **Documents**

3. The Tribunal considered all of the documents in the case which comprised an electronic trial bundle containing:

### **Applicant**

- The Rule 5 Statement and exhibits
- Reply to the Respondent's Answer dated 13 May 2020 and exhibits
- Witness statement of Ms Y dated 19 April 2018
- Witness statement of Sarah Taylor dated 16 January 2019
- Supplementary witness statement of Sarah Taylor dated 6 February 2019
- Witness statement of James Carruthers dated 18 January 2019
- Witness statement of Ms D dated 21 January 2019
- Witness statement of Jennifer Jones dated 8 February 2019
- Civil Evidence Act Notice dated 3 June 2020

- Schedules of costs from remission of proceedings dated 6 April 2020 and as at the date of the final hearing dated 26 June 2020
- A transcript of an interview with the Respondent dated 13 April 2017
- Video footage of a conversation between the Respondent and Person A

#### Respondent

- Amended Answer dated 15 June 2020 and document bundle
- Respondent's witness statement dated 15 June 2020
- List of propositions which would have been put to Ms Y
- Bills of costs dated 5 May 2020 and as at the final hearing
- Personal financial statement dated 29 May 2020 and supporting documents
- Four character references

#### Preliminary Matters

4. It was ordered by consent in the Administrative Court that the previous decision of the Tribunal be quashed and remitted for a reconsideration (with a specified transcript and translation certificate included in the trial bundle).
5. Pursuant to a direction made by the Tribunal the hearing was held remotely via video-link.

#### Factual Background

6. The Respondent was admitted as a solicitor on 1 November 2010. He was authorised as a sole practitioner on 8 June 2015 and practised at all material times as ZA Solicitors Ltd ("the Firm").
7. The Applicant received a complaint from JP Goldman Solicitors ("JPG") relating to conveyancing transactions and the purchase of flats that were under construction. The Respondent acted for the developer IC. A forensic investigation was undertaken by the Applicant, beginning on 15 March 2017, which gave rise to allegations 1.1 and 1.2.
8. The matters detailed in allegations 1.3 and 1.4 had featured in a television programme which was aired on 2 July 2015 and involved the Respondent (and other solicitors) being surreptitiously recorded discussing sham marriages with purported clients. The Applicant became aware of the Respondent's involvement in February 2017 and obtained the relevant footage on 6 December 2017.

#### Witnesses

9. The Respondent, Sarah Taylor (Forensic Investigation Officer ("FIO") of the Applicant) and Jennifer Ann Jones (a former Senior Conveyancer at JPG) gave oral evidence. The written and oral evidence given is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of the witnesses. 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**

10. 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.
11. **Allegation 1.1: Whilst acting in relation to a property development scheme at Property P the Respondent caused and/or permitted client money, which included purchaser's deposit money, to be paid into his office account and thereby breached Rule 13.1 and/or 14.1 of the SARs.**

### The Applicant's Case

- 11.1 The complaint received by the Applicant was submitted by Jennifer Jones (a former Senior Conveyancer at JPG) who was acting for buyers who were purchasing flats under construction at Property P. The property developer was IC. The Respondent had received deposit monies from buyers via JPG and remitted these funds to his client, IC. Rule 13.1 of the SARs requires that if client money is received or held, one or more client accounts must be kept. Rule 14.1 of the SARs requires that client money must without delay be paid into a client account and must be held in a client account.
- 11.2 The Respondent sent a letter dated 11 November 2016 to IC which stated "We write to confirm our client bank account details as follows..." However, the letter in fact provided the Firm's office account details. During the interview with the FIO on 13 April 2017, the Respondent acknowledged that he had provided his office account details to IC and attributed this to commercial pressure being applied from IC whose marketing efforts had attracted interest from potential purchasers. The Firm did not have a client bank account at the date of the letter (on 11 November 2016). The Respondent stated that he had met with his bank manager on 31 October 2016 and 2 November 2016 to discuss opening one. A client bank account was subsequently opened on 24 November 2016.
- 11.3 On 21 November 2016, £65,973 and £59,290 were remitted into the Firm's office account as deposits for two units at Property P. The deposits remained in the Firm's office bank account until they were returned in full to the prospective buyer on 19 January 2017. On 25 November 2016, £89,172 was remitted into the Firm's office account from another buyer. The deposit remained in the Firm's office bank account until it was sent to IC in full on 30 November 2016.
- 11.4 The Applicant's case was that the Respondent did not have a client account at the time he received the deposit monies (something he acknowledged) in breach of Rule 13.1 of the SARs. By retaining client money in his office account as described above, it was submitted that the Respondent had also breached Rule 14.1 of the SARs.

### The Respondent's Case

- 11.5 This allegation was admitted. In summary, this was on the basis that the Respondent acknowledged that an office account was used improperly for 13 days on what he described as an entirely temporary basis, in circumstances where only the Respondent was able to disburse funds from the account. The account in question was said to have been in significant credit and there had been no misuse of the monies temporarily held there. The Respondent had taken steps to arrange for a client account to be set up.

### The Tribunal's Decision

- 11.6 Allegation 1.1 was admitted with regards to the alleged breaches of Rules 13.1 and 14.1 of the SARs. The Tribunal considered the admissions were properly made and the allegations were proved beyond reasonable doubt.
12. **Allegation 1.2: The Respondent made payments out and facilitated transactions which were dubious and/or bore the hallmarks of fraud when acting on behalf of his client IC in relation to a property development scheme at Property P. The Respondent transferred a minimum of £828,796 of purchaser's deposit monies to IC notwithstanding that he was aware that IC did not own Property P and that purchaser's deposit monies were being placed at risk. The Respondent thereby breached any or all of Principles 2 and 6 of the Principles and failed to achieve Outcome 7.4 of the Code.**

### The Applicant's Case

- 12.1 Ms Hansen, for the Applicant, submitted that there was not a significant factual dispute between the parties. The various payments, and the key elements of the surrounding factual matrix upon which the Applicant relied, were not disputed by the Respondent. Ms Hansen set out various reasons, described as 'red flags', why the Applicant contended that the development was dubious and bore the hallmarks of fraud, in light of which, it was submitted that the Respondent's actions breached Principle 2 (act with integrity), Principle 6 (maintain public trust) and failed to achieve Outcome 7.4 of the Code (maintain systems to protect money and assets).
- 12.2 Firstly, the Respondent was approached about the work which involved the sale of 64 flats when he did not practice in conveyancing. The Firm advertised its services on its website as immigration, criminal and family work. It was acknowledged that solicitors may take on new areas of work, but it was submitted that being approached 'out of the blue' in relation to the sale of 64 flats, a field in which he did not ordinarily practice, should have raised concerns. The Respondent informed the FIO that he had been told that he had been recommended by a client for whom he had done immigration work. It was submitted that he should have ensured he was satisfied as to why a (purported) property developer would instruct a solicitor with no recognised experience in conveyancing, in relation to what was described as a large-scale property development.
- 12.3 The Respondent sent a retainer letter to his client IC regarding his instructions to act in the sale of the individual flats at Property P on 24 November 2016. At this point, having conducted a Land Registry search the previous day, the Respondent was aware

that his client was not the owner of Property P (the owner was a Mr AP). It was submitted that this should have caused concern to the Respondent and represented a second 'red flag' warranting urgent further enquiries. Unless satisfied by the outcome of such further enquiries, it was submitted that this ownership discrepancy should have resulted in a suspension of the Respondent's payments of purchaser deposit monies to IC or alternatively in the Respondent ceasing to act for IC.

- 12.4 The Respondent had been in communication with various individuals at IC prior to sending the retainer letter of 24 November 2016. In his evidence the Respondent stated he was first contacted by phone in September of 2016. On 26 October 2016, the Respondent received an email from a Mr JK who had stated that he was the Marketing Director for IC. The FIO noted that Mr JK was not named as a Director of IC at Companies House. The Respondent had performed a search of Companies House and so it was submitted that Mr JK not being a Director of the company was a further 'red flag'. In addition, it was submitted by Ms Hansen that the fact the Companies House records revealed that IC had been a dormant company prior to the appointment of a new director in June 2016 (shortly before the Respondent was contacted) was a further 'red flag' that should have prompted further enquiries.
- 12.5 The commercial pressure that the Respondent described being applied by IC, described in paragraph 11.2 in relation to allegation 1.1, for him to provide bank account details for the receipt of buyer deposits, when the Respondent stated IC was aware that his Firm did not have a client account was submitted to be a further 'red flag'. A property development company that was content, to the point of applying commercial pressure, for the Respondent to breach the SARs was submitted to be an additional factor which should have raised concerns.
- 12.6 The email dated 26 October 2016 from Mr JK of IC to the Respondent, mentioned in paragraph 12.4, attached a letter dated 15 August 2016 from Chamber of Legal Advisors LLP. This unsigned letter, addressed to "whomever it may concern", stated that IC had exchanged contracts on Property P. The Applicant contended that this was an attempt by IC to demonstrate to the Respondent their ownership and interest in Property P. The FIO conducted enquiries with Chamber of Legal Advisors LLP who were said to have no knowledge of this matter. Chamber of Legal Advisors LLP is an exclusively immigration practice and it was submitted that the documents relating to Property P which had been provided to the Respondent did not appear to be genuine. During the FIO's investigation the Respondent accepted that he made no enquiries of Chamber of Legal Advisors LLP to check the veracity of the documents provided to him by IC concerning their purported acquisition of the property.
- 12.7 On 24 November 2016, the Respondent met with Mr AK (a director of IC) at the Firm. Mr AK provided his driving licence as proof of identification. The Respondent confirmed that the Company House search and driving licence check represented the extent of the due diligence that he undertook on Mr AK and IC. Mr AK signed the Respondent's client care letter dated 24 November 2016 in which the Respondent had stated:

"You are a developer. You develop the properties and sell those in the market. Currently you have acquired [Property P]. You have made agreement(s) with

the landlord to develop and sell this property. You instruct us to act as your (seller) solicitors in this matter”.

The reference to IC having acquired Property P was submitted to be clearly inaccurate; something known to the Respondent, who from the date of his Land Registry search (23 November 2016), knew he was acting on behalf of a property developer that did not own the property being marketed.

- 12.8 At the interview with the FIO on 13 April 2017, the Respondent stated that he was aware that IC did not own the property but that he believed they were in the process of acquiring it. In response to a question from the Tribunal the Respondent had stated that he was first informed by IC in September 2016, in his first meeting with his prospective new client, that exchange of contracts had not yet taken place. Notwithstanding his understanding of the status of the properties’ ownership, between 25 November 2016 and 8 February 2017 the Respondent transferred £828,796 to his client IC. This comprised £839,796 in purchaser’s deposit monies sent to the Firm by JPG on behalf of 11 clients hoping to purchase units within the property (with a deduction of £11,000 by the Respondent for his fees). Ms Hansen submitted that the size of the deposits, in the context of the other features of the development scheme, was a further ‘red flag’ which should also have raised concerns for the Respondent.
- 12.9 The Rule 5 Statement included details of individual would-be purchasers whose deposit monies had been paid to IC by the Respondent. These included Ms Y whose evidence detailed the effect on her families’ financial circumstances. She stated that the loss of the £59,290 deposit monies provided to the Respondent and paid out by him to IC eroded almost half of her husband’s pension. The personal impact described was profound.
- 12.10 On 15 May 2017, IC emailed the Respondent and informed him that planning permission had not been granted by the council to turn the development into flats. In his interview with the FIO, the Respondent had described the project as a “bad investment” and stated that if was acting for purchaser clients he “would definitely advise them don’t go ahead until you have some kind of surety that they have acquired the property”. The Applicant submitted these comments confirmed that the Respondent was aware that the scheme was potentially dubious. The Respondent was said to have acknowledged that buyers’ deposits were at risk because IC did not own the property or have planning permission to develop it. The Applicant’s case was that the Respondent understood that IC’s business model was to generate money through initial deposits on a building they did not own and did not have planning permission to develop. In those circumstances, compounded by the background to the instructions summarised above, the Respondent’s release of purchaser’s deposit monies to IC was submitted to be dubious and IC’s activities to have borne the hallmarks of fraud.
- 12.11 The Respondent’s reliance on the fact that the buyers were represented by their own solicitors could not absolve the Respondent from the breaches alleged. The Applicant contended that a solicitor cannot assign responsibility for risk to the buyer’s solicitors and adopt the position that as he does not act for the purchasers he need pay no heed to the wider implications and risks posed by his instructions. Ms Jones’ evidence was that she received an email from the Respondent on 20 December 2016 which, amongst other things, “assured me that exchange had taken place and that [IC] would

hold the freehold title on completion in early January [2017]”. It was alleged that the Respondent recognised the risks to the buyers at the time he released the deposit monies and yet between 25 November 2016 and 8 February 2017 he transferred £828,796 to IC.

- 12.12 It was submitted that the public would not expect a solicitor to accept instructions and continue to act in a property development when he was aware that buyer’s deposits were being placed at risk. By facilitating these payments, it was submitted that the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6. Likewise, the Applicant submitted that the Respondent’s conduct in releasing the deposit monies failed to achieve Outcome 7.4 which required him to monitor and take steps to address risks to money and assets entrusted to him by clients and others.
- 12.13 It was submitted that the Respondent’s actions amounted to a failure to act with integrity in breach of Principle 2. The Applicant relied on the test set out in Wingate v SRA [2018] EWCA Civ 366 in which it was said that integrity connoted adherence to the ethical standards of one’s own profession. Ms Hansen invited the Tribunal to consider all of the factors outlined above together. It was submitted that a solicitor acting with integrity would not have paid out purchaser’s deposit monies to IC in the circumstances detailed above and would not have facilitated transactions which were dubious and bore the hallmarks of fraud.

#### The Respondent’s Case

- 12.14 The allegation was denied. Mr Di Francesco, for the Respondent, acknowledged that the structure of IC’s development represented a risk to investments made, but the scheme was said to involve much that was common practice. The commercial risk did not amount to a breach of the SARs or Principles. Mr Di Francesco stated that what were described by the Applicant as ‘red flags’ were known to all parties to the transactions, and had seemingly not been considered dubious by the solicitors acting for the buyers.
- 12.15 In particular, prior to the payment of their client’s deposit monies to the Respondent, the buyer’s solicitors were said to have been aware that title of Property P had not been transferred to IC, that planning permission had not been obtained, and of the size of the deposit required. It was submitted that these elements were intrinsic to the development, and were not uncommon or the hallmarks of fraud. Ms Jennifer Jones, the former Senior Conveyancer who acted for buyer clients at JPG, who gave oral evidence at the hearing, had confirmed in her evidence that these features were not unusual.
- 12.16 The Respondent’s case was that he received the buyers’ deposit monies as agent for the developer, IC. This was submitted by Mr Di Francesco to have been clear at all times, and was something the Respondent reiterated in his written and oral evidence. Taking the evidence of Ms Y by way of example, an intended purchaser who had provided a written statement but did not give live evidence during the hearing, Mr Di Francesco stated that the relevant contract was clear on its face that the Respondent was not receiving the deposit money as stakeholder. The Respondent had worked on the basis that Ms Y, and others, were receiving their own legal advice and



it was submitted that the buyers' solicitors, JPG, operated on the same basis. Mr Di Francesco submitted that the Respondent was being criticised after the event for not withholding money from his client when this was a condition which should have been stipulated at the time if it was something that buyers required. Mr Di Francesco submitted that it was counter intuitive to place a higher burden on the Respondent to protect buyers' interests than on the buyers' own solicitors who were operating with the same knowledge as the Respondent.

- 12.17 Mr Di Francesco submitted that the Applicant combined its alleged 'red flags' with the fact that the Respondent took various documents at face value to arrive at the alleged regulatory breaches. For example, the Respondent carried out a Companies House search and took a photocopy of Mr AK's driving licence, but was criticised for not going further and looking more closely at the company information and inferring fraud from the recent appointment of a new director. Mr Di Francesco submitted that the issues highlighted by the Applicant were not obvious 'red flags' – and appeared so only with the benefit of hindsight.
- 12.18 The Respondent took the document he had been provided with, the letter dated 15 August 2016 from Chamber of Legal Advisors LLP, purporting to demonstrate that contracts for the sale of Property P had been exchanged, at face value. Mr Di Francesco submitted that JPG acting for the buyers did the same. The document did not generate suspicion that the scheme was fraudulent for the solicitors acting for either the seller or the buyers. It was said to have been later, when JPG realised that the development may not happen, that their suspicions were aroused rather than it being a result of one of the factors described by the Applicant as 'red flags'.
- 12.19 Mr Di Francesco submitted that the Applicant had ignored those features of the scheme which pointed away from fraud. For example, IC had been open about the nature of the development ownership and the lack of planning permission. The Respondent had met with a director from IC, who had provided valid identification documents. It was said not to be consistent with fraudulent activity for deposits received on IC's behalf to have been voluntarily refunded to buyers, as was the case in respect of £125,233 repaid to a potential purchaser who sought the return of his deposit. It was submitted that the entirety of the picture, viewed as it appeared at the time rather than with hindsight, was not just a series of 'red flags' pointing towards fraud. The Respondent submitted that if the activities of IC were fraudulent from the outset, the fraud was sophisticated, involved multiple individuals willing to provide evidence of their identities and verifiable legal documents and was a fraud which operated counter intuitively by, in one instance, repaying deposits obtained.
- 12.20 The Respondent was a sole practitioner, and was insured to carry out the conveyancing work he took on for IC. The suggestion that he had been recommended as a result of other work he had carried out within the small community to which the Respondent belonged did not arouse his suspicions.
- 12.21 It was submitted that much of what had been criticised by the Applicant could be attributed to a lack of experience rather than any lack of integrity. It was further submitted that the Respondent's conduct would not undermine public trust. The Respondent submitted that he acted with integrity at all times. It was submitted not to

be the Respondent's duty to advise his own clients on the commercial merits of transactions he facilitated, let alone the lay clients of other solicitors. He referred the Tribunal to Orientfield Holdings Ltd v Bird & Bird LLP [2015] EWHC 1963 (Ch), in which HHJ Peeling QC stated:

“Solicitors do not generally advise on the business merits of transactions they are instructed to facilitate. The business judgments involved are those of the client, not the solicitor, and it is for the client to judge the impact of the material that may be relevant, not the solicitor. Whether the solicitor agrees with the client's judgment, or the grounds on which it is arrived at, is immaterial”

- 12.22 It was denied the transactions which the Respondent facilitated were dubious or bore the hallmarks of fraud. Further, the Respondent had confirmed the identities of individuals by whom he was instructed, conducted independent research into those individuals and dealt, for the most part, with regulated legal representatives of buyers.
- 12.23 Whilst, in retrospect, the Respondent stated that he would have done more, particularly in light of the fact some documentation he relied upon has since been repudiated by its purported authors, at the time he did not suspect fraud. It was therefore denied the Respondent breached any or all of Principles 2 and 6 of the Principles or failed to achieve Outcome 7.4 of the Code.

#### The Tribunal's Decision

- 12.24 The Tribunal considered that the instruction by IC, out of the blue, in a field in which the Respondent and the Firm did not advertise as practising, was at least surprising. The sale of 64 flats represented a reasonably large development, even allowing for the likelihood of referrals within the small community to which the Respondent belonged. The Tribunal considered that a developer planning such a scheme would look for legal representation with expertise in the relevant area.
- 12.25 Whilst the Respondent may have made it clear that he acted as agent, rather than stakeholder, when receiving deposits monies, the Tribunal did not consider that this affected his overriding professional duties. The Respondent's evidence was that IC had been open about the fact that they did not own Property P when they approached him. The Respondent had stated in his oral evidence that he was first informed by IC in his first meeting in September 2016 that exchange of contracts had not yet taken place. This sworn evidence contradicted the position set out in the letter of 15 August 2016 from Chamber of Legal Advisors LLP, purporting to demonstrate that contracts for the sale of Property P had been exchanged (which had been received by the Respondent on 26 October 2016). By the time the Respondent stated that he received this letter, it had, on his evidence, been contradicted by what he had been told in a meeting with his client. Further, the letter was considerably out of date by the time he received it and was unsigned. The Tribunal considered that this combination of factors should have raised the Respondent's suspicions and prompted further queries.

- 12.26 The Tribunal did not consider that in itself the information revealed by the Companies House search, that the director he had met had been recently appointed and the company had been dormant until very recently, was dubious to the extent it suggested fraud. Nevertheless, the Tribunal considered that such information in the context of the other features of the development and its arrangements should have triggered greater vigilance. The Tribunal noted that the Respondent did not comply with the Firm's written anti-money laundering processes by taking only one form of identification, although the address on this document, a driving licence, matched that on the Companies House search.
- 12.27 The Tribunal accepted the submission made by Ms Hansen that a developer prepared to apply pressure for their solicitors to breach the requirements of the SARs must also raise concerns for a solicitor.
- 12.28 The Tribunal accepted the Respondent's contention that pre-marketing before a site is owned is not uncommon and not in itself a hallmark of fraud. Similarly, the high level of the deposits were not in themselves necessarily problematic. However, on his own evidence, the completion date was repeatedly put back, and in circumstances where the buyers' deposit monies were to be paid to IC without guarantees this was another factor which should have raised concerns. The Respondent acknowledged that the arrangements did in fact raise concerns, as he had stated that he would not have advised his clients to proceed without "some kind of surety that [IC] have acquired the property". The Tribunal considered this demonstrated that the Respondent was aware of the risk to the deposit monies, but, as he had emphasised in his pleadings and evidence, he did not consider there was an obligation on him to act to mitigate this risk on the basis that the buyers were separately legally represented.
- 12.29 There was a crucial difference in the bases on which the Respondent and the buyers' solicitors were operating. As stated above, Ms Jones' evidence was that she received an email from the Respondent on 20 December 2016 which she stated "assured me that exchange had taken place and that [IC] would hold the freehold title on completion in early January [2017]". As also stated above, the Respondent's oral evidence during the hearing was that he had been told in September 2016 that exchange of contracts had not yet happened. Contrary to the submissions made on his behalf, the Respondent was in possession of this highly significant information for some months whilst the buyers' solicitor was operating on the basis that contracts had been exchanged. The Tribunal considered that this changed the complexion of the risk profile significantly.
- 12.30 On the basis of the cumulative effect of the 'red flags' described and accepted by the Tribunal above, and the Respondent's own evidence that he would advise clients to ensure surety was obtained before proceeding, the Tribunal was satisfied to the requisite standard that the Respondent was aware that there was a significant risk to the deposit monies paid by the purchasers. The Tribunal accepted the submissions made by the Applicant that a solicitor cannot assign responsibility for risk to the purchasers' solicitors entirely and pay no heed to the wider implications and risks posed by his instructions, particularly where those risks were known to him and not to the purchasers' solicitors. The sums that the Respondent had put at risk by transferring them in these circumstances were significant, amounting to £828,796. The Tribunal accepted the submission that the public would not expect a solicitor to

accept instructions and continue to act in a property development when he was aware that purchasers' deposits were being placed at risk. The Tribunal found beyond reasonable doubt that by facilitating these payments, the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6. Similarly, the Tribunal found beyond reasonable doubt that his conduct in releasing the deposit monies failed to achieve Outcome 7.4 of the Code which required him to monitor and take steps to address risks to money and assets entrusted to him by clients and others.

12.31 As set out above, the Tribunal considered that there were sufficient grounds for the Respondent making further enquiries and taking steps to address the risk at which the deposit monies were put. The deposit monies which the Respondent had received would only be required by IC for the building works involved in the development of Property P. Before providing the deposit monies, which could only be legitimately required for this purpose, the Tribunal considered that the Respondent should have satisfied himself that IC owned the building. The Tribunal considered that the ethical standards of the profession required this. He had placed £828,796 at risk on the strength of due diligence consisting of a photocopy of a driving licence and a Company House search which revealed a company until recently dormant and with a newly appointed director. The Tribunal referred to the test set out in Wingate, and was satisfied beyond reasonable doubt that by paying out the purchasers' deposit monies to IC in the circumstances set out above, the Respondent had failed to adhere to a fundamental ethical standard of the profession and failed to act with integrity in breach of Principle 2 of the Principles.

13. **Allegation 1.3: On 30 January 2015 and/or on or around 1 April 2015 the Respondent advised Person A (an undercover reporter posing as an immigration client) regarding methods for circumventing the UK immigration system, namely by entering into a sham marriage. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.**

**Allegation 1.4: On 30 January 2015 and/or on or around 1 April 2015 during a surreptitiously recorded conversation with Person A, the Respondent stated that he could prepare and/or submit paperwork in support of Person A and/or others marriage and U.K. residency, notwithstanding that the Respondent was aware that the marriage would be bogus and arranged for the purpose of circumventing the UK immigration system. The Respondent thereby breached Principles 1, 2 and 6 of the Principles.**

#### The Applicant's Case

13.1 Allegation 1.3 and 1.4 are very closely linked factually and are summarised together below. Both arose out of an undercover reporter (Person A) attending the Respondent's office twice and surreptitiously recording their discussions. The recording featured in a television programme broadcast on 2 July 2015 during which the Respondent (and other solicitors) discussed sham marriages with purported clients. As indicated above, the matter came to the Applicant's attention in February 2017 (and the relevant footage was obtained on 6 December 2017).

- 13.2 The Tribunal was referred to a certified transcript of the first meeting (of which an audio only recording was said to exist). With regards to the second meeting, a video recording had been obtained which the Tribunal viewed with the parties. By the date of the hearing the parties had agreed that a transcript of the second meeting prepared by Language Line, to which the Tribunal was referred, should be used and that other versions contained within the paperwork before the Tribunal should be disregarded.

*Meeting One – 30 January 2015*

- 13.3 Upon meeting the Respondent Person A explained that his student visa was running out in August of that year and that his parents would like him to stay in the UK but he didn't "really have any options". The Respondent asked Person A if he was able to get his student visa renewed to which Person A explained that was going to be a bit difficult. The Respondent went on to ask if he had "any relationships in [his] life, friends, girlfriend, that sort?" to which Person A responded "No". The Respondent went on to ask how long Person A had been in the country and where he was from, to which Person A replied that he had been in the country a year and a half and was from Pakistan. The Respondent then provided Person A with "options", explaining that the best option was to go for a degree, the second option was marriage and the third option would be seeking asylum.

- 13.4 Ms Hansen referred the Tribunal to various extracts from the meeting transcript. After asking about the option of a student visa, and briefly mentioning the possibility of asylum, the Respondent was described as moving straight onto a marriage visa. He stated:

"Whichever visa in your situation, the most reasonable way would be for to get married in a proper way. There will be no hassle, No doubt, you can find a girl - whether the girl wants to go to Pakistan or not ... That is a relatively, a quick and easy way"; and

"I will provide you legal help like what sort of documentations this process will need and how to make the documentations and application forms for this process. In this process, we can guide you, okay?"

- 13.5 Ms Hansen referred the Tribunal to an extract from the transcript in which the Respondent and Person A discussed the type of questions that the Home Office may ask. The Respondent stated:

"You will be helped in your documentations, application forms and in interview if you need to be interviewed. We will arrange all these documents. We will help you with everything..."; and

"They will ask you that when you go to job, when you go to sleep and when you get up. So, they will ask you about all these..."

When asked by Person A if the Respondent can help with what answers have to be given:

“No, we do not say that you are answerable for all your things but when you go there then they will ask you about those things, for example, if you live in this room so they will ask about this room and if you do not know about this room so how will you tell them about this room. If you go and say the room is blue and she goes and says its yellow.. that kind of a statement...”

and when asked if he would inform Person A how to go through the procedure the Respondent replied “Yes, sure”.

- 13.6 The Applicant’s case was that the undercover reporter, Person A, made it clear that the relationship upon which an application for a marriage visa would be based would not be genuine. It was submitted to be clear that the Respondent was advising on a sham marriage and how to make it appear genuine when he stated: “I will tell you legal way in which you will seriously keep the marriage.”
- 13.7 Person A asked: “So, if I come on next visit and in case, I find a partner and obviously I cannot guarantee if we have a relationship or not, so can we work on this?” to which the Respondent replied: “It will depend upon the girl that how could she handle it.” When asked if Person A can pay her, the Respondent said: “It depends on you all”. Ms Hansen submitted that it was clear from this exchange that payment for an arrangement that was not genuine was being discussed.
- 13.8 Person A asked about whether there were many firms who could assist with this work and the Respondent replied that there were few, around 5 or 6. Ms Hansen referred the Tribunal to a further section of the transcript in which the relative success rates of asylum and marriage applications was discussed.
- 13.9 It was submitted that from the outset of the meeting, when Person A stated that he was not in any relationship, the Respondent should have refrained from advising on the option of entering into any marriage as this was said not to have been a legitimate option in those circumstances. In proceeding to advise on entering into a marriage in the knowledge that Person A was not in a relationship, it was submitted that the Respondent gave a clear inference that he was advocating entering into a sham or bogus marriage so as to circumvent the UK immigration system. It was submitted to be clear from the questions posed by Person A to the Respondent (including whether being in a gay marriage would help the asylum position) that Person A was advocating entering into a sham marriage and it was submitted to have been of concern that at no point did the Respondent inform Person A that sham marriages were illegal and that he could not proceed to advise on a marriage and/or a situation which was not genuine.

*Meeting Two—on or around 1 April 2015*

- 13.10 Around two months after meeting one, Person A returned to the Respondent’s office and held himself out to be the same person the Respondent had met previously. After playing the video recording of Meeting Two, Ms Hansen highlighted parts of the transcript. When Person A informed the Respondent that he had exhausted his options to remain in the U.K. based on his studies, the Respondent advised: “I mean the only option left is getting married”.

13.11 When Person A asked about how he could pursue the marriage option, the Respondent and Person A had the following exchange:

Respondent: “Go and find some suitable person, well you maybe chat online you know dating sites, marriage, you never know when luck gonna knock on your door. You know, girls are there, boys are there, they want to get married and you are a smart handsome guy so you can get somebody easily.”

Person A: “What if I pay someone to marry me?”

Respondent: “It totally depends on you”

Person A: “Would you be able to help me out with that, I mean do the paperwork and everything”

Respondent: “Yes we will be able to do the paperwork, visa, certificate but at the end of the day it's a very costly business”

Person A: “How much is it?”

Respondent: “Roughly these days it costs around £12 or £13,000”

Person A: “To get the girl?”

Respondent: “To do all the work”

Person A: “To do all the work... so get the girl”

Respondent: “Pay her, pay the solicitor, pay for it”

The Applicant’s case was that it was clear from this exchange that the Respondent understood that he was advising on a sham marriage. Ms Hansen stated that when asked about Person A paying someone to marry him the Respondent had not said anything to the effect that he should not pay someone to marry him; instead he had simply said it was up to Person A. Ms Hansen submitted that the Respondent’s explanation of his comments being a reference to the costs of a wedding was not plausible. It was alleged that notwithstanding that the Respondent knew that the client was proposing a sham marriage the Respondent’s offer to assist with all other aspects indicated that he was willing to be complicit in Person A’s intended course of action.

13.12 There were said to be further indications in the exchange which confirmed that what was being proposed by Person A was a sham marriage and that the Respondent was willing be complicit in bringing it about. When asked by Person A whether he would have to live with his spouse the Respondent responded “Technically yes”. This was submitted to have indicated that the Respondent was aware the marriage would be bogus as the client was suggesting living with his potential spouse may be a problem. Similarly, Person A had asked about the effect of saying that he was gay on the potential for a human rights based application; a question which was submitted to indicate clearly that the marriage under discussion would not be genuine.

13.13 Person A also asked the Respondent about the risk of getting caught. This led to the following exchange:

Respondent: “Risk is of course there is a risk if you got caught and you don’t, cannot produce your wife and then they will say it wasn’t a genuine marriage but other procedure is like if you complete 3 years then hat [sic] you can do is, after that you can apply for the divorce and get divorce and apply for indefinite.”

Person A: “Ok, after three year?”

Respondent: “You have to complete three years. You can wish her to die before three years”.

Person A: “Sorry”

Respondent: “You can wish her to die after one years. You might be saved. You can produce a death certificate and then you're fine.”

It was submitted by the Applicant that the Respondent was unambiguously advising his client on the risks of being caught by the authorities for having obtained residency based on a sham marriage. The Respondent, by acknowledging the risk of being caught, was said to clearly be aware that the course of action his client was proposing was illegal. In the exchange included in the preceding paragraph, the Respondent went on to advise Person A how he could get out of the marriage (by divorcing after a prescribed period after which he would retain residency).

13.14 The Applicant’s case was that in both meetings the Respondent offered, as part of his service to Person A, assistance with ensuring the sham marriage was supported by the requisite background evidence to pass Home Office enquiries regarding its validity and to ensure that the client was prepared for any future interview by the authorities regarding the domestic circumstances associated with the marriage. During the second meeting the Respondent stated:

“...we need to do it together we can do that. It’s just simply getting all the paperwork, putting bills together, making name together making photographs, where you live you have to understand where you live, you know the area, your house, I’m in this room somebody say what else is in the room you need to be able to explain this situation what is in the room, practise, with all these things. The same thing they’re gonna, they don’t ask the question something out the blue, something people don’t know what they’re talking about so it is definitely on small facts, where do you live, what kind of house it is, how many bedrooms, what colour the bath what colour is the bed sheet, if there is any extra furniture there...”

13.15 Person A asked the Respondent about his experience of assisting clients in these circumstances and the Respondent stated that “I’ve been dealing with this, doing these kind of applications every day.” When pushed by Person A as to whether he was referring to sham marriages it was submitted that the Respondent unambiguously confirmed he was referring to both:



Person A: “So even if it’s like, it’s not a genuine marriage? Do you you [sic] do this?”

Respondent: “It’s up to people to do it, genuine or not”.

The Respondent stated:

“I mean we act on client's instruction not our own instruction. They came to us and say they're genuine and we believe them. It's not my job to find out whether they're living together or not”.

- 13.16 Principle 1 required that the Respondent uphold the rule of law and the proper administration of justice. The Applicant submitted that the Respondent was complicit in advocating Person A enter into an illegal marriage, something it was submitted clearly breached Principle 1. Principle 6 required the Respondent to behave in a way that maintained the trust the public placed in him and in the provision of legal services. In acting as the Respondent did, i.e. in offering Person A advice regarding subverting the immigration system by means of a sham marriage (allegation 1.3) and/or offering to prepare and submit paperwork in support of a bogus marriage (allegation 1.4), it was submitted that the Respondent fell significantly short of this Principle also and that his actions would diminish the trust the public placed in him.
- 13.17 It was alleged that the Respondent’s actions amounted to a failure to act with integrity (in other words with moral soundness, rectitude and a steady adherence to an ethical code) in breach of Principle 2. The Applicant again cited Wingate in which it was said that integrity connotes adherence to the ethical standards of one’s own profession. It was submitted that a solicitor acting with integrity would not have advocated and advised on entering into an illegal course of action such as entering into a sham marriage (allegation 1.3) nor advised a client/individual that he could prepare the paperwork to be able to do so successfully (allegation 1.4). In so acting it was submitted that the Respondent fell significantly below the ethical standards expected and thereby breached Principle 2.

#### Dishonesty alleged in relation to allegations 1.3 and 1.4

- 13.18 Dishonesty was alleged in respect of allegations 1.3 and 1.4. The Rule 5 Statement set out the test for dishonesty from paragraph 74 of the Judgment in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67:

“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”

- 13.19 It was submitted that ordinary decent people would regard it as dishonest for a solicitor to provide a client with advice advocating a sham marriage as an option so as to circumvent the immigration rules and to secure residency in the U.K. Solicitors were described as trusted by the public to perform their duties honestly and solicitors were said to play a vital role in the effective maintenance of judicial and administrative functions. It was submitted that ordinary, decent people would regard it as dishonest for a solicitor to offer to submit paperwork in support of a sham marriage.
- 13.20 The Respondent was described as being unambiguous in his responses to Person A that he understood that that what was being proposed was a sham marriage. The Respondent was alleged to be fully complicit when advising Person A on his options for entering into such a marriage. It was submitted that the Respondent's actual state of mind, as revealed through facts presented in allegation 1.3 and 1.4, led to the inevitable conclusion that he was acting dishonestly when he advised Person A.

### The Respondent's Case

- 13.21 The allegation was denied. Mr Di Francesco invited the Tribunal to accept that providing the right answer to a question posed in difficult circumstances is often harder than it appears in retrospect. Person A's sole purpose in their two conversations was to turn the conversation to fake marriage. Mr Di Francesco submitted that if the entirety of the transcript was read in full, it was clear that the Respondent was providing advice in good faith about the available legal options to an individual who was not operating in good faith. The Respondent stated in his evidence that he did not respond in any meaningful way to the references made by Person A to non-genuine marriage.
- 13.22 The Respondent's case was that he was providing advice on the effect of a lawful marriage on an individual's right to stay in the UK. Notwithstanding the undercover reporter's efforts, the transcript confirmed that the Respondent had referred to getting married in a "proper" way. Similarly, the transcript showed that he had said he would tell the reporter a "legal way you will seriously keep marriage". The Respondent had stated that "it depends on evidence" when asked whether the process could be done easily. This was again submitted to reflect the fact that the Respondent was advising on a genuine arrangement.
- 13.23 Mr Di Francesco submitted that there was nothing which offended regulatory principles in advising on the legal effect that marriage would have in a situation where no relationship currently existed. Similarly, advising on how long a marriage would need to last for certain legal consequences to flow or what type of questions the Home Office may ask were submitted to be inoffensive. This information conveyed by the Respondent was uncontroversial information about aspects of the UK immigration system which was publicly available. There was submitted to be nothing wrong with providing such advice in the response to a hypothetical question from a client.
- 13.24 The Respondent accepted that refusing to accept instructions on a false basis, such as in relation to a sham marriage, was an important principle for solicitors. This was not, however, the same thing as advising on a hypothetical situation. The Respondent had not been instructed in relation to any sham marriage. The undercover reporter had not

given instructions in relation to a situation which was not genuine, the Respondent had answered his hypothetical questions about the UK immigration system and marriage in particular. Mr Di Francesco stated that many lawyers would say that they work on the instructions they are provided with as the Respondent had done. A solicitor could properly state that they would only work on a particular basis, and that it was a matter for the client what decisions they took. It was submitted that the Respondent had made it clear he was advising, and would only act, on a “proper” marriage, pursued in a “legal way”.

13.25 At the end of the first meeting the Respondent had stated:

“Our work is to provide legal advice and the people come here to seek the legal advice and tell them that those applications and documentations are reasonable for them. You know people come here and we tell them that these are your circumstances, and this will be suitable for you. We guide them provide them with advices about marriages and if they fail in this case then we prepare them for the next step.”

There was submitted to be nothing objectionable about advising and working on this basis. The Respondent was trying to use his legal knowledge to help someone who had a practical problem. The other party to the conversation was intent on inducing the Respondent to say that he would act where he knew the relationship was not genuine. It was, Mr Di Francesco submitted, perfectly proper to conclude the meeting by saying that the Respondent would work on the basis of the instructions he received and what he was told by his clients.

13.26 At the outset of meeting two, the Respondent had spoken about dating websites when asked how Person A could pursue the marriage option. A relationship and potential marriage arising out of meeting someone on such a dating website would be a genuine one.

13.27 A central factual dispute was said to be whether the Respondent had advised how much a woman would charge to enter into a sham marriage with Person A. The Respondent’s evidence was that when he mentioned a figure he was talking about the expense associated with a legitimate marriage. The Respondent stated that his fee for an application based on marriage would be £1,500 and the remainder of the figure he had cited reflected typical expenses associated with a modest Islamic wedding. Mr Di Francesco submitted that the Applicant’s contention that the Respondent had given a price for a non-genuine marriage was internally inconsistent. Mr Di Francesco submitted that had the Respondent in fact provided such a price for a non-genuine marriage then it would make no sense for the reporter to ask later in the same meeting if he would act in a non-genuine situation, something Person A sought to introduce into the conversation as it progressed.

13.28 Mr Di Francesco submitted that the standard of proof was an important consideration for the Tribunal. Where the evidence was finely balanced, he invited the Tribunal to carefully consider the Respondent’s evidence. The Respondent was entitled to the benefit of any doubt. The Respondent had accepted that he should have been clearer and said something firmer about non-genuine marriage. This would have been the right thing to do. However, in the face of the discussion about hypotheticals that the

Respondent had had with Person A, what he had said was not wrong. He had said he would act on genuine instructions, and thereafter it was up to Person A what he decided to do.

- 13.29 The Applicant had drawn attention to the Respondent's comment in relation to client instructions that "They came to us and say they're genuine and we believe them. It's not my job to find out whether they're living together or not". Mr Di Francesco described this as uncontroversial. That the Respondent had stated that he must be told the marriage was genuine was submitted to reflect the fact that this was the only circumstance in which the Respondent would act. It was submitted that none of the Principles alleged to have been breached had been offended by the Respondent's conduct.
- 13.30 The Respondent's evidence was that after the second meeting he had further telephone conversations with Person A where again attempts were made to induce him to endorse a non-genuine marriage. The Respondent stated that he informed the Reporter he would have to settle his instructions before he proceeded any further and that the Respondent would refer him to a senior solicitor at the firm (these events having place before Respondent began practising as a sole practitioner). He stated that following broadcast of the documentary, he was contacted by the Home Office, with whom he cooperated fully, and no further action was taken against him.

#### Response to allegations of dishonesty in relation to allegations 1.3 and 1.4

- 13.31 The allegation of dishonesty was denied on the same basis as the alleged breaches of the Principles. The Respondent invited the Tribunal to take into account the character references he had submitted. Despite the efforts of the undercover reporter, viewed in its entirety the transcript demonstrated that he had been giving advice on hypothetical avenues of achieving Person A's stated goal of remaining lawfully in the UK. The Respondent made it clear that evidence would be required and that he should get married in a "proper" (i.e. legitimate) way, the marriage should be done in "a legal way" and should be "kept", and the Respondent would only act on the basis that the marriage was genuine.

#### The Tribunal's Decision

- 13.32 The Tribunal read both transcripts in full very carefully. It was clear that taken in their totality, everything required for a sham marriage was discussed. The Tribunal accepted that the sole intention of Person A had been to explore the issue of a non-genuine marriage for immigration purposes and the Respondent's willingness or otherwise to advise and assist with such an arrangement.
- 13.33 The Tribunal also accepted that there were individual elements of the transcripts which supported the suggestion that the Respondent had been discussing a hypothetical genuine situation – such as his reference to dating sites in the context of how an individual may begin the process of establishing a relationship that may make marriage an option. Similarly, the Tribunal noted the references to which it was referred where the Respondent had mentioned getting married in a "proper way", the process being done "a legal way" and the marriage being "kept". Considered in the context of the entire exchange, and having carefully considered the Respondent's

written and oral evidence, the Tribunal found the interpretation that it was being invited to give to the conversation by the Respondent was implausible and not credible.

- 13.34 As well as reading both transcripts, the Tribunal had the benefit of seeing the video footage of the second meeting, and assessing the Respondent's live evidence. The Tribunal did not find the Respondent a compelling or credible witness on the conversations he had had with Person A. The contrast in the quality of the Respondent's evidence on matters where he was providing a straightforward factual answer and those elements where he was seeking to explain the comments highlighted and relied upon by the Applicant was marked. The character references supplied by the Respondent, which the Tribunal reviewed with care, did not alter this assessment.
- 13.35 As a matter of basic principle, the Tribunal did not consider that a solicitor could simply turn a blind eye where a client is proposing to take unlawful action. Whilst all solicitors act on instructions, they are not free to do so in all circumstances without regard to any wider professional obligations.
- 13.36 The Tribunal found that it was clear that what was being discussed in both meetings was a non-genuine or sham marriage, and that the Respondent was aware of this and gave advice on that basis. His answers to various questions demonstrated this. At the outset of their first conversation, the Respondent was told that Person A did not have any relationship such that marriage was an immediate legitimate option. By way of illustration of the exchanges which underpinned the Tribunal's conclusions, the Tribunal considered the following to be significant:
- When asked by Person A if "we" could work on the fact Person A could not guarantee he would have a relationship when seeking further advice and assistance, the Respondent stated "*It will depend upon the girl that how could she handle it.*" When asked if Person A can pay her, the Respondent said: "*It depends on you all*".
  - When asked whether the £12,000 to £13,000 cost that the Respondent had estimated covered "*... all the work... so get the girl*" the Respondent had replied "*[p]ay her, pay the solicitor, pay for it*". There was no suggestion whatever from the transcript that was what being discussed was the costs of a wedding or a dowry as the Respondent had stated in his evidence.
  - When asked "*would I have to live with my spouse*" the Respondent had answered "*Technically yes*". He then went on to explain that an interview with the Home Office was a possibility. The Tribunal did not consider there was anything objectionable in itself in advising on the type of questions the Home Office may ask, but doing so when the client has discussed paying to "*get the girl*" and asked about "*the risk if you get caught*" made it so.
  - The Tribunal considered the Respondent's comments that Person A "*can wish her to die before three years*" and "*You can wish her to die after one years [sic]... You might be saved*" made it plain that he was not being asked about and was not advising on a genuine marriage.

- The Tribunal also considered the fact that Person A spoke about marrying either a male or female, and the Respondent advised on the effect of a gay marriage on an asylum based claim, was a further example of the Respondent advising on a marriage he knew would not be genuine.
- When asked by Person A “*So even if it’s like, it’s not a genuine marriage? Do you you [sic] do this?*” the Respondent had replied “*It’s up to people to do it, genuine or not*”.
- When asked about the risk of deportation the Respondent had stated “*if you’re applying in time for your british [sic] passport you need to take the risk, if you don’t take the risk you’re not going to get the passport anyway. So you need to take the risk*” and subsequently “*passport will be yours, so you have to take the risk not me*”. The Tribunal did not consider that a discussion about lawful means of acquiring the right to remain in the UK would include such comments about the client needing to take the risk and in particular that the risk was assumed by the client and not the solicitor.

13.37 The Tribunal did not find the submission that the Respondent and Person A were at cross purposes and the Respondent was advising on hypothetical scenarios and offering to assist only on the basis that the marriage was genuine to be plausible. There would be no need to advise on the risk of “*getting caught*” if that was the nature of the conversation. The Tribunal found that the conversation and the Respondent strayed well beyond discussing options. It would be legitimate to advise that marriage was one of the grounds for acquiring the right to stay in the UK, as the Respondent stated this was publicly available information; there was no place in such a legitimate conversation for advising on the risks of getting caught. The Tribunal found beyond reasonable doubt that the Respondent was aware that the marriage-based residency application being discussed in both meetings was not genuine and he provided advice on that basis.

13.38 Allegation 1.3 concerned advising Person A regarding methods for circumventing the UK immigration system, namely by entering into a sham marriage. The Tribunal found that it was plain in both meetings that the purpose for the advice given regarding a non-genuine marriage, examples of which are set out in the preceding paragraph, was to circumvent the UK immigration system.

13.39 Allegation 1.4 concerned the Respondent offering to prepare paperwork in support of Person A’s marriage and U.K. residency despite being aware that the marriage would not be genuine and arranged for the purpose of circumventing the UK immigration system. In the first meeting the Respondent had stated:

“You will be helped in your documentations, application forms and in interview if you need to be interviewed. We will arrange all these documents. We will help you with everything...”

In the second he had stated “*...we need to do it together we can do that*” in the context of the necessary paperwork for the marriage-based application. The Tribunal found to the requisite standard that the Respondent had offered to prepare paperwork

as alleged in relation to a marriage based residency application that he knew would not be genuine.

- 13.40 The Tribunal had found that the Respondent had advised on entering into a non-genuine marriage, and offered to prepare the relevant paperwork, with a view to circumventing the UK immigration system. The Tribunal found beyond reasonable doubt that he thereby breached Principle 1 of the Principles which requires all solicitors to uphold the rule of law and the proper administration of justice. The Tribunal accepted the submission that this is such a fundamental requirement of the profession that the trust placed by the public in the Respondent and the provision of legal services would be undermined by such conduct. The Tribunal found beyond reasonable doubt that the Respondent had thereby breached Principle 6 of the Principles.
- 13.41 Principle 2 of the Principles requires solicitors to act with integrity. The Tribunal referred to the relevant test set out in Wingate in which it was said that integrity connotes adherence to the ethical standards of one's own profession. The Tribunal accepted the submission that a solicitor acting with integrity would not have provided advice and offered assistance with paperwork relating to entering into a non-genuine marriage in order to circumvent UK immigration rules. The Tribunal found that the Respondent's conduct as summarised above fell well below the standard expected and found beyond reasonable doubt that he thereby breached Principle 2 of the Principles.

Allegation of dishonesty in relation to allegations 1.3 and 1.4

- 13.42 The Tribunal accepted the summary of the test for dishonesty provided by the Applicant. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:
- firstly, the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;
  - secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.
- 13.43 The Tribunal had found that the Respondent had provided advice and offered assistance with paperwork relating to entering into a non-genuine marriage in order to circumvent UK immigration rules. The Tribunal had found that the Respondent was aware that what was being discussed in both meetings was a non-genuine marriage. The Tribunal had rejected as implausible in the face of the evidence of the transcript that the Respondent believed he was advising on hypothetical scenarios on the basis he would only accept instructions based on a genuine marriage.
- 13.44 The clear purpose of the advice and offer of assistance was to help a client circumvent the UK immigration system. Applying the second element of the Ivey test, the Tribunal had no doubt that ordinary decent people would regard such conduct as dishonest. The Tribunal found beyond reasonable doubt that the Respondent had acted

dishonestly in providing advice and offering assistance with paperwork relating to entering into a non-genuine marriage in order to circumvent UK immigration rules.

### **Previous Disciplinary Matters**

14. The Tribunal's previous decision having been quashed and remitted back to the Tribunal for reconsideration, there were no previous disciplinary findings to take into account.

### **Mitigation**

15. Mr Di Francesco focused on the conduct found to be dishonest, and noted that the misconduct had happened in 2015. The Respondent had practised since then, except for the hiatus caused by the subsequently quashed previous Tribunal decision, without any incident. He invited the Tribunal to consider the nature of the Respondent's actions in the light of the case of SRA v Sharma [2010] EWHC 2022 (Admin). This case established that there was residual category of cases where dishonesty had been found proved where strike off was not the inevitable sanction. The Tribunal should have regard to the nature, scope and extent of the Respondent's actions in assessing whether they fell within the small residual category.
16. It was submitted that the Respondent had not denounced the undercover reporter's questions and proposed actions sufficiently, but it was maintained that the Respondent had considered that he was advising on hypothetical situations. Mr Di Francesco referred the Tribunal to the Respondent's use of the words "genuine" and "proper" amongst his responses to Person A. It was submitted that this indicated advice that a genuine marriage should be maintained. In any event, no instructions on any non-genuine marriage had been taken and no documents in support of any such marriage had been prepared. The Respondent had cooperated with an investigation by the Home Office and no action had been taken against him.
17. Mr Di Francesco referred the Tribunal to the Tribunal's Sanctions Guidance (November 2019) and made submissions about the illustrative factors set out under the heading "Assessing Seriousness". Mr Di Francesco submitted that the Respondent's motivation for the advice he gave to the undercover reporter was to provide some assistance in the face of the extended attempts by Person A to draw the Respondent into a conversation about non-genuine marriage. Resulting as they did from these efforts by an undercover reporter, the Respondent's actions were not planned. The Respondent had been practising for around five years at the relevant time, and so it was submitted that he did not have significant experience, a factor which reduced his culpability.
18. The fact that the misconduct found had resulted from a deception (an undercover reporter effectively seeking to entrap the Respondent) was submitted to be a mitigating factor. The Respondent had genuine insight into his actions and accepted that he should not have advised in such circumstances where a supposed client kept steering the conversation to non-genuine marriage.



19. The Applicant's FIO witness, Ms Taylor, had noted the Respondent's level of cooperation with her investigation in her evidence. This was a further mitigating factor.
20. Mr Di Francesco invited the Tribunal to consider a sanction of suspension in the light of the mitigating factors outlined and his submissions based on the Tribunal's Sanctions Guidance.

### **Sanction**

21. The Tribunal referred to its Guidance Note on Sanctions (November 2019) when considering sanction. 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.
22. In assessing culpability, the Tribunal found that the motivation for the Respondent's motivation for acting and making payments in relation to Property P was financial. With regards to the non-genuine marriage related conduct, the Tribunal found that his motivation was to generate instructions and further work. The Respondent's conduct in relation to Property P was planned. The time over which the conduct took place, and the multiple deliberate acts meant that even though the Respondent was reacting to instructions received from IC, his conduct could not be described as spontaneous. With regards to the advice given to Person A, the Tribunal accepted that the Respondent was responding to pointed suggestions put to him by an undercover reporter during two meetings and that his conduct was spontaneous in this case. The Tribunal did not consider that the Respondent was in a position of particular trust, beyond that inevitable when receiving significant sums of money from purchasers. The Tribunal considered that the Respondent had total control of the circumstances of his misconduct relating to Property P. There were multiple opportunities for the Respondent to cease to act or to make appropriate enquiries, and multiple 'red flags' to prompt him to do so. The Tribunal did not consider that the Respondent could be described as being 'entrapped' into giving the advice and offer of assistance that he did on non-genuine marriage. Whilst he did not control the circumstances, the undercover reporter specifically seeking to elicit responses on sham marriages, he did control his responses. The Respondent failed to direct the conversation in another direction and was thereby retained responsibility for the circumstances of the misconduct. The Respondent was reasonably experienced at the time of the misconduct. In both cases he had over three years' post qualification experience, the point at which a solicitor may manage a legal practice. The Tribunal had heard from the FIO that the Respondent had cooperated with the Applicant's investigation. The Tribunal found that the Respondent was fully responsible for his actions, with a high degree of culpability.
23. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that the Respondent had dishonestly advised and offered assistance to help a client circumvent the UK immigration system. The Respondent's conduct represented a serious departure from the probity required of all solicitors. Such conduct would inevitably have a significant harmful effect on the reputation of the profession. The Tribunal considered that such harm was entirely foreseeable. In the context of Property P, there was harm caused to the purchasers whose deposit monies

were put at risk. In some cases this risked very serious personal harm, for example the Tribunal heard from Ms Y that a significant proportion of her husband's pension fund had been put at risk. The Tribunal considered that there had been potential for even more harm. Whilst most of the deposit monies had in fact been returned, the Respondent had paid £828,796 to IC in the circumstances described in the Tribunal's findings on allegation 1.2 with no regard to how any may be returned if appropriate.

24. The misconduct found proved was aggravated by the fact that the allegations included dishonest conduct. The dishonest conduct occurred in two client meetings, and so to that extent was repeated. The conduct was deliberate in that the Tribunal had found the Respondent had control of the circumstances of the misconduct and his response to Person A's questions. The conduct relating to Property P extended over a significant period of time, over a year and a half. The significant sums of money put at risk risked a very significant impact on the lives of the intended purchasers of the flats at Property P. The Tribunal considered that the Respondent knew, or ought to have known, that such actions were potentially harmful to the reputation of the legal profession.
25. Whilst the Tribunal did not accept that it explained or excused the Respondent's conduct, it recognised that Person A had deceived the Respondent by posing as a client and repeatedly asking questions relating to non-genuine marriage and the right to remain in the UK. The Tribunal did not consider the fact that the Respondent was duped in this way amounted to meaningful mitigation; it simply called for an appropriate response. In relation to Property P, the Tribunal noted that all but one purchaser had received their deposit money back and so the actual harm was not as extensive as it could have been. The Tribunal did not accept that the Respondent had demonstrated any significant insight into his misconduct. In relation to paying over and placing at risk the deposit monies for the flats in Property P, the Respondent had maintained that the purchasers' solicitors were entirely responsible. In relation to the conversations which had involved non-genuine marriage and circumventing UK immigration rules, whilst the Respondent had accepted he should not have allowed the conversation to continue he showed no sign of appreciating the extent to which the conversation repeatedly strayed into areas which were unacceptable for any solicitor.
26. The Tribunal noted that the Respondent had no prior disciplinary findings against him and also carefully reviewed the character references which had been supplied and which spoke of the Respondent's honesty, professionalism and competence.
27. The Tribunal had regard to the case of Sharma, and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll. The Tribunal was not persuaded that any exceptional factors were present such that the normal penalty was not appropriate. As stated in Sharma in considering what amounts to exceptional circumstances, 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. The nature of the dishonesty was advice and the offer of assistance to help a client circumvent UK immigration rules; the scope was wide-ranging advice and the offer of assistance with the paperwork and other preparation; and the extent was two meetings at which the advice and offer of further assistance were offered. The meetings featured very similar conversations. The

Tribunal did not consider that it could be regarded as exceptional to have fallen into the same pattern of providing improper advice and offering improper assistance in two separate meetings some months apart. In any event, applying SRA v James et al [2018] EWHC 3058 (Admin) any exceptional circumstances must relate in some way to the dishonesty. The Tribunal had found the Respondent to be highly culpable for his conduct. He had control of the circumstances of the dishonesty, and had been behaving naturally in the video footage of the second meeting reviewed by the Tribunal. Whilst the deception of Person A was noted, the Respondent had had control of his response. The Tribunal did not consider the deception of Person A amounted to “exceptional circumstances”. Further, whilst the deception of Person A had been a feature of both meetings, the Tribunal did not consider that it could be said to have caused or to relate to the Respondent’s dishonesty. The Tribunal accepted that the Respondent had presented evidence of a difficult financial situation, but did not consider that this amounted to exceptional circumstances relating to the dishonesty.

28. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR 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 Tribunal determined that the findings against the Respondent including dishonesty required that the appropriate sanction was strike off from the Roll.

### Costs

29. The total costs claimed in the Applicant’s schedule of costs dated 26 June 2020 was £27,547.40. The Applicant’s own investigation costs amounted to £4,627.40 and the costs associated with the formal correspondence (‘explanation with warning’ letter) were £720. Capsticks’ fixed fee was £18,500 (plus VAT). Ms Hansen stated that these costs related only to the re-hearing, and not to the previous proceedings which were remitted for reconsideration. The fee was fixed by reference to the complexity of the matter. 157 hours had been completed on the case which equated to a notional hourly rate of £118. Both the fixed fee and this notional hourly rate were submitted to be reasonable. Ms Hansen invited the Tribunal to consider discounting 12 hours on the basis that the hearing had not taken three full days as anticipated. Such a discount would mean the notional hourly rate of £128.
30. Ms Hansen stated that amendments were made to the Rule 5 Statement when it was remitted for a reconsideration. These reflected that a further transcript had come to light. A Case Management Hearing, at which the Respondent sought to sever the two sets of allegations had also been required. Five witness statements, including two taken in person, had been required. Ms Hansen stated that significant additional work had been required analysing the transcripts and considering the Respondent’s own amendments. In all the circumstances, and having successfully proved all the allegations, it was submitted that the costs claimed were reasonable. Ms Hansen accepted that the Tribunal was entitled to reflect the Respondent’s means when awarding any legal costs to the Applicant. She stated that the Applicant recognised the

individual circumstances of Respondents and these would be reflected in an appropriate repayment plan. The Applicant opposed any order under which further permission from the Tribunal was required to enforce any costs order.

31. The Respondent had provided supporting evidence of his very limited current means. Being in receipt of universal credit, in three months' rent arrears and having previously entered into a voluntary insolvency agreement, it was submitted that his means were plainly very limited. Mr Di Francesco invited the Tribunal to take account of these means and how any costs award would be met by the Respondent. Mr Di Francesco noted the scope available to the Tribunal to order that any costs should not be awarded without leave of the Tribunal and he invited the Tribunal to consider this. The Respondent had been working since October 2019, when the previous decision had been quashed, although in the months leading up to the hearing he had only worked minimal hours. The Tribunal's decision to strike him off would inevitably impact on the Respondent financially.
32. Responding to the Applicant's schedule of costs, Mr Di Francesco submitted that 27 hours for work including amending the Rule 5 Statement was a significant amount of time, even allowing for the additional transcript which was available. He queried whether the 114 hours spent on "Directions, Answer, Reply and Case Management Hearing" together with "Post-CMH preparation for SDT hearing" was efficient. Mr Di Francesco submitted that the proposed concession to reflect the shorter than anticipated hearing duration was appropriate.
33. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal considered that the FIO's investigation costs and the Applicant's supervision costs were reasonable. Similarly, Capsticks' fixed fee was not excessive bearing in mind the five witnesses, the need to respond to the Respondent's own application to sever the cases and the detailed work required as a result of an additional transcript being available and in corresponding with the Respondent on his comments on the transcripts. All four allegations had been proved, including the allegations of dishonesty. The Tribunal considered that it was appropriate to make a modest reduction to the costs to reflect the legal costs to reflect the fact that not all of the anticipated three hearing days had been used (although the hearing concluded after 1 p.m. on the third day and so this saving was relatively modest). The Tribunal carefully reviewed the evidence of means supplied by the Respondent. He had supplied strong evidence of currently limited means. The Tribunal was mindful that the Applicant as a regulator of legal services acting in the public interest was obliged to bring proceedings in relation to serious allegations with the potential to seriously undermine the reputation of the profession. To the extent that they are not recovered from a Respondent, the costs of the Applicant are met by the profession. The Tribunal had heard from Ms Hansen, and was aware from its previous experience, that the Applicant takes a pragmatic approach to the recovery of costs awarded and that payment plans are negotiated taking into account the means of the Respondent. In all the circumstances the Tribunal did not consider that it was appropriate to reduce the costs based on the Respondent's means. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £26,500 which reflected the fact that the hearing had concluded shortly after 1 p.m. on the third day.

**Statement of Full Order**

34. The Tribunal ORDERED that the Respondent, ZULFIQAR ALI, 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 £26,500.

Dated this 10<sup>th</sup> day of September 2020

On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'A. Kellett', is centered on a light gray rectangular background.

A. Kellett  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**10 SEPT 2020**