SOLICITORS DISCIPLINARY TRIBUNAL

<u>IN THE MATTER OF THE SOLICITORS ACT 1974</u> Case No. 11858-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID KINGSLEY WEDGE Respondent

Before:

Mr E. Nally (in the chair)
Mr H. Sharkett
Dr S. Bown

Date of Hearing: 25 – 27 March 2019

Appearances

Natasha Tahta, counsel of QEB Hollis Whiteman Chambers, 1-2 Laurence Pountney Hill, London EC4R 0EU for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") arising out of his conduct whilst working as a solicitor at Kingsley Rose Solicitors ("the Firm") were that:

1.1 In June 2008 the Respondent accepted a personal loan for £110,000 from a client, AMD, in circumstances in which he had not advised AMD to seek independent legal advice in relation to the loan and/or in which there existed a conflict of interest. In so doing, the Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 and 3.01(1) of the Solicitors Code of Conduct 2007 ("the 2007 Code").

1.2 Between October 2013 and April 2016, the Respondent failed to provide his client KK with a proper standard of service and provided KK with misleading information in relation to the status of his professional negligence claim matter in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failing to achieve all or alternatively any of Outcomes 1.2, 1.5 and 1.12 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.3 Between December 2013 and March 2015, the Respondent failed to provide his client RL with a proper standard of service and provided RL with misleading information in respect of work he had carried out on his matter. In so doing, the Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the Principles and failed to achieve all or alternatively any of Outcomes 1.2, 1.5 and 1.12 of the 2011 Code.

1.4 The Respondent failed to co-operate fully with the SRA's investigations into the matters of AMD, KK, RL YS and LP. In so doing, he breached all or alternatively any of Principles 2 and 7 of the Principles and failed to achieve all or alternatively any of Outcomes 10.6, 10.8 and 10.9 of the 2011 Code.

2. Allegations 1.2, 1.3 and 1.4 were advanced on the basis that the Respondent's conduct was dishonest. Whilst dishonesty was an aggravating feature of the Respondent's conduct, it was not an essential ingredient for the proof of those allegations.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 3 August 2018
- Rule 5 Statement and Exhibit AHJW1 dated 3 August 2018
- Email from the Respondent dated 24 March 2019
- Applicant's Statement of Costs dated 18 March 2019

Preliminary Matters

4. Application to proceed in the Respondent's absence

4.1 The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") enabled the Tribunal to proceed with a matter in the Respondent's absence. Rule 16(2) of the SDPR required the Tribunal to be satisfied that Notice of the Hearing was served on the

Respondent in accordance with Rule 10. If so satisfied, the Tribunal was able to hear and determine the application notwithstanding that the Respondent had failed to attend and was not represented.

4.2 The Respondent was initially served at his registered postal address, however it became clear that he was no longer residing there. The Applicant was able to contact the Respondent via email. The Respondent explained that he was abroad. He did not provide an address abroad to which papers could be sent. The Applicant applied for an order for substituted service so that the proceedings papers could be served on the Respondent by email. That application was granted by the Tribunal on 24 October 2018.

4.3 The Respondent had intermittently responded to the SRA on issues of his choosing. It was clear that he was aware of the hearing date. Despite repeated requests, he had not informed the SRA as to whether he intended to attend the hearing or whether he required any witnesses to attend for the purposes of cross examination. There had been numerous emails between the Applicant and the Respondent in September and October 2018 regarding service of the documents prior to the Tribunal ordering substituted service. Documents were served by the Tribunal on the Respondent by email on 25 October 2018. The Respondent's Answer was due to be filed and served on 27 November 2018. On 28 November 2018, the Respondent was written to by the Applicant reminding him that his Answer was required. On the same day the Respondent emailed stating that he had not received any documents from the Tribunal. On 28 November 2018 the Tribunal informed the Respondent that the matter was listed for a Case Management Hearing ("CMH") on 18 December 2018. On 29 November 2018 the Tribunal resent all the proceedings papers, advising the Respondent to contact the Tribunal in the event he was unable to access the documents. On 11 December 2018, the Respondent informed the Tribunal that he had been unable to open the documents.

4.4 The Respondent provided a telephone number for the purposes of the CMH. The Tribunal was unable to contact the Respondent on that number as the number was "unassigned". After the commencement of the hearing the Tribunal received an email from the Respondent which stated:

> "I am in quite a small village … which is quite remote and apparently the mobile phone system isn't great. I have tried calling but it won't connect. I will be travelling to Istanbul Friday and don't expect any problems so will call and make contact with you."

4.5 At the CMH the Tribunal ordered (amongst other things) that unless the Respondent filed and served his Answer and documents on which he intended to rely at the substantive hearing by 7 January 2019, he was prohibited from doing so without the leave of the Tribunal. The Respondent did not file an Answer and made no further contact with the Tribunal or the Applicant until March 2019.

4.6 Ms Tahta referred the Tribunal to the case of R v Jones [2002] UKHL 5 which the Tribunal must have in mind when considering whether to proceed in the absence of the unrepresented Respondent. That case set out a number of factors that the Tribunal

ought to assess when considering whether to proceed in the absence of the unrepresented Respondent.

4.7 When considering whether to proceed in the absence of the unrepresented Respondent, perhaps the most important factor was the principle of overall fairness to the Respondent. The Tribunal ought also to consider the public interest in expeditious prosecutions, particularly in the professional regulatory sphere, where regulators had a public duty to maintain confidence in the profession.

4.8 In GMC v Adeogba [2016] EWCA Civ 162, the Court of Appeal repeated the principles in Jones and added that, in regulatory cases, there was a burden on professionals to provide current updated registered addresses and to engage with their regulators. The same principles were applied in Blacker v SRA [2017] EWHC 892. Mr Blacker was a solicitor who had stated that he wished to attend the SDT for his hearing but that he couldn't for medical reasons. He asked for the hearing to take place in Manchester but he provided scant medical evidence to support his application. The High Court held that his failure to provide sufficient medical evidence effectively meant that he had voluntarily absented himself from the proceedings and they upheld the SDT's decision to proceed in his absence. They also held that Mr Blacker's failure to provide any evidence as to means, despite the SRA's request for him to do so, enabled the SDT to make a costs order against him in his absence and in the absence of any such evidence.

4.9 Ms Tahta submitted that there was no doubt that the Respondent had voluntarily absented himself from these proceedings, of which he was clearly aware. He had not requested that the proceedings be adjourned. In those circumstances it was clearly in the public interest to proceed with the hearing in his absence.

The Tribunal's Decision

4.10 The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondent in accordance with the SDPR. It noted that the Respondent had engaged intermittently. It was clear from the Respondent's email of 24 March 2019 to the Tribunal that he had received the proceedings papers, as he had addressed matters detailed in those papers in his email. It was also clear that he was aware of the hearing date; he stated that he was unable to attend the hearing "due to the cost of travelling to the UK". He further explained that that he had sought a last minute flight, but that would have involved "incredible expense" and he did not have the funds. The Tribunal found that the Respondent had been aware of the hearing date for some time. It should not have been necessary for him to seek a "last minute flight". Thus the Tribunal did not consider that his inability to get a flight was a compelling reason for his absence. Further, the Respondent had provided no evidence of his means; his assertion that he was unable to obtain a flight due to lack of funds was an assertion that had no evidential support.

4.11 There was nothing to suggest that an adjournment would secure the Respondent's attendance at a later date. The Respondent had not requested that the matter be adjourned. On the contrary, the Respondent stated that he was "happy for the Tribunal to remove me from the Roll". Were the matter to be adjourned, it was

unlikely that the Tribunal could re-list the matter much before October 2019. Such delay would neither be justifiable nor in the public interest.

4.12 At no stage had the Respondent suggested that he wished to be legally represented in the proceedings. The Tribunal also considered that the Respondent was clearly aware of the sanction that could be imposed by the Tribunal if it found the matters proved; he had indeed referred to the ultimate sanction of the Tribunal removing him from the Roll.

4.13 The Tribunal considered the authorities cited, and noted the requirement for it to consider with the utmost care and caution proceeding in the Respondent's absence. As detailed above, it was plain that the Respondent had notice of the hearing. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing and had thus waived his right to appear. Further, the Tribunal found that it was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. In light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

5. Application to defer consideration of allegation 1.1

5.1 In his email of 24 March 2019, the Respondent stated as regards allegation 1.1:

> "The matter is subject to litigation and mediation between the parties is due to take place in April. I have attached a copy of the most recent court order and an email confirming the mediation between the parties. I strongly urge the Tribunal not to make any finding in relation to this matter because it would severely prejudice the ongoing court proceedings. The tribunal should consider deferring their decision on this matter until after the case has been concluded as not to prejudice my position or that of my ex-wife. Given that a third party is involved and her position could be prejudiced by any decision of the Tribunal it would be unfair to make a determination at this stage. There is no prejudice or reason not to defer a decision. I have confirm (sic) that I will never be a solicitor again and have in fact not applied for a practising certificate. I am happy for the Tribunal to remove me from the Roll. In those circumstances a decision on [allegation 1.1] would simply be one to cause problems.

5.2 Ms Tahta objected to the application, which, it was submitted, was unclear. It appeared that he was requesting that consideration of allegation 1.1 be deferred until some later date, or that it be severed from the other matters. The deferment or severance would lead to additional costs. Further, the matters raised in that allegation formed part of the factors to be considered as regards allegation 1.4.

5.3 Further, and more importantly, there was no evidence of how the consideration of that allegation would prejudice him or his ex-wife. The Respondent had not provided his defence in the civil proceedings so as to enable the Tribunal properly to assess whether any decision on that allegation could create a conflict in the civil proceedings. Allegation 1.1 concerned the Respondent's failure to provide advice when he was conflicted. The failure of the Respondent to provide any evidence to the

Tribunal in support of his application meant that the additional costs involved in deferring or severing the allegation was disproportionate. Ms Tahta submitted that the Tribunal could, of its own volition, choose to hear that allegation in private. However, there was no evidence that to hear the matter in public would cause extreme hardship or extreme prejudice to the Respondent or any other person affected by the proceedings.

The Tribunal's Decision

5.4 The Tribunal determined that the Respondent's application was to adjourn consideration of allegation 1.1. Accordingly, it had regard to paragraph 4(a) of its Policy/Practice Note on Adjournments which stated:

> "The following reasons will NOT generally be regarded as providing justification for an adjournment;
>
> The Existence of Other Proceedings
>
> The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying fats as form the basis of the proceedings before the Tribunal AND there is a genuine risk that the proceedings before the Tribunal may 'muddy the waters of justice' so far as concerns the criminal proceedings. Civil proceedings are even less likely to do so."

5.5 The Tribunal considered that the burden for providing evidence to show that its consideration of allegation 1.1 would 'muddy the waters of justice' lay on the Respondent. He had failed to provide any evidence in support of that contention. In any event, the matters being considered by the Tribunal were distinct and related solely to whether the Respondent had acted in breach of his obligations as a solicitor. Further, the decision in the civil proceedings would be made by a civil Judge. The likelihood that the Judge would rely on the Tribunal's decision as to whether the Respondent had acted in breach of his obligations in consideration of the civil matter was so small as to be irrelevant. Further, the Tribunal's decision as to the Respondent's conduct would not be determinative of those civil proceedings. For those reasons, the Respondent's application was refused.

5.6 The Tribunal considered whether this was an appropriate case for it to exercise its discretion under Rule 12(6) of the SDPR, namely that the hearing, or part of it be held in private on the grounds of exceptional hardship or exceptional prejudice to a party, witness or any person affected by the application, or that a hearing in public would prejudice the interests of justice. The Tribunal concluded that there was no evidence that the hearing of allegation 1.1 in public would cause exceptional hardship, exceptional prejudice or that it was contrary to interests of justice. Accordingly, the Tribunal determined that this the circumstances of this matter were not such that it should exercise its aforementioned discretion.

Factual Background

6. The Respondent was born in 1971 and was admitted to the Roll of Solicitors in November 2001. At all material times the Respondent was a solicitor practising at the Firm. The Firm closed on 25 January 2016. The Respondent did not have a current practising certificate.

7. On 14 September 2016, the SRA received a report from RL in relation to the Respondent's conduct. On 29 September 2016, the SRA received a report from KK in relation to the Respondent's conduct. A further report was received by the SRA from JMD on 18 October 2016.

Witnesses

8. None.

Findings of Fact and Law

9. 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. The Tribunal considered all the evidence before it, together with the submissions of both parties.

Dishonesty

10. The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

11. When considering dishonesty the Tribunal firstly 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. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

12. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession".

13. **Allegation 1.1 - In June 2008 the Respondent accepted a personal loan for £110,000 from a client, AMD, in circumstances in which he had not advised AMD to seek independent legal advice in relation to the loan and/or in which there existed a conflict of interest. In so doing, the Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 and 3.01(1) of the 2007 Code.**

The Applicant's Case

13.1 The allegation concerned a loan made by AMD to his grand-daughter, KT (also known as KW) and her fiancé (and later husband), the Respondent.

13.2 AMD was the executor of his sister's estate. The Respondent had been acting for AMD in obtaining probate for that estate. AMD's sister had passed away in 2007. Following probate having been granted AMD received, via the Firm's client account, just under £250,000 on 19 May 2008.

13.3 Shortly afterwards the Respondent and KT asked to borrow £110,000 from AMD for the purchase of land in Betws-y-Coed (referred to as "land adjoining Craigside") on which they subsequently built a house. No formal proof of the loan or the basis for any interest payments were drawn up.

13.4 In March 2009, AMD made a payment to the Firm in the sum of £13,000 for "services provided", that payment relating to services provided by the Respondent to AMD regarding the probate of AMD's sister's estate.

13.5 The Respondent and KT married in July 2009.

13.6 Following repeated requests, a letter dated 13 August 2009 was provided to AMD regarding the loan. The letter was handwritten on the Firm's headed note paper and stated:

> "I, [KT] and [the Respondent] ... have borrowed £110,000.00 (one hundred and ten thousand pounds) in order to purchase land Adjoining Craigside, Betws y Coed ..."

13.7 That letter was signed by KT and witnessed by KT's mother.

13.8 In a typed letter of the same date, sent by the Respondent to AMD, the Respondent confirmed that "all transactions" relating to the probate of the estate had been completed, no further action was required and the Respondent was in a position to close the file.

13.9 Ms Tahta submitted that it was clear from the documents that the Respondent was acting for AMD during 2008 and up to at least August 2009 in respect of his sister's estate, and that, during that period, in early June 2008, he accepted a personal loan from AMD, jointly with KT.

13.10 These matters were brought to the attention of the Applicant in an email dated 18 October 2016, from AMD's daughter, JMD. JMD also provided a statement detailing the chronology of events. She explained that interest payments on the loan were initially made from July 2008 to January 2009. Thereafter there were no payments for February, March, April and May of 2009. On 15 June 2009 a payment equating to 5 months interest, and thus bringing the interest payments up-to-date was made to AMD. On 11 August 2010, AMD received a further payment. Out of the 25 months interest payable, AMD had received payment equating to 17 months. JMD instructed solicitors in October/November 2015 on AMD's behalf, to obtain advice on what steps could be taken to recover the loan. Following correspondence from those solicitors, AMD received 2 further payments totalling £25,000.00.

13.11 In an email dated 11 November 2016, JMD confirmed that the Respondent did not advise AMD to seek independent legal advice regarding the loan.

13.12 Ms Tahta submitted that the documentary evidence, together with the statement of JMD demonstrated that the Respondent gave no advice to AMD that he should instruct an independent solicitor, nor did he inform AMD that he had a duty not to act under the 2007 Code. Rule 3.01(1) of the 2007 Code stated:

> "You must not act in there is a conflict of interests ... There is a conflict of interests if: ... your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter".

13.13 That there was a conflict of the interests of the Respondent as the receiver of the loan, and AMD as the provider, was clear in the circumstances where AMD was the Respondent's client. It was in the Respondent's interests not have the loan documented whereas AMD had a contrary interest.

13.14 In his email of 17 July 2017 to the Forensic Investigation Officer ("FIO") the Respondent stated that the monies had not been borrowed by him but entirely by KT, for whom he was acting in the purchase of land. The monies were paid into the Firm's client account for that purpose. The Respondent further stated that he did not have any documents relating to that purchase because it took place about 10 years before the investigation.

13.15 The Applicant obtained documents from the Land Registry. The Respondent objected to those documents being admitted into evidence, as they were out of time. An application for the submission of those documents was made. That application was granted by the Tribunal on 13 March 2019. The Land Registry documents demonstrated that the land was purchased solely by the Respondent on 20 August 2008. They also demonstrated that the land was in fact transferred to KT on 27 January 2012.

13.16 In summary it was submitted that the Respondent had a duty to advise AMD to take independent legal advice, to advise him that he had a conflict of interest in relation to the loan agreement and that he could not act for him. By failing to so advise AMD, the Respondent acted in his own best interests rather than his client's and he acted wholly without integrity. The public confidence in solicitors would be undermined by the Respondent's conduct in respect of AMD.

13.17 As the Respondent had failed to attend the hearing, the Tribunal were entitled to take the Respondent's failure to make himself available for cross examination into account when reaching its findings pursuant to Practice Direction Number 5, and in line with the decision in Iqbal v SRA [2012] EWHC 3251 (Admin).

The Respondent's Case

13.18 In his email of 24 March 2019, the Respondent stated:

> "The loan was between my ex wife and her grandfather. I had no involvement in the loan or any discussions between the parties. I was involved in the purchase of the land because that's my job and it would be nonsense for my wife to instruct an alternative solicitor and pay their fees.
>
> [JMD] had no knowledge of loan until after 7 years had passed and that was because the grandfather did not want anyone to know about it because he was fearful the family would all ask for money. His other daughter ... was aware of the loan and was present when discussions about the terms off (sic) the loan were agreed. I was not however. I believe approx £75,000 has already been repaid with the readier (sic) due later this year. Again repayments have nothing to do with me and I certainly have not paid anything. All payments have been made by [KT]. It should be noted that the land purchased was transferred in the name of [KT] and then into my name for a brief period only. I did not receive any financial gain whatsoever, I was never involved in the loan discussions and never spoke with the Grandfather about the loan when we visited his home, which was very regular. In any event the purpose of the loan is irrelevant."

The Tribunal's Findings

13.19 It was noted that the Respondent did not dispute that a loan had been made by AMD and also that the amount of the loan was not in dispute. The Respondent had also informed the FIO that the loan monies had been paid into the Firm's client account. It was clear that at the time that the monies were loaned, AMD was a client of the Firm.

13.20 The Tribunal took account of the letter dated 13 August 2009, in which it was stated that the loan was made to both KT and the Respondent for the purchase of the land. The Tribunal also took account of the statement of the FIO in which he stated that on asking the Respondent about the loan, the Respondent explained that the monies had been loaned to both he and KT. The Land Registry documents evidenced that the land was, in fact, purchased in the Respondent's sole name before being transferred some 3.5 years later to KT.

13.21 In response to a letter dated 6 July 2016, sent by AMD's solicitors as regards the loan, KT sent a letter dated 11 July 2016. That letter purported to set out the terms of the loan agreement. Throughout the letter there was reference to "we". The Tribunal considered that "we" referred to both KT and the Respondent. In arriving at that conclusion, the Tribunal had regard to a text message sent by KT to JMD in which she explained that the letter had been written by the Respondent as she was "in such a state. I told [the Respondent] what I wanted to say but he would have replied matter of fact because he was dealing with a lawyer and not direct with my grandad. We cannot write personal replies, we know how solicitors work." The Tribunal found beyond reasonable doubt that the loan was made to the Respondent and KT. In so far as the Respondent denied that this was the case, the Tribunal rejected that evidence.

13.22 Having determined that the Respondent was the recipient of the loan (together with KT) the Tribunal then considered whether the Respondent had breached the Rules as alleged.

13.23 The Tribunal determined that it was in the Respondent's interests to have no documented loan agreement, whereas it was in AMD's interests to have the agreement documented. There had been no advice to AMD as to his options as regards registering an interest in the land nor as to any terms for the payment of interest. It was in his interests to receive that advice but contrary to the Respondent's interest for that advice to be given. There were no default provisions that might have applied in breach of any repayment obligations by the borrower; such provisions would have been in AMD's interests but contrary to the Respondent's interests. In all the circumstances, the Tribunal considered that there was a clear and obvious conflict of interests between the Respondent and AMD. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had acted when a conflict existed in breach of Rule 3.01(1) as alleged.

13.24 The Tribunal considered that in making an unstructured and undocumented loan, the Respondent had failed to act in the best interests of his client. Accordingly, it found beyond reasonable doubt that the Respondent had breached Rule 1.04. In failing to act in his client's bests interests in the circumstances, the Tribunal found beyond reasonable doubt that the Respondent had failed to provide a good standard of service to his client in breach of Rule 1.05. That such conduct was likely to diminish the trust placed in the Respondent or in the profession was plain. Members of the public would be concerned to know that the Respondent had acted where a conflict existed between him and his client, and his actions were for his own benefit. Accordingly the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Rule 1.06.

13.25 The Tribunal considered that the Respondent had allowed his own interests to trump those of his client. He was an experienced solicitor who had knowledge of AMD's financial situation as a result of conducting the probate on AMD's sister's estate, and in acting in the way that he did, had subordinated his client's interests for his own. That such conduct lacked integrity was clear. No solicitor acting with integrity would put his own interests above those of his client. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct lacked integrity in breach of Rule 1.02.

13.26 The Tribunal thus found allegation 1.1 proved beyond reasonable doubt in its entirety.

14. **Allegation 1.2 - Between October 2013 and April 2016, the Respondent failed to provide his client KK with a proper standard of service and provided KK with misleading information in relation to the status of his professional negligence claim matter in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles 2011and failing to achieve all or alternatively any of Outcomes 1.2, 1.5 and 1.12 of the 2011 Code.**

The Applicant's Case

14.1 KK was a property developer. In July 2012 he had instructed a firm of solicitors CJC to act for him in the purchase of a property. The purchase completed in October 2012. In about September 2013 KK was he was informed that the property he had bought had mine shafts running below it. KK contacted CJC who confirmed no mining authority searches had been undertaken. CJC then undertook the searches which showed that there were indeed mine shafts below the property.

14.2 KK instructed the Respondent to represent his interests in a negligence action he intended to bring against CJC. The Respondent agreed to act for KK using a Conditional Fee Agreement. The Respondent sent KK a client care letter dated 28 October 2013, in which he confirmed that he had agreed to act for KK on a "no win no fee basis". The Respondent obtained KK's file from CJC. Thereafter, the Respondent sent a Letter of Claim to CJC dated 13 November 2013 for damages in excess of £100,000. CJC instructed CL to represent their interests in that action.

14.3 In his witness statement KK explained that he met with the surveyor who did the initial property valuation. The surveyor had been instructed by the Respondent to undertake a further valuation in the knowledge that the land had mine shafts present. KK did not receive a valuation report from the surveyor.

14.4 On 12 June 2014, the Respondent forwarded an email he received from CL stating that they believed that KK had abandoned his claim. CL requested that no further action be taken until they had an opportunity to write to the Respondent, which it was stated would be done before the end of the following day. In response the Respondent stated: "We are not sure why you would believe that [KK] had abandoned his claim. We have exchanged valuation reports and have considered your client's valuation, with Counsel and [the surveyor]. We have received instructions to commence proceedings and we must follow those instructions." In his statement KK confirmed that he did not provide the Respondent with instructions to issue proceedings prior to the receipt of a Part 36 settlement offer.

14.5 On 13 June 2014, the Respondent emailed KK stating that an offer of £20,000 had been made in full and final settlement of the claim. He advised that should KK wish to reject the offer, proposals for settlement should be put forward, however, before doing so the Respondent advised that the advice of a senior barrister should be sought. On 19 June 2014 the Respondent emailed KK stating that he intended to instruct a particular set of chambers but that "the barrister instructed had not yet been identified because they will be acting on a no win no fee basis and will only consider this option when the papers have been reviewed so they can determine the prospects of success."

14.6 Ms Tahta submitted that it was clear from the email of 19 June 2014 that counsel had not been instructed in this matter. Thus the Respondent's email to CL of 12 June 2014 was both misleading and dishonest – counsel having not yet been instructed could not have considered the valuation, and KK not having provided instructions to commence proceedings.

14.7 On 14 July 2014, KK emailed the Respondent requesting a progress report. A letter dated 1 August 2014 was sent from the Firm to KK advising him that the Respondent was away from the office due to ill health and that he was unlikely to return until September. Thereafter he would only work part-time. KK was invited to consider transferring his file to another firm, the details of which were provided in the letter. KK attended the offices and met with KT (then KW) in September 2014. Following that meeting, he decided to leave his matter with the Firm.

14.8 On 25 September 2014, following an email request for an update, the Respondent replied on the same date stating: "I will arrange a meeting soon but at the moment I want to complete tasks I have on your matter so that when we meet it will be constructive. The meeting may involve a Skype meeting with your barrister also but that is something I am considering at this stage. I just want to get on with progressing the matter and you will hear from me very soon".

14.9 Following a further chasing email from KK, on 3 November the Respondent stated in an email: "I will meet with you once we have counsel's opinion and not before. At this stage we must finalise your statement and that is what I am concentrating on. You should receive it this week. I am not dealing with your concerns because I am concentrating on the progress of the case."

14.10 On 11 November 2014, KK emailed the Respondent in the following terms:

> "Despite your assurances to send me a draft statement, I have still received nothing from you in the post. I have not had problems receiving other mail ... Regarding meeting following obtaining counsel's opinion, am I correct in assuming you are referring to [chambers] whom you advised me you intended to instruct in June of this year? Please can you give me a reasonable indication of when you expect to receive counsel's opinion and therefore be prepared to meet to discuss the case? Please can you also advise what bearing it may have on the case if my home is repossessed and I am made homeless? Please take the time to answer my queries as my situation is becoming increasingly desperate."

14.11 On 24 November 2014, the Respondent responded to the 11 November email and stated, amongst other things, that he expected to receive counsel's opinion within the next 3 weeks after which time he would issue court proceedings.

14.12 On 20 January 2015, the Respondent emailed KK stating that "by Tuesday of next week you should have received the court papers and schedule of loss for approval." Ms Tahta submitted that at that stage, no court proceedings had been issued. Thus the Respondent's email was both misleading and dishonest. KK responded on 7 February 2015 explaining that he had not received any of the documents so he would attend the office in person to collect them.

14.13 On 16 February 2015, the Respondent sent a draft Particulars of Claim to CL. CL responded on 20 February 2015, querying why there had been such a long period of inactivity, amongst other things.

14.14 On 26 March 2015, the Respondent submitted the claim to the County Court. On 16 April 2015, this was returned by the Court to the Respondent as the 'Disposable capital threshold' had been incorrectly stated. On 21 April 2015, the Respondent emailed KK explaining that the Court required further information. As that had already been provided by KK the Respondent had "resubmitted the application". Following enquiries made by the Applicant, the Court confirmed that no case in the name of KK v CJC could be located on its case management system and it was "therefore most likely that this case was never issued and created by the Court".

14.15 Ms Tahta submitted that from November 2014 through to March 2016, KK sent increasingly desperate emails to the Respondent as regards his matter. On 7 March 2016, the Respondent informed KK: "This week I will be sending your complete file to the barrister", and that he expected a response in a week or so at which point he would forward counsel's advice. On 21 March 2016, following the absence of any further correspondence from the Respondent, KK emailed him explaining that he had not received counsel's advice. Further,he wrote "I am deeply concerned as the only correspondence I have received appears to be over a year old and it seems as though the months/years are just rolling by without anything actually progressing. I really can't understand why you keep telling me you are going to send things yet nothing is ever received and you keep assuring me you are going to do the same things yet nothing happens?!"

14.16 KK received no response to his email. He forwarded that email to the Respondent on 30 March 2016. No response was received. He emailed again on 4 April 2016, requesting a response and stating that if he heard nothing he would refer the matter to the relevant regulatory authorities. On 9 April, 6 May and 28 June 2016, KK emailed requesting that he be provided with his full file. On 28 June 2016 he stated: "I have no idea why you may have sabotaged my case as I have given you no cause to do so and clearly any continued withholding of my file and documents is damaging my opportunity to achieve a resolution. Please do the right thing and return my file and documents." Despite his requests for the return of his file, KK never received his file from the Respondent. KK made official complaints to the Legal Ombudsman and the SRA.

14.17 It was submitted that the Tribunal could be sure that in his dealings with KK the Respondent had breached the Principles and failed to achieve the outcomes as alleged. It was not in KK's best interests for there to be lengthy periods of inactivity on his matter nor was it in his best interests for the Respondent to lie to CL/CJC. By being deleterious with his actions, lying to the client about the instruction of counsel and lying to the other side, the Respondent failed to provide KK with a proper standard of service. Public confidence in him and in the profession was undermined by his actions. He failed to protect KK's interests, failed to provide him with a timely service, the competence of the service he provided was questionable and failed to keep KK informed so as to enable KK to make informed decisions. Such conduct clearly lacked integrity.

14.18 The Respondent's conduct was clearly dishonest. He had deliberately misled his client into believing that counsel had been instructed when he knew that was not the case. That the Respondent had not instructed counsel became clear during the investigation into his conduct. On 27 June 2017, the Respondent was asked by the Applicant when he had instructed counsel, and who that counsel was. The Respondent explained that he had not sent KK's file to counsel nor had any counsel been instructed as KK had failed to provide any funds on account for the instruction of counsel. In his statement, KK confirmed that at no point was he asked to provide funds on account for the instruction of counsel. There was nothing in any of the correspondence obtained by the Applicant relating to funds for counsel. The Respondent was asked to provide any evidence of a request for such payment, or any correspondence chasing such a payment. Nothing was provided in that regard. The Respondent had also informed KK that he had re-submitted his claim to the Court when it had been rejected when he knew that this was not the case. Ms Tahta submitted that reasonable and honest people would consider such conduct to be dishonest.

The Respondent's Case

14.19 In his email of 24 March 2019, the Respondent stated:

> "I recall that proceedings were sent to the court with an application for fee exemption but prior to the court issuing the claim [KK] commenced employment and therefore was not entitled to a fee exemption. The court fee was in excess of £10,000 given the amount claimed. I recall [KK] saying he would borrow the money but nothing was forthcoming and the case was taken as far as it could in the circumstances. Proceedings needed to be issued but he didn't have the funds to pay the court fee."

The Tribunal's Findings

14.20 The Tribunal considered that the emails to KK as regards the instruction of counsel were equivocal, evasive and ambiguous, and were deliberately crafted so as to give KK the misleading impression that counsel had been instructed. On 24 November 2014, the Respondent informed KK that he expected to receive counsel's opinion within the next 3 weeks after which time he would issue court proceedings. On 7 March 2016, the Respondent had informed KK that he would send his full file to counsel and that a response from counsel was expected "in a week or so". However, as detailed above, the Respondent had not instructed counsel. He informed the Applicant that this was because he did not have funds on account to do so. The Tribunal accepted KK's evidence that he was never asked to provide funds on account for the instruction of counsel. That this was the case was clear from the contemporaneous documents. Not only was no evidence produced by the Respondent demonstrating that such a request had been made, but the email to the KK from the Respondent dated 19 June 2014 contradicted this in that it made it clear that counsel was to be instructed under a conditional fee agreement: "The barrister instructed has not yet been identified because they will be acting on a no win no fee basis and will only consider this option when the papers have been reviewed so they can determine the prospects of success."

14.21 The Tribunal found that the Respondent had not re-submitted the claim to the Court as he detailed in his email to KK of 21 April 2015. The correspondence from the Court made clear that no case had been issued in the name of the client against CJC. In his email to the Tribunal of 24 March 2019, the Respondent explained that proceedings were not issued due to KK obtaining work and failing to pay the issue fee. That was the first time the Respondent put forward such an explanation. No evidence was provided by the Respondent in support of that contention. The claim was returned to the Respondent by the Court due to the Court requiring "an official document, dated within the last three months, that clearly states you are currently in receipt of Income-based Jobseekers Allowance". The Respondent, in his email to KK of 21 April 2015 stated: "As predicted the Court require further information that you have already provided so I have re-submitted the application". There was no suggestion in that email that the matter could not progress any further until KK had provided funds of £10,000 in order for the claim to be issued. The Tribunal thus rejected the explanation provided by the Respondent in his email of 24 March 2019, and found that the Respondent had misled KK in his email of 21 April 2015.

14.22 The Tribunal found the Respondent's conduct of the KK matter to be wholly inadequate. The email correspondence sent by the Respondent to KK was calculated so as to disguise his failings in the conduct of the matter. The Tribunal found that it was not in KK's best interests for the Respondent to fail to progress his case adequately or at all. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 4 of the Principles. Providing a proper standard of service required the proper and timely progression of KK's case; the Respondent failed in that regard. It also required that a solicitor did not mislead his client; the Respondent failed in that regard. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 5 of the Principles. 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 was plain. This was clearly demonstrated by the emails sent by KK to the Respondent. KK was becoming increasingly concerned. His emails and his statement demonstrated the loss of faith he had in the Respondent and the devastating impact the Respondent's conduct had on him. The Tribunal found beyond reasonable doubt that the Respondent breached Principle 6 of the Principles.

14.23 Outcome 1.2 required the Respondent to provide services to clients in a manner which protected their interests in their matter, subject to the proper administration of justice. The Respondent had failed in this regard. Not only had he failed to protect his client KK's interests when he had conduct of the matter, he had positively harmed those interests further by his failure to return the file to KK. Outcome 1.5 required the Respondent to provide a competent service, delivered in a timely manner, taking account of the client's needs and circumstances. The Tribunal found that the Respondent's service was incompetent, untimely and had failed entirely to take account of KK's needs. Outcome 1.12 required that the Respondent ensure that KK was in a position to make informed decisions about the services he needed, how his matter would be handled and the options available to him. The Tribunal considered that by virtue of the Respondent providing KK with misleading information, KK was deprived of the ability to make informed decisions about the services he required. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had failed to achieve the outcomes as alleged.

14.24 The Tribunal determined that a solicitor acting with integrity would have kept their client informed and would not have sought to obfuscate or distract their client by providing a fabricated and misleading impression that the case was more advanced than it was. A solicitor acting with integrity would have, at all times, provided his client with a proper standard of service and acted in the client's best interests. The Respondent failed to do any of this. The Tribunal found beyond reasonable doubt that the Respondent's conduct lacked integrity in breach of Principle 2 of the Principles.

14.25 The Tribunal considered whether the Respondent's conduct had been dishonest. For the reasons detailed above, the Tribunal found that the Respondent informed KK that he had resubmitted his claim to the County Court when this was not the case, and he knew that it was not the case. Reasonable people operating ordinary standards of honesty would consider this to be dishonest. The Tribunal had found that the Respondent had deliberately given KK the misleading impression that he had instructed counsel, when he knew that was not the case. He had deliberately crafted his emails to give that impression so as to disguise the lack of progress made on the case. Reasonable people operating ordinary standards of honesty would consider this to be dishonest.

14.26 Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

15. **Allegation 1.3 - Between December 2013 and March 2015, the Respondent failed to provide his client RL with a proper standard of service and provided RL with misleading information in respect of work he had carried out on his matter. In so doing, the Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the Principles and failed to achieve all or alternatively any of Outcomes 1.2, 1.5 and 1.12 of the 2011 Code.**

The Applicant's Case

15.1 On or around 20 December 2013, RL instructed the Respondent by telephone, to act for him in contact proceedings relating to his daughter. RL confirmed these instructions by email on 22 January 2014. RL had instructed the Respondent within two weeks of being prevented from seeing his daughter. The Respondent failed to provide RL with a client care letter or any other documentation in relation to costs or hourly rates.

15.2 In his statement, RL explained that thereafter he had difficulty in contacting the Respondent. He telephoned the office on 3 and 10 February 2014. He spoke to the Respondent on 19 February 2014, at which time the Respondent agreed that he would act for RL.

15.3 During March 2014 RL again attempted to speak to the Respondent, however his calls were unanswered and unreturned. RL produced a copy of his work telephone records to the Respondent's Firm's number. It demonstrated that the Respondent had called the Firm on 14, 19, 28 and 31 March 2014. A total of 9 calls were made to the Respondent on those dates.

15.4 On 1 April 2014, RL managed to speak with the Respondent. The Respondent informed him on that date that he had sent letters to RL's ex-wife in relation to the contact proceedings. RL requested copies of those letters but the Respondent failed to provide them. RL explained that he spoke to his ex-wife who stated that she had never received any such correspondence. The SRA also requested copies of those letters; no letters were provided. Ms Tahta submitted that the clear inference was that no such letters had been sent by the Respondent, and that in telling RL that he had sent letters that he had not, he had lied to RL.

15.5 On 21st May 2014, following a call from RL the previous day, the Respondent sent RL an email which stated: "I have drafted the application and will lodge it as soon as possible. Before a Judge will hear your case he must be satisfied that you have tried to mediate". In the same email the Respondent continued: "This is nonsense in your case because your ex-wife has refused to engage and respond to my letters." Ms Tahta submitted that this was a statement was a serious matter in circumstances where the Respondent had not sent any letters to RL's ex-wife.

15.6 Following receipt of the Respondent's email, RL attempted mediation however that proved unsuccessful. He called the Respondent on 7 and 27 August 2014 following the unsuccessful mediation. On 27 August 2014, the Respondent emailed RL requesting a copy of the mediation form. That form was duly provided to the Respondent by RL. On 15 September 2014, the Respondent emailed RL stating that he required him to pay £215 for Court fees and £750 on account of costs. Once those monies were received, he would lodge the application at Court. RL transferred the monies into the Firm's account and emailed the Respondent on 17 September 2014 to confirm the same.

15.7 RL then heard nothing further from the Respondent despite calls to him during October – December 2014. On 30 January 2015, RL emailed the Respondent in the following terms:

> "Since I contacted you in December 2013 regarding my daughter you have done nothing. I do not believe you have not received my emails, everyone else seems to get them okay. I have phoned your office attempting to talk to you only to be told by your receptionist that you are "in court" or "with a client" and that you would return my call, something which you were too discourteous to do. You have gone even quieter since you requested, and got, £750 that I forwarded to your account in September. Your email stated that on receipt of these funds you would "upon receipt of the funds I will lodge the application immediately". You chose not to do this for your own unfathomable reasons however, using false pretences (false representation) to take peoples money is fraud and I therefore intend to report this as an act of fraud.
>
> If, when I contacted you in December 2013, you had said you were not interested in taking this work then that would have been understandable however, you have wasted over a year of time that could have been given to another solicitor who could have resolved matters concerning my daughter. Sadly you did not do this I am entitled to an explanation as to why you did not do this.

> This is what will happen … Firstly you will refund the £750 I paid to you, if this does not happen I will apply to the courts for the money and interest. I will report this as fraud and seek compensation for the time wasted by your actions, time that I could have been progressing my case.
>
> I have no doubt that you will claim that you did not receive this email so … I will send a letter by registered delivery."

15.8 On 2 February 2015, the Respondent replied to that email stating: "Thank you for your email. I will arrange for the file to be costed and the funds returned to you as soon as possible."

15.9 Nothing was received by RL. On 6 February 2015, RL emailed the Respondent again:

> "Thank you for your email, I will forward it to the Action Fraud office and the North Wales Police … It is good to see you are so confident that you feel able to hold onto the money which you fraudulently claimed off me … I am staggered … at your actions. Please feel free to do all the costings you want, they can be argued in court where you can give an explanation as to why you deliberately wasted over a year of time that could have enabled me to see my daughter. Your talk of costings is not constructive … you should be thinking of compensation for the stress, financial difficulties and lost time your actions have caused. I will point out that while you continue to hold the money you fraudulently obtained I am unable to continue fighting for access to my daughter."

15.10 The Respondent replied on the same day:

> "Take whatever action you feel is necessary. We have no interest in your allegations and will not waste any time on them. I await hearing from your solicitors and North Wales Police".

15.11 Thereafter Mr RL instructed another solicitor in relation to contact proceedings. His case was heard by the Court in March 2016. RL confirmed that he did contact North Wales Police as regards the monies paid to the Respondent.

15.12 In March 2017 RL contacted the court to find out whether the Respondent had ever lodged his application (for which he had transferred the court fees to the Respondent). The Court confirmed that other than the application submitted by his new solicitor, no other application had been lodged on his behalf.

15.13 On 7 March 2017, the Respondent was asked about RL's file. He stated that he had returned this to RL in 2014/15 following an email he received from North Wales Police. RL confirmed that he never received his file, nor did he receive any refund from the Respondent.

15.14 Ms Tahta submitted that there could be no doubt that the Respondent failed to provide RL with a proper standard of service and that he provided misleading and dishonest information to him in respect of the letters he had purportedly sent to his ex-wife, as

well as in relation to his assertion that he would lodge the application at court on receipt of the monies requested. His conduct was plainly in breach of the Principles as alleged. He had failed to achieve the outcomes. Furthermore, his conduct had been dishonest.

The Respondent's Case

15.15 In his email of 24 March 2019 to the Tribunal the Respondent stated:

> "With regard to the child contact case the client paid the fee upfront which I believe was appropriate (sic) £700-£800. The application was prepared and sent to the client for signing and checking but never returned. I believe he attended mediation. I did not hear from the client again for approx 18 months by which time the matter had to begin again. The client believed I had stolen his money and reported the matter to the Police. The police were satisfied the money had not been stolen once they had reviewed his file. The work had been done but the client did not engage in the process of applying to the court. He did not return the application to me and therefore the matter was closed".

The Tribunal's Findings

15.16 The Tribunal found that the Respondent did not send any letters to RL's ex-wife as stated. RL's ex-wife informed him that she did not receive any of the letters purportedly sent by the Respondent prior to the email to RL of 21 May 2014. The Tribunal noted that on a number of occasions, including during the proceedings, the Respondent claimed either to have sent a letter that was never received by the recipient, or that correspondence sent to him had not been received. RL made specific reference to that in his email to the Respondent of 30 January 2015, hence his decision to not only send the email but to send the same to the Respondent by registered mail. Having determined that no letters had been sent to RL's ex-wife, the Tribunal found that the Respondent's statement in the 21 May 2014 email "your ex-wife has refused to engage and respond to my letters" was misleading.

15.17 The Tribunal was satisfied that the RL had tried to contact the Respondent on numerous occasions, without success. The telephone records provided by him evidenced the number of times that he had called the Respondent's office.

15.18 The Tribunal also found that the Respondent had failed to lodge the application immediately upon receipt of the funds. The Court had confirmed that no application (other than that lodged by RL's new solicitors) had been lodged on his behalf.

15.19 The Tribunal rejected, in its entirety, the explanation provided by the Respondent in his email of 24 March 2019. The explanation given was completely contrary to the contemporaneous evidence. There was no credence to the assertion that RL had failed to return the application, indeed there was no evidence that the application was sent by the Respondent to RL. Further, the contemporaneous documents showed that there was no period of 18 months throughout which RL failed to contact the Respondent. RL instructed the Respondent in December 2013. In January 2015, he sent his email of complaint. This was a total of 13 months. Thus it was simply not possible that there was a period of 18 months throughout which RL failed to engage.

15.20 The Tribunal found beyond reasonable doubt that the Respondent had failed to provide a proper standard of service to RL. He had misled RL by stating that his ex-wife had failed to respond to letters that were not, in fact, sent.

15.21 The Tribunal found beyond reasonable doubt that the Respondent had failed to act in RL's best interests in breach of Principle 4. He had failed to issue the proceedings or progress the matter, which was one of heightened sensitivity involving as it did a claim for contact with a young child. That he had failed to provide a proper standard of service was plain in all the circumstances; the Respondent's conduct was beyond reasonable doubt in breach of Principle 5. The trust of the public in the Respondent and in the provision or legal services was not maintained. The public would find his conduct particularly distressing as the case related to issues of contact by a parent with a young child. RL was deeply affected by the Respondent's conduct. There could be nothing more visceral for a parent than losing contact with a young child due to the poor actions of a solicitor. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent breached Principle 6.

15.22 It was also clear, beyond reasonable doubt, that the Respondent had failed to achieve the outcomes as alleged. In failing to submit the application, the Respondent had not protected RL's interests in his matter nor had he provided a timely service. Thus he had failed to achieve outcomes 1.2 and 1.5. He did not put RL in the position so as to allow RL to make informed decisions about the services he needed, the options available to him and how the matter would be handled. Thus he failed to achieve outcome 1.12.

15.23 His conduct fell well below the standards the public would expect of him. RL was in an inherently vulnerable position. The Respondent's conduct towards him was atrocious. He was dismissive of RL's complaint. He made no attempt to remedy the situation and provided a peremptory and indeed arrogant response to RL's complaint. No solicitor acting with integrity would have conducted themselves the way the Respondent had done. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 2.

15.24 The Tribunal found that the Respondent stated he had sent letters to RL's wife when he knew this not to be true. When he asserted that he had not received a response from her as she had ignored his communications, he knew that this was not true. Reasonable and honest people would consider that to lie to a client about communications sent in this context was dishonest, and the Tribunal found the Respondent's conduct in this regard to be dishonest.

15.25 Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

16. **Allegation 1.4 - The Respondent failed to co-operate fully with the SRA's investigations into the matters of AMD, KK, RL YS and LP. In so doing, he breached all or alternatively any of Principles 2 and 7 of the Principles and failed to achieve all or alternatively any of Outcomes 10.6, 10.8 and 10.9 of the 2011 Code.**

The Applicant's Case

16.1 The AMD matter

16.1.1 The FIO met with the Respondent at his office on 7 March 2017. The meeting was arranged as a result of the Respondent's failure to comply with written requests for information. During that meeting, the Respondent was asked to provide all written documentation regarding the loan. The Respondent stated that he would do so within the next 7 days. No documentation was provided. The FIO emailed the Respondent on 14 July 2017 requesting further information. The Respondent replied on 17 July 2017. He stated that KT had used the funds to purchase land and that he was acting for her in that purchase. He confirmed that "I did not borrow any money from [AMD] and this is supported by the document you have confirming the loan". Ms Tatha reminded the Tribunal that the documentary evidence showed that the land was in fact purchased in the Respondent's sole name, and also the Respondent's reference to the loan being made to both himself and KT during his meeting with the FIO on 7 March 2017. The FIO sent a letter dated 14 September 2017 to the Respondent requesting further information. The Respondent failed to respond substantively to that letter. A further letter was sent on 12 October 2017. Again, none of the information requested was provided by the Respondent.

16.2 The KK matter

16.2.1 During a telephone conversation on 26 June 2017 with the second FIO, the Respondent stated that he had not sent KK's file to counsel, nor was any counsel instructed as KK had failed to pay funds on account, as requested, in order to cover counsel's fees. He also told her that he had returned KK's full file to him and that he had postal receipts to evidence this.

16.2.2 On 29 June 2017, the second FIO emailed the Respondent requesting copies of the postal receipts and the correspondence with KK requesting funds on account for the counsel's fees, amongst other matters.

16.2.3 The Respondent failed to provide any of that information to the SRA, although he did send a computerised file, but this was clearly not the full file. The correspondence showed no references to requiring funds to instruct counsel.

16.2.4 On 19 October 2017, the second FIO sent the Respondent a letter asking for an explanation of his conduct in respect of the complaints made by KK. This letter was also sent by email with password protection. The Respondent failed to respond to this letter. The Respondent was chased for a response by an email on 7 November 2017. He replied an hour later, stating that he had been away and so had not seen any post. He also stated that he was unable to open the attachment but that he was going to be able to collect the hard copy the next day (8th November) and would reply soon after.

16.2.5 On 15 November 2017 the Respondent sent an email stating that he had had flu and his response would be with her that day. The second FIO replied the same day stating that if she did not receive a response by 5pm that day she may take regulatory action. The Respondent replied requesting passcodes for the attachments. The passcodes were sent the following day. The second FIO advised the Respondent to contact her if he had any problem opening the documents.

16.2.6 The Respondent never sent any response to the letter of 19 October 2017.

16.3 The RL matter

16.3.1 The letter sent by the second FIO of 19 October 2017 also contained allegations in respect of the Respondent's conduct in RL's matter. In his meeting with the FIO on 7 March 2017, the Respondent informed the FIO that he had returned RL's file to him following receipt of a letter from the North Wales Police. RL confirmed that he never received his full file from the Respondent.

16.3.2 The Respondent failed to respond to the queries raised in the letter of 17 October 2017 as regards RL.

16.4 The YS and LP matters

16.4.1 The Respondent was emailed on 8, 23 and 26 February, 12, 23 and 27 March, 4 and 17 April, and 1, 3, 4 and 14 May 2018 in relation to the above matters. He was asked to provide information and documents in relation to the YS and LP matters.

16.4.2 On 8 February 2018, the Respondent replied to the email, however he did not address any of the matters raised therein. Instead he made enquiries as the outcome of a complaint he stated he had made in 2014 and 2016 regarding CM and AN. In response, the FIO agreed to make enquiries into those matters once the Respondent provided relevant dates. The Respondent stated that he would find the exact date; he did not do so.

16.4.3 The Respondent provided a partial response to the queries made in relation to the LP and YS matters. He gave assurances that documents would be sent in the post, however no documents were received.

16.4.4 On 23 March 2018, in response to an email sent to him on the same date requesting his response and relevant documents, the Respondent stated: "I have been advised not to correspond with the SRA other than in connection with the referral to the SDT and only to reply to the allegations that are being prepared and which are still awaited."

16.4.5 In his email of 4 May 2018, the FIO reminded the Respondent of his obligations to co-operate with the SRA pursuant to Principle 7. The Respondent replied by email on 7 May 2018. He stated:

> "I have been awaiting a response from the SRA since 2014 and despite numerous emails and telephone calls I have heard nothing at all. You can imagine how frustrated (sic) and annoying it is when I am reminded of Principle 7. As a governing body the conduct of the SRA is totally unacceptable and cannot continue. I have decided that I am not going to cooperate at all with the SRA until such time as the SRA respond constructively to my two complaints. Rest assured I am fully aware of the severity of my decision and when the matter comes to be determined I will make sure that the conduct of the SRA will be made known to all concerned. On any view their conduct falls much further than any conduct I am alleged to have committed."

16.4.6 The FIO replied on 14 May 2018. As regards the outstanding complaints made by the Respondent the FIO explained that he had understood that the Respondent was going to send him further information, but had not received anything further, thus it was incorrect to say that he had not heard anything from the SRA about the reports. Further, in response to questions raised re the LP matter he had received a report that contained blank pages from the Respondent. Further, he still had not received the documentation that the Respondent said he would post on 1 May 2018.

16.4.7 The FIO did not receive a response. On 4 June 2018 the FIO served a Section 44B Notice on the Respondent. The Respondent replied on the same date:

> "Many thanks for your email. I will issue an application at court for the SRA to produce documents and information previously requested. I suggest you notify your legal department accordingly."

16.4.8 On 18 June 2018, the FIO emailed the Respondent to remind him that the deadline for his response to the Section 44B Notice expired at 5pm that day. The Respondent replied stating: "The response to the Notice was posted on Saturday…." No such response was ever received by the SRA.

16.5 Ms Tahta submitted that the above demonstrated that the Respondent had failed to comply with his legal and regulatory obligations and deal with the regulator in an open, timely and cooperative manner in breach of Principle 7. He had failed to cooperate with the SRA fully at all times, had failed to comply promptly with a written notice and had failed to produce documents, information and explanations. Accordingly, he had also failed to achieve outcomes 10.6, 10.8 and 10.9.

16.6 The Respondent's conduct was also in breach of Principle 2. A solicitor acting with integrity would not refuse to cooperate with his regulator, nor would he lie to his regulator during the course of an investigation. The Respondent had lied on a number of occasions:

- He lied to the FIO when he stated that the loan was taken by KT for the purchase of land and that KT was his client for that purpose

- He lied to the second FIO in relation to KK, by stating that he was awaiting payment for counsel's fees prior to instructing counsel when that was not the case.

- He lied when he stated that he had returned KK's full file to him
- He lied to the FIO regarding the return of RL's file to him.
- He lied when he stated that he had posted a response to the SRA's Section 44B Notice.

16.7 Accordingly, his conduct was also dishonest by reasonable and ordinary standards.

The Respondent's Case

16.8 In his email of 24 March 2019, the Respondent stated:

> "My relationship with the SRA has been frustrating for a number of years and had got to the point that I refused to engage in any correspondence with them. The reason being is that approx 4 years ago I made two reports to the SRA regarding the conduct of two solicitors that were employed by me. Despite excessive telephone calls and emails I have never had a reply from the SRA and therefore I refused to engage with them until such time as I receive a response from them reading the reports.
>
> It is interesting to note that one of the solicitors reported was previously employed by the SRA and maybe that is why the reports were never followed up. The reports were in respect of mortgage fraud and contempt of court, both of which were extremely serious allegations supported by documentary evidence.
>
> I mention this because it appears that the SRA do treat solicitors differently. I find myself before the Tribunal for allege conduct that I am unable to respond to. Kingsley Rose ceased trading in 2016 and since that time I have not held any files. I have made respects for a copy of the file for each of the cases before the Tribunal but again have not received any response. I am therefore unable to defend myself. What I can say is purely from memory and given that I had conduct of over 150 files at one particular time is it extremely difficult to recall the facts of each particular case without a file
>
> ...
>
> Maybe the Tribunal can direct the SRA to respond to the report that I made because the loss to the practice was significant?".

The Tribunal's Findings

16.9 The Tribunal did not find that the Applicant's failure to respond to queries from the Respondent provided the Respondent with grounds not to respond to the enquiries and requests for documentation; the Respondent was still bound by Principle 7. In any event, it was clear that the Applicant had not failed to respond as alleged by the Respondent. This was evidenced in the email chain between the Respondent and the FIO of 8 February 2018. The Respondent explained that the reports were made "using the red alert email address" and that he would find the exact date that evening.

In response the FIO stated that he would make enquiries when the Respondent provided the relevant dates. No further information was forthcoming from the Respondent in that regard. The Tribunal rejected the complaint made by the Respondent as to the non-engagement of the SRA on that issue. Further, the role of the Tribunal was to consider whether a Respondent had breached professional obligations on the basis of evidence presented to it. It was not for the Tribunal to direct the SRA to respond to a report that was unconnected to the proceedings or the alleged breaches under consideration.

16.10 The Tribunal noted that the files which the Respondent stated he did not have access to, were all files that had been in his possession and which the Applicant had been requesting he provide copies of (either to the Applicant or to the clients). It was thus unclear to the Tribunal of whom the Respondent had made the request for documentation.

16.11 <u>The AMD matter</u>

16.11.1 The Tribunal repeated its findings of fact as regards allegation 1.1 above. The Tribunal had found that the loan had been made to both the Respondent and KT. It has also found that the Respondent had purchased the land in his sole name before transferring it some years later to KT. Accordingly, the Tribunal found that, contrary to what the Respondent stated in his email of 17 July 2017, he was not acting for KT in the purchase. The Tribunal also found that the Respondent failed to substantively respond to the letters from the Applicant of 14 September and 12 October 2017, and failed to provide the documents requested.

16.12 <u>The KK matter</u>

16.12.1 The Tribunal repeated its findings of fact as regards allegation 1.2 above. The Respondent informed the SRA that the full file had been returned to KK and that he could provide postal receipts to prove that he had done so. Despite a number of requests the Respondent never provided these receipts to the SRA. KK confirmed that he never received his full file back. As a result, he had been unable to pursue his negligence claim. The Tribunal found that the Respondent had not returned the full file to KK. The Tribunal further found that the Respondent had failed to substantively respond to the communications from the SRA requesting documentation and information. The account provided by the Respondent in his email of 24 March 2019 was implausible and bore no relation to the contemporaneous documentary evidence.

16.13 <u>The RL matter</u>

16.13.1 The Tribunal repeated its findings of fact as regards allegation 1.3 above. The Tribunal found that the Respondent had not returned RL's file as claimed. It further found that the Respondent had failed to substantively respond to the communications from the SRA requesting documentation and information.

16.14 The LP and YS matters

16.14.1 The Tribunal found that the Respondent had failed to respond substantively to requests from the SRA for information and documentation. Further, he had failed to respond to the S44B Notice issued on 4 June 2018. The Tribunal did not accept the Respondent's explanation that the response had been posted. It was a recurring theme that documents allegedly posted by the Respondent were never received by the intended recipients.

16.14.2 Given its findings above, the Tribunal found beyond reasonable doubt that the Respondent had failed to comply with his legal and regulatory obligations and had failed to deal with his regulator in an open, timely and cooperative manner, in breach of Principle 7. The Respondent had been contemptuous of the regulatory process. His conduct in attempting to bargain with the SRA as to his engagement was wholly misconceived. His failure to cooperate was exacerbated by the numerous misleading statements made by him to the SRA during the investigation of his conduct. That such conduct fell well below the standards the public would expect of him as a solicitor was plain. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct lacked integrity in breach of Principle 2. It was also evident beyond reasonable doubt that he had failed to achieve the outcomes as alleged. He had failed to cooperate at all with the investigation into his conduct, had failed to comply with the Section 44B Notice and had not provided all information and explanation required of him, nor had he produced the requested documents.

16.14.3 The Respondent had repeatedly lied to the SRA about his actions and conduct. He knew his statements were untrue. The Tribunal found that:

- the loan had been made to him
- he had not been acting for KT in the purchase
- he had not returned the full file to KK
- he was not waiting for funds from KK to enable the instruction of counsel
- he had not returned the file to RL
- he had not posted the response to the Section 44B Notice

16.15 The Tribunal considered that reasonable and honest people would consider that it was dishonest for the Respondent to lie to his regulator in such a blatant manner. Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt, including that the Respondent's conduct was dishonest.

Previous Disciplinary Matters

17. None.

Mitigation

18. In his email of 24 March 2019 the Respondent stated:

> "I am sincerely sorry for any distress or upset that I have caused any client, it was never intentional and in hindsight I would have operated the practice differently. I was an extremely stressful time resulting in the breakdown of my marriage and suffering significant health issues as a result."

Sanction

19. The Tribunal had regard to the Guidance Note on Sanctions (6th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

20. The Tribunal considered that much of the Respondent's conduct was motivated by his desire to cover up his incompetence and his failure to properly progress matters in which he had been instructed. He had displayed a wilful disregard of his professional obligations in the broadest sense. Further, he had an arrogant disregard of his clients' affairs. The Respondent was in a position of fiduciary duty as regards his clients. He abused that position and took advantage of it. This was clearly demonstrated in his conduct as regards AMD. He was aware that AMD had sufficient finances to provide the loan following his conduct of the probate matter. The Respondent's clients trusted him to act in their best interests; he failed to do so on numerous occasions. The Respondent was an experienced sole practitioner who had conduct of all the matters complained of. He had misled the regulator in relation to each of the matters detailed in allegations 1.1 – 1.3. The Tribunal determined that the Respondent was wholly and solely culpable for his misconduct.

21. He had caused harm to his clients. AMD had had to resort to taking out court proceedings, which at the time of this Judgment were ongoing, so as to recover his monies. This had impacted on AMD's health, and had also caused interfamilial disputes. AMD had suffered financial loss and had been caused distress. KK had been unable to progress his negligence claim as the Respondent had failed to provide him with his files. KK reported that the Respondent's conduct had had a huge impact on him both financially and personally. RL described, with great pathos, the effect that the Respondent's conduct had on him and his relationship with his daughter. The year of contact that he lost with his daughter was used against him at Court in his application for contact. It had a detrimental effect on his daughter who had become distressed, believing that her father did not want to see her and that he did not want to know her. He had also suffered financial loss, the monies paid to the Respondent representing a large part of his monthly income. He had been left in debt and suffering from depression. The Respondent's clients had instructed him so that he could assist them. The consequences for them of his misconduct had been significant financially, emotionally and as regards their health. The Respondent had caused significant harm to the reputation of the profession. The harm to his clients and to the reputation of the profession was clearly foreseeable.

22. The Respondent's conduct was aggravated by his proven and admitted dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

23. He had deliberately and repeatedly misled his clients and thereafter the SRA. His misconduct had continued over a period of time. He had attempted to conceal his wrongdoing by misleading his clients and the Applicant and failing to provide his clients with their files, at which point they could have ascertained what work had been undertaken by the Respondent. The Respondent knew that his conduct was in breach of his obligations to protect the public and the reputation of the profession. The Tribunal found no mitigating features. The Respondent's email of 24 March 2019 demonstrated his complete lack of insight into his conduct. Further, he put forward matters and explanations that were completely implausible and ran entirely contrary to the contemporaneous documents.

24. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand, a fine or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "....Lapses from the required standard (of complete integrity, probity and trustworthiness)....may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

25. The Tribunal had found proved that the Respondent had acted dishonestly. It was settled law that save in exceptional circumstances, a finding of dishonesty would almost invariably lead to the sanction of being struck off the Roll. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

26. Ms Tahta applied for costs in the sum of £15,972.00. This reflected a reduction in the costs claimed for the attendance of the solicitor with conduct at the SRA. The Tribunal was referred to its Standard Directions issued on 14 September 2018. Standard Direction 7 required the Respondent, if he wished his means to be taken into account in relation to sanction/costs to file and serve a Statement of Means including full details of assets, such statement to be supported by documentary evidence. The Respondent had not filed and served such a statement.

27. On the issue of costs, the Respondent stated in his email of 24 March 2019:

> "I have previously said that I had offered to be struck from the Roll and therefore I am at a loss as to why theses (sic) proceedings were necessary. I do not know what the SRA are seeking by way of a sanction but had they

confirmed so I would have agreed to it. Therefore the costs in these proceedings could have been avoided in their entirety and therefore the SRA should not be allowed to recover costs that could clearly have been avoided. Also the SRA seem to be allowed to submit documents at any time with the approval of the Tribunal. I have received documents long after the deadline for doing so and even this week have received more documents. I am suspicious of the ... while (sic) process and have no doubt that the SRA look after their own. Maybe the Tribunal can direct the SRA to respond to the report that I made because the loss to the practice was significant?"

28. Ms Tahta submitted that the Respondent, in his representations as regards costs had failed to state that he received a fully reasoned decision in October 2018 in relation to his application for removal from the Roll. His application was refused as these proceedings were extant. There were clear public policy reasons for refusing such applications where disciplinary proceedings were already in train. The only other mechanism whereby the costs of the proceedings could have been avoided was by way of an Agreed Outcome. The process in relation to Agreed Outcomes was clear from Standard Direction 2. The Respondent would need to have admitted the allegations and agreed the facts, however he denied culpability. In the circumstances, the matter had properly proceeded to a hearing and the costs were properly incurred.

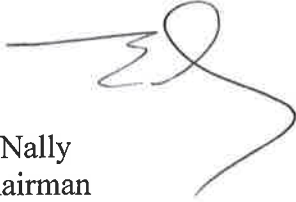
29. The Tribunal noted that in his email of 24 March 2019, the Respondent had provided a defence to allegations 1.1 – 1.3. In those circumstances, an Agreed Outcome was not feasible. As regards the Respondent's application for removal from the Roll, this was made when the proceedings against him had been issued by the Applicant and certified by the Tribunal. Rule 9 of the Solicitors Keeping of the Roll Regulations 2011 stated: "The SRA shall not remove from or restore to the roll the name of any solicitor or former solicitor against whom disciplinary proceedings are pending before the Supreme Court or the Tribunal." Thus, the Tribunal determined that the refusal of the Respondent's application was properly made. In the circumstances, the proceedings before the Tribunal were appropriate and costs had been properly incurred.

30. The Tribunal considered that the costs applied for were appropriate and proportionate. The costs had been reduced to take account of the non-attendance on the final day of the solicitor with conduct of the case for the Applicant. The Tribunal did not find that the time claimed for work undertaken, or the hourly rate charged to be excessive. The Tribunal awarded costs in the full amount claimed.

Statement of Full Order

31. The Tribunal Ordered that the Respondent, David Kingsley Wedge, 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 £15,972.00.

Dated this 3rd day of May 2019
On behalf of the Tribunal



E. Nally
Chairman

Judgment filed
with the Law Society
on 03 MAY 2019