

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11879-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CLIVE LESLIE BILLINGTON

Respondent

Before:

Mr J. A. Astle (in the chair)

Ms H. Dobson

Mr S. Howe

Date of Hearing: 9 April 2019

Appearances

There were no appearances on behalf of the parties as they had submitted a Statement of Agreed Facts and Indicated Outcome which was considered by the Tribunal in private.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent were that:
 - 1.1 Between 1 January 2008 and 15 November 2008, when acting on the purchase of the leasehold of 21 H Lane ("the property"), the Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 because he:
 - 1.1.1 Failed to advise his lender client Barclays Bank ("Barclays") that the transaction involved a sub-sale transaction whereby his client Mr P purchased the lease from Mr Pt and then sold the lease to Mrs N at a lower price; and
 - 1.1.2 Failed to advise his lender client Barclays that the property had been purchased within the last six months before it was acquired by Mrs N; and
 - 1.1.3 Failed to advise his lender client Barclays that the outstanding balance to complete the purchase of the property was not coming from Mrs N but from JS Solicitors and Mrs P; and
 - 1.1.4 Failed to advise his lender client Barclays that, although it provided a mortgage advance of £315,000, the leasehold of the property was purchased for £234,000.
 - 1.2 Between 1 November 2009 and 28 February 2011, when acting on the purchase of the freehold interest and the purported sale of the leasehold interest of the property, the Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 because he:
 - 1.2.1 transferred £97,000 to Mrs N prior to the completion of the sale of the property; and
 - 1.2.2 failed to register a Charge in favour of his lender client Barclays against the freehold, despite the fact that Barclays had indicated in previous correspondence that a legal charge should be executed over the freehold title.
 - 1.3 The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05, 1.06, 3.01(2)(a) and 3.07(2) of the Solicitors Code of Conduct 2007 by acting in circumstances where there was a conflict of interest because he:
 - 1.3.1 Acted for both Mr P and Mrs N in the sub-sale transaction for the sale and purchase of the property in 2008; and
 - 1.3.2 Failed to disclose to Barclays the fact that he was acting for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property; and
 - 1.3.3 Failed to advise Barclays of the true nature of the transactions and provide Barclays with all of the necessary information; and
 - 1.3.4 Favoured the interests of Ms N over those of Barclays.

- 1.4 The Respondent breached all or alternatively any of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 in that he acted in transactions which bore the hallmarks of mortgage fraud.
- 1.5 By failing to apply all of the monies he received from Barclays towards the purchase of the property, the Respondent breached an undertaking which he had given to his lender client Barclays, and therefore breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 and 10.5 of the Solicitors Code of Conduct 2007.

In addition, it was alleged that the Respondent had acted dishonestly in relation to Allegations 1.1 to 1.5 inclusive.

In the alternative it was alleged the Respondent had acted recklessly in relation to Allegations 1.1 to 1.5 inclusive.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:
 - Applicant's Rule 5 Statement dated 15 October 2018 together with attached exhibits
 - Statement of Agreed Facts and indicated Outcome
 - The Respondent's Answer dated 22 November 2018 and his Amended Answer dated 8 January 2019

Preliminary Matters – Agreed Outcome Procedure

3. On 4 April 2019 the Applicant submitted an application on behalf of both parties for the Tribunal to approve an Agreed Outcome to the proceedings. In accordance with paragraph 2.2 of the Tribunal's standard directions, the matter was listed for consideration by a division of the Tribunal, in private, on 9 April 2019. For the reasons set out below, the Tribunal was satisfied that the Agreed Outcome should be approved without requiring any further submissions from the parties. The Tribunal's decision was announced in open court, and an Order setting out the Tribunal's Order was filed with the Law Society on 9 April 2019. This Judgment sets out the circumstances of the matter and the Tribunal's reasons for its decision. The Statement of Agreed Facts and Indicated Outcome is attached to this Judgment.

Agreed Factual Background

4. The Respondent was admitted to the Roll of Solicitors in 1987.
5. At the time of the alleged misconduct the Respondent was a sole practitioner at Dowson Billington Solicitors, 68 Stephenson Terrace, Deepdale Road, Preston, PR1 5AR.
6. On 22 April 2016, RPC Solicitors reported to the SRA that their client, Q and the insurers of the firm had declined cover for a claim by Barclays for losses arising out of conveyancing transactions on which the Respondent had acted.

7. The remaining facts agreed between the parties relevant to the allegations are set out in the Statement of Agreed Facts and Indicated Outcome, a copy of which is attached to this Judgment.

Findings of Fact and Law

8. The Tribunal had carefully considered all the documents provided. 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 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.
9. The Respondent had admitted all the allegations made against him as set out in the Statement of Agreed Facts and Indicated Outcome, including allegations of dishonesty. The Tribunal noted that the Respondent was legally represented. In light of this the Tribunal was satisfied on the basis of the admissions and the agreed facts presented that the allegations had all been proved to the requisite standard.

Previous Disciplinary Matters

10. The Respondent had previously appeared before the Tribunal on 11 April 2012.

Sanction

11. The Respondent's mitigation was contained in the Statement of Agreed Facts and Indicated Outcome, a copy of which is attached to this Judgment.
12. The parties both submitted the appropriate penalty in this case was for the Respondent to be Struck Off the Roll of Solicitors.
13. The Tribunal had considered carefully the Statement of Agreed Facts and Indicated Outcome proposed by the parties, and all the documents before it. The Tribunal referred to its Guidance Note on Sanction when considering sanction.
14. In considering the matter, the Tribunal noted in particular that the Respondent had admitted the allegations in full, including several allegations of dishonesty. There was, accordingly, no need for a trial on the facts and allegations. The Tribunal had to consider whether, in light of the admitted facts and allegations, the proposed Outcome was just and proportionate. The Tribunal noted that if it was satisfied with the proposed sanction it could proceed to make the necessary Order.
15. The Respondent had appeared before the Tribunal previously on 11 April 2012. On that occasion, the Tribunal had found a number of allegations proved including the Respondent had failed to act in his clients' best interests, had failed to properly supervise a junior member of staff, had taken unfair advantage of a client, had breached the Solicitors Accounts Rules, had failed to provide costs information to his client and he had acted where there was a conflict of interest. The Respondent had been Ordered to pay a Fine of £25,000 and the Applicant's costs of £17,500.

16. The Tribunal considered the Statement of Agreed Facts and Indicated Outcome. The Respondent's conduct, which included dishonesty, had taken place over a long period of time. He was an experienced solicitor with over 25 years of experience at the material time. The harm caused by his conduct was high as his lender client had lost funds due to his actions. He had also caused a great deal of harm to the reputation of the profession.
17. The Tribunal took into account the mitigation advanced by the Respondent. The Respondent had stated that he had a previously unblemished career but this was clearly not true as he had appeared before the Tribunal on 11 April 2012. However, the Tribunal took into account that the conduct complained of had taken place prior to the Respondent's appearance in 2012.
18. The Respondent stated that he had sold one of his properties and repaid some funds to his lender client. He stated he had tried to sell his family home in order to pay the balance to the lender client but had not been able to do so.
19. The Tribunal determined that the Respondent's misconduct, which included dishonesty was very serious. As such neither No Order nor a Reprimand were appropriate. The Tribunal considered whether a Fine and/or a restriction order would be sufficient sanctions but concluded neither of these would be enough to protect the reputation of the legal profession or mark the seriousness of the misconduct.
20. The Tribunal concluded that the Respondent's conduct was so serious that there was a need to protect the public and the reputation of the profession by removing the Respondent's ability to practise. The Tribunal decided that a Suspension was an insufficient sanction in light of the dishonesty found proved. There were no exceptional circumstances to warrant anything less than striking the Respondent off the Roll. This was would maintain public confidence in the profession and ensure proper standards of behaviour were upheld.
21. The Tribunal did not require any further submissions from the parties to consider this sanction further, and determined that the case could be concluded on the basis of the Statement of Agreed Facts and Indicated Outcome.

Costs

22. As part of the proposed Indicated Outcome, it was further proposed that the Respondent would pay £2,500 towards the Applicant's costs.
23. Based on the agreement between the parties, the Tribunal was satisfied that the agreed costs in the sum of £2,500 were reasonable and proportionate, particularly as a full trial had not been necessary in this case. Accordingly the Tribunal Ordered the Respondent pay the Applicant's costs in the agreed sum of £2,500.

Statement of Full Order

24. The Tribunal Ordered that the Respondent, CLIVE LESLIE BILLINGTON, 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 £2,500.00.

Dated this 28th day of May 2019
On behalf of the Tribunal

Handwritten signature of J. A. Astle in black ink.

J. A. Astle
Chairman

Judgment filed
with the Law Society
on 28 MAY 2019

Case Number: 11879-2018

IN THE MATTER OF THE SOLICITORS ACT 1974

and

IN THE MATTER OF CLIVE LESLIE BILLINGTON (A SOLICITOR)

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CLIVE LESLIE BILLINGTON

Respondent

STATEMENT OF AGREED FACTS AND INDICATED OUTCOME

1. By its application dated 15 October 2018, and statement made pursuant to Rule 5(2) of the Solicitors (Disciplinary proceedings) Rules 2007, which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of the Respondent, Clive Leslie Billington.
2. The SRA subsequently filed and served an Amended statement pursuant to Rule 5(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 19 December 2018.
3. The facts which are agreed by the Respondent are set out below. That agreement is confirmed by his signature at the bottom of this document.

Allegations

4. The allegations against the Respondent are that:

1.1 Between 1 January 2008 and 15 November 2008, when acting on the purchase of the leasehold of 21 Hannel Lane, Bamber Bridge, Preston, PR5 4LB ("the property"), the Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 because he:

- a) failed to advise his lender client Barclays Bank ("Barclays") that the transaction involved a sub-sale transaction whereby his client Mr P purchased the lease from Mr Pt and then sold the leasehold to Ms N (who was also his client) at a lower price; and
- b) failed to advise his lender client Barclays that the property had been purchased within the last six months before it was acquired by Ms N; and
- c) failed to advise his lender client Barclays that (i) the outstanding balance to complete the purchase of the property was not coming from Ms N but from John Swindell Solicitors (in the sum of £116,000) and Mrs P (in the sum of £16,000) and (ii) that the monies which came from John Swindell Solicitors and Mrs P on 7 November 2008 were then repaid to them on 11 November (and, in relation to the former, the sum of £128,000 was in fact repaid); and
- d) failed to advise his lender client Barclays that, although it provided a mortgage advance of £315,000, only £57,737.73 was in fact paid to the vendor, Mr P

1.2 Between 1 November 2009 and 28 February 2011, when acting on the purchase of the freehold interest and the purported sale of the leasehold interest of the property, the Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 because he:

- a) transferred £97,000 to Ms N prior to the completion of the sale of the property; and
- b) failed to register a charge in favour of his lender client Barclays against the freehold, despite the fact that Barclays had indicated in previous correspondence that a legal charge should be executed over the freehold title.

1.3 The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05, 1.06, 3.01(2)(a) and 3.07(2) of the Solicitors Code of Conduct 2007 by acting in circumstances where there was a conflict of interest because he:

- a) acted for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property in 2008; and
- b) failed to disclose to Barclays the fact that he was acting for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property; and
- c) failed to advise Barclays of the true nature of the transactions and provide Barclays with all of the necessary information; and
- d) favoured the interests of Ms N over those of Barclays.

1.4 The Respondent breached all or alternatively any of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 in that he acted in transactions which bore the hallmarks of mortgage fraud.

1.5 By failing to apply all of the monies he received from Barclays towards the purchase of the property, the Respondent breached an undertaking which he had given to his lender client, Barclays, and therefore breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 and 10.5 of the Solicitors Code of Conduct 2007.

5. All of the allegations are advanced on the basis that the Respondent's conduct was dishonest.

Admissions

6. The Respondent admits the allegations in their entirety, such that he admits the aggravating feature of dishonesty attached to each allegation.

Agreed facts

7. The following facts, together with the matters set out at paragraphs 8 to 71, below, are matters that are agreed between the SRA and the Respondent:

- The Respondent was admitted to the Roll of Solicitors in October 1987.
- At the time of the alleged misconduct, the Respondent was a sole practitioner at Dowson Billington Solicitors, 68 Stephenson Terrace, Deepdale Road, Preston, PR1 5AR.
- On 22 April 2016, Reynolds Porter Chamberlain Solicitors reported to the SRA that QBE, their client and insurers of the firm, had declined cover for a claim by Barclays for losses arising out of conveyancing transactions on which the Respondent had acted.

Allegation 1.1

Between 1 January 2008 and 15 November 2008, when acting on the purchase of the leasehold of 21 Hannel Lane, Bamber Bridge, Preston, PR5 4LB ("the property"), the Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 because he:

- a) failed to advise his lender client Barclays Bank ("Barclays") that the transaction involved a sub-sale transaction whereby his client Mr P purchased the lease from Mr Pt and then sold the leasehold to Ms N (who was also his client) at a lower price; and
- b) failed to advise his lender client Barclays that the property had been purchased within the last six months before it was acquired by Ms N; and
- c) failed to advise his lender client Barclays that (i) the outstanding balance to complete the purchase of the property was not coming from Ms N but from John Swindell Solicitors (in the sum of £116,000) and Mrs P (in the sum of £16,000) and (ii) that the monies which came from John Swindell Solicitors and Mrs P on 7 November 2008 were then repaid to them on 11 November (and, in relation to the former, the sum of £128,000 was in fact repaid); and

d) failed to advise his lender client Barclays that, although it provided a mortgage advance of £315,000, only £57,737.73 was in fact paid to the vendor, Mr P

8. In its letter to the Respondent dated 18 April 2016, Reynolds Porter Chamberlain indicated, "Barclays was not told of the sub-sale, nor of the prior transaction at all."

9. During the course of the interview which took place on 1 February 2017, Ms Bond, the FI Officer from the SRA, informed the Respondent that she had not located any correspondence to Barclays informing it of the sub-sale.

10. The following exchange took place:

LB: Ok and it looks as if well, it's obvious from the file that there was a sub-sale...now there was no indication on the file that you'd informed the lender of this.

CB: No, that was an error, I should have done.

LB: Ok and that was, that it was in the Lenders Handbook that you've got to tell them that...

CB: I attached insufficient importance to that and should have done."

11. This matter was also discussed during the meeting which the Respondent attended with the solicitors representing the insurers on 25 February 2016.

12. In the note from the meeting it is recorded: "PC said that common things that would be disclosable included the existence of sub-sales and variations in the purchase price. PC asked Clive Billington whether Mr Billington was aware that he needed to disclose these things to discharge his obligations. Mr Billington said yes. In the report on title he included the correct purchase price."

13. Mr C asked the Respondent whether he accepted that the bank was not told of the existence of the sub-sale. The Respondent said that he had not told the bank that.

14. In his response to a letter from the SRA, dated 15 May 2017, the Respondent stated,

"From my own papers, I see that I did not specifically advise Barclays Bank of the structure of the transactions...the purchase by P and sub-sale to N should have been directly reported to Barclays Bank in correspondence...I assumed the bank knew of

the structure of this purchase, but on reflection should have made the facts known in correspondence to the bank."

15. The Respondent did not disclose the existence of the sub-sale in the Report on Title dated 31 October 2008.
16. Moreover, the Respondent failed to inform Barclays that the property had been purchased within the last six months before it was acquired by Ms N.
17. When asked, in the letter from the SRA dated 15 May 2017, why Barclays were not told that the property had been purchased within the last six months before it was acquired by Ms N, the Respondent replied, "As P's purchase and sale to N were simultaneous, N's seller could not have owned the property for 6 months."
18. Further, the Respondent made no mention at all, in the Report on Title, dated 31 October 2008, of the fact that the property had been purchased within the last six months before it was acquired by Ms N.
19. In Part 7 of the Report on Title, with the narrative, "Insert below details of other matters of which the Bank should be made aware," the Respondent entered "none." Had the Respondent desired to bring that matter to the attention of Barclays, it would have been open to him at that point to provide details in that section.
20. Reference is also made to section 1 (c) of the Report on Title, "If the Property is to be purchased by the Mortgagor we confirm that the seller has owned or been the registered owner of the property for not less than six months." By not providing any disclosures to the contrary in Part 1 of the Schedule to the Report on Title, the Respondent was confirming that the seller had owned the property for not less than six months when that was not true.
21. During the interview, the FI Officer questioned the Respondent about a letter that he had sent to Marsden Rawthorn Solicitors on 14 August 2008. Ms Bond asked the Respondent why he wrote in the letter "As you are aware we found (sic) ourselves under pressure from Ms N's solicitors who wish to complete this matter." She asked him why he said that in the letter because she thought that he was Ms N's solicitor. The Respondent replied: "Well this firm was Ms N's solicitors anyway...whilst the letter makes reference to Ms N's

Solicitor, that was us anyway...I don't think I would mean anything sinister or trying to mislead for one, one second. Alexander at Marsden's knew we were Ms N's solicitor."

22. The Respondent similarly failed to advise his lender client Barclays that the outstanding balance to complete the purchase was not coming from his client but from John Swindell Solicitors and Mrs P, and failed to advise Barclays that, although it provided a mortgage advance of £316,000, only £57,737.73 was in fact paid to the vendor, Mr P.

23. During the course of the interview which took place on 1 February 2017, Ms Bond questioned the Respondent as to why monies were received from John Swindell and Mrs P.

24. Ms Bond put it to the Respondent:

"Ok and then you sent Ms N a financial statement really, a completion statement on the 30 October 2009, and you state in that that she needs um a balance to complete the matter after receiving the advance of £316,000.00 from the mortgage, and it says *I believe that John Swindell, Solicitor, has the funds and he'll be transferring them to me in due course.*

Why were funds being sent via John Swindell...do you know?"

25. The Respondent explained that John Swindell had previously acted for the R family. AR and SN were husband and wife. He said that he was "aware that Swindell had funds for R when he appeared on the scene." The Respondent referred to those funds as being cleared funds and legitimate funds.

26. Ms Bond asked the Respondent if, "in hindsight" he thought "it might have been prudent" to have informed Barclays about where the completion monies were coming from to which the Respondent replied, "I think we should have let the lender know several things and on reflection, to breakdown where the balance of the monies were coming from, I should have done."

27. She also questioned him on why £16,000 was received from Mrs P/HSBC by saying,

"Why do you think funds, or do you know why funds were received from Mrs P?"

28. The Respondent stated that he could not recall and that he could "only assume that that financial statement was prepared following a conversation whereby in reply to the question *how is the balance going to be provided?* That either N, A or P told me, this is how it was

going to be happening." Ms Bond once again asked the Respondent whether he should have told the lender to which the Respondent replied, "At that time I should have done."

29. She also questioned him about why this information was not included in the Report on Title stating, "...also the Report of Title there were sub-sections which basically said what I've just said, that you have to tell the client, tell, tell the lender. So..."

30. As to the completion of the Report on Title the Respondent offered the following explanation:

- The standard Barclays form was dictated by him, prepared by him in advance;
- It was then completed in manuscript by his secretary in his absence;
- It was signed by Gillian Hothersall, a solicitor at the firm and of 5 years' post-qualification experience at the time;
- He said that it would not have been signed by "any authorised signatory" at the firm until it was needed;
- He said that the reason as to why Gillian Hothersall signed the document was "probably because" he was "on holiday, being the half term week";
- He stated that it would have been checked for accuracy of the detail but doubted that either Gillian or he "would have read every single word in that Report on Title."

31. The report from Reynolds Porter Chamberlain also makes reference to the Respondent's failure to make these important disclosures to the bank. Notably:

- When asked by Mr C whether the Respondent considered whether the money coming from AR was disclosable to the bank, the Respondent stated that "he did not consider it was at the time because it was coming from Ms N's husband who was supporting the purchase";
- Mr C referred to the possibility of AR claiming a beneficial interest in the property giving that he was contributing funds towards the purchase and the Respondent accepted that but stated that most of his conversations regarding Ms N's purchase of the property had been with AR;
- The Respondent did not consider it remarkable that AR was providing funds "in this way";
- When asked whether he thought these matters should have been disclosed to Barclays, the Respondent said that he thought the bank knew AR was supporting his wife's purchase;
- The Respondent said that he could not remember the source of the £16,000 entry receipt from HSBC.

32. The Respondent also did not inform Barclays of the fact that, whilst it provided a mortgage advance of £315,000, only £57,737.73 was in fact paid to the vendor, Mr P.
33. During the course of her inspection of the firm, Ms Bond examined the ledger for the transaction and discovered that, although £315,000 was advanced from Barclays, only £57,737.73 was in fact paid to the vendor, Mr P.
34. On 13 June 2008, £250.00 was received from Ms N, for Local Authority and Drainage Searches.
35. On 7 November 2008, £16,000 was received from HSBC, from Mrs P.
36. The next entry is that, on 7 November 2008, Barclays advanced £315,000 accordance with the agreement. £116,000 was received from John Swindell on the same date.
37. On 7 November 2008, £234,000 was paid to Forbes Solicitors, who was acting on behalf of Mr Pt.
38. On 11 November 2008 £128,000 was paid back to AR via John Swindell and £16,000 was paid back to Mrs P. On 14 November 2008, £57,737.73 was paid to Mr P.
39. Therefore, AR received the £116,000 back which he initially paid, together with an additional £12,000, totalling £128,000.
40. Mrs P received her initial payment back of £16,000.
41. As to the £57,737.73 paid over to Mr P, Ms Bond reports, "Mr P received a sum of £57,737.73 which was assumedly his "premium" as nothing was received from him into the client account towards the purchase."
42. The FI Officer questioned the Respondent about the distribution of the monies during the course of the interview.
43. Ms Bond put it to the Respondent:

"...so out of the £315,000 that was received from the bank, only the amount of £234,000 was actually paid to the seller, and the remaining balance was distributed amongst AR and Mr & Mrs P. And again, did you inform the lender of this fact?"

The Respondent replied,

"No, but should have...I should have told them the structure of the deal, and that is an error, a serious error which I feel dreadful about, as we've discussed."

44. Ms Bond also asked the Respondent why AR received £12,000 more than he loaned towards the purchase. The Respondent replied that he did not know why that was and it was because "it was the way the deal was structured."
45. The Respondent told Mr C that Mr Pt had owed Mr P money and that Mr P wanted that money returned via the sub-sale.
46. When asked whether he knew how much money Mr Pt owed Mr P, the Respondent said that he did not know. The Respondent said that the purchase price (which also included the goodwill of the business) was agreed between Mr Pt and Mr P but was lowered shortly before completion to take account of a shortfall created by Mr Pt taking lottery tickets without paying for them, which resulted in Camelot intervening into the business.
47. Ms Bond asked the Respondent if at the time he was aware of the Law Society warning cards regarding mortgage fraud and whether he had attended training on mortgage fraud. He said that he had read the Conveyancers Journal on mortgage fraud. She asked him if he thought that the transaction had the hallmarks of potential mortgage fraud. The Respondent replied, "if I thought that I would have stopped what I was doing. Why did I not think it? Because I was caught up in the transaction and the pressure to make progress with the job."

Allegation 1.2

Between 1 November 2009 and 28 February 2011, when acting on the purchase of the freehold interest and the purported sale of the leasehold interest of the property, the Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 because he:

- a) transferred £97,000 to Ms N prior to the completion of the sale of the property; and

b) failed to register a charge in favour of his lender client Barclays against the freehold, despite the fact that Barclays had indicated in previous correspondence that a legal charge should be executed over the freehold title.

48. In November 2009, the firm acted for Ms N again in the purchase of the freehold interest of the property and the purported sale of the leasehold interest over which there was a charge in favour of Barclays.

49. Ms N's purchase of the freehold completed on 26 January 2010. Purchase monies in the sum of £7,226.25 were transferred to Marsden Rawthorn Solicitors.

50. However, before that, on 22 December 2009, "a payment of £97,000.00 was subsequently made to Ms N on 22 December 2009 which was recorded on the client ledger as a payment of £97,000.00 to Nat West."

51. Ms Bond goes on to say, "It is not known how the balance of the purchase monies of £56,000.00 was paid (sale price of £165,000.00 - £109,000.00), or if the balance of the monies were paid to Ms N. During the interview on 1 February 2017, the Investigation Officer asked Mr Billington if he recalled how if and how the balance of the monies was paid. He said that he did not know but he would have assumed at the time that the monies had been paid to Ms N privately as was common practice sometimes in such transactions."

52. During the course of the interview, the FI Officer asked the Respondent why the £97,000 was paid over before completion and the following exchange took place:

"LB Ok. Um now... further down the line, a payment of £97,000.00 was made to Ms N, that's 22, 22 December 2009, and there's an internal email, I think from Sandra to you saying Ashraf, saying that you were to hold back £12,000.00 and transfer to Salma's account approximately £98,000.00. Do you know why you transferred that money to Ms N when the deal hadn't completed? Because the Lease hadn't been finalised had it, at that point?"

CB No. If, if those dates are correct, with the benefit of having the file and the dates there. Um whatever the deal was, Swindell was party to it, and I don't recall particularly being involved in the structure of the Leasing, the lease arrangement. It, it was what it was and Swindell was doing what he was being

told to do by his purchaser. I did know that the tenant was quite desperate to get in the shop.

....

LB ...but you hadn't finalised the paperwork?

CB Yes, I think that could well have happened, and Swindell was under pressure to date the Lease, despite the fact -- and send me, and send me funds.

LB But would it have been normal at the time, to have completed on the matter, well to have paid the money to the receiving party, to the, to the, to the seller without the matter completing?

CB It would"

53. Ms Bond also questioned the Respondent on why he failed to register a charge in favour of his lender client Barclays against the freehold.

54. Ms Bond asked the Respondent whether he thought that Barclays wanted a charge on the new title.

55. The Respondent stated that he had told Barclays that they should have a charge on the Freehold and that they did not instruct him to put a charge on the title. He stated, "But the Freehold was still there, but the bank chose not to have its charge over it."

56. Ms Bond stated that she thought that Barclays believed that they had instructed him to put a charge on the property and questioned the Respondent on his completion of the Form TR1 in respect of this transaction.

Allegation 1.3

The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05, 1.06, 3.01(2)(a) and 3.07(2) of the Solicitors Code of Conduct 2007 by acting in circumstances where there was a conflict of interest because he:

- a) acted for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property in 2008; and**

- b) failed to disclose to Barclays the fact that he was acting for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property; and**
- c) failed to advise Barclays of the true nature of the transactions and provide Barclays with all of the necessary information; and**
- d) favoured the interests of Ms N over those of Barclays.**

57. The SRA submits that, by acting for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property in 2008, by failing to disclose to Barclays the fact that he was acting for both Mr P and Ms N in the sub-sale transaction for the sale and purchase of the property, by failing to advise Barclays of the true nature of the transactions and provide Barclays with all of the necessary information, and by favouring the interests of Ms N over those of Barclays, the Respondent acted in circumstances where there was a conflict of interest.

58. By doing so, he: failed to act with integrity in breach of Rule 1.02, allowed his independence to be compromised in breach of Rule 1.03, failed to act in the best interests of his clients in breach of Rule 1.04, failed to provide a good standard of service to his clients in breach of Rule 1.05, and behaved in a way that was likely to diminish the trust the public places in him or the profession in breach of Rule 1.06.

59. Further, he had a regulatory obligation under Rule 3.01(2)(a) of the Solicitors Code of Conduct 2007 not to act because there was a conflict of interests; he owed separate duties to act in the best interests of two or more clients in relation to the same or related matters, and those duties came into conflict.

60. Finally, he contravened Rule 3.07(2) because he acted for more than one party in conveyancing, property selling or mortgage related services other than as permitted by, and in accordance with, Rules 3.08 to 3.15 of the Rules. Under Rule 3.07(2), "Property selling" means negotiating the sale for the seller. "Mortgage related services" means advising on or arranging a mortgage, or providing mortgage related financial services, for a buyer. "Mortgage" includes a remortgage.

Allegation 1.4

The Respondent breached all or alternatively any of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 in that he acted in transactions which bore the hallmarks of mortgage fraud.

61. The SRA submits that the Respondent breached Rules 1.02 and 1.06 of the SRA Code of Conduct 2007 because he acted in transactions which bore the hallmarks of mortgage fraud.

62. As a solicitor of over 25 years' post-qualification experience at the material time, the Respondent would have been aware of this warning card and of its contents. However, he chose not to take heed. The Respondent also told the FI Officer that he had read the Warning Cards (see below).

63. During the course of the interview which took place on 1 February 2017, the FI Officer asked the Respondent if at the time he was aware of the Law Society warning card on mortgage fraud and whether he had attended training on mortgage fraud.

64. The following exchange ensued:

LB: I understand. Were you aware at the time, this is going back to 2008, of the Law Society Warning Cards regarding mortgage fraud?

CB: Yes I was

LB: And had you had training regarding mortgage fraud ?

CB: Um I've been on courses where these, these issues were raised, and also we have read Conveyances Journal at the time, and other Property Lawyers of the existence, and we've read the Cards, the Warning Cards. The back to back, the mortgage fraud. Yes, we have read those. Um we've read them. Mortgage fraud can be very complicated, like Money Laundering today, very difficult. I'm not... I don't think I have a lot of experience in spotting fraud and Money Laundering, we do our best. I, I – we continue to do our best and try and act on gut reaction on all these things. Um

LB: Do, do you recall at the time, thinking this has got the hallmarks of the mortgage, potential mortgage fraud?

CB: ...If I had thought that I would have stopped what I was doing. Why did I not think it ? Because I was caught up in the transaction and the pressure to make progress with the job"

Allegation 1.5

By failing to apply all of the monies he received from Barclays towards the purchase of the property, the Respondent breached an undertaking which he had given to his lender client, Barclays, and therefore breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 and 10.5 of the Solicitors Code of Conduct 2007.

65. The Respondent gave the following undertaking to Barclays,

"WE UNDERTAKE that we will apply all monies received from you towards the purchase of the Property or in accordance with your Instructions and will not part with the advance (and will return to you if required) if it shall come to our notice prior to completion that the Property will at completion be occupied in whole or in part otherwise than in accordance with your instructions (details of leases/licences/tenancies will be given in Part 8 of the Schedule)."

66. It is submitted that the Respondent breached that undertaking given to Barclays, and therefore breached Rule 10.05 of the Solicitors Code of Conduct 2007, because he did not apply all of the monies received from Barclays towards the purchase of the property.

67. Ms Bond makes mention of this in her report :

"The mortgage advance of £315,000.00 was only partly used to fund the purchase and the remaining balance of £81,000.00 was distributed amongst third parties. The firm did not inform the lender of this fact."

68. The FI Officer questioned the Respondent about this during the course of the interview which took place on 1 February 2017.

69. She put it to him:

"LB I understand. Um so out of the £315,000.00 that was received from the bank, only the amount of £234,000.00 was actually paid to the seller, and the remaining balance of the £81,000.00 was distributed amongst Ms N and Mr & Mrs P. Again, did you inform the lender of this fact?"

- CB No but should have.
- LB Right
- CB I should have told them the structure of the deal, and that is an error, a serious error which I feel dreadful about, as we've discussed.
- LB Yeah. At the time, did you feel that what you were doing was dishonest ?
- CB Foolish and reckless yes. Dishonest, again that's been put to me by the insurers...I value my honesty. I value being thought as being honest. I take great importance to people trusting me. Um I think personally and commercial lenders, it's the same element of trust and integrity we owe. To people face to face I think I find that easler."

Dishonesty

70. In respect of each of Allegations 1.1 to 1.5, the Respondent's actions were dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67. The Respondent acted dishonestly according to the standards of ordinary decent people. The Respondent admits all of the allegations of dishonesty.

Proposed outcome

71. Mr Billington accepts that his admitted dishonest conduct constitutes misconduct of the most serious kind that a solicitor can commit.
72. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions (December 2018), the SRA contends, and the Respondent accepts, that in those circumstances, and in the absence of any exceptional circumstances mitigating in favour of a lesser sanction, the protection of the public and the protection of the reputation of the profession require that the Respondent is struck off the Roll of Solicitors.
73. The following factors aggravate the seriousness of the Respondent's misconduct:
- i. The misconduct involves dishonesty over a relatively long period of time.
 - ii. The Respondent is an experienced solicitor, with over 25 years of post-qualification experience at the material time.

Mitigation

74. The following is put forward by the Respondent in mitigation. However, it is not endorsed by the SRA.
75. The Respondent apologises for his conduct and deeply regrets having to appear before the Tribunal after a career in the legal profession for 34 years in which he has been very proud to be member of. He has had previously an unblemished career. He is contrite and embarrassed by having to appear at the SDT at the end of a long career in which he has had considerable pride in acting professionally for all members of the community in Preston and the surrounding area. The Respondent believes that he was highly regarded by his clients, contacts and other solicitors for always acting with probity and integrity. He took great pride in his practice and worked extremely hard over many years to make it a success. The interest of clients had been of vital importance to the Respondent and these allegations of dishonesty which have been admitted have been deeply distressing on a personal level. This is not how the Respondent wanted his professional career to end at the age of 63.
76. He has cooperated fully with the SRA and his indemnity insurers on the matters which are the subject of the SDT proceedings.
77. There was no personal gain for the Respondent other than his modest conveyancing fees on these transactions.
78. The issues relate to matters going back to January 2008, more than 11 years ago. A Letter of Claim was sent by Barclays solicitors on the 14 August 2013 and accordingly the Respondent's actions have been in issue for almost 6 years with detailed investigations being carried out initially by insurers and then the SRA concerning the Respondent's conduct. The Respondent's handling of these transactions has been hanging over his head for an inordinate period of time.
79. The Respondent had a genuine subjective belief that Barclays knew about the structure of the transaction although he entirely accepts that he should have reported to them and says he was caught up in the transaction and the pressure to make progress on these transactions.
80. The insurers declined indemnity to the Respondent on or around 18 April 2016 which meant that as from that date, the Respondent was personally liable to Barclays on any

claim for professional negligence and breach of trust in the sum of £226,502 together with interest and costs. The decision by the Insurers was a devastating blow to the Respondent as he has never been in any financial position to meet the claims being made by Barclays out of his own pocket. Further, he had no funds to challenge the decision of his Insurers to decline indemnity as he was informed that this would cost £25,000 and he would be liable to pay the costs of Insurers if his challenge failed.

81. The claim which is the subject of the proceedings before the SDT has had a huge financial effect on the Respondent. On 11 April 2017, the claim by Barclays which was in excess of £300,000 was settled by the Respondent for £195,000 payable out of his own property. The Respondent agreed to sell a commercial property which he owned subject to a mortgage and pay the net proceeds to Barclays. This was sold and the Respondent paid £112,000 to Barclays. In addition, Barclays registered an equitable charge over his family home which he then sought to sell since October 2017 to pay the balance but without success. The Respondent has now paid a further £30,000 to Barclays in full and final settlement. Accordingly, any loss arising from the misconduct has been made good by the Respondent out of his own limited funds. He has no further savings and will lose his livelihood, income and financial security. The Respondent's wife does not work.
82. The costs of being represented in these proceedings is being provided by a loan from the Respondent's son. The additional costs and a three-day contested hearing have been estimated in excess of £25,000 which are simply beyond the resources of the Respondent. Facing allegations of such magnitude and without the financial, emotional, personal means or mental strength to face a hearing, the Respondent accepts the proposed outcome in paragraph 72 therein subject to the decision of the SDT.
83. The claim and the subsequent SRA investigation and SDT proceedings have had a profound effect upon the Respondent and his health.

However, he continues to work full time endeavouring to plan and prepare for the future running of his workload and ensuring that staff and clients will be serviced in the future by his firm.

Costs

84. Following without prejudice negotiations on costs, during which the Respondent's mean and representations, the Respondent agrees to pay the SRA's costs of the application and enquiry fixed in the sum of £2,500.00.

Dated this 15th day of April 2010

~~Alastair Henry John Willcox~~, Solicitor, Senior Legal Adviser, Legal & Enforcement
Department
(For and on behalf of the Applicant Solicitors Regulation Authority)

Clive Leslie Billington