SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12000-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHEN PEARSON Respondent

Before:

Mrs A. Kellett (in the chair)
Mr P. S. L. Housego
Mrs C. Valentine

Date of Hearing: 7-8 January 2020

Appearances

Ms Grace Hansen, Counsel employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Mr Nicholas Leviseur, Counsel of 3 Paper Buildings, Temple, London EC4Y 7EU instructed by Stephensons Solicitors LLP, Wigan Investment Centre, Waterside Drive, Wigan WN3 5BA for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent, Stephen Pearson, made by the SRA were that, while in practice as a sole practitioner at Pearsons and as a partner at Turner Pearsons Solicitors:

1.1 Between approximately 13 February 2006 and 7 March 2008 the Respondent facilitated up to six transactions which bore the hallmarks of mortgage fraud and thereby:

1.1.1 insofar as such conduct took place on or before 30 June 2007, acted in breach of Basic Principles (a), (c), (d) and (e) of Rule 1.01 of the Solicitors' Practice Rules 1990 ("the Basic Principles"); and

1.1.2 insofar as such conduct took place on or after 1 July 2007, acted in breach of Core Duties 2, 3, 4, 5 and 6 of the Solicitors' Code of Conduct 2007 ("the Core Duties");

2. In addition, allegation 1.1 is advanced on the basis that the Respondent's conduct was:

2.1. dishonest; and/or

2.2. reckless; and/or

2.3. manifestly incompetent.

Dishonesty or recklessness or manifest incompetence were alleged as aggravating features of the Respondent's misconduct but were not an essential ingredient in proving the allegations.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 5 September 2019 with exhibit DWP1 and Appendices 1 and 2
- Applicant's Schedule of Costs dated 30 December 2019

Respondent

- Answer to the Rule 5 Statement dated 10 October 2019
- Witness statement of the Respondent with exhibit SP1 dated 29 November 2019
- Testimonials
- Statement of Means, Assets and Financial Circumstances dated 19 November 2019 with Supporting Evidence

Preliminary Issues

4. For the Applicant, Ms Hansen informed the Tribunal that the contents of the second Forensic Investigation Report were agreed between the parties and Ms Jordan the second Forensic Investigation Officer (although present) would not be called to give

evidence. She said that Mr Leviseur for the Respondent agreed that she need not give evidence as her evidence was not challenged. An additional document which should have been added to the hearing bundle on CaseLines, Exhibit SP1 to the Respondent's witness statement had just been added. The allegations included dishonesty and the Respondent had submitted testimonials which would be relevant when the Tribunal considered his previous good character and their submission was not therefore disputed by the Applicant.

5. It was confirmed, as set out in the Respondent's Answer and witness statement, that in respect of Property 1 and Property 2 the Respondent denied the factual allegation 1.1 and also denied dishonesty (allegation 2.1) and/or recklessness, (allegation 2.2) and/or manifest incompetence (allegation 2.3). In respect of Properties 3, 4, 5 and 6, the Respondent also confirmed that as in his Answer and witness statement he admitted the allegation that the transactions regarding the four properties bore the hallmarks of mortgage fraud and thereby admitted allegation 1.1 regarding those transactions. In respect of allegation 2 he also admitted that his conduct was reckless and manifestly incompetent. He denied dishonesty.

6. A Member of the Tribunal noted that allegation 2 was pleaded on an "and/or" basis and, referring to an earlier Tribunal case upon which he had sat, queried whether if the more serious allegations of dishonesty and recklessness were found proved, it would be necessary for the Tribunal to go on to consider manifest incompetence. Mr Leviseur submitted that there was a theoretical difference between recklessness and manifest incompetence but if recklessness were found an additional finding of manifest incompetence would have no real impact upon sanction. He would understand, should the Tribunal find dishonesty and recklessness proved that it might choose not to consider manifest incompetence. Ms Hansen submitted that the Applicant asked the Tribunal to make a finding on all the matters alleged and suggested that it would not take much additional time to do so but acknowledged that this decision was a matter for the Tribunal.

7. At the conclusion of the Respondent's oral evidence, the Tribunal asked for confirmation of his admissions as he seemed to have changed his position in some respects while giving evidence. Mr Leviseur confirmed that the Respondent maintained his denial of the allegation of dishonesty in respect of all the properties. Following his evidence he admitted recklessness regarding Properties 1, 3, 4, 5 and 6 and also manifest incompetence regarding those properties.

Factual Background

8. The Respondent, was admitted to the Roll on 2 January 1992. He voluntarily removed himself from the Roll on 1 August 2013, but re-joined the Roll on 13 December 2013. At the time of the hearing he was not practising as a solicitor.

9. The Respondent was in sole practice at Pearsons from 1997, which merged with Turners on 1 May 2007 to create the firm Turner Pearsons Solicitors. As Turner Pearsons Solicitors was a successor to Pearsons and the allegations related to the Respondent's conduct at both Pearsons and Turner Pearsons Solicitors the term "the firm" was used interchangeably to refer to both Pearsons and Turner Pearsons Solicitors in the Rule 5 Statement and is so used in this judgment

10. The Respondent conducted conveyancing matters at the firm.

11. A Forensic Investigation Officer ("FIO1") conducted an investigation which commenced in December 2011 in relation to the Respondent's conduct whilst in sole practice. FIO1 produced a Forensic Investigation Report ("FIR1") dated 25 April 2012 which related to Property 1 and Property 2.

12. As set out in FIR1, the Respondent was not interviewed formally in relation to the matters raised in FIR1 because he did not respond to correspondence sent by the Applicant. (The Respondent explained that this was because he had moved address). The Respondent also stated during FIO1's investigation that at that time he was no longer working as a solicitor.

13. There was a further investigation into the Respondent's conduct, undertaken by FIO2, who produced a Forensic Investigation Report ("FIR2") dated 25 January 2018 which exemplified the transactions relating to Property 3, Property 4 and Property 5 and referred to Property 6.

Allegation 1.1 – facilitating transactions which bore the hallmarks of fraud

Property 1

14. The facts and matters in relation to this property were set out in FIR1 which attached excerpts from the client file. Further excerpts from the client file were copied by FIO1 and were exhibited to the Rule 5 Statement. Property 1 was bought at auction on 12 May 2006, for a purchase price of £31,000 and the Respondent was instructed in relation to the conveyancing transaction on or before that date. Company A appeared to have paid a 10% deposit at the auction, and the outstanding purchase price was transferred from one of the firm's bank accounts to the seller's solicitors on 16 June 2006.

15. On 14 July 2006 the Respondent completed a Certificate of Title for a mortgage of £90,000 over Property 1 from Lender D, stating that Company B was the borrower.

16. A letter dated 13 August 2006 from the Respondent to Mr C (a director of both Company A and Company B) confirmed that Property 1 was purchased by Company B on 21 June 2006. The official copy of the Land Registry Register of Title contained within the client file recorded Company A as the proprietor of the property on 22 January 2007.

17. The Respondent was instructed by both Company A in relation to its purchase of Property 1 and Company B in relation to its apparent purchase of Property 1 from Company A. The Respondent corresponded with Mr C as a representative of both companies.

18. In his email dated 3 December 2018 to the Applicant, the Respondent stated that the director of Company A bought Property 1 at auction [the Respondent referred to the client having purchased properties in the plural] "in that individual's name" intending them to be acquired "in the name of his related company" and that it was the

Respondent's "understanding that this had been known to the Lender who was always aware of this at branch level".

Property 2

19. The facts and matters in relation to this property were set out in FIR1. Excerpts from the client file for this matter were appended to FIR1. The Respondent acted for Mr C in a personal capacity in relation to the purchase of Property 2. A mortgage offer was made by Lender E to Mr C on 16 February 2006 in the sum of £251,250 on the basis of a purchase price of £400,000. The offer stated that the mortgage advance must not be released if the actual purchase price was less than that stated, unless the difference was less than 5% (i.e. £20,000).

20. On 16 June 2006, it was agreed in the contract between the sellers and Mr C that the purchase price for Property 2 would be £335,000 and the same price was set out in the Completion Statement. However on 11 September 2006, the Respondent completed a Certificate of Title and request for mortgage funds which stated that the purchase price was £400,000.

21. The mortgage advance in the sum of £251,250 was received into the client account on 15 September 2006 and subsequently released by the Respondent.

22. In relation to this transaction, the Respondent noted in his email to the Applicant of 3 December 2018 that the mortgage of £251,250 represented 75% of £335,000 (the actual purchase price) and stated "[t]here is no recognisable percentage of the borrowing of £251,250 set against the purchase price of £400,000" and therefore the lender must have been aware of the actual price.

Property 3, Property 4, Property 5 and Property 6

23. The facts in relation to each of these transactions were as follows: The firm was instructed by both the borrower and the lender (Lender F) in relation to the transaction; Lender F made a mortgage offer to the borrower for a 'same-day' remortgage, with the mortgage representing 85% of the stated value of the property; and the borrower did not own the property at the time of the offer being made. The Tribunal understands the term "same-day remortgage" means that the "remortgage" is effected on the same day that the mortgagor acquires the property, without the mortgagee asking for any evidence of a prior mortgage (necessarily of the same date as the acquisition and the "re" mortgage). The details in respect of each transaction were as follows:

	Property 3	**Property 4**	**Property 5**	**Property 6**
Fee Earner	Fee Earner J	Respondent	Fee Earner J	Fee Earner J
Borrower	Client G	Client H	Client I	Client G/ Client H
Date of Mortgage Offer	21.11.07	29.05.07	22.02.08	29.10.07
Mortgage amount	£76,500	£72,250	£97,750	£59,500
Purchase Price	£76,000	£65,000	£82,000	£48,000
Purchase date	25.01.08	June or July 2007 (various dates stated on documents)	07.03.08	08.11.07

24. In respect of Property 6, Client H was recorded as the purchaser on two different contracts for sale, the contract for sale signed by the firm being dated 25 August 2007, the date on the contract for sale signed by the seller being unclear. The file opening form, recording Client H as the client was signed by "SP" (and therefore presumed to be the Respondent) on 3 October 2007. However, for reasons that were not apparent from the client file, the mortgage offer was made to Client G and the sale was completed with Client G as the purchaser.

25. In respect of Property 4, Property 5 and Property 6, the mortgage advances were sufficiently larger than the costs associated with purchasing the property that surplus sums were paid to the client at the conclusion of the transaction. The amounts borrowed exceeded the amounts spent by the mortgagor. In all three cases the sums appear to have been transferred to companies related to the client, rather than the client himself as an individual.

26. In respect of Property 4, £3,987.34 was transferred from the firm's client account to Company K on 14 June 2007. The Respondent stated in interview with FIR2 that he believed Company K was Client H's company. Fee Earner J stated in interview with FIR2 that she thought that Company K "was a Company that [Client G] and [Client H] had". It was also noted that the name of Company K includes the initials of Client H. It was therefore inferred that there was a relationship between Client H and Company K.

27. In respect of Property 5, £15,232.96 was transferred from the firm's client account to Company L on 7 March 2008. Client I was the sole director of Company L.

28. In respect of Property 6, £12,282.96 was transferred from the firm's client account to Company K on 8 November 2007.

29. In relation to Property 3, Property 5 and Property 6, although the Respondent was not the fee earner with conduct of the transactions, he was the supervisor of fee earner J, an unadmitted person. In relation to Property 6, the Respondent appeared to have opened the file and sent and received a small number of letters.

30. Fee earner J told FIO2 during a recorded interview that she completed Certificates of Title in the way she was instructed to by the Respondent, in particular that the Respondent had instructed her to record "N/A" for the "Price stated in Transfer".

31. In relation to Client H, the Respondent had conduct of the transaction in respect of Property 4.

32. The Respondent's position in interview and in his email dated 3 December 2018 appeared to be that Lender F was aware that these were purchase mortgages, rather than remortgages, and was aware that the mortgages were based on property value rather than purchase price.

33. The Applicant took the following steps to investigate the allegations which it made against the Respondent. An Explanation With Warning ("EWW") letter was sent to the Respondent on 18 September 2018. The Respondent provided a response by email on 3 December 2018, denying the allegations. On 29 March 2019, an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

34. There were no witnesses.

Findings of Fact and Law

35. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(References to the submissions below include both submissions made in writing and orally.)

36. **Allegation 1 - The allegations against the Respondent, Stephen Pearson, made by the Applicant were that, while in practice as a sole practitioner at Pearsons and as a partner at Turner Pearsons Solicitors:**

1.1 Between approximately 13 February 2006 and 7 March 2008 the Respondent facilitated up to six transactions which bore the hallmarks of mortgage fraud and thereby:

1.1.1 insofar as such conduct took place on or before 30 June 2007, acted in breach of Basic Principles (a), (c), (d) and (e) of Rule 1.01 of the Solicitors' Practice Rules 1990 ("the Basic Principles"); and

1.1.2 insofar as such conduct took place on or after 1 July 2007, acted in breach of Core Duties 2, 3, 4, 5 and 6 of the Solicitors' Code of Conduct 2007 ("the Core Duties");

Allegation 2. In addition, allegation 1.1 is advanced on the basis that the Respondent's conduct was:

2.1 dishonest; and/ or
2.2 reckless; and /or
2.3 manifestly incompetent.

Dishonesty or recklessness or manifest incompetence were alleged as aggravating features of the Respondent's misconduct but were not an essential ingredient in proving the allegations.

36.1 For the Applicant, Ms Hansen relied on the facts set out in the Rule 5 Statement which are set out in the background to this judgment.

Property 1

36.2 Ms Hansen submitted that the Respondent was instructed to complete the purchase on 16 June 2006 which he did in the name of Company A and on 14 July 2006 one month later the Respondent completed a Certificate of Title for the mortgage stating that Company B was the owner. The mortgage was in the amount of £90,000 whereas the property had been purchased for three times less than that figure, £31,000, only a month previously. The only evidence that Property 1 was in fact transferred from Company A to Company B, was a letter dated 13 August 2006 from the Respondent to Mr C owner of both companies:

> "I write to confirm the above freehold property was purchased by [Company B] on 21st June 2006.
>
> I am dealing with the registration formalities at the Land Registry.
>
> Please contact me should you require any further details…."

Ms Hansen submitted that the letter was written two months after the purported transfer of the property from Company A to Company B and one month after the mortgage was obtained. The Register of Title from 2009 showed that Company A was registered as having ownership of the property from 22 January 2007. There was a letter from the Land Registry dated 22 January 2007 confirming that registration had been applied for by the firm dated 17 January 2007. Ms Hansen emphasised the timetable of the transaction. The property was bought at auction in May 2006, the transaction completed in June 2006 and according to the file five weeks later in July 2006 there was a transfer of ownership to Company B. Five months after that the Respondent completed an application to the Land Registry registering Company A as the owner. There was nothing about Company B. Further concerns arose out of the mortgage application.

36.3 Ms Hansen submitted that the Respondent acted for the mortgage provider and borrower; he had duties to both. There was no evidence that the Respondent notified Lender D that Company B had owned Property 1 for less than six months, as was required pursuant to section 2(v) (b) of the Certificate of Title, or that Company B did not own Property 1, or that Company A had owned Property 1 for less than six months. In completing and signing the Certificate of Title the Respondent certified that the property had been owned for at least six months whereas as the Respondent said himself Company B had only owned the property for a few days. Perhaps he saw Companies A and B as the same entity. The Tribunal noted that in the Certificate of Title "Price stated in Transfer" was completed in handwriting as "N/A-ALREADY OWNED".

36.4 Ms Hansen submitted that the Tribunal needed to consider whether the transaction bore the hallmarks of mortgage fraud and the Applicant said it did for the following reasons: first, there was enormous confusion in the documents about who owned Property 1. The Applicant said that one company bought a property and a different company obtained a mortgage over it which was an indicator of fraud because the lender was told that Company B owned the property when it did not. The Respondent facilitated moving ownership of the property and money between the two companies without following any proper formalities that would be required in order to do that. The Applicant's primary case was that there was no transfer from Company A to Company B which was borne out by the fact that months later the Respondent registered only the initial purchase by Company A with the Land Registry. Ms Hansen submitted that even if there was an intended transfer, it was a fiction and even if it was not a complete fiction then there was still no actual transfer of the property, and so Company B should not have been able to obtain the mortgage. Secondly Ms Hansen submitted that if the Tribunal disagreed about the absence of a transfer there was still the issue of the difference between the mortgage amount of £90,000 and the purchase price of £31,000; both were in respect of the same property and the mortgage came a short time after the purchase. The wide difference in the values was a clear indicator of mortgage fraud as set out in The Law Society's Green Card at the time. It would be expected that the Respondent would question either Company A or Company B as to why the property had tripled in value in such a short time and there was no evidence that the Respondent did so. Thirdly, Ms Hansen submitted that the mortgage provider (who was also the Respondent's client) was told the property had been owned for more than six months in circumstances where either Company B did not own the property or it had owned it for a short period, as had Company A. For all these reasons Ms Hansen submitted that there were clear concerns about the bona fides of the transaction. Mr C was moving

the property around between his companies and obtained a mortgage to which Company B was not entitled.

36.5 Finally regarding Property 1, Ms Hansen submitted regarding what the Respondent said about the way the property was purchased (quoted in the background to this judgment) in his email dated 3 December 2018, that the Respondent's response was not applicable to this transaction because Property 1 was not purchased by Mr C as an individual but by Company A. The Respondent's account failed to recognise the difference between individuals and companies as separate legal persons, which he either knew or ought to have known as an experienced solicitor. The Respondent's account was either not credible or suggested that he was aware of concerns with the bona fides of the transaction, as did his distinction between the lender and the lender "at branch level". Ms Hansen submitted that this situation had some similarities to that in Properties 3, 4, 5 and 6 the transactions in respect of which admissions had been made where the Respondent would be dealing with individuals at the mortgage provider and the suggestion was that the individuals with whom he liaised were aware of the true position but were proceeding anyway. The Respondent's clients included the lender, and if there was mis-selling of mortgages at what the Respondent called "branch level" through fraudulent documentation for mortgages the Respondent's obligations were to ask questions about that or to cease to act. His duty was not owed to the branch but to the corporate lender.

36.6 Having regard to allegation 2 and Property 1, Ms Hansen submitted that it was the Applicant's case that there were clear hallmarks of mortgage fraud and that given the clear and obvious signs, the Applicant drew the inference that the Respondent must have been aware of them. The Tribunal might think that it was the most stark because the Respondent acted for Company A in purchasing the property, but did not effect the transfer to Company B and must have known that he had not done so, and yet made a mortgage application for Company B for what he must have known was three times the price for which Property 1 had been bought. Despite not having done anything to effect that transfer the Respondent wrote a letter in August 2006 to say he had, and the following year he registered Company A's ownership but did nothing about Company B. Given all that, the Applicant said that the Respondent knew what was going on in the transaction; he knew who the owner of the property was and to suggest that he forgot what he had, and had not, done, whatever pressures of work he had at the time, was simply incredible. As a result Company A bought the property for £31,000 and Company B received £90,000. Therefore the Respondent must have been aware that the transaction bore the hallmarks of mortgage fraud.

36.7 The Tribunal asked about a first charge shown on the charges register of the property. Ms Hansen submitted that there was lack of clarity about the charges. It was known that the lender bank wrote later on 17 May 2007 to the firm including:

> "Further to your letter of 14" May 2007 we return the title deeds relating to the above property.
>
> The legal mortgage has not been registered at Companies House.
>
> We enclose a fresh legal mortgage for execution by the Company. Please arrange for the necessary registrations at Companies House and Land Registry.

> Please confirm to us once the new legal mortgage has been registered at Companies House and forward completed Form DS1 for us to sign in respect of the charge dated 16th November 2006..."

Ms Hansen submitted that the need for clarification showed the extent of the mess involved in the matter.

36.8 Ms Hansen submitted that the Applicant's case on dishonesty (allegation 2.1) was straightforward; as a solicitor the Respondent acted in a transaction which had or he suspected had the hallmarks of mortgage fraud. The Tribunal could infer dishonesty from his continuing to act, particularly as the Respondent had two clients; the borrower and the lender - and it was possible the latter was being defrauded. Alternatively the Respondent acted recklessly in that given all these issues he must have known or suspected it was a transaction with the hallmarks of mortgage fraud. He would be aware of the obvious risks to the lender client in continuing to act and acted recklessly in continuing to act without asking further questions (allegation 2.2). Alternatively if he did not notice the concerns he was manifestly incompetent (allegation 2.3). (Later Ms Hansen confirmed that although not expressed that way in oral submissions, allegations 2.1, 2.2, and 2.3 were put on an "and/or" basis.)

Property 2

36.9 Having regard to Property 2, Ms Hansen submitted this was of a slightly different nature. The Respondent acted in a number of transactions for Mr C, the director of Companies A and B. Ms Hansen relied on the facts set out in the Rule 5 Statement and in the background to this judgment. A mortgage offer was made of £251,250 based on a purchase price of £400,000 which was stated in the mortgage instructions to the firm. The document also stated:

> "You must not release the mortgage advance:
> …
> If the purchase price for the property is less than the amount set out in these instructions, unless the difference between the amount set out in these instructions and the actual purchase price is 5% or less of the amount set out in these instructions:"

The purchase price agreed was £335,000 so there was more than a 10% difference between that figure and £400,000. The mortgage offer was dated 16 February 2006 and the Certificate of Title was dated 11 September 2006. The Certificate of Title document was prepopulated with the sum of £400,000 because so far as the lender was aware that was the purchase price. Ms Hansen submitted that the Respondent was aware that figure was incorrect but he certified the Certificate of Title with his signature. At some time between June and September 2006 the Respondent should have advised the lender of a change in price. Given the significance of the document one would expect any competent solicitor to check it and ensure it was correct. The Tribunal might think that the purchase price was one of only a few important pieces of information and therefore if it was incorrect the Respondent had two options; to amend it in manuscript from £400,000 to £335,000 so that the document he signed was correct or, and perhaps the better option was to pick up the phone to his lender client and point out that it had made a mortgage offer on the incorrect information of price, as he was obliged to do if there

was a change in the purchase price of more than 5%. The Applicant's case was that the transaction involved the hallmarks of mortgage fraud because the mortgage offer was made on an incorrect purchase price. While the offer was within 85% of the purchase price Ms Hansen submitted that there was no evidence of the lender's loan to price ratio. Either the Respondent did not notice the discrepancy at the time, or if he did note it he must have realised that a very serious error had been made. Yet he signed the Certificate of Title. The Respondent needed to ensure that his lender client was making its decision on correct information; it was not for the Respondent to take the decision that the lender client would be content to lend. This was a very serious allegation to make against a solicitor as this was information central and critical to the document and not peripheral. If the Respondent did not notice the discrepancy it did not take the Tribunal any further with the case.

36.10 Ms Hansen submitted that the mortgage advance was 75% of the purchase price and the Respondent said that therefore the lender must have been aware that the price was £335,000 or it would not have made the loan in the amount. If so, this was potentially mis-selling by an individual at the lender. The Applicant did not go so far as to say that. If that was going on it raised questions, and the transaction was one with the hallmarks of mortgage fraud. Someone in the branch might do this to make the mortgage look as if it afforded lower risk; in which case the lender was effectively being defrauded by its employees. If there was a difference between what the employee and the borrower knew and what the lender client knew, the obligation on the individual solicitor was to ask questions, and if he was not happy to refuse to act further.

36.11 In respect of the allegation of dishonesty regarding Property 2, Ms Hansen submitted that it was very similar to that in respect of Property 1. Given how obvious the discrepancy was, the Respondent must have noticed the difference between the purchase price stated in the Certificate of Title and the actual price. The Tribunal might find it telling that the Respondent did not notify any change of purchase price between the date of the offer and completion of the Certificate of Title in June and September 2006 respectively. If there was an oversight one might expect him to pick it up when he completed the Certificate of Title. The Applicant said the fact he did not do so was evidence that he knew what was going on. If a solicitor knew or suspected the hallmarks of mortgage fraud, he was acting dishonestly if he continued to act and certified a Certificate of Title with information that was incorrect. Alternatively, given that he must have been aware there were risks to the transaction the Respondent acted recklessly when he acted without asking any further questions. Alternatively, the Respondent acted with manifest competence in failing to notify the lender that there was a significant difference in the purchase price from June 2006 to September 2006.

Property 3, Property 4, Property 5 and Property 6

36.12 It was submitted that there were common facts about the transactions involving Properties 3, 4, 5 and 6 as follows:

- the firm was instructed by both the borrower and the lender (Lender F) in relation to the transaction;

- Lender F made a mortgage offer to the borrower for a remortgage, with the mortgage representing 85% of the stated value of the property;

- the borrower did not own the property at the time of the offer being made, and the transaction therefore was not a remortgage;

- the sum of the mortgage was greater than the purchase price paid by the borrower,

- the firm did not notify Lender F that the borrower was using the mortgage to purchase the properly, and therefore was not remortgaging a property he or it already owned;

- the firm did not notify Lender F of the actual purchase price of the property; and

- the firm did not notify Lender F that the sum borrowed was greater than 100% of the actual purchase price, nor even that the sum borrowed was greater than 85% of the actual purchase price.

36.13 Ms Hansen relied on the facts set out in the Rule 5 Statement and in the background to this judgment. The time period encompassed two different regulatory provisions; in respect of Properties 1 and 2 the Solicitors' Practice Rules 1990 and in respect of Properties 3, 5 and 6 the Solicitors' Code of Conduct 2007. Regarding Property 4, it was not clear from the file when the transaction completed; it was either June or July 2007. The Code of Conduct 2007 came into force on 1 July 2007. However Ms Hansen submitted that the Core Principles of the Code were the same as those in the 1990 Rules and the Applicant argued that there was no material difference regarding this property. The largest gap between the mortgage amount and the purchase price was in respect of Property 5 where it was £15,750. The Respondent was the fee earner for Property 4 and an unadmitted person, Ms J, dealt with Properties 3, 5 and 6 and the Respondent was her supervising solicitor. Ms Hansen submitted that this had no impact on the seriousness of the findings as the Respondent had the same obligations when acting as a supervisor as when he was the fee earner.

36.14 In respect of Properties 4, 5 and 6 the mortgage advances were sufficiently larger than the costs associated with purchasing the property that substantial surplus sums were paid over to the purchaser client at the conclusion of the transaction. Ms Hansen referred to what happened to the surplus money from the transactions (which is set out in the background to this judgment). The client was an individual but those sums were transferred to a company. No reason was given on the file why money due to an individual was paid to a company he owned.

36.15 Ms Hansen submitted that it was admitted that the transactions bore the hallmarks of mortgage fraud. The following matters were relied upon as evidence that the Respondent knew, or ought to have known, that the applications for mortgage bore the hallmarks of fraud:

- the mortgage offers were for *re*mortgages, in circumstances where the borrowers were purchasing the properties and using the *re*mortgage funds to do so;

- there was a significant difference between the actual purchase price and the property valuation upon which the mortgage offer was made; and

- the mortgage advance was greater than the purchase price, with the excess paid by the solicitor to his purchaser client, institutions lending money to buy properties not usually lending more than the cost of buying them.

36.16 Ms Hansen submitted, by way of example, that the mortgage offer for Property 3 used the words:

> "Your mortgage requirements
> This offer is based on the following remortgage requirements…"

In other places the document referred to "mortgage". Ms Hansen submitted that the Respondent said the word "remortgage" was only mentioned once, but just because the word was not referred to elsewhere in the document that did not make it more (or less) than a requirement that the loan was to replace an existing loan over the property mortgaged. The Tribunal had also seen the Certificate of Title for Property 3 where the purchase price was completed as "N/A". Ms Hansen submitted that a lot was made in the Respondent's witness statement of "mortgage" or "remortgage" or "one day remortgage" which Ms Hansen described as an attempt to muddy the waters in this case. This transaction was either a mortgage or a remortgage; from the papers it all appeared to be a remortgage because the offer was made on that basis. As the Respondent stated, it was an offer made based on value, rather than on purchase price. If that was the case then the money could not be used to fund the purchase which was what in fact happened in each of these cases. If it was a purchase mortgage then of course the documents ought to make that clear. The Respondent himself stated that a purchase mortgage was based on the purchase price of the property being acquired and if so then he ought to have told the lender client of the purchase price. He had an obligation to do so in a case where the purchase price was very different to the valuation, and less than the mortgage advance itself.

36.17 Ms Hansen asserted that these transactions bore the hallmarks of mortgage fraud. The Applicant said that would have been abundantly clear to the Respondent when acting in circumstances that his borrower client was literally being paid to purchase a house. The Respondent suggested that at branch level the lender knew what was going on, but the Applicant could make the same point; if individual employees at the lender were authorising mortgages by mis-stating facts in the paperwork that was still a transaction that bore the hallmarks of mortgage fraud, and one in which the Respondent (owing his duty to the corporate lender which instructed him) should have asked questions or refused to act.

36.18 Ms Hansen submitted that the Respondent had admitted his conduct was reckless. She also pointed out that the Respondent said in his witness statement:

> "In proceeding in this manner I have to accept that, subconsciously, I prioritised [Client G's] business activities over protecting the interests of the lender…"

Ms Hansen submitted that given the obvious red flags the Respondent had not subconsciously prioritised the interests of the borrower clients or their companies but as an experienced conveyancing solicitor he must have realised that this was what he was doing.

36.19 Ms Hansen submitted that the Respondent acted for these clients in a number of transactions. The allegations only related to these four properties but the Applicant said it was clear the same issues arose from four transactions and he must have been aware of warning signs in these transactions. This meant that he ought not simply to have processed the transactions, but to have raised concerns with his lender clients. If as a solicitor one knew or suspected one was conducting a transaction that bore the hallmarks of fraud, a solicitor was acting dishonestly if they continued to act. This applied particularly to these transactions when, as the Respondent had fully admitted, were the true position to be made clear on the documents his borrower clients would not have received the mortgages they did, at least from this lender. The Respondent knew that in facilitating the transactions and giving the borrower clients the funds to purchase properties where he knew there was a surplus over the purchase price and the valuation/mortgage advance, the borrower clients were getting a benefit they would not have otherwise received. He would have known of the obvious risk that posed to the lender client which was lending monies, which it thought were secured against a property which might not have had the value the documents stated it had. Lenders do not usually make mortgage advances of amounts which exceed the cost price of properties purchased with their funds, as the Respondent will have been aware. The Applicant submitted the Respondent acted dishonestly in continuing to act and in failing to disclose the true purchase price to the lender client when he had had the opportunity to do so on the Certificate of Title.

Breaches of Principles

36.20 Having regard to Basic Principle (a) Core Duty 2 (integrity), Ms Hansen submitted that by acting in relation to conveyancing transactions which bore the hallmarks of mortgage fraud, the Respondent failed to act with integrity. She referred to the submissions in the Rule 5 Statement to that effect; i.e. he failed to act with moral soundness, rectitude and steady adherence to an ethical code. In Wingate v Solicitors Regulation Authority v Malins (2018) EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity would:

- not have acted in relation to transactions which bore the hallmarks of fraud;
- have sought explanations from his clients where concerns arose in relation to the bona fides of transactions;
- have notified the lender of significant differences between the actual purchase price and the price upon which a mortgage offer was made;
- have notified the lender of discrepancies between the type of mortgage offered and sought; and
- have refused to act in relation to transactions where there was a deliberate discrepancy between underlying transaction documents and the true position.

36.21 Having regard to Basic Principle (a) Core Duty 3 (independence), Ms Hansen submitted that the need for independence was particularly important where a solicitor had two clients; frequently there was no conflict, but it could arise and often did arise. Here, as

the Respondent had accepted regarding Properties 3, 4, 5 and 6, the Respondent conducted transactions and the Respondent did not disclose material information about the transaction to the lender client but nevertheless continued to act, as described above. In prioritising the position of one client, the borrower, where there was a conflict (or potential conflict) of interest between two clients, which the Applicant asserted was deliberate rather than subconscious, the Respondent failed to maintain his independence as a solicitor. Regarding Properties 1 and 2, the Respondent had material information which he failed to disclose to the lender client and so he privileged the position of the borrower client over that of the lender client.

36.22 Having regard to Basic Principle (c) Core Duty 4 (best interests) and Basic Principle (e) Core Duty 5 (proper standard of work/good standard of service), Ms Hansen submitted that the Respondent failed to act in the best interests of his lender clients in failing to disclose material information about the transactions, particularly in circumstances where that material information gave rise to concerns as to the bona fides of the transaction. It was now clear that it was in the best interests of the lender client to be fully aware of the circumstances of the transactions so they could decide whether to lend or how much. For the same reasons, the Respondent failed to provide proper standard of work/good standard of service to his clients. Were the Respondent fulfilling those obligations, he would have sought explanations from his client where concerns had arisen as to the bona fides of transactions in which he was acting.

36.23 Having regard to Basic Principle (d) Core Duty 6 (good repute/not diminishing trust), Ms Hansen submitted that the good repute of solicitors and the profession and public confidence in solicitors and the profession were likely to be undermined by the Respondent facilitating multiple conveyancing transactions which bore the hallmarks of mortgage fraud. The public would expect solicitors not to facilitate mortgage transactions that bore the hallmarks of fraud; which was why lender clients did not require their own solicitors in these transactions; they expected the solicitor to act in the best interests of both parties, and to identify any conflict of interest that might arise.

Submissions for and evidence of the Respondent

<u>General Submissions and Submissions in respect of all the properties.</u>

36.24 Mr Leviseur submitted that the Tribunal had to look at the situation as it was at the material time. The Respondent maintained throughout that he had not been dishonest however hard he was pushed on the subject. There was no evidence that what he had done enabled him to earn substantial fees. These were standard residential conveyances involving the "buy to let" of domestic properties. There were various invoices in the documents; the fees were not large. These were not clients on whom the Respondent was wholly reliant: this was not a one man band with a single client. No one suggested that, or any other motive for dishonesty; it was a baseless assertion.

36.25 Mr Leviseur submitted that there had been evidence that during the period in question the market was behaving in an extraordinary way. Lenders were behaving imprudently; one could categorise it as such now, but at the time they felt the way they operated was prudent and it was applauded by the markets. The Respondent was professionally required to comply with the interests of his lender clients as much as borrower clients. It was the lenders who were driving the change in the market from being old fashioned

building societies to being aggressive financial institutions rewarding their own servants by volume payments: the market was highly competitive. Market share was, then, all. There was no dispute regarding any of these matters. With the glorious benefit of hindsight all could see that the lenders were borrowing money on a very short term basis and lending it on a 25 year basis, assuming that they could replicate the short term basis in the long term. This was not a sensible business plan. It was not the job of solicitors to act as the FCA or the Bank of England. It was too onerous to ascribe these duties to a country solicitor. Lenders wanted to behave in this way and it was not unlawful to do so. Northern Rock was lending over 100% of purchase price by granting unsecured loans in addition to the purchase price of a property. This led to the ridiculous situation where there had to be a "cooling off" period of 28 days on unsecured loans, required under consumer credit legislation, so that purchasers could not borrow more than 100% of the purchase price of a house for instantaneous completion. The lenders in this case dressed matters up as "re"mortgages when they well knew that they were lending more than the cost price of a property, and basing such lending on a rising market and professional valuations. It was not credible that other institutions were not doing it in this way. The Respondent should be judged against this background.

36.26 Mr Leviseur submitted that the Tribunal should exercise extreme care regarding Properties 3, 5 and 6 where it was suggested that representations made in documentary from by someone else, the conveyancer Ms J, entitled the Tribunal to make an inference of dishonesty at second hand. Mr Leviseur submitted that it did not. The Tribunal would have to explain how it could be satisfied that any dishonesty was of the Respondent and not of someone else. These were very serious matters and the Tribunal must exercise any doubt in the Respondent's favour. The Tribunal should be very careful in imputing dishonesty to the Respondent having regard to the actions of someone else, particularly in the light of his credible and honest admissions that he was not doing a great deal of supervision of Ms J. She was an extremely competent conveyancer and the volume of work in a single handed practice meant that the Respondent was not doing what he should be doing. It did not make him dishonest because he had failed in his duties as a supervisor.

36.27 Mr Leviseur also asked the Tribunal to consider the effect of the breakup of the Respondent's marriage; it was a significant and difficult time in his life. It was caused by his own behaviour which, with the benefit of hindsight was ridiculous, sleeping on the office floor so that its hardness would wake him up so as to start work again at 4 a.m. Mr Leviseur submitted that all of this was very significant in considering a wide ranging allegation of dishonesty. People who were habitually tired were highly unlikely to be thinking straight. If one gave advice at 4 a.m. it would not be advice worth taking. If someone was doing that day after day, month after month, muddled thinking would be the order of the day. If there was another explanation of the Respondent's behaviour than dishonesty, then one needed to think carefully. If he was doing a large volume of work, as he was, he was highly unlikely to have good recall of the detail of each case and would be likely to cut corners, and be providing very limited critical insight. In these circumstances he might be properly criticised for slack professional behaviour which amounted to recklessness and manifest incompetence, but it was not dishonesty.

36.28 More generally, Mr Leviseur submitted that so far as he could see all the properties were registered with legal charges in favour of the lender. Regarding Property 1 the lender had a charge against Company A. Company A and B were associated companies and a judge would have allowed enforcement to take place. As to the intercompany transfer from Company A to Company B, the notion that a solicitor would tell a client a transfer for value should occur was fanciful when it would attract a stamp duty charge. The error was always accepted to be that of the client; Mr C at auction saying the purchase was for Company A, when it was intended to be for Company B. It was a silly idea to suggest a transfer at full value. Mr Leviseur also submitted that registration of all the properties recorded the correct date of acquisition and mortgage which was what the Respondent believed the lender required. There was no internal manipulation of dates, times or prices; no seeking to cover his tracks. If there was dishonesty where one solicitor was working for two clients one would expect covering up.

36.29 Mr Leviseur submitted that it was important to consider the Respondent's evidence; he was not a man who was seeking to avoid responsibility. He showed considerable insight with the benefit of hindsight. He knew what he should have done and what he now did do. He had analysed what he had done. Like everyone else he was caught up in that market at that time. Deadlines were crazy and clients were contacting lenders direct, which would now set alarm bells ringing and would speak of an unhealthy relationship between the servants of the lender and the borrowers. Set against the background this was not thought to be extraordinary at all; there was no motive for fraud and no reward. The Respondent simply could not understand how he could be considered dishonest particularly regarding Properties 3, 5 and 6. He had acted in the lender clients' interests regarding what they wanted to do, they having developed a product and put it on the market, wanting to sell it.

Evidence of the Respondent

36.30 The Respondent made two corrections to his witness statement; at paragraph 27 the reference should have been to Property 1 and not to Property 2; at paragraph 63 the words "to consider and raise" had been omitted after "incumbent upon me". The Respondent also wished to add at the end of paragraph 19 that his files had been inspected by the Applicant at a legal practice where he worked after leaving the firm and so far as he was aware no issues were raised.

36.31 The Respondent understood mortgage fraud at the material time to mean deceiving the lender for the benefit of the borrower; giving a financial advantage for the borrower which the lender did not intend. He was now aware of the Law Society's Green Card as a means of bringing it to the attention of the profession. At the time he did not discuss the Green Card or advice given by the Law Society with others; he relied on training from 1989-1992 and his Principal. They would advise the lender if they considered anything to be out of place; of anything that would affect its security; it would be something about which they would use their own judgment. The Respondent had explained in his statement the volume of work and the pressure he was under at the time:

> "14. By late 2008 I was suffering with complete exhaustion and I was drained by the intensity of the work, which was all-consuming. I indicated to my partners that I wished to leave the firm. This was due to a number of factors in

my professional and personal life. This was affecting the quality of my work and I recognise that I was not giving my work the necessary level of reflection and consideration.

15. Between 2006 and 2008 I was dealing with an extraordinary high volume of work as the property boom of that decade reached its peak. I was working very long hours - in excess of 80 hours per week - in an attempt to keep up with demand and, with hindsight, I recognise that I was taking on too much work. My marriage had broken down due to the demands and pressures of work and we divorced in August 2006. I feel that I threw myself wholly into my work as a distraction. Additionally, my workload increased dramatically following AP's [a colleague's] sudden departure from [the firm].

16. Following the establishment of [the successor firm] my workload continued to be substantial as the demand within the property sector was relentless throughout 2007 and early 2008 before the financial crisis. Whilst I struggled to admit or see it at the time, I have no doubt now in hindsight that I had a breakdown in 2008/2009 and I needed to leave the profession in order to recuperate."

The Respondent stated that new work was consistently coming in. The number of files was difficult to calculate but he had over 100 files at any one time which was a huge amount. It was a mixture of commercial and domestic. He took one week's holiday in two or three years when he left eight tapes of instructions. He worked every day including Sunday. On occasion he slept on the office floor without a mattress to ensure he would awake at 4.30 am to work. Once he did not go home for a week. With hindsight it made no sense whatsoever. He kept getting more work until he was saturated. The Respondent stated that he made mistakes, which was why he was before the Tribunal. He was not aware of other mistakes. He tried to give good service to clients. He did not enjoy his work at that time. He was always busy but it began to escalate beyond what was normal.

36.32 In cross examination, the Respondent stated that he was aware of the phrase "Green Card" but agreed he was not familiar with it. He understood it to be advisory. He was ashamed to say he was not aware that there was a Green Card specifically for prevention of conveyancing fraud. The Respondent was familiar with Certificates of Title to be completed for each transaction in their various forms. He was being asked to certify matters; a report on the general suitability for the purpose of a loan.

Property 1

36.33 The Respondent explained that he became aware of having mistakenly registered Property 1 and the charge upon it in the name of Company A when he sent the documents to the lender client. By then Company A had fallen into administration and liquidation. He informed Mr C and he confirmed the position to him. The Respondent then wrote to the liquidator of Company A to try to rectify the error. After completion in the name of Company A, Mr C had informed the Respondent he needed the property to be in the name of Company B, because the mortgage was to be with Lender D with whom Mr C had a longstanding relationship in Company B's name. The Respondent stated that he called Mr C to the office and he signed a transfer deed TR1 to transfer the

property from Company A to Company B which was put on the file. He wrote to Mr C later on 13 August 2016 to confirm this. The Respondent recognised that there were "huge" gaps in the dates particularly regarding this file which demonstrated the extreme amount of work he had. So when he wrote to Lender D the transfer had already been done. He was going to deal with the transfer and charge at the same time. The Respondent stated that this sort of thing happened a lot with clients buying at auction; they would deal with the auctioneer quite casually but then left it to the solicitors to regularise the position. The Respondent could not remember when Mr C said he was taking the legal charge. Client C would have known when he received the Respondent's letter about having completed registration that the transfer had been sent to Client C. The Respondent would not have reported to the bank or the client Mr C without the transfer having been completed. Lender D picked up that the fact that he had not dealt with the legal charge at Companies House. The legal charge had to be filed at Companies House within a set time; he had totally overlooked it. The Respondent stated that his colleague AP had departed very suddenly in February 2007. The Respondent then merged his firm with the successor practice, on 1 May 2007. He wrote with the title deeds to Property 1 to Lender D on 14 May 2007.

36.34 The Respondent stated that his client Mr C was a professional property dealer. The Respondent's job was to complete the transaction in the required time. It was a cash purchase for Company A. Following that the Respondent received instructions from Lender D to create a mortgage for Company B. He would have contacted the client and pointed out the discrepancy, and then made the transfer from Company A to Company B, which he would have dated, but then he had lost it. As to the difference in purchase price and the mortgage amount, the Respondent made an assumption that the client achieved a good price, as he had bought at auction from personal representatives of a deceased's estate and prices were rapidly increasing, month on month.

36.35 The Respondent stated that he received a fee of £150 plus VAT for the transfer and mortgage as shown by a bill dated 1 November 2006. The additional work to transfer and register seemed minimal at the time.

36.36 In cross examination, the Respondent confirmed what he said in his witness statement - that he understood the differences between an individual and a company and there were separate companies involved, which were separate legal entities. He also understood that where there was a sole director of two companies they were not the same entity. He appreciated that where he had a lender and borrower client he had separate obligations to both.

36.37 The Respondent clarified how he became aware that Company B would take out the mortgage; his surmise was that the mortgage offer would have come to him and he would have picked up the phone to the client to tell him he had acquired the property in the wrong name. There would have been a discussion about how to resolve the situation and he would have prepared a transfer deed. He supposed that in that transfer he acted for both companies. He would have taken instructions. He could not recall the conversation but he would have thought no money passed between the companies in relation to the transfer. As to whether he should have given advice to Company A that it was transferring an asset without consideration, the client (by whom speaking generally he meant Mr C as the person behind the companies) was a seasoned investor, a commercial individual and the Respondent was acting on his instructions regarding

the transfer. It did not occur to the Respondent that moving the money around the companies could have been a warning that he might be facilitating a fraud. He could not recall his thought processes about whether he saw C, Company A and Company B as separate. He had not referred to the transfer before, because he did not see it as a point to be addressed. He would not have sent the letter of 13 August 2006 to Mr C if there was not transfer deed; Mr C would have thought the Respondent was mad.

36.38 The Certificate of Title, which the Respondent agreed he had signed, referred to Company B as the property owner although initially that line had been completed "N/A" but then crossed out. The Respondent stated that he thought "N/A" was a mistake. It was put to him that in a fax Lender D had stated:

> "We thank you for your fax of 15" July 2006 enclosing your Certificate of Title. Please confirm the owners of the property. The section of the final page of your Certificate of Title has been completed as N/A."

The Respondent stated that he had then sent his letter of 17 July 2006 saying the Certificate of Title was amended as requested. (He had written to Lender D referring to its fax of that morning and enclosing the Certificate of Title amended as requested.) He apologised "for this error on our part and look forward to hearing from you with mortgage advance for 19th July 2006". The Respondent then said he thought he had put "N/A" because the property was not being purchased as he had effected the transfer. The borrower was named on the first page as Company B and he did not put "N/A" to mislead the lender as to the owner of the property. The Respondent had completed against Purchase price "N/A ALREADY OWNED" as by then he would have dealt with the transfer deed to Company B.

36.39 Regarding the difference in the purchase price and the loan amount for Property 1, the Respondent could not recall but he assumed that he satisfied himself that it was appropriate based on the factors identified above. Rightly or wrongly he was assuming the lender knew what it was doing; lending on the basis of the valuation obtained in a professional manner. He acted only through lack of common sense nothing more. It was put to the Respondent that the property had a sitting tenant paying £45 per week rent. He agreed that would decrease the value of the property. He could not recall conversations with Mr C regarding arrangements for the tenant who might have been about to be offered money to vacate, because there was no investment value in the property. He agreed that it appeared to be the case that when he wrote to Mr C on 16 June 2006 with the heading of the property address and Company A only five days before the property was transferred from Company A to Company B there was no plan about what would happen to the tenancy. (The letter referred to the Respondent obtaining a rent authority letter from the vendor's solicitors and to the tenancy being Rent Act protected and the tenant obviously being of long standing and paying a modest rent of £45 per week.)

36.40 The Respondent could see Ms Hansen's point about the possible flags but he did not see it in those terms. He did not see the transfer of the property from one company to another as a relevant factor. He did not know why he did not pick up the six month point at the time. He would not have wanted to misrepresent the position to the lender. He mentioned pressure of work and his state of mind. The Respondent agreed it was a standard term of a Certificate of Title, and he was filling in a huge number of them, but

he was not sure of the extent to which he was aware of it at the time regarding this or other properties. He was not sure that he gave it the credence he needed to give it. He now agreed it was material information for the lender to know about. He did not see at the time that quick turnaround of properties could be a mark of some fraudulent or criminal activity.

36.41 As to time scales, the Respondent stated that it was a sign of the mess he had got himself into that he wrote to Mr C in August 2006 saying he was dealing with registration, but he did not effect registration until January 2007. The AP1 form of application for registration in the name of Company A referred to a mortgage deed. The Respondent stated that as the form was typed he would not have completed it and he would not necessarily have checked it. There were two people in the office who dealt with registrations. The Respondent stated that it was a mistake the property was registered in the name of Company B; it was just a mess of a registration. He could not shed light on the certified copy mortgage referred to in the application form; it must have been a mortgage deed for Company A but he did not know why that would be. The Respondent thought the level of delegation was correct at the time; the people he left the file with were very familiar with the registration process, but clearly the file was in a mess. These days he dealt with his registrations personally, and on line. It was then realised a mistake had been made and he asked Lender D to execute a discharge form and they agreed, provided he got on with it. By then Company A was in liquidation and he had to seek the approval of the liquidator. The ownership of Company B of the property was never registered. The Respondent thought that by the time Lender D wrote to the firm on 17 May 2007 about the non-registration of the charge at Companies House he had lost the mortgage deed and transfer deed. He could only think that the documents had come away from the file. The Respondent rejected the suggestion that there had not been a transfer deed and rejected all the other allegations of impropriety around the transaction for Property 1. He had made a real mess of the file which compounded itself by inaction/action he failed to take. There was no intention or malice. Today he would be questioning the lender. He knew he had created a mess but it was done in virtually a state of breakdown. If he had been thinking clearly there were issues which should have occurred to him that did not. However he regarded the matter of the inter-company transfer as a separate matter. Now as a matter of course he would at least refer the matter to someone in the firm who did company commercial work, if they had someone.

36.42 In re-examination about his letter of 13 August 2006 to Mr C, confirming that Company B had bought the property on 21 June 2006 the Respondent confirmed it was his evidence that there must have been a form TR1 or he could not have registered the property. He also confirmed that a transfer for nil consideration attracted no stamp duty land tax, but a transfer for value would attract the tax. In answer to Tribunal questions, the Respondent stated regarding the disparity of the purchase price and the loan amount all he could think was that the purchaser client had a portfolio including loans with Lender D through each of the three parties, Company A, Company B and Client C, and the bank mortgages were interchangeable; the bank could require a person to redeem a mortgage on another property. The lending was a facility for the portfolio overall and not for a specific property. As to whether this was what had happened here the Respondent replied that when clients came in to see him and talked about whether to take a bank or building society mortgage, part of his explanation was that if they had other bank mortgages the bank could refuse to redeem one loan if the individual owed money on another property, whereas each building society mortgage was standalone.

He thought he had gone through the thought process that the £90,000 loan was an overall facility which the borrower client had with the bank at that time. Mr Leviseur submitted that there was a letter in the hearing bundle which referred to two properties, but he was unable to locate it. The Respondent stated that it was certainly the case that these three parties were controlled by the same person and they had multiple borrowings with Lender D. Ms Hansen agreed that the purchase of Property 1 was financed by the sale of a previous property. The Respondent stated that Property 1 did not make good reading. When presented to him during the hearing it was difficult to see how he could have made such ridiculous mistakes. He did not known how he had let himself get into that position. It was absolutely embarrassing and he was very ashamed but he would never wish to be dishonest, and denied that he had been.

Property 2

36.43 Having regard to Property 2, the Respondent stated that he was not sure why he missed the fact that in the Conveyancer's Notes in the mortgage instructions from Lender E, the "Purchase Price" was stated as £400,000. He received the offer in February 2006 and completed in September 2006. He could only think he put the offer on the file, knowing he had it and then due to pressure of work he had not paid heed to the purchase price. He was only now aware of the ratio of mortgage lending to price. He now saw that in the mortgage offer dated 16 February 2006 under the heading "Your mortgage requirements" the valuation was stated to be £400,000. It was so long ago he could only think that he went to the amount borrowed and thought it was not out of the ordinary. The mortgage offer was addressed to Mr C at his home address. A mortgage adviser J was involved which was not connected to the lender. It was a broker which would look to find the best deal and refer clients to the lender. The Respondent assumed the mortgage instructions addressed to the firm would have come to the firm with the offer. The offer document included:

> "Your mortgage product is only available when the amount of loan compared to the value of the property is less than 85%."

The Respondent agreed he would have seen this document. The mortgage (£251,250) was an odd figure but it was 75% of the actual price paid (£335,000). The Respondent stated that these figures had been put in by the lender and he could not see how it could have done so without it knowing the actual purchase price. The discrepancy came to his attention only in respect of these proceedings. The price paid was something reported on in the Certificate of Title to the lender; it was not something he was seeking to disguise in any way.

36.44 In cross examination, the Respondent agreed that in signing the Certificate of Title, which he acknowledged was an important document, he had certified that all the aspects were correct including those typed in by the lender which included the purchase price. He had completed all the manuscript entries. He stated that checking was part of his professional obligations. He did not know why he did not pay too much heed to it. He mentioned the large time lapse between the offer and the Certificate of Title. Also he had undertaken this transaction a month after his divorce. He had no cause not to tell the lender about the figure of £400,000 when it was only lending £251,250. The offer would usually be a figure such as 75% or 85% of the purchase price; he did not notice at the time that the mortgage offer figure would have been an unusual amount if it was

based on the figure £400,000. The Respondent had no reason to think there were people working for the lender who were acting dishonestly. Although the Respondent had used the terminology relating to a "branch" of the lender in interview, he stated in evidence that the Certificate would have gone into the main hub of the lender. It seemed to him there was nothing untoward about the offer. When he received a mortgage offer he would look to see if there was a retention; he did not make a beeline for the percentages. Since these issues arose he checked everything absolutely. He thought now that he should have checked then; it was his obligation to check relevant aspects. The conveyancing world was "flat" and it suddenly became round after the crash. Everyone woke up to what they had to do. Ever since he re-joined the profession, it was under a microscope; everything now went to the lender through its portal but it was very different in 2006. If he had checked the purchase price he would have noticed the price quoted was different from the actual price and the unusual percentage. He clarified that he would have gone to the lender and queried the offer; his first thought would be that the lender had produced the offer in the wrong format. He was not looking for wrong actions by parties within the mortgage set up; naïvely he thought the product was right. He denied wrongdoing. If he was trying to hide anything from the lender he would have amended the price on the document and at the Land Registry. Also if he wanted to hide something, he would have had to do something to hide it from the firm's registration clerk.

Property 3, Property 4, Property 5 and Property 6

36.45 In his witness statement the Respondent described his career history including that he did not renew his practising certificate at the end of October 2010 and stepped away from work to recuperate, and lived off savings for the next few years. In 2013, having been outside of the law for around two and a half years, he reapplied for a practising certificate and worked as a locum. He joined a law firm as a consultant in January 2016. In late 2016, he received notification of a potential claim from Lender F who had made loans in respect of Property 3, Property 4, Property 5 and Property 6. The claim related to losses which were incurred in mortgages which had been granted to former clients. The solicitors acting on behalf of Lender F also reported the Respondent to the Applicant. The Respondent stated that all these loans were based on valuations. The loans were 85% of the value. The mortgage product referred to 85%. In his statement he said:

> "My understanding is that the concept of the same-day remortgage contemplated that a borrower would purchase a property using funds which had been obtained and would then immediately mortgage it in favour of [Lender F]."

With the benefit of hindsight he thought that was strange. At the time as explained to him it did not seem strange. In the market as it was, lenders were falling over themselves to try and secure business. If they tried to lend on price they were constrained. He referred to the practices of Northern Rock which dealt mostly with first time buyers, whereas these transactions were buy to let, which was a slightly different market; Lender F was by far the largest lender of record in the market. It wanted to best its competitors by the nature of the product. The Respondent stated that the loan was described as a remortgage, but when it came to him and he read all the terms and conditions it did not stack up as a remortgage offer. Such an offer would usually say that the borrower must repay the mortgage registered against the property. All these

offers had a flat 85% of value, without any reference to an existing mortgage being redeemed as part of the process. He said in his statement:

> "Consequently, it is evident that [Lender F] were content to rely solely upon value of the property for repayment of its loans and, whilst the valuation reports I have seen in relation to these transactions were printed on the letterhead of [Lender F], I now understand that, in a large number of cases, [Lender F] "obtained" valuations by agreeing with the mortgage applicant and the mortgage broker that a valuation had already been obtained by them and could be retyped/transcribed on to [Lender F] paper and used for the purposes of the loan applications, such was [Lender F's] desire to secure such mortgages."

One of the borrowers had 38 properties on his books, supposedly remortgaged individually. The Respondent stated that one did not remortgage drip by drip; one did it on a portfolio basis, or in sections. It did not make any sense as a genuine remortgage product. The mortgage offer was a standard form document. As to who told him it was a remortgage product, the product came about, and they seemed to be receiving it all the time. He had spoken with a mortgage broker in the North West and local to the borrower to see how it worked. He had concerns. The Respondent was referred to Lender F's valuation report. He stated that in looking at it he would be looking for issues of retention (of the loan monies) as that would have to be picked up on and structural stability and repair issues. In this particular case, Property 5, the valuation was stated to be £115,000 and the loan was £97,750, with fees to be added to the loan. The Respondent agreed when taken to the mortgage offer for a different property that the mortgage requirements included: "This offer is based on the following remortgage requirements" He took the Applicant's point that "remortgage" only had to be referred to once in the document but it could not be described as mortgage because then the lender could only lend 85% of the purchase price. These mortgages were being effected up and down the country. Investment schemes would peddle this product. Lender F could only make this product attractive as being based on valuation, therefore beating Northern Rock who offered a large percentage of purchase price, and an unsecured loan in addition. By calling it a "remortgage" product the lenders could avoid all the complexities of an additional unsecured loan, by categorising all the loan as "remortgage" funds based on the certified value of the property being charge, even though the loan was, to their knowledge, being made on the day the borrower bought the property, which was exactly why it was called a "same day" remortgage.

36.46 In cross-examination, the Respondent agreed the Clients G, H and I were known to each other and the transactions had similar features (set out in the background to this judgment). The Certificate of Title was a standard report. They were completed with "N/A" recorded against the "Price stated in Transfer". The Respondent had explained the nature of the transaction as he understood it and fee earner J completed them in the manner he explained. The Respondent could not remember whether J or one of the secretaries had spoken to the lender and been told to put N/A instead of the purchase price on the Certificate of Title. They were told N/A did not work, so they crossed it out, put "N/A" and sent the Certificate of Title in. He did not know the reason.

36.47 In cross examination, the Respondent stated that he interpreted the mortgage as a product to facilitate the purchase in the way the borrower and lender wanted. It was well known at the time that Lender F was providing a product to try to persuade

borrowers that they could start their own property portfolio by lending above the purchase price. Loans had to be above the purchase price because it was explained to the Respondent that it would generate additional funds to go towards the next purchase. There was a rolling effect; a concept of owning your own property portfolio without putting money down. It was not his understanding at the time that the advance could not be used to fund the purchase. The Respondent was referred to his witness statement where he said:

> "My understanding is that the concept of the same-day remortgage contemplated that a borrower would purchase a property using funds which had been obtained and would then immediately mortgage it in favour of [Lender F]."

The Respondent stated that people had the idea they could buy for the property and immediately remortgage it, in effect to fund its acquisition. He then spoke to a broker who said it made no sense as the purpose of the mortgage monies was to acquire the property. Initially they followed the procedure and bought, usually by a bridging loan which was repaid when the mortgage loan came in, but subsequently that ceased and they used the mortgage funds for the purchase of the property as any other way made no sense. Based on speaking with the broker, and how the lender interacted with them it was not a remortgage product. The lender was only interested in them securing a legal charge on the property to secure the loan, underpinned by valuation.

36.48 It was put to the Respondent that the original method gave the lender the benefit of knowing the client had other funds. The Respondent stated that the mortgage application form did not even require him to demonstrate what the purchaser earned or how they would repay; it was purely based on value. The Respondent saw no difference between the two approaches (the one followed initially and then using the loan to purchase) because that was how the mortgage advance was packaged. Now, the Respondent agreed that he should not it have used the mortgage advance to fund the purchase, because it was a *re*mortgage product. He therefore admitted he had acted recklessly. At the time he did not see risks; he should have looked at the word "remortgage". The Respondent stated that lenders were pressurising the firm to take funds. All the lenders were in a fight to secure virgin business coming through at that time. Lender F bought up other entities' mortgage books and acquired market share. There was a frenzy. The Respondent regretted that as a professional person he got caught up in it and did not stand back. The Respondent stated that the product did not make sense now after the biggest financial crash in modern history, and that should not influence how people viewed their legal obligations but all this had to be seen as it was then, not as it is seen now. The Respondent was not then as prudent then as he was now, with the benefit of hindsight. The product was very common and a lot of domestic conveyancers knew of it; they talked about it on the phone. They were processing these mortgage en masse because they were being promoted en masse. It was all transactional, and the lenders wanted transactions, and knew exactly what they were doing.

36.49 The Respondent stated that he was not doing a great deal of supervision. Ms J was unadmitted but she had experience of plot sales through working in-house for a developer. She was very capable. Also the firm had another person, a licensed conveyancer at the time. (The individual who left suddenly in February 2007.) Ms J was recruited because of the volume of work. It could be that his supervision was not

what it should be but Ms J was not far from inexperienced, and he had reason to think that she did not need close supervision.

36.50 The Respondent denied dishonesty. He would not have tried to jeopardise his 10 year old firm for the fees to be earned on ordinary mortgages. He would have not recklessly or knowingly put himself or the firm at risk in a position of being exposed to a negligence claim or seek to favour a client, who in volume terms he could do without, for the sake of fraud. It did not make sense. He made mistakes, but he had not done so to sully his name or the profession which he held dear, or to put someone at a particular advantage. This was not something he would do.

36.51 In cross examination, the Respondent was asked about what he had said in interview. He was asked (R being the Respondent):

> "SW [of the Applicant]…so you're understanding was that of a purchase price it wouldn't have been as lucrative for the mortgage lenders
>
> R: Absolutely
>
> R: …and if they mentioned purchase price … They snooker themselves on what they can lend…"

The Respondent stated that at the time he did not know why there was a significant difference between purchase price and value, but in 2017 (when the interview took place), it was seen that if the lender put in the purchase price it could not lend the sum it wanted to lend. The Respondent stated that he was answering the questions in 2017 and not in the way the matter was now looked at. The Respondent denied that as an experienced solicitor he was fully aware of the difficulty in lending on the purchase price in 2006-2008. It was clear the lender was lending more than the purchase price; that was the very nature of their product. He did not know it was a remortgage; it was a product so that the lender could lend on value. The word "snooker" was just a phrase he used. He did not recognise at the time that the difference between the purchase price and the valuation could be a hallmark of fraud. He recognised there was a problem in what all the parties wanted to achieve. If he had recognised hallmarks of fraud he would have stopped. The Respondent rejected the suggestion that he deliberately omitted the purchase price in order to facilitate the transaction or that he acted dishonestly by deliberately concealing information. Why would he be acting dishonestly; would he get some kind of advantage; he would be working dishonestly just for the sake of it. Both lender and borrower knew all: he was merely doing what they both wanted, and they both made informed decisions.

36.52 In re-examination the Respondent confirmed that in interview he had said that to lend on the purchase price would not have been as lucrative for the lender which was seeking market share for its product, devised precisely to increase market share. The lender was interested in promoting the product and as his client he was acting in his lender client's (then expressed) interests.

36.53 The Tribunal invited the Respondent to give evidence about the environment in 2006-2008 and after September 2008. The Respondent explained that before 2008 lenders used to lend from their own resources; borrowing was based on money they

held. In the early 2000s banks and financial institutions started borrowing from the money markets at preferential rates and worked out that they could use the money in mortgages. They could lend long term loans at higher rates than those at which they borrowed in the short term, and increase their market share by lending at lower rates than those borrowing on long term rates. The flaw in this model was the assumption that short term rates would always be lower than long term rates, with no provision for what might happen if this was not the case, as happened. Organisations like Lender F started acquiring other lenders; it acquired the whole loan book of a named company in an effort to increase volume. They wanted to acquire debt. The Respondent stated that he knew he should have resisted the pressure from the lenders. There might have been people at the lenders who were receiving rewards for placing mortgages as quickly as possible. It had been portrayed in films how suddenly the market started to shake and the money markets told lenders to repay the money they had borrowed short term (and lent long term) because these were not considered good loans by the long term lender to the mortgagor. Organisations like Lender F had a problem; they looked for how they could get money back, and argued that the borrowers had borrowed under false pretences for a purchase rather than a remortgage and that the loans could not be used to purchase. This was disingenuous. The lenders had to repossess, while borrower clients said there were tenants in the properties and the loans were being serviced. This caused more chaos in the markets and then lenders took possession and sold properties at a loss. There were runs on banks. It was a very stressful time. The Respondent apologised; he should have had more common sense; he was foolish. He should have seen it coming. In answer to Tribunal questions the Respondent repeated that the lenders did not ask *any* of the questions that were usual in a remortgage, including asking for a redemption statement, and proof of repayment of the existing mortgage (necessarily in existence for only a few hours as it was a "same day" remortgage). The product was a mechanism, or marketing device. Thirty or so properties were the subject of an insurance claim. The Respondent clarified that "same day remortgage meant a remortgage on the same day as purchase". So far as he could remember the Respondent was not asked to provide any information about the purchase price. He did not have to certify that the buyer had funds from elsewhere to make the purchase. He was not required to provide any information about the loan that was to be repaid by the remortgage.

36.54 At the conclusion of the Respondent's evidence, Mr Leviseur invited the Tribunal to consider the testimonials submitted for the Respondent in connection with the allegation 2.1 of dishonesty. They were given by people who understood that the Respondent faced these allegations. They had worked with him or knew of him and could judge him. The testimonials had some probative value because he was not likely to be a dishonest man. The Tribunal was considering the Respondent's state of mind many years before. He was of good standing and of good character in the profession. The Respondent continued to be of good character and he continued in the profession, once he had come back to work after a period of rest and recuperation following a period of ill health. The Respondent was not presently practising; he had made a deliberate choice not to renew his practising certificate.

Determination of the Tribunal

36.55 *Determination of the Tribunal in respect of Property 1*

36.55.1 The Tribunal had regard to the evidence including the oral evidence of the Respondent and to the submissions for the Applicant and the Respondent. This transaction was governed by the Solicitors Practice Rules 1990 but the parties had agreed to make no distinction between those Rules and the requirements of the Solicitors Code of Conduct 2007, on grounds of similarity. The Tribunal did not have to concern itself with any distinction between those two sets of provisions. The Tribunal found that the facts were as follows: Property 1 was bought at auction by the Respondent's client Mr C in the name of Company A for the sum of £31,000 in May 2006. The purchase was apparently funded by the sale of another property, but nothing turned on that. The Respondent, acting for Mr C, Company A and the Lender D, carried out the conveyancing for the purchase and completed the transaction in June 2006. He registered the property, albeit belatedly, in January 2007 in the name of Company A. Company B obtained a mortgage against the property in the amount of £90,000 for which the Respondent completed a Certificate of Title on 24 July 2006. The Respondent gave evidence that when it came to his attention that the property was intended to be registered in the name of Company B, he contacted Mr C and effected a transfer deed from Company A to Company B again acting for all the parties involved. However that deed could not be found. The Tribunal did not consider that it needed to determine whether such a deed had in fact been executed, as nothing in the allegation turned on that point. The Tribunal did not attach any significance to the fact that the inter company transfer which the Respondent stated he had effected was for no value; this could have been for a number of reasons including legitimately avoiding payment of stamp duty in moving a property between companies owned by the same sole director. Also the Respondent was not instructed in company commercial aspects of the acquisition.

36.55.2 The Tribunal had first to determine whether as alleged the transaction bore the hallmarks of mortgage fraud. A hallmark was a potential indicator of fraud but it did not mean there was fraud and the Tribunal made no finding regarding any underlying fraud or any intention to commit fraud by any of the clients or anyone else in this or any of the transactions the subject of the allegations. The Respondent stated that Mr C had a property portfolio and other loans with the same lender D and the Respondent understandably assumed that the lender knew what it was doing, as it had relied on a professional valuation of the property. While the Tribunal accepted that this was a probate sale made at auction in a fevered market where properties could rise in value at astonishing rates in a short time, the difference between the purchase price agreed in May 2006 £31,000 and the loan advance of £90,000 made in July 2006 was very significant, and made more so by the fact that the property was tenanted on what was almost certainly a Rent Act protected tenancy for only £45 per week with no evidence there was any arrangement with the tenant that they should vacate the property; indeed a letter from the Respondent to Mr C reporting on the transaction made no mention of any such arrangements, only that rent authority was to be obtained. It also referred to the probable status of

the tenancy. Furthermore neither Company A nor Company B (if it ever owned the property) had owned it for six months. The Tribunal determined that there were aspects of the transaction in respect of Property 1 which merited further investigation by the Respondent and which he admitted he did not raise with Mr C or the companies and which he admitted he did not report to his client Lender D. The Tribunal found that the transaction in respect of Property 1 bore the hallmarks of mortgage fraud.

36.55.3 The Tribunal noted that there was no evidence that the Respondent notified Lender D (as required of him) of the ownership status of Property 1 and that neither Company A or Company B had owned it for six months, or if that was the case, that Company B did not own Property 1. Indeed he put "N/A – ALREADY OWNED" in the space for "Price stated in Transfer" on the Certificate of Title because he said the property was not being purchased by Company B, and he said doing so was consistent with the transfer to B. The Respondent gave evidence that he did not notice the discrepancy between the purchase price and loan amount at the time. He was not alert to look for fraud and had admitted that although he knew the Law Society's Green Card publications existed he did not know there was one which warned of the hallmarks of fraud in property transactions, and could not remember when it was brought to his attention. He said that at the time he did not think about fraud; he missed the hallmarks and accepted that he was naïve. His focus was on redemption requirements to ensure the right people were paid back before the loan money was released. He described the extraordinary personal pressure on him at the time and his workload as reasons why he missed the signs. He spoke through the lens of what he would do today, not at the time. The Tribunal accepted the Respondent's admissions in so far as they bore the benefit of hindsight. However whatever mitigating factors there were, the Respondent facilitated a transaction with the hallmarks of fraud as alleged.

36.55.4 Dishonesty was alleged in respect of Property 1. The Tribunal applied the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos (2017) UKSC 67, which applies to all forms of legal proceedings:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The Tribunal found the state of the Respondent's knowledge and belief to be as follows: he was complying with the wishes of Client C who had made a mistake in deciding which company in his structure he wanted to own Property 1. The Respondent knew that Mr C had a property portfolio and he believed the Lender

D was an existing lender which had an independent valuation of the property. He did not recognise the hallmarks of fraud at the time, but only when the market changed after the financial crash of 2008. He knew the property was being transferred from Company A to Company B and on his evidence a transfer deed had been executed for that purpose. He knew that the purchase price box on the Certificate of Title was completed as "N/A" because he completed it and in his mind the transfer had taken place and there was therefore no purchase. He knew the property had been owned for less than six months but paid no attention to that fact. He did what clients instructed him to do without thinking about what might be behind it. The documentation was correctly registered at HM Land Registry. There was a complete paper trail save for the Transfer Deed between the companies. The Respondent knew the above facts but did not see them as hallmarks of possible fraud and therefore he did not suspect they were fraudulent. The Tribunal accepted the evidence of the Respondent on these matters. The Tribunal therefore did not consider that the inference of dishonesty could be drawn, and decided that by the standards of ordinary decent people the Respondent was not dishonest as alleged. The Tribunal therefore found allegation 2.1 not proved on the evidence to the required standard.

36.55.5 The Respondent admitted that his conduct amounted to breaches of Rule 1.01 of the 1990 Rules which required as follows:

> "A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:
>
> (a) the solicitor's independence or integrity...
>
> (c) the solicitor's duty to act in the best interests of the client;
>
> (d) the good repute of the solicitor or of the solicitors' profession;
>
> (e) the solicitors' proper standard of work."

36.55.6 The Tribunal had heard the Respondent's detailed oral evidence about the transaction and how he conducted it. The Tribunal found the Respondent to be a truthful witness and that his evidence was consistent with the documentary evidence. As to the Rule 1.01 (a) breach the Tribunal found that what the Respondent did, impacted upon his independence; Mr C might have been taking advantage of Lender D but the attitude of the Respondent to the client and his affairs was such that he did not look objectively at the facts from his other client Lender D's viewpoint. The Tribunal therefore accepted the Respondent's admission of lack of independence in breach of Rule 1.01 (a).

36.55.7 Regarding the alternative aspect of Rule 1.01 (a) the requirement not to compromise or impair his integrity, there were submissions in the Rule 5 Statement which related to all the transactions. The Statement referred to the definition of integrity in the *Wingate* case and went on to set out what the Applicant considered the Respondent should have done in a matter

demonstrating the hallmarks of mortgage. The Tribunal heard no oral submissions on integrity regarding Property 1 and no supporting evidence save that the Respondent had made mistakes and the file was, in his own words, a mess. The Tribunal did not consider that the evidence amounted to a lack of integrity and did not find that aspect of Rule 1.01(a) proved on the evidence to the required standard.

36.55.8 The Tribunal had seen evidence of the admitted mess into which the transaction descended and found that thereby the Respondent had failed to act in his lender client's best interests (a breach of Rule 1.01 (c)) and thereby had also undermined his own good repute or that of the profession (a breach of Rule 1.01 (d)). He had also thereby failed (regarding Property 1) to deliver a proper standard of work (a breach of Rule 1.01 (e)). The Tribunal therefore found it proved on the evidence to the required standard that the Respondent had breached Rule 1.01 in reject of the transaction relating to Property 1 as alleged, save in respect of integrity. The Respondent was also alleged to have been reckless (allegation 2.2) and manifestly incompetent (allegation 2.3) regarding Property 1. There had been significant mistakes in the conduct of this matter, the conveyancing transaction had, as the Respondent accepted, on the whole been a mess. The Respondent agreed he had been reckless and manifestly incompetent and the Tribunal agreed those admissions were properly made and found allegation 2.2 and 2.3 proved on the evidence to the required standard in those respects regarding Property 1.

36.56 *Determination of the Tribunal in respect of Property 2*

36.56.1 The Tribunal had regard to the evidence including the oral evidence of the Respondent and to the submissions for the Applicant and the Respondent. In this transaction the Respondent acted for Mr C personally. The mortgage offer was made in February 2006. It stated that the valuation of the property was £400,000. The mortgage instructions to the firm of the same date quoted the purchase price as £400,000. The purchase price agreed in June 2006 exactly four months later was £335,000, £65,000 less than the price stated to the lender, a difference far in excess of the amount of variation permitted by the lender. The Respondent signed a Certificate of Title in September 2006 which had been pre-populated by the lender in respect of "Price stated in Transfer" with the figure of £400,000. The figure for the mortgage advance, also pre-populated, was in the box below on the form in the figure of £251,250. The Respondent acknowledged that he completed the handwritten entries on the Certificate of Title personally.

36.56.2 The Tribunal found that the Respondent focussed on getting as many files from point A to point B as fast as possible; he got caught up in the febrile momentum and overheated market of the time and in trying to provide service to his clients' needs. The Tribunal considered that it was not appropriate to heap all the blame for what happened at the time on solicitors, where lending was being done on professional valuation advice, and driven by lenders. The Respondent's role was to effect the transaction between Mr C and the lender, a large commercial institution. The Tribunal noted that the borrowing was being effected with the assistance of an independent broker and based on

professional valuation advice. The Respondent had to achieve a valid enforceable legal charge over the property for the lender. The Tribunal had to determine whether the facts bore the hallmarks of mortgage fraud. The Tribunal noted that the mortgage advance in relation to the actual price was within the lender's parameters; against a maximum permitted loan of 85% of the purchase price (£335,000) the figure of the advance (£251,250) was exactly 75%. The Tribunal considered that this supported the proposition that a mistake had been made by the lender in prepopulating the Certificate of Title with a mistaken figure. The Applicant noted the Respondent's concern that there might have been collusion among the lender's staff to maximise lending for their own advantage. The conditions of the time are a relevant consideration to which the Tribunal gave limited weight, as set out below. The Respondent's evidence was that he did not look at the loan to price ratio when he signed the Certificate of Title; that it was many months since the offer had been made, and that the lender itself did not spot the error. He knew nothing of any machinations with the lender's staff. The Tribunal considered that what might be going on with the lender was irrelevant; it was unsupported by any evidence. The Tribunal had the evidence of the contract for sale stating the purchase price to be £335,000. The Tribunal focused on the actions of the Respondent and the evidence before it. The point of overstating the price would be to enable the purchaser to obtain a higher loan figure than would be permitted if the correct purchase price was stated. Here the amount obtained was considerably below what could have been borrowed. The evidence was consistent with the price figure inserted by the lender on the Certificate of Title where there was a third party broker involved. This was a mistake which the Respondent did not spot. The Tribunal did not consider that the transaction bore the hallmarks of fraud. Rather the evidence was indicative of a simple mistake which the Respondent did not spot. He had no reason to consider the transaction for months. He was under pressure. Mortgage offers focussed on issues such as retention, not relevant here. He admitted, with hindsight, that he was verifying the whole document, but he was focused on getting the transaction through as both buyer and lender wanted. A mistake, even a negligent one, was not necessarily misconduct. The Respondent's oversight might be unfortunate but was not evidence of manifest incompetence or worse. In any event as the Tribunal found there to be no hallmarks of fraud it did not need to consider whether there had been breaches of the Rules. The Tribunal did not find allegation 1.1.1 proved on the evidence to the required standard in respect of Property 2, and therefore did not have to consider any aspect of allegation 2 in respect of it.

36.57 *Determination of the Tribunal in respect of Properties 3, 4, 5 and 6*

36.57.1 The Tribunal had regard to the evidence including the oral evidence and the submissions for the Applicant and the Respondent. Transactions 3, 4, 5 and 6 had several common features which are set out in the background to this judgment. The Respondent dealt with Property 4 personally. Properties 3, 5 and 6 were conveyed by an unadmitted but experienced person Ms J, for whom he was responsible for supervising, and who worked to his instructions. Property 4 transaction straddled the 1990 Rules and the 2007 Code of Conduct but neither party took any points about that on the basis that the requirements

of the two sets of regulatory requirements were essentially the same. The transactions in respect of properties 3, 5 and 6 were subject to the 2007 Code. The loans were offered under the colloquial description of a "same day remortgage" product. No one disputed that the product was created by the mortgage company Lender F, and nor was the Respondent's description of the lending market at the material time challenged by the Applicant. The Respondent had given a thoughtful and coherent explanation of the state of the market before the financial crash. The Tribunal noted that actual or potential mortgage fraud involved a fraud on the lender. The Respondent or Ms J acted for both the lender and borrower in these transactions. The Tribunal accepted the Respondent's evidence that mortgage lenders which were highly sophisticated (albeit they later came to grief when the market changed dramatically against them) were competing to outdo each other to enhance their market share at the material time in a highly competitive market situation. This meant focussing on lending as much money as possible as fast as possible because in that way lenders could optimise profits from the lower interest rates that the money markets were prepared to offer them long term, by re-lending at a higher rate short term. A market was encouraged which focused on the creation and development of property portfolios by buyers such as Messrs G, H and I, who could create whole portfolios of property investment with little or no investment themselves. The development mechanism involved providing more money to the borrower than the purchase price of a buy to let property, to provide seed money for the next purchase, itself to be financed on the same (surplus generating) basis. The Tribunal accepted that Lender F required no information about the purchase price to be paid by the borrower. The Respondent was not required to certify that the buyer had funds from elsewhere to purchase the property before it was "re" mortgaged to them. Nor was he asked to provide details of any existing loan to be repaid. The Tribunal accepted the Respondent's evidence that the product was being sold across the country and that it was a subject of discussion among conveyancing solicitors at the time. It fast became obvious to the borrower clients and to their representatives such as the Respondent that the bridging loan facility made no sense in these transactions (as he explained in his evidence) and the funds were instead used on the same day they were advanced in order to fund the purchase. There was no enquiry about a loan taken out to buy the property, to be redeemed by the loan from the lender. The lender client achieved its objective; to lend more than the purchase price paid by the borrower, the loan based on valuation, and maximise its lending book by so doing. The purchaser/borrower client incidentally avoided the needless loop of a bridging loan. These were transactions of their very particular time now being prosecuted more than a decade after they took place. (The Tribunal made no criticism of either party in this respect.) The allegations were framed and presented with knowledge of the much more prudent conveyancing market of today and present standards, but the reason today's standards were in place was a result of the extraordinary effects of lenders' desperate efforts to increase their market share in financially imprudent ways which led to the crash of 2008. The Respondent accepted that as a result of the crash his own conduct was now very different. The Tribunal considered that the Respondent's admissions were made based on his knowledge of current conveyancing practice and hindsight and not on the standards prevailing at the material time. The Tribunal considered that the

hindsight provided by the biggest financial cash in history should not impact on how one treated a single solicitor's obligations at the material time. The Tribunal did not accept that the duties of a solicitor before the crash extended to acting in place of the financial regulator or the Bank of England. It was incumbent upon the solicitor to carry out his clients' instructions in line with their best interests in such circumstances as those being presented where both lenders and borrowers were benefitting from the arrangement and it was not unlawful for them to act in this way. The Respondent had done no more and no less than his informed lender and borrower clients had instructed him to do. That matters had subsequently gone awry did not mean that he was guilty of professional misconduct. The Tribunal considered that the lender client knew what it was doing, the borrower clients wanted to borrow and the solicitor did what he was asked. If the Respondent had blown the whistle he would have been the only one to do so. The financial regulatory system allowed the mortgage market to operate in that way. The Respondent had been asked key questions about whether the lender client required particular information about the transactions and in the Tribunal's view his answers in the negative, completely undermined allegation 1 in respect of properties 3, 4, 5 and 6. The lender did not ask what lending there was to fund the purchase before it was to be "re" mortgaged to them. It asked for no undertaking that such prior lending would be repaid through its loan. The documentary evidence supported this complete absence of enquiry by the lender client as to facts, all of which would usually be expected to be the subject of express enquiry in a loan transaction for a remortgage of an already owned property. That absence of enquiry taken together with the fact that everything revolved around the valuation of the property the subject of the loan, convinced the Tribunal that to all intents and purposes and to those working in the market at the time this was a mortgage product being packaged and sold as a remortgage. On that basis, the Tribunal could not find proved on the evidence to the required standard that these transactions bore the hallmarks of fraud. That the lender's model proved to be unsound in the longer term is irrelevant.

36.57.2 In arriving at this decision the Tribunal had gone through the Rule 5 Statement and the facts around the transactions which it set out including that the borrower did not own the property at the time of the offer being made and that the firm did not notify Lender F that the sum borrowed was greater than 100% of the actual purchase price, nor that the sum borrowed was greater than 85% of the actual purchase price. These were facts but it was the understanding of all the parties, and certainly of the Respondent as he worked it out in discussion with the broker (and conveyancing colleagues) how the product was intended to work; its whole point was to operate based on value; this was part of the reason why the lender packaged the product as it did. The Tribunal did not overlook the Rule 5 Statement raising issues about the surpluses over the purchase prices of Properties 4, 5 and 6 being the seed money to fund other purchases and being transferred to companies related to the client, but it also noted that there was no allegation about those surpluses. No allegation was made about the companies and personal status of Clients G, H and I to provide an explanation for the movements and therefore the Tribunal made no finding about them. There was no allegation the Respondent benefitted in any way other than by the modest professional fees charged from the purchases and

mortgages. The Rule 5 Statement also referred to the fact that respect of Property 6 while Client H was recorded as the purchaser on certain documents, the mortgage offer was made to Client G and the sale was completed with Client G as the purchaser. Again the Tribunal noted that no submissions were made about the financial arrangements of clients G, H and I other than the acceptance by the parties that these individuals were connected and known to each other. Something had also been made of the degree of supervision exercised by the Respondent over Ms J at the material time. The Respondent stated that it was not done in the way he would now exercise supervision but the Tribunal considered the point to be irrelevant; Ms J was a competent clerk recruited for her experience whom the Respondent trusted to bring any problems to him. She was accustomed to working without supervision of any detailed kind.

36.57.3 The Tribunal recognised that it might be unusual for the Tribunal to reject admissions, particularly repeated and heartfelt admissions, by a Respondent but in this particular case the Tribunal did not find the admissions regarding Properties 3, 5 and 6 to have been properly made as it did not regard the evidence to be sufficient to establish that the transactions bore the hallmarks of mortgage fraud. Following on from this finding the Tribunal did not have to consider the detail of the breaches alleged in terms of the 1990 Rules and the Code 2007. The Tribunal therefore found that allegation 1.1 had not been found proved to the required standard on the evidence in respect of Property 3, Property 4, Property 5 and Property 6.

36.57.4 In respect of allegation 2, in the circumstances the Tribunal also did not consider that the admissions of recklessness and manifest incompetence had been made properly and did not make any finding of either allegation in respect of Properties 3 to 6. The Respondent had denied dishonesty and the Tribunal made no finding that he had been dishonest.

36.58 The Tribunal wishes to make it clear that its findings regarding these properties should not be taken to undermine the seriousness of the professional duties of solicitors for the protection of the public and the reputation of the profession in acting for both lenders and borrowers. In the particular circumstances of these transactions at a very singular time in financial history the Tribunal did not consider it to be the responsibility of the Respondent to be the gatekeeper and to safeguard the entire line of regulation where a financial regulator existed; the solicitors' profession could not be blamed for the financial crash of 2008. The lenders in question were large commercial entities which knew exactly what they were doing and why. The Tribunal recognised that there could have been circumstances where an individual might have fallen foul of the regulatory provisions during the period in question but it did not consider that this case was one of them.

Previous Disciplinary Matters

37. There had been no previous findings against the Respondent before the Tribunal.

Mitigation

38. For the Respondent, Mr Leviseur offered mitigation in respect of the only allegations which had been found proved against the Respondent, allegation 1.1 and part of allegation 2 in respect of Property 1. Mr Leviseur submitted that the Respondent was of previous good character as his testimonials indicated. He was a competent and conscientious lawyer who had come back into the profession after a serious health problem. He was good at what he did and wished to continue to practise. The matters before the Tribunal had arisen many years ago in a different legal world. If insight was a predictor then the Tribunal could be entirely satisfied that his conduct would not be repeated; he had behaved impeccably in practice in a new world. The Applicant had subjected his files to serious consideration in 2013 and had no concerns. The Respondent was a man of good character. The Respondent had properly and honourably stepped back from the profession so that these proceedings could be worked through and he could give them his undivided attention. He was working in a lowly job in a supermarket. Mr Leviseur submitted that unusually, and primarily because there was no finding of lack of integrity, the Respondent should be permitted to practise.

Sanction

39. The Tribunal had regard to its Guidance note on Sanctions (November 2019). The Tribunal had found proved that between approximately 13 February 2006 and 7 March 2008 the Respondent facilitated a transaction in respect of Property 1 which bore the hallmarks of mortgage fraud and thereby: acted in breach of certain Basic Principles (not extending to lack of integrity), and that his conduct was reckless and manifestly incompetent in respect of that transaction. The Tribunal assessed the seriousness of the misconduct. As to the Respondent's culpability, he had no deliberate motivation for what had occurred; he had made errors. His actions were not planned however he had direct control of and responsibility for the file and was an experienced conveyancing solicitor at the time. As to any harm caused by the Respondent's actions, a loan had been obtained in the amount of £90,000 against the property. The Respondent was slow to deal with post completion matters and as a result of the Respondent's actions the lender had made an unsecured loan to Company B in respect of a property registered to Company A. The charge had not been registered with Companies House. By the time the error came to light Company A was in liquidation. The Tribunal considered that there was a degree of resulting harm to the reputation of the legal profession in a case where a solicitor allowed a file to get into serious disarray. The extent of the harm was reasonably foreseeable as the Respondent failed to ask questions that would have been expected of a competent solicitor. The Tribunal considered whether there had been any aggravating factors. Certainly the Respondent should have known that the conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. As to mitigation, the problem arose initially because of an error by the client Mr C at the auction about which of his companies he wanted to own Property 1. No harm had been intended. The Tribunal agreed that it seemed likely that a judge would have enforced the charge so there was no real evidence of direct harm to the lender client. This was a single episode in an otherwise unblemished career. The Respondent had produced testimonials and no fault had been found by the Applicant with others of the Respondent's files which it had reviewed. The problems had occurred between 2006 and 2008; the allegations were historic. The Respondent had no problems for the next 10 years and when the Applicant

reviewed his files more recently in 2013 it found no problems. The Respondent had shown genuine insight into the issues. Indeed the Respondent was self-critical to an extent that was beyond any fault found. As to sanction, the Tribunal considered whether it should make no order against the Respondent or impose a reprimand. However the finding of manifest incompetence and recklessness in respect of Property 1 took the conduct beyond that level. The Tribunal determined that a fine was merited, but the protection of the public and the reputation of the profession did not require suspension or strike off. The Tribunal also took into account the Respondent's personal mitigation. It accepted his evidence that he had let his work completely take over his life and led to the breakup of his home life. The Tribunal determined that the conduct was moderately serious including recklessness and manifest incompetence, albeit relating only to one property and was at the lower end of indicative fine band Level 2. There was no need to reduce the fine by relation to ability to pay as the Respondent had capital. Taking into account all the circumstances the Tribunal would impose a fine of £2,500.

Costs

40. The Applicant had submitted a Schedule of Costs totalling £39,465.73. Mr Leviseur informed the Tribunal that the Respondent had been prepared to agree a sum in costs with the Applicant and stood by his agreement to pay £32,500. He thought it would not be right to withdraw the offer notwithstanding the outcome of the hearing. The payment would reduce his savings by about half. Ms Hansen for the Applicant submitted that it was a matter for the Tribunal whether the agreement between the parties on costs should stand. Ms Hansen submitted that the costs of the forensic investigation had amounted to just under £17,000. Two FIOs had been involved and the costs of their forensic investigation reports totalled £26,000. The costs of the initial investigation report were £9,000. The Schedule did not include the cost of the first investigation. The cost of supervision related to drafting the EWW letter were £450 which Ms Hansen submitted was reasonable. Capsticks worked to a fixed fee which had originally been assessed at £34,500. It had subsequently been reviewed on the basis that the case was felt to be less complex than originally thought and the fixed fee claimed now was £18,500. Based on the lower fixed fee, Capsticks' hourly rate worked out at £214 per hour based on Capsticks having claimed for 86.4 hours of work on review of case papers and case planning, investigation, and preparation of Rule 5 and documents for issue, directions, Answer and case management and the estimated time for the hearing as set out in the Schedule. The Applicant's costs claim totalled nearly £40,000 but the Applicant had reached agreement with the Respondent that he would pay £32,500. The difference was in part a reduction for the costs of the forensic investigations; the time spent on information reviews was significant and of the cases looked at only Properties 3, 4, 5 and 6 were used for the Rule 5 Statement in addition to Properties 1 and 2. Ms Hansen submitted that the costs were reasonable and that proportionate time had been spent on the matters put to the Tribunal for consideration. The Tribunal had found most of the allegations not proved and was entitled to make a reduction in the costs to be awarded to the Applicant if it wished. The Applicant said that the allegations were properly brought and the Tribunal could take that into account. The Respondent had submitted a statement of means dated 19 November 2019. Ms Hansen submitted that the Respondent had assets of £65,000 or so, a greater sum than the sum claimed for costs and the lower sum agreed. The Applicant recognised that the Respondent's monthly income was less than his monthly expenditure but he had some capacity to increase it when the national minimum wage was increased; he was working part time and his

finances had been restrained by his recent income. The Applicant recognised that he was not a person of significant means, but he had the means to pay. The Tribunal might wish to take into account that the Applicant did not seek immediate payment and was prepared to engage in a payment plan and discussions. Mr Leviseur found himself in difficulty in commenting on the costs claim because of his instructions. He however raised a point about the level of the £450 supervision costs. The Tribunal noted the agreement which the Respondent had entered into and to which he was prepared to adhere. The Tribunal considered that the allegations had been properly brought and were conducted reasonably by the Applicant. The costs claimed were reasonable and proportionate, but the Tribunal considered that it would be appropriate to reduce the costs award to the Applicant to reflect the fact that most of the allegations brought against the Respondent had not been found proved. The Tribunal related the reduction to the costs of the second forensic investigation report as the allegations relating to Properties 3, 4 5 and 6 had not been found proved. The Tribunal assessed costs in the amount of £20,000.

Statement of Full Order

41. The Tribunal ORDERS that the Respondent, STEPHEN PEARSON, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

Dated this 26th day of February 2020
On behalf of the Tribunal

A. Kellett
Chair