

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12043-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

GARY JAMES BURNS

Respondent

Before:

Mr A Ghosh (in the chair)

Mr B Forde

Mr P Hurley

Date of Hearing: 6 October 2020

Appearances

Andrew Bullock, counsel, of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent were set out in a Rule 12 Statement dated 20 December 2019 and were that while in practice as a Solicitor at Nalders LLP (“the Firm”):
 - 1.1 Between 22 August 2017 and 21 May 2018, he made statements to Mortgage Lender A in respect of progress purportedly being made in respect of registering their charge over Property A, which were untrue and which he knew, or ought to have known, were untrue at the time they were made, and thereby breached all or any of:
 - 1.1.1 Principle 2 of the SRA Principles 2011 (“the Principles”);
 - 1.1.2 Principle 4 of the Principles; and
 - 1.1.3 Principle 6 of the Principles.
 - 1.2 Between 16 and 30 May 2018 he made statements to Client B and Client B’s Agent in respect of the letting of Property B, which were untrue and which he knew, or ought to have known, were untrue at the time they were made, and thereby breached all or any of:
 - 1.2.1 Principle 2 of the Principles;
 - 1.2.2 Principle 4 of the Principles; and
 - 1.2.3 Principle 6 of the Principles.
 - 1.3 In or around 30 April and 1 May 2018, he gave a date on Stamp Duty Land Tax and HM Land Registry forms which was false and which he knew, or ought to have known, were false, and thereby breached either or both of:
 - 1.3.1 Principle 2 of the Principles; and
 - 1.3.2 Principle 6 of the Principles.
 - 1.4 Between 14 February (at the earliest) and 4 June 2018, he made statements to his employer regarding the progress of conveyancing matters, which were untrue and which he knew, or ought to have known, were untrue at the time they were made, and thereby breached either or both of:
 - 1.4.1 Principle 2 of the Principles; and
 - 1.4.2 Principle 6 of the Principles.
 - 1.5 Between 8 August 2017 and 15 June 2018, he failed to complete post completion formalities in respect of his client files promptly or at all, and thereby breached all or any of:
 - 1.5.1 Principle 4 of the Principles;
 - 1.5.2 Principle 5 of the Principles; and
 - 1.5.3 Principle 6 of the Principles.
2. In addition, allegations 1.1, 1.2, 1.3 and 1.4 were advanced on the basis that the Respondent’s conduct was dishonest.

Documents

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

Applicant

- The originating Application, Rule 12 Statement (as amended) and exhibits
- Extracts from files of the Firm
- Two witness statements of Charlotte Adams dated 6 and 16 March 2020
- Two witness statements of Gayle McDermott dated 6 March and 24 September 2020
- Witness statement of Simon Rogers dated 6 March 2020
- Witness statement of Zoe Trethewey dated 6 March 2020
- Civil Evidence Act Notices dated 6 March and 8 September 2020
- Schedules of costs at issue dated 20 December 2019 and as at the date of the final hearing dated 29 September 2020
- A “relevant correspondence” section of 9 pages

Respondent

- The Respondent’s Answer dated 5 February 2020
- Respondent’s witness statement dated 6 March 2020
- Statements of financial means dated 3 March and 15 September 2020 and supporting documents
- A “late submissions” section of 7 pages.

Preliminary Matters

Application to proceed in the Respondent’s absence

- The Respondent did not attend the hearing. Mr Bullock applied for the hearing to proceed in the Respondent’s absence. He referred the Tribunal to correspondence with the Respondent about attendance and in particular an email of 2 October 2020 in which the Respondent had stated:

“I advise that it is my intention not to contest these proceedings further, as a result of the severe distress and anxiety that I am currently experiencing and the impact that I have suffered on my mental health. Subsequently, and as result of this, I will not be attending the virtual hearing commencing on the 6 October 2020...”

Mr Bullock stated that the Respondent was clearly aware of the hearing date and had made the decision of his own volition not to attend the hearing. In the same email the Respondent had asked the Tribunal to give consideration to the statement of means he had submitted which indicated, Mr Bullock submitted, that the Respondent was content for the hearing to proceed in his absence. In response to an emailed enquiry from the Tribunal the Respondent had stated in an email of 5 October 2020:

“I confirm that I am not seeking an adjournment of the hearing.”

5. In response to a question from the Tribunal, Mr Bullock stated that whilst the references to distress, anxiety and mental health were potentially relevant factors, the Respondent had produced no supporting evidence, had not sought an adjournment and had indicated he was content for the hearing to proceed in his absence.
6. The Tribunal was satisfied that notice of the hearing had been served on the Respondent and that accordingly by virtue of Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 it had the discretion to hear the case in the Respondent's absence if that was fair in all the circumstances. The Tribunal considered the factors set out in R v Jones [2002] UKHL 5 in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal gave due weight to the judicial comment in Jones that it is only in rare and exceptional cases that the discretion to proceed in a Respondent's absence should be exercised. The Tribunal also had regard to the observations in GMC v Adeogba [2016] EWCA Civ 162, that, in determining whether to continue with regulatory proceedings in the absence of the accused, whilst the principles outlined in R v Jones were the starting point, it was important that the analogy between a criminal prosecution and regulatory proceedings should not be taken too far. In a criminal prosecution steps could be taken to enforce attendance by a defendant; he or she could be arrested and brought to court. No such remedy was available to a regulator and in determining whether to continue with regulatory proceedings in the absence of the accused and that the following factors should be borne in mind by a disciplinary tribunal:
 - (i) the tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
 - (ii) the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
 - (iii) it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
 - (iv) there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they signed up when being admitted to the profession.
7. The Respondent had not asked for an adjournment or objected to the hearing proceeding in his absence. No evidence of a medical basis for an adjournment had been supplied. The Respondent had made comments indicating he envisaged the hearing proceeding in his absence. He had provided a brief answer to the allegations, a fuller witness statement and provided information relevant to mitigation and his financial position. Based on the correspondence leading up to the hearing the Tribunal did not consider that there was any indication that the Respondent would participate in a hearing at a later date. The Tribunal determined that the Respondent had voluntarily absented himself from the hearing and there was no good reason not to

proceed. The allegations were of serious misconduct and the Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

8. The Respondent was admitted to the Roll of Solicitors on 4 May 2004. From 23 March 2017 until 15 June 2018 he was employed as a Senior Associate Solicitor based in the Firm's head office in Truro where he specialised in commercial property. In the Rule 12 Statement it was stated that he had a Practising Certificate for the period 2019 to 2020, which was subject to the condition that he may act as a solicitor only as an employee where the role has first been approved by the Applicant.
9. The Respondent left the Firm on 15 June 2018. A colleague took over the conduct of the Respondent's files from 13 June 2018. On 15 June 2018 the colleague approached the Firm's COLP, Gayle McDermott, for assistance with various concerns. Ms McDermott duly investigated and emailed her preliminary findings to the Respondent on 21 June 2018. The Respondent replied on 25 June 2018 acknowledging various "practical errors", referring to various extenuating circumstances and stating "there is no intentional dishonesty on my part."
10. The Firm submitted an initial report to the Applicant on 25 June 2018 and following an internal investigation submitted a final report on 11 March 2019. The allegations against the Respondent arose out of these reports.

Witnesses

11. There was no live evidence during the hearing. The written evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

12. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations "to the standard applicable in civil proceedings". In other words, the Applicant was required to prove the allegations on the balance of probabilities (that the conduct and breaches alleged were more likely than not to have occurred). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
13. **Allegation 1.1: Between 22 August 2017 and 21 May 2018, the Respondent made statements to Mortgage Lender A in respect of progress purportedly being made in respect of registering their charge over Property A, which were untrue and**

which he knew, or ought to have known, were untrue at the time they were made, and thereby breached all or any of:

- 1.1.1 Principle 2 (you must act with integrity);
- 1.1.2 Principle 4 (you must act in the best interest of each client); and
- 1.1.3 Principle 6 (You must behave in a way that maintains the trust the public places in you and in the provision of legal services).

The Applicant's Case

- 13.1 The Respondent was instructed in the purchase of Property A, which was completed on or around 20 June 2017. The Respondent was also instructed by the mortgage lender. Mr Bullock referred the Tribunal to various emails sent between August 2017 and May 2018 in which the Respondent made various statements to the mortgage lender about the progress of an application to the Companies Court and the separate application to Her Majesty's Land Registry ("HMLR") to register the mortgage against the title to Property A. The Applicant's case was that these various statements were untruthful and the steps mentioned had not been taken.
- 13.2 The following statements were made by the Respondent to the mortgage lender:
- (In an email dated 22 August 2017) *"We apologise for the failure to respond previously but confirm that we are taking all necessary steps to register your charge and confirm that you remain protected"*
 - (In an email dated 25 October 2017) *"The Court application is progressing well and matters should be resolved shortly. I will submit the UNI [an HMLR form] to the Land Registry and will return with evidence of registration as soon as I am able to do so"*
 - (In an email dated 27 November 2017) *"will ensure that the UNI submitted today. The court application is progressing and I will confirm the hearing date as soon as one is received. I assure you of my utmost attention to this matter at all times"*
 - (In an email dated 8 January 2018) *"I will ensure that the UNI is dealt with as a matter of urgency..."*
 - (In an email dated 30 January 2018) *"I'm lodging the UNI personally today"*
 - (In an email dated 14 February 2018) *"after some delay a UNI has been sent to the Land Registry. It should be processed and showing by them within the next couple of days... The Companies House registration is progressing and I hope to have the completed Registrations back very soon"*
 - (In an email dated 12 March 2018) *"The Land Registry rejected my application and it is being resubmitted today"*
 - (In an email dated 20 March 2018) *"I have also submitted a UNI to the Land Registry"*

- (In an email dated 17 April 2018) “*I will chase up the [Court] hearing date and come back to you as soon as I hear*”; and
- (in an email dated 21 May 2018) “*I have just chased [the Court hearing date] up. I will come back to you as soon as I hear*”.

- 13.3 It was submitted that, as the file holder, the Respondent knew the relevant form (UN1) was not submitted to HMLR until 26 March 2018 at the earliest, and that he had not made, or arranged for anyone else to make, an application to the Court to extend the time to register the legal charge. He was therefore aware that the information he provided to the mortgage lender in the various emails referred to above was not true. These were described by the Applicant as significant events in the progress of the transaction and as the fee earner with day to day conduct of the file it was submitted to be inconceivable that the Respondent would not have known that they had not taken place at the time that he made the statements. In the alternative it was submitted that he ought to have known that that was the case and, if he was in any doubt, should have checked with the file before giving advice to his client. In her witness statement Ms McDermott described the support and supervision provided to the Respondent being “*not only adequate ... [but]... beyond what he could have expected from a compliance and commercial perspective*”. She stated that in her investigation she had found no evidence of the relevant tasks being delegated or any follow-up emails questioning progress. She also described as “*implausible in the extreme*” the delegation of the application to Court given that the Respondent would have to be a pro-active participant in any such application.
- 13.4 It was submitted that by providing such untrue and misleading statements the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. The Applicant relied on Wingate v SRA [2018] EWCA Civ 366 in which it was said that integrity connotes adherence to the ethical standards of one’s own profession. It was submitted that by providing untrue information to his client in circumstances where he knew (or at the very least should have known) it to be untrue the Respondent failed to act with integrity and therefore breached Principle 2 of the Principles.
- 13.5 The Applicant submitted that it was in the best interests of a solicitor’s client for them to be fully informed as to the true and accurate position so they are able to make fully informed decisions about progress and to ensure that their assets are fully protected at all times. By providing false and misleading information to his mortgage lender client was alleged to the Respondent failed to act in his client’s best interests in breach of Principle 4 of the Principles.
- 13.6 The Applicant submitted that a member of the public would expect a solicitor to be truthful in all of his dealings with his client and that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a solicitor providing untrue and misleading information to his client’s mortgage lender. By doing so, the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

The Respondent's Case

- 13.7 In his Answer, the Respondent denied this allegation.
- 13.8 As set out in [4] above, the Respondent stated in an email of 2 October 2020, shortly before the hearing, that he did not intend to contest the proceedings further. The Tribunal reviewed the material before it and the key elements of the Respondent's position drawn from his Answer, his witness statement and his email of 25 June 2018 to the Firm (responding to the preliminary investigatory findings) are summarised below.
- 13.9 In his Answer, the Respondent denied the allegation on the following basis:
- "i. The Respondent will say that at all times the Respondent was supervised by Mr Simon Rogers ('Mr Rogers') and the Firm operated a case management system whereby all employees of the firm readily had access to client files. The Respondent will say that the Firm was required to undertake monthly reviews of files under the Respondents [sic] control. The Respondent will say that at all times the Firm had access to the files under the Respondents [sic] files and the Firm knew or should have know [sic] the current status of all matters. The Respondent will say that the Firm failed to provide adequate support, assistance and supervision to the Respondent.*
 - i. The Respondent will say that instructions were provided to support staff of the Firm to register the mortgage at Companies House withing [sic] 21 days from the date of completion. The Respondent will say that an application was made to Companies House for registration of the mortgage but the application was rejected by Companies House.*
 - ii. The Respondent will say that support staff of the Firm were instructed by the Respondent to liaise with other colleagues in the Firm for an application to be made to the Court to obtain an order to register the mortgage at Companies House. The Respondent will say he was given assurances by support staff of the Firm that this had been done and that the assurances given by the Respondent to the lender were provided on the basis of information given to the Respondent by support staff of the Firm. The Respondent will say that support staff of the Firm failed to follow or undertake instruction of the Respondent."*
- 13.10 With regards to the specifics of allegation 1.1, in his witness statement the Respondent stated:

"It is alleged that I failed to register a legal charge at Companies House in favour of [Mortgage Lender A]. Again, an instruction was given to [my secretary] by me to register the legal charge at Companies House within the required time frame and to register at the land registry. I was told by [my secretary] that this was in hand and that she would ask another legal assistant to help her in doing so. Given the extreme anxiety and stress that I was

experiencing at the time and my incoherent state of mind I failed to follow this up.”

- 13.11 Again with regards to the specifics of allegation 1.1, in his email of 25 June 2018 to the Firm, the Respondent stated:

“With regard to [Company A] I failed to submit the registration to companies house in the correct timescale. A UN1 was ultimately registered at the land registry, albeit not as quickly as it could have been. An earlier application was submitted to the land registry but that was rejected. This was due to work pressures and outside pressures creating increased stress levels meaning mistakes were made. I should also have instructed litigation to make an application to court for registration of the charge, but delay of this was down to a lack of diligence and not dishonesty.”

- 13.12 In response to the Firm’s preliminary investigatory findings, which included the matters on which all of the Applicant’s allegations were based, in an email dated 25 June 2018 the Respondent stated *“there is no intentional dishonesty on my part. Whilst it is evident that there are practical errors which I do not deny, there was no intention of dishonesty”*. The Respondent attributed these acknowledged practical errors to the increased pressure and stress caused by a lack of secretarial support and administrative support. He also made reference to very significant stress and anxiety in his personal life at the relevant time involving a severe illness for a close relative and other highly disruptive personal matters.
- 13.13 In his witness statement dated 6 March 2020 the Respondent again referred to a lack of support from secretaries or legal assistants throughout his time at the Firm. He described the support as sporadic and falling below what he regarded as basic levels of competency. The Respondent linked this to his decision to resign from the Firm in March 2017.
- 13.14 The thrust of the Respondent’s position was accordingly that his various statements were made in good faith. Having delegated various tasks to support staff he believed that they had been completed and due to the various pressures outlined above he failed to check the position.

The Tribunal’s Decision

- 13.15 The Tribunal had been referred to the emails from which the extracts in [13.2] above were drawn. The emails were sent over a period of several months, from August 2017 to May 2018. The emails had seemingly been sent by the Respondent, and he had not stated in any of the documents before the Tribunal that he had not done so. The Tribunal accepted that the Respondent had sent the relevant emails to the mortgage lender in respect of Property A.
- 13.16 The Respondent had not sought to argue that the emails were not misleading. His position was that the statements were made in good faith and they represented his understanding based on the delegation of tasks to support staff. The Tribunal accepted the documentary evidence relied upon by the Applicant, and supplied by the Firm, that the UN1 form was not submitted to HMLR until 26 March 2018. The Respondent

had made various comments about this form in the emails from which extracts are drawn at [13.2] culminating in a statement made in an email of 14 February 2014 that “a UN1 has been sent to the Land Registry”. Later emails, sent in March 2018 prior to the submission of the UN1 form, made reference to an application in respect of the UN1 form having been rejected and resubmitted to HMLR. These statements were plainly untrue, no application having been made until 26 March 2018. The Tribunal accepted that the Respondent had made statements in the emails about the submission of the UN1 form which were untrue.

- 13.17 The Tribunal accepted the contention made by the Firm in Ms McDermott’s COLP Investigation Report, relied upon by the Applicant and not disputed by the Respondent, that there was no evidence of an application to Court to register the charge in this matter. Accordingly, the Tribunal accepted on the balance of probabilities that the statements made by the Respondent in the emails set out in [13.2] about chasing the hearing date were untrue; there being no evidence of any Court application and therefore no hearing date to chase.
- 13.18 The Tribunal did not consider the fact that others may have also known what the position was on this file to be relevant to what the Respondent said to the mortgagee. If the solicitor with conduct of a file made untrue statements about its status or progress it was no defence or meaningful explanation to state that the true position was discoverable through file reviews or electronic access to the file. Quite apart from the fact that the recipient of the Respondent’s emails would not have such access to information, as the solicitor with conduct of the matter the Tribunal accepted that it was incumbent on the Respondent to ensure that he was providing accurate and truthful information.
- 13.19 The Respondent also stated that he thought his secretary had completed the relevant tasks and had received assurances from her that the matters were progressing. On this basis the Respondent maintained his statements were made in good faith and were not knowingly untrue. The Respondent set out in some considerable detail his views about the shortcomings and lack of competence of the administrative and secretarial support he received. The Tribunal did not consider it to be credible that given such strongly held convictions that the Respondent would rely to such an extent on the same individual for tasks of such importance. The Tribunal accepted that these were important tasks with potentially serious implications for the mortgage lender and the protection of their interest.
- 13.20 The Tribunal noted that Ms McDermott had given evidence in her witness statement about the support and supervision provided to the Respondent. She characterised both as “*not only adequate ... [but]... beyond what he could have expected from a compliance and commercial perspective*”. The Respondent had made assertions about a lack of support, having delegated certain tasks and assurances as to progress but had provided no supporting documentation. In contrast, Ms McDermott described a thorough investigation during which she found no evidence of these tasks being delegated or any follow-up emails questioning progress. She also described as “*implausible in the extreme*” the delegation of the application to Court on the basis that the Respondent would have to be a pro-active participant in any such application. There was no evidence beyond the Respondent’s assertions that he had delegated

these tasks whereas there was credible evidence from Ms McDermott and Ms Adams to the contrary.

- 13.21 The Respondent had not submitted himself to cross-examination. The Tribunal had regard to the comments of Sir John Thomas in *Iqbal v SRA* [2012] EWHC 3251 that “*ordinarily the public would expect a professional man to give an account of his actions*”. The Tribunal’s Practice Direction No. 5 confirms that in appropriate cases the Tribunal shall be entitled to take into account the position the Respondent had chosen to adopt as regards the giving of evidence. Whilst the Respondent had made reference to distress, anxiety and the impact on his mental health, he had provided no supporting evidence of any kind. He had not indicated any willingness or intention to explore when he may consider he could participate in a future hearing to provide the account of his actions. Whilst the Tribunal did not consider this factor to be determinative of this allegation in light of the findings set out above, the Tribunal did consider that the persuasiveness of the Respondent’s account was undermined by his failure to submit to cross examination.
- 13.22 The Respondent had raised the pressures he was under at the relevant time in his Answer. The Tribunal considered that the period of time over which the relevant emails were sent (some eight months) and the number of individual instances mitigated against the statements having been made in error due to oversight or pressure. The Respondent was an experienced solicitor and he had personal conduct of the matter. He had sent the emails in question. The emails concerned important steps in the life of the file. The Tribunal was satisfied to the requisite standard, the balance of probabilities, that he had known that the statements he had made were untrue.
- 13.23 The Tribunal found that making untrue statements to a client was a very clear example of conduct which failed to meet the minimum ethical standards of the profession. Acting with integrity required that a client receive a true account of the position so that their interests could properly be protected. The Tribunal found to the requisite standard that by making various untrue statements to the mortgage lender, which the Respondent knew or should have known to be untrue, he had acted without integrity in breach of Principle 2 of the Principles.
- 13.24 The Tribunal accepted that it was plainly contrary to any client’s interests to receive any untrue information, let alone information about important steps needed to protect their interests as in this case. The Tribunal found to the requisite standard that by making the untrue statements in the circumstances described above, the Respondent had failed to act in the interests of his mortgagor client in breach of Principle 4 of the Principles.
- 13.25 The Tribunal also accepted the uncontroversial submission from Mr Bullock that the public would expect a solicitor to be truthful in all of his dealings with his client and that public confidence in the Respondent and in the provision of legal services was likely to be undermined by a solicitor failing to meet this expectation. The Tribunal found to the requisite standard that by providing untrue and misleading information to his client’s mortgage lender the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

14. **Allegation 1.2: Between 16 and 30 May 2018 the Respondent made statements to Client B and Client B's Agent in respect of the letting of Property B, which were untrue and which he knew, or ought to have known, were untrue at the time they were made, and thereby breached all or any of:**
- 1.2.1 **Principle 2 of the Principles (you must act with integrity);**
 - 1.2.2 **Principle 4 of the Principles (you must act in the best interest of each client); and**
 - 1.2.3 **Principle 6 of the Principles (you must behave in a way that maintains the trust the public places in you and in the provision of legal services).**

The Applicant's Case

- 14.1 The Respondent was instructed by Client B in respect of the purchase of Property B, which completed on or around 13 October 2017. The Respondent was then instructed by Client B in respect of letting out Property B.
- 14.2 In an email dated 16 May 2018 to Client B's agent, the Respondent stated that the *"file is open and initial letters are being prepared"*. On 24 May 2018, in response to an enquiry from Client B's agent, the Respondent stated that *"Drafts docs have been prepared, I just need to give the once over before I send out"*. In an email dated 30 May 2018, he informed Client B and Client B's agent that *"the "agreement for lease" has been prepared and I am finalising the lease this afternoon to go across to the tenants (sic) solicitor"*. The Tribunal was referred to copies of these three emails.
- 14.3 The Applicant relied upon the Firm's confirmation that no file had been opened in respect of the letting of Property B, that the client did not receive a client care letter and terms of business, and that no documents were drafted until Simon Rogers, the Respondent's supervising partner, took over conduct of the matter on 18 June 2018.
- 14.4 As with the previous allegation, the Applicant's case was that these statements were made in circumstances where the Respondent, as the fee earner with (purported) conduct, must have known that he had not opened a file in respect of the lease of Property B, nor sent any initial letters nor prepared any documentation. It was submitted to be inconceivable that a solicitor would have genuine belief that he was undertaking work on a transaction when he was not and that the Respondent must have known that providing untrue information would mislead his client and his client's agent into thinking the that the lease of Property B was being progressed, when he knew this was not the case.
- 14.5 As with the previous allegation, it was alleged that by providing untrue and misleading statements the Respondent failed to act with integrity in breach of Principle 2 of the Principles.
- 14.6 Again mirroring the previous allegation, it was alleged that by providing false and misleading information the Respondent had failed to act in his client's best interests in breach of Principle 4 of the Principles.

- 14.7 For the same reasons set out in relation to allegation 1.1, it was alleged that by virtue of the alleged conduct the Respondent also failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

The Respondent's Case

- 14.8 This allegation was denied in the Respondent's Answer. The general points about support staff and the pressures on the Respondent summarised in [13.12] to [13.13] above are not set out again but apply equally to all allegations.
- 14.9 In his Answer, the Respondent denied this allegation on the following basis:

"The Respondent will say that the documents were drafted by the Respondent. The Respondent prepared the agreement for lease and lease in manuscript and provided direction to support staff to open a file for the client, to issue client care and terms of business and to prepare the draft documents for issuing to the parties involved in the transaction and that support staff of the Firm failed to follow or undertake instruction of the Respondent."

- 14.10 In his email to the Firm of 25 June 2018 the Respondent had stated:

"With regard to the matter of [Client B], the intention on my part was to submit the agreement for lease and lease to the tenants (sic) solicitor as suggested. Unfortunately, at this time I was without any secretarial or admin support of any nature and I was unable to prepare the documentation in the timescale I had envisaged."

- 14.11 In his witness statement prepared for the Tribunal proceedings the Respondent stated:

"It is alleged that in relation to the [Client B] I mislead the client and agent as to the progress of the transaction. As stated above, at this time I was suffering from extreme stress and anxiety. Due to a lack of support and assistance, I was struggling to cope with the levels of work and at the time that I advised the client that I had opened a file and prepared the draft lease. I had every intention of doing so on the very same day as speaking to the client and agent. Unfortunately, because I had no support other more urgent matters overtook this and I was unable to fulfil the assurances that I had given to the client. I thereafter spoke with a colleague and provided instructions for a file to be opened, terms of business letters to be prepared and sent out and provided marked manuscript copies of a draft lease to enable the colleague to undertake the preparation of the lease. At this time, I also found that other work that I had dictated was dictating was not being dealt with by anyone for periods of at least two weeks. It is for this reason I spoke directly to a colleague asking them to undertake the work, rather than dictating it as I would in the usual manner."

- 14.12 Accordingly, as with allegation 1.1, the Respondent maintained that his statements were made in good faith, that his genuine intentions to complete the work when indicated had been overtaken by higher priorities and he had been undermined by a lack of support.

The Tribunal's Decision

- 14.13 This second allegation mirrored the first in many respects. The Tribunal had been referred to the three emails relied upon by the Applicant and it was clear that the Respondent had stated to Client B's agent that a legal file had been opened and that certain relevant documents had been drafted. The Respondent did not dispute that he sent the three emails; his contention was that he had completed the tasks as described but that he was again let down by support staff who failed to complete delegated tasks. As with allegation 1.1, the Respondent's assertions were unsupported by any documentation and he had not submitted to cross examination which the Tribunal considered undermined the persuasiveness of his account.
- 14.14 The conclusion of Ms McDermott's investigation was that no file had been opened and that no documents were drafted until Mr Rogers took over conduct of the matter on 18 June 2018. Given the evidence of a detailed investigation from Ms McDermott and the written statement of Mr Rogers, the Tribunal accepted that it had been proved on the balance of probabilities that there had been no file opened and that the relevant documents were not drafted until Mr Rogers himself undertook this task. Accordingly, the Tribunal found that the Respondent's statements about having opened a file and the documents having been drafted were untrue.
- 14.15 As with allegation 1.1, the Tribunal accepted that there was no persuasive evidence that the administrative and secretarial support had been inadequate. In any event, inadequate support of this type would not provide any meaningful explanation for a solicitor making untrue statements to the agent of a client. There was no documentary evidence supporting the Respondent's contention that the tasks of opening a file, issuing client care and terms of business and preparing the draft documents for issuing to the parties involved in the transaction had been delegated. In contrast, there was credible evidence in the form of the COLP Investigation Report and witness statements from Ms McDermott, Ms Adams and Mr Rogers that there were no such instruction and that the tasks remained undone until Mr Rogers undertook them. On the balance of probabilities, the Tribunal considered that the Respondent had not delegated these tasks in the way he described. Even had he done so, and had his instruction not been carried out, the statements in the three emails set out in [14.2] would still have been untrue given that he stated unambiguously that the file was open and that the documents had been drafted. Whatever his intention to complete the work promptly or for someone to do so on his behalf, such a statement would remain untrue given the Tribunal's finding that the file was not in fact opened or work completed on the documents until Mr Rogers undertook these tasks.
- 14.16 The Tribunal did not consider it to be credible that the Respondent could have been mistaken in the statements he made. There were three examples made over two weeks which were unambiguous in relation to the file having been opened and relevant document having been drafted. Again, the Respondent was an experienced solicitor with conduct of the matter and these were central steps required for the progression of

the client's matter. The statements made related to tasks the Respondent stated he had completed and the Tribunal accepted the Applicant's submission that it was not credible that the Respondent could have a genuine belief that he was undertaking this work when he was not and that the Respondent must have known he was providing untrue information in his emails.

- 14.17 As with the previous allegation, the Tribunal did not consider that the pressure and stress to which the Respondent referred altered the position. Apart from the lack of any supporting evidence for these statements, the Tribunal did not consider that any such stress and pressure had a direct bearing on whether the Respondent knew that he was providing untrue information. Given the Tribunal's findings that the Respondent had not completed the initial work or instructed others to do so, the statements he made in his three emails would be untrue and misleading whether or not he was subject to the pressures he claimed. For the reasons set out above, the Tribunal found on the balance of probabilities that the Respondent knew the statements made to Client B's agent were untrue at the time he made them.
- 14.18 As with allegation 1.1, applying the test set out in Wingate, the Tribunal found that knowingly making untrue statements to the agent of a client was a very clear example of conduct which failed to meet the minimum ethical standards of the profession. The Tribunal found to the requisite standard that by making statements to Client B's agent which the Respondent knew to be untrue, he had acted without integrity in breach of Principle 2 of the Principles.
- 14.19 As recorded at [13.24] the Tribunal accepted that it was plainly contrary to any client's interests to receive any untrue information. The Tribunal found to the requisite standard that by making the untrue statements in the circumstances described above, the Respondent had failed to act in the interests of Client B in breach of Principle 4 of the Principles.
- 14.20 The Tribunal also accepted that public confidence in the Respondent and in the provision of legal services was likely to be undermined by a solicitor providing untrue and misleading information to his client's agent. The Tribunal found to the requisite standard that by knowingly making such untrue statements the Respondent breached Principle 6 of the Principles.
15. **Allegation 1.3: In or around 30 April and 1 May 2018, the Respondent gave a date on Stamp Duty Land Tax and HM Land Registry forms which was false and which he knew, or ought to have known, were false, and thereby breached either or both of:**

1.3.1 Principle 2 of the Principles; and

1.3.2 Principle 6 of the Principles.

The Applicant's Case

- 15.1 It was alleged that the Respondent made false declarations when completing SDLT (land tax) returns, TR1 (property transfer) forms, and by changing the date of completion without approval or consent from his clients or their mortgage lenders.

Three clients were said to be affected, as summarised below. The Tribunal was referred to the relevant copy documents by Mr Bullock.

- 15.2 Client C's property purchase was completed on 8 August 2017. It was alleged that the Respondent did not submit the SDLT form within 30 days from completion as required and instead, without client or mortgage lender consent, he amended the date of the TR1 and legal charge (protecting the mortgage lender) to 30 April 2018. He was alleged to have submitted the SDLT form to HMRC on 21 May 2018 (and to have submitted the amended TR1 form together with a copy of the altered legal charge to HMLR).
- 15.3 Clients D's and E's property purchases were alleged to have followed the same pattern. Client D's purchase completed on 15 December 2017, and, again it was alleged that the Respondent did not submit the SDLT form within 30 days as required and instead, without consent, he amended the date of the transfer to 1 May 2018. He was alleged to have thereafter submitted the SDLT form to HMRC on 21 May 2018 (and to have submitted the amended TR1 to HMLR).
- 15.4 Client E's purchase was completed on 24 November 2017. It was alleged that having again failed to submit the SDLT form within 30 days from completion the Respondent, without the consent of his client or the mortgage lender, amended the date of the transfer to 1 May 2018. He subsequently submitted the SDLT form to HMRC and the altered TR1 form to HMLR on 25 May 2018. It was said that HMLR confirmed that the application was completed on 3 June 2018.
- 15.5 The Applicant described the submission of an SDLT return as an important step in the conveyancing process given the penalties to which a client may be subject if it is not paid on time. It was alleged that accordingly the Respondent must have known that each of the SDLT returns referred to above was being submitted late and was therefore incorrectly dated. It was submitted that, in any case, he should not have completed an SDLT return without checking the completion date from the file.
- 15.6 It was alleged that by changing the date of completion on SDLT forms, TR1 transfer forms and legal charges, without the knowledge to consent of his clients or their mortgage lenders, and subsequently submitting those forms to HMRC and HMLR, the Respondent failed to act with integrity in breach of Principle 2 of the Principles. It was submitted that a solicitor of integrity would ensure that he did not make such declarations which he knew or should have known could not be true.
- 15.7 As with the previous allegations, it was further alleged that the alleged conduct described above amounted to a failure to behave in a way that maintained the trust the public placed in the Respondent and in the provision of legal services in breach of Principle 6 of the Principles. Again, it was submitted that a member of the public would expect a solicitor to be truthful in all of his dealings with HMRC and HMLR.

The Respondent's Case

- 15.8 This allegation was denied in the Respondent's Answer. The general points about support staff and the pressures on the Respondent summarised in [13.12] to [13.13] apply to this allegation as to all others.

15.9 In his Answer the Respondent denied this allegation on the following basis:

- “i. The Respondent will say that he was suffering from stress, anxiety and depression and as a result of this medical condition the Respondent was unaware of the actions that the Respondent was undertaking.*
- ii. The Respondent will say that the mental health issues experienced by the Respondent arose of the following factors:*
 - a. Illness to [a member of the Respondent’s family].*
 - b. [Other personal matters].*
 - c. A failure by the Firm to provide adequate support, assistance, supervision and also a failure by the Firm to provide suitable support staff to assist the Respondent in the effective performance of his duties.”*

15.10 In his witness statement the Respondent had stated:

“It is alleged that I had filed stamp duty land tax returns with incorrect transaction dated inserted. There is no intention of dishonesty whatsoever in regard to these allegations. Following completion of the transactions, instructions were provided by me to [my secretary] for her to attend to post completion formalities including filing of stamp duty land transaction returns and registration at the land registry. On each occasion I was told by her that she would do so. I advised [my secretary] that if she had any questions or queries that she should speak to me. I followed matters up with [her] and I was told that she had the matters in hand and was waiting for another legal assistant to help her with the given task but that she required information from the client in order to complete the returns. Given the extreme anxiety and stress that I was experiencing at the time and my incoherent state of mind I failed to follow this up.”

15.11 The thrust of the Respondent’s denial was thus that he had provided instructions for the necessary post-completion work to be undertaken by his secretary. The points made in response to the previous allegations about the support with which he was provided applied again. Having received confirmation the tasks would be completed, and given the stress and anxiety he was subject to at the time, compounded by the lack of support, he acknowledged failing to follow up the issues.

The Tribunal’s Decision

15.12 The Tribunal had been taken to the copy documents relied upon by the Applicant. The Respondent did not contend that client consent had been received for the amendments to the dates, nor contest the completion and submission dates relied upon by the Applicant. On the basis of these copy documents and lack of challenge from the Respondent, the Tribunal accepted that the completion dates on the various forms, as described in [15.2] to [15.4], submitted to HMRC and HMLR, were false.

- 15.13 The Applicant's case was that the Respondent knew, or should have known, that the dates were false and that the submissions and declarations to HMRC and HMLR were not truthful. For the reasons set out above at [13.19] to [13.20] and [14.15] the Tribunal had not accepted in relation to allegations 1.1 and 1.2 that the Respondent had delegated significant elements of the legal work on his files such that he was unaware of the true position. The Tribunal made the same finding in relation to allegation 1.3. The Tribunal accepted the submission that the completion and submission of these forms, which carried with them the potential for penalties for his clients, was something about which the Respondent as the solicitor with conduct of the matter, should and would have known.
- 15.14 For the reasons set out at [13.19] the Tribunal did not consider that it was credible or likely that such a step had been delegated to an individual the Respondent did not consider to be competent. As with the previous allegations, no evidence was presented to support the Respondent's contention that he delegated these tasks and made no effort thereafter to monitor or check the position at any stage. For the reasons set out at [13.21] the Tribunal considered the credibility of the Respondent's (unsupported) account was undermined by his failure to submit cross examination. The Tribunal accepted that the Respondent was aware that the information supplied to HMRC and HMLR was false.
- 15.15 As set out in [14.17] in relation to the previous allegations, the Tribunal did not consider that the pressure and stress to which the Respondent referred altered the position. As noted previously, no supporting evidence was presented for the statements made about stress, anxiety and mental health, nor in support of the contention that "*as a result of this medical condition the Respondent was unaware of the actions that the Respondent was undertaking*". Whilst such matters may be relevant to mitigation, in the absence of any supporting evidence whatsoever, and given the adverse inferences drawn by the Tribunal from the Respondent's decision not to submit to cross examination and give an account of his actions, these bare assertions made by the Respondent were given little weight by the Tribunal. For the reasons summarised above, the Tribunal considered it more likely than not that the Respondent himself provided the dates on the forms submitted to HMRC and HMLR which he knew were false.
- 15.16 Applying the test set out in Wingate, the Tribunal found that submitting forms containing false information about completion dates to HMRC and HMLR was a very clear example of conduct which failed to meet the minimum ethical standards of the profession. The Tribunal found to the requisite standard that by submitting such false information, where he knew or ought to have known the true position, the Respondent had acted without integrity in breach of Principle 2 of the Principles.
- 15.17 The Tribunal also accepted that public confidence in the Respondent and in the provision of legal services was likely to be undermined by a solicitor providing untrue information to HMRC or HMLR. The Tribunal found to the requisite standard that by doing so the Respondent breached Principle 6 of the Principles.

16. **Allegation 1.4: Between 14 February (at the earliest) and 4 June 2018, the Respondent made statements to his employer regarding the progress of conveyancing matters, which were untrue and which he knew, or ought to have known, were untrue at the time they were made, and thereby breached either or both of:**

1.4.1 Principle 2 of the Principles; and

1.4.2 Principle 6 of the Principles.

The Applicant's Case

- 16.1 Between 15 January and 3 April 2018, the Firm's Accounts Department chased the Respondent in respect of unpaid stamp duty on several of his matters. When the Respondent did not pay the outstanding balances, the Accounts Manager escalated the issue to Mr Rogers. On or around 14 February 2018, the Respondent emailed Mr Rogers, in respect to an email from a mortgage lender chasing an update on its matter, into which Mr Rogers had been copied along with two other members of staff at the Firm. The Respondent advised Mr Rogers *"This is one of mine that is in hand – nothing to worry about. I'll respond to them today"*.
- 16.2 In March and April 2018, the Respondent advised Mr Rogers that he was awaiting information from five separate clients before he could submit SDLT forms in respect of each of the matters. It was said that from a review of the files it appeared the Respondent had not chased any outstanding information from the various clients. In an email of 4 April 2018, the Respondent informed the Firm's Accounts Manager that he was awaiting information from the client before he could submit the SDLT return and payment in circumstances where in fact he already had all of the information required to submit the SDLT return and there was no evidence that he was awaiting information from the clients before he could proceed.
- 16.3 On 1 May 2018 the Respondent advised Mr Rogers that *"having finally heard from the clients. I will attend to those forthwith and chase the outstanding one today. Clients are aware of the penalties"*. It was alleged that there was no evidence that the Respondent was awaiting information from the relevant clients before he could proceed, and the Firm advised the Applicant that the clients were not aware of the penalties.
- 16.4 On 14 May 2018 the Respondent informed Mr Rogers that *"BACS payments will be set up tomorrow morning"*, however no BACS payments were arranged. On 21 May 2018, he advised Mr Rogers that *"I have the files on my desk and will action them today. I have also requested fees for penalty notices"*. The Firm advised the Applicant that nothing appeared to have been actioned in respect of this matter and no fees for penalty notices had been requested.
- 16.5 In an email of 4 June 2018 the Respondent told Mr Rogers that he had *"just dealt with this"* when asked for an update on whether SDLT had been paid on a particular client's property purchase and whether the charge and relevant fee had been submitted to Companies House. Again relying on information supplied by the Firm it was alleged that the Respondent gave this reply in circumstances where he was aware that

he did deal with the SDLT submission on that date, but had not submitted anything to Companies House.

- 16.6 It was alleged that the Respondent must have been aware that he had not been waiting for information from the clients before being able to submit the SDLT forms to HMRC, that his clients were not aware of any financial penalties, and that he had not requested fees or BACS payments in respect of the outstanding fees. He must also have known that providing his employer with false and untrue information about his cases would mislead them into thinking that the matters were being properly progressed. For the same reasons set out in relation to the previous allegations it was submitted that by providing such untrue and potentially misleading statements to his employer the Respondent failed to act with integrity in breach of Principle 2 of the Principles. It was submitted that a solicitor of integrity must always be careful to not knowingly say anything which might lead his employer to believe something which was not true.
- 16.7 As with the previous allegations this alleged conduct was also alleged to amount to a breach of Principle 6 of the Principles on the basis that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a solicitor deliberately providing untrue and misleading information to his employer.

The Respondent's Case

- 16.8 This allegation was denied in the Respondent's Answer. The general points about support staff and the pressures on the Respondent summarised in [13.12] to [13.13] apply to this allegation as to all others.
- 16.9 In his Answer the Respondent denied this allegation on the following basis:
- “ii. *The Respondent will say that at all times the Respondent was supervised by Mr Simon Rogers ('Mr Rogers') and the Firm operated a case management system whereby all employees of the firm readily had access to client files. The Respondent will say that the Firm was required to undertake monthly reviews of files under the Respondents control [sic]. The Respondent will say that at all times the Firm had access to the files under the Respondents files and the Firm knew or should have know the current status of all matters [sic]. The Respondent will say that the Firm failed to provide adequate support, assistance and supervision to the Respondent.*
 - iii. *The Respondent will say that as the Respondents [sic] supervisor, Mr Rogers was at all times aware of the position of the files under the Respondents control. The Respondent will say that several face to face meetings took place between the Respondent and Mr Rogers to discuss the matters referred to in Paragraphs 58 to 71 of the Applicants [sic] Statement and that the emails sent by the Respondent were done so on the instruction of Mr Rogers following the meetings between Mr Rogers and the Respondent, where by [sic] Mr Rogers asked the*

Respondent to send confirmation by email that the matters were in hand and being dealt with.”

16.10 In his witness statement the Respondent stated:

“At a meeting in my office, I was told by Simon Rogers that the stamp duty land transaction returns had not been filed. I was surprised as I had instructed [my secretary] to do so. I understand that there are emails sent from myself to Simon Rogers stating that I was dealing with the issues. These emails were sent by to Simon Rogers by myself under and instruction [sic] from him for me to send the emails stating that the issues were being dealt with. This instruction came during a face to face meeting with Simon Rogers in my office. Given the extreme anxiety and stress that I was experiencing at the time and my incoherent state of mind, I have no recollection whatsoever as to the filing of the returns.”

16.11 The thrust of the Respondent’s denial was thus that the position on the relevant files was knowable to all in the Firm and was, or ought to have been, known to his supervisor Mr Rogers. The specific emails relied upon by the Applicant were sent following a specific instruction from Mr Rogers. The Respondent had understood that his secretary, to whom he had delegated the relevant tasks, had completed them. Again the position was influenced by the stress, anxiety and lack of support referred to above.

The Tribunal’s Decision

16.12 The Applicant’s case highlighted several instances where the Firm had indicated that the Respondent had presented an inaccurate position to Mr Rogers. These included:

- Stating that he was awaiting information in order to submit SDLT forms when all necessary information was available [16.2];
- Stating that he was awaiting information from clients before he could proceed, and that the clients were aware of the relevant penalties, when there was no evidence on the file to support either statement [16.3];
- Stating that BACS payments would be arranged and that fees for penalty notices had been requested when there was no evidence on the file to support either statement [16.4];
- Informing Mr Rogers that he had dealt with SDLT and Companies House issues on a matter when there was no evidence to support this [16.5].

16.13 The Tribunal had been referred to the emails sent by the Respondent to Mr Rogers which were relied upon by the Applicant. The Tribunal found on the balance of probabilities that the position reported by the Firm to the Applicant, in terms of the underlying position on the relevant files, was more likely than not to be accurate. The Tribunal noted that the Respondent did not seek to argue that position in the emails was accurate (save in one case where he maintained that he had instructed his secretary to complete the SDLT returns).

- 16.14 The Respondent had stated in his Answer that he had been instructed by Mr Rogers to send emails confirming that these various issues were in hand and were being dealt with. The Tribunal considered the suggestion that any such instruction from a supervisor might go any way to explaining the provision of false updates to be thoroughly unsatisfactory and unpersuasive. A supervisor was entitled to require that an update be provided and that specified tasks receive attention. The Tribunal did not consider the fact that Mr Rogers had access to the Firm's case management system, and so had access to the true position on the various matters highlighted by the Applicant, had any bearing on the allegations. It was no answer to the allegation for the Respondent to suggest that Mr Rogers should have seen beyond the account he provided and investigated the true position.
- 16.15 For the reasons set out above at [13.21] to [13.22], [14.17] and [15.15] in relation to the previous allegations, the Tribunal again found that the points raised by the Respondent in his Answer and witness statement about lack of support, stress, anxiety and pressure and having delegated certain tasks did not alter the position. Such contentions carried limited weight for the reasons already set out above.
- 16.16 The Tribunal did not accept that the Respondent's contentions cast doubt on the evidence presented that the Respondent had made various statements about the progress on files to his employer which were untrue. Again, the Respondent was the solicitor with conduct of the relevant matters. The statements amounted to significant mischaracterisations of major elements of the various files; they were not minor errors relating to peripheral details. The Respondent must have been aware that his supervisor and the Firm would be misled by an untrue account. The Tribunal did not consider it credible that the categorical statements made by the Respondent, about basic matters within his control including actions he stated he had taken or developments he stated he was waiting for, could have been made either in error or in the belief they were true. The Tribunal found to the requisite standard that the Respondent knew the statements he made were untrue.
- 16.17 Applying the test set out in Wingate, the Tribunal found that providing untrue statements about progress on files to a supervisor was another clear example of conduct which failed to meet the ethical standards of the profession. The Tribunal found to the requisite standard that by providing such untrue information, in circumstances where he knew or ought to have known the true position, the Respondent had acted without integrity in breach of Principle 2 of the Principles.
- 16.18 The Tribunal also accepted that public confidence in the Respondent and in the provision of legal services was likely to be undermined by a solicitor providing untrue information about the progress of cases to his supervisor and employer. The Tribunal found to the requisite standard that by doing so the Respondent breached Principle 6 of the Principles.
17. **Allegation 1.5: Between 8 August 2017 and 15 June 2018, the Respondent failed to complete post completion formalities in respect of his client files promptly or at all, and thereby breached all or any of:**

1.5.1 Principle 4 of the Principles;

1.5.2 Principle 5 of the Principles; and**1.5.3 Principle 6 of the Principles.**The Applicant's Case

- 17.1 Based on information and documents provided by the Firm it was alleged that the Respondent failed to complete the post completion formalities promptly or at all on a number of client files. Mr Bullock stated that this allegation concerned the failures that underpinned the previous allegations based on the false statements said to have been made by the Respondent.
- 17.2 In respect of Property A, the purchase of which completed on 20 June 2017, the Respondent was alleged to have failed to:
- register the mortgage lender's charge with Companies House within the requisite 21 day period;
 - make any applications to Court to register the charge at Companies House out of time;
 - register the property at HMLR in the client's name; and
 - to pay stamp duty until 7 June 2018, which caused the client to incur a £100 penalty.
- 17.3 In respect of Property B, the purchase of which completed on 13 October 2017, the Respondent was alleged to have failed to:
- register the mortgage lender's charge with Companies House within the requisite 21 day period;
 - make any applications to Court to register the charge at Companies House out of time;
 - pay the SDLT to HMRC until on or after 4 June 2018; and
 - register Property B in Client B's name.
- 17.4 The Respondent was also alleged to have failed to submit SDLT forms on a number of other matters within the requisite period of time, including:
- In respect of Property C which completed on 8 August 2017, SDLT was due to be submitted by 7 September 2017, however the Respondent did not submit the payment until 30 April 2018;
 - In respect of Property D, which completed on 15 December 2017, SDLT was due to be submitted by 14 January 2018 however the Respondent did not submit the payment until 1 May 2018; and

- In respect of Property E which completed on 24 November 2017, SDLT was due to be submitted by 24 December 2017, however the Respondent did not submit the payment until 15 May 2018.

17.5 By failing to undertake the post completion formalities, leaving his clients' interest in their properties not fully protected, and liable to pay late payment penalty charges, it was submitted that the Respondent failed to act in his clients' best interests, and failed to provide a proper standard of service to each client, and therefore breached Principles 4 and 5 of the Principles. It was further submitted that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by such conduct and that the Respondent had therefore also breached Principle 6 of the Principles.

The Respondent's Case

17.6 This allegation was denied in the Respondent's Answer. The general points about support staff and the pressures on the Respondent summarised in [13.12] to [13.13] apply to this allegation as to all others.

17.7 In his Answer the Respondent denied this allegation in part by repeating the text reproduced in [16.9] above about the case management system and wide access to it within the Firm. In addition, he stated:

"i. The Respondent will say that instructions were provided to support staff immediately following completion of the matters referred to in paragraphs 72 to 81 of the Applicants Statement, for post completion formalities to be carried out, including registration of charges at Companies House, registration at the Land Registry and payment of stamp duty land tax. The Respondent will say that support staff of the Firm failed to follow an instruction of the Respondent."

17.8 In his witness statement, by way of example of certain post-completion matters, the Respondent stated:

"In relation to the allegation of a failure to carry out post completion formalities for [Client B], instructions had clearly been provided by me to [my secretary] to deal with post completion formalities, including registration of the legal charge to HSBC at Companies House and registration at the Land Registry. I was told by [my secretary] that those issues were in hand and being dealt with. [She] advised me that she had asked another legal assistant within [the Firm] to assist her with that. I followed this up with [my secretary] on a number of occasions, where I was told that she was dealing with post completion formalities. Given the extreme anxiety and stress that I was experiencing at the time and my incoherent state of mind I failed to follow this up."

17.9 The Respondent's position was thus had he had delegated the various tasks listed by the Applicant to support staff he believed that they had been completed.

The Tribunal's Decision

- 17.10 The Tribunal had already made findings in respect of many of these underlying completion formalities in relation to allegations 1.1 to 1.4. The Tribunal was referred to the documents supporting the factual contentions set out in [17.2] to [17.4]. The Respondent did not dispute the dates relied upon by the Applicant, either the dates when the formalities were due to be completed or the dates when it was alleged that the tasks were in fact completed. The Tribunal found that the facts underpinning paragraphs 17.2 to 17.4 were proved to the requisite standard and that the various completion formalities set out therein had not been completed promptly or at all as alleged.
- 17.11 The Tribunal had found in relation to the previous allegations that these formalities were important steps in the conveyancing process about which it was not credible that the experienced solicitor with conduct of the matter, who stated he did not have confidence in the support staff available, did not have knowledge. For the reasons set out at [13.19] to [13.20], [14.15], and [15.13] to [15.14] the Tribunal did not accept that these tasks had been delegated in their entirety to support staff as described by the Respondent. The Firm had reported no evidence of such delegation on the files, Ms Adams had provided a statement stating that whilst she could not remember the specific files due to the passage of time she would not have given any assurances that work had been completed when it had not and would have advised the Respondent of any delay. The Tribunal had found the Respondent's own account of the wholesale delegation and lack of subsequent knowledge of these completion formalities to be unpersuasive as set out above. The Tribunal found on the balance of probabilities that the Respondent had personally failed to complete the various tasks alleged by the Applicant and that he did not have a genuine belief that these tasks had been delegated and completed by others. As the solicitor with conduct of the legal files, these responsibilities were primarily his.
- 17.12 For the reasons previously set out at [13.21] to [13.22], [14.17], and [15.15] the Tribunal did not consider that the points raised by the Respondent about stress, anxiety, pressure and the impact on his mental health altered these findings. They were considered by the Tribunal to relate principally to mitigation rather than whether the alleged facts were made out.
- 17.13 An extended failure to undertake completion formalities carried with it the risk of penalties for the Respondent's clients. The failures described by the Applicant, and found proved by the Tribunal, were self-evidently not in the best interests of these clients. The Tribunal found that the Respondent had accordingly breached Principle 4 of the Principles. Such protracted failures to complete necessary formalities means that the Respondent, as solicitor responsible for the work, had not provided a proper standard of service. The Tribunal found that the Respondent had accordingly breached Principle 5 of the Principles. The Tribunal accepted the submission that public confidence in the Respondent and in the provision of legal services was likely to be undermined by such conduct and found that the Respondent had also breached Principle 6 of the Principles.

18. Allegation of dishonesty in relation to allegations 1.1, 1.2, 1.3 and 1.4.

The Applicant's Case

18.1 The Applicant relied upon the test for dishonesty in Ivey v Genting Casinos [2017] UKSC 67, at [74]:

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

18.2 It was alleged that in engaging in a course of conduct described in allegations 1.1 to 1.4 whereby he provided misleading and untrue information concerning property transactions to his clients, their mortgage lenders, HMRC, HMLR and his employer over a 10 month period the Respondent acted dishonestly according to the standards of ordinary decent people. The Applicant’s case was that an honest solicitor would not have knowingly provided misleading and inaccurate information and documentation in this way.

18.3 At the time that the Respondent provided the allegedly misleading and untrue information described above it was alleged that he knew or believed the following:

Allegation 1.1

- That a form UN1 in respect of Property A was not submitted to HMLR until 26 March 2018 at the earliest, despite the fact that between 27 November 2017 and 20 March 2018 he advised the mortgage lender that this had been submitted;
- That he also advised the mortgage lender on 12 March 2018 that HMLR had returned the UN1 form that he submitted when he knew this was not true;
- That when he advised his client, the mortgage lender for Property A, on 17 April and 21 May 2018 that he was awaiting dates from the Court in respect of a hearing he knew that no such application to the Court had been made and that he could not be awaiting a hearing date from it;

Allegation 1.2

- That he had not opened a file in respect of the lease of Property B on behalf of Client B, nor had he sent out the initial letters or drafted any of the lease documentation, yet advised his client that he had done so.

Allegation 1.3

- When the Respondent amended the dates of completion on the SDLT forms in relation to Properties C, D and E to 30 April, 1 May and 1 May 2018 respectively he knew that completion had not taken place on those dates and that the relevant transactions had, in fact, completed on 8 August 2017, 15 December 2017 and 24 November 2017.

Allegation 1.4

- On various dates between 14 February and June 2018 he stated that he was awaiting information from his clients before he could submit the SDLT forms when he knew that this was not the case. He also advised his employer that BACS payments would be set up the following day and that he had requested fees for the penalty notices when he knew he had made no such request.

18.4 It was submitted that in relation to all of these matters, there was a disparity of knowledge between the Respondent and his clients, his employer and HMRC. The Respondent knew that the information he was providing was incorrect whereas the persons to whom he was imparting it did not. It was further alleged that the Respondent knew that the persons to whom he was imparting information would trust him as a solicitor to be truthful and might act in reliance upon what was being said to them. In particular, it was alleged that the Respondent would have known that HMRC would decide whether or not to impose penalties for late payment of SDLT upon the basis of the dating of the transfer form. It was submitted that in those circumstances, the Respondent was dishonest according to the Ivey test.

The Respondent's Case

18.5 This aggravating allegation was denied in the Respondent's Answer in which he stated:

- i. The Respondent will say that the Firm knew or should have known of the status of all matters under the Respondents [sic] control and that the Firm failed to provide adequate supervision and assistance to the Respondent in relation to those matters and resolve any issues in relation to those matters.*
- ii. The Respondent will say that as the Respondents [sic] supervisor, Mr Rogers knew or should have known the status of the matters under the Respondent's control and that Mr Rogers failed to adequately supervise or support the Respondent.*
- iii. The Respondent will say that the Firm failed to sufficiently support the Respondent in his duties and that the Firm failed to provide adequate and suitable support staff to assist the Respondent in the performance of his duties.*
- iv. The Respondent will say that support staff of the Firm failed to undertake or follow instructions of the Respondent.*

- v. *The Respondent will say that as a result of the mental health issues and illness experienced by the Respondent, he was unable to take account of his actions.*”

18.6 As set out in [13.12] above, the Respondent had stated in his email to the Firm of 25 June 2018: *“there is no intentional dishonesty on my part. Whilst it is evident that there are practical errors which I do not deny, there was no intention of dishonesty”*. The Respondent made the same point at various places in his witness statement.

18.7 By way of further example, the Respondent also stated in his email to the Firm of 25 June 2018:

“With regard to the stamp duty matters, I have always had an assistant or secretaries who dealt with preparation and submission of the returns on my behalf. I did not have that level of support during my employment but believe other fee earners had assistants or secretaries to do that for them. I confirm that in the matters referred to I did ask my secretary to prepare the returns to be sent to the clients and ask for assistance if she needed it. As I did not hear I presumed, incorrectly, that they had been sent to the clients and hence my explanation to Simon Rogers. There was no dishonesty there, I simply did not check the file when I provided that advice as I had not seen [sic] any incoming correspondence from the client. I should have looked into this further and apologise for not doing so. The returns that were submitted with the incorrect date were a practical error through a lack of diligence when completing the forms and not done out of dishonesty, the mistake should have been rectified by me”.

18.8 As set out repeatedly above, the Respondent attributed acknowledged errors to oversight, the reliability and availability of support staff and the stress, anxiety and health issues and personal pressures to which he was subject at the relevant time. The comments he had made were made in good faith based on his genuine understanding at the time. For a combination of these reasons he denied that his actions had been dishonest in any of the matters raised in allegations 1.1 to 1.4.

The Tribunal’s Decision

18.9 The Tribunal accepted the summary of the test for dishonesty provided by the Applicant. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at [74] in that case, and accordingly the Tribunal adopted the following approach:

Firstly, the Tribunal established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

Secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

- 18.10 Applying the first limb of the Ivey test, the Tribunal assessed the actual state of the Respondent's knowledge or belief as to the facts. The Tribunal had found that the Respondent had known that the false statements he had made, which were the subject of allegations 1.1, 1.2 and 1.4, were untrue. The Tribunal had also found that the Respondent had known that the date provided on SDLT and HMLR forms, which were the subject of allegation 1.3, were false. The subject matter of the statements was very straightforward factual matters, and the false statements were made over an extended period of time which as stated above supported the conclusion that the statements were not the result of mistakes. The Tribunal had rejected the apparent contention that the Respondent had delegated tasks with the effect he was unaware that the statements he made were false. As solicitor with conduct of the file, and in the light of the evidence from the Firm, this was not credible.
- 18.11 For the reasons already set out in relation to allegations 1.1 to 1.4 the Tribunal had found proved to the requisite standard that the Respondent had the knowledge described in summary at [18.3]. These findings were set out as follows:
- At [13.18] to [13.22] (allegation 1.1)
 - At [14.15] to [14.17] (allegation 1.2)
 - At [15.13] to [15.14] (allegation 1.3)
 - At [16.14] to [16.16] (allegation 1.4)
- 18.12 The Tribunal carefully considered the Respondent's defence, including the impact of stress, anxiety and a lack of support on his actions and state of mind. No evidence had been supplied to support the contention that the Respondent's state of mind was such that he was unaware of his actions and incapable of possessing a dishonest state of mind. The Tribunal had rejected the Respondent's contention that he made the various statements in good faith or with genuine belief in their truth. The Tribunal found that the Respondent knew that he had provided untrue accounts and submitted forms containing misleading and false dates.
- 18.13 Moving on to the second limb of the Ivey test, the Tribunal had no doubt that ordinary decent people would regard the making of such false and untrue statements, and provision of a false date on SDLT and HMLR forms, to be dishonest. The statements related to legal formalities for which the Respondent had responsibility as a solicitor and were made in circumstances where the recipients of the information were likely to rely on its truthfulness. The Tribunal found proved to the requisite standard that the Respondent had acted dishonestly when making the statements, and providing the forms, detailed in each of allegations 1.1 to 1.4.

Previous Disciplinary Matters

19. There were no previous Tribunal findings.

Mitigation

20. The Respondent's responses to the various allegations had included points of mitigation and the Tribunal considered these carefully. The Respondent had repeatedly made reference to a lack of support for him personally whilst he was at the Firm and also to a lack of what he considered adequate and suitable support staff.

Given his workload the Respondent's contention was that this significantly increased the pressure on him and contributed to the circumstances with which the allegations were concerned. The Respondent described this situation as contributing to heightened stress and anxiety at work, and reduced professional effectiveness, at the relevant time.

21. The Respondent also provided an account of personal issues which exacerbated this stress and anxiety at the relevant time. He described unsuccessful attempts to discuss these issues and pressures with those at the Firm. The Respondent described these issues as extreme, amounting to a medical condition, and having the effect that at times he was unaware of his actions.
22. The Respondent had an otherwise unblemished disciplinary record.
23. The Respondent also provided details about his current financial position and requested that the Tribunal take this into account when making its decision. He stated that without employment or other income and given his liabilities he faced almost certain bankruptcy in the immediate future.

Sanction

24. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.
25. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was to cover up the lack of progress made on his clients' matters. The misconduct was planned as it involved numerous deliberate acts over a period of several months. The Respondent was an experienced solicitor at the time, with over ten years' post qualification experience. Notwithstanding his comments about the Firm, the Respondent had direct control over the relevant circumstances and his actions. Whilst the Respondent had made repeated reference to stress, anxiety and pressure, the Tribunal had found that he was aware of the untruthful statements he provided. The Tribunal assessed the Respondent's culpability as high.
26. The Tribunal then turned to assess the harm caused by the misconduct. The Tribunal had found that the Respondent dishonestly made untrue statements to a client mortgagor, a client's agent, a supervisor and HMRC and HMLR about progress on the relevant matters or dates. The Applicant had outlined steps taken by the Firm to rectify the position of affected clients once they had become aware of the issues. Whilst the clients' positions were rectified, the false information and the delay in progress of their matters amounted to harm. The Firm itself was put to the time and expense of undertaking remedial action and was caused reputational harm. The harm to the profession from such conduct was also significant. The Respondent's conduct represented a complete departure from the probity required of all solicitors. The Tribunal considered that such harm was entirely foreseeable.

27. The misconduct found proved was aggravated by the fact that the allegations included dishonest conduct. The misconduct, of making false statements about the progress of client matters and completion dates, also extended over a considerable period of time. It involved the concealment of a lack of progress on the underlying legal matters. The Respondent knew, or ought to have known, that such actions were potentially harmful to the reputation of the legal profession.
28. In mitigation, the Respondent had raised personal circumstances which he described as extreme. As set out above, no supporting medical evidence was provided, but the Tribunal gave due weight and consideration to the Respondent's account of the stress, anxiety, pressure and very difficult personal circumstances he described. The Tribunal had sympathy for the account provided by the Respondent and recognised, of course, the impact that personal pressures can have on professional life. For the reasons set out above, findings of dishonesty had nevertheless been made. The Tribunal noted that the Respondent had no prior disciplinary findings against him.
29. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll.
30. The Tribunal was not expressly invited to consider exceptional circumstances. The Tribunal did not consider that the personal circumstances raised by the Respondent, even had they been evidenced, were capable of amounting to exceptional circumstances. The Tribunal had regard to the Guidance Note on Sanctions. Paragraph [53] of the Guidance Note on Sanctions summarised what amounts to exceptional circumstances drawing on the case of Sharma and SRA v James et al [2018] EWHC 3058 (Admin):

“In considering what amounts to exceptional circumstances: relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others.” (Sharma above).

The exceptional circumstances must relate in some way to the dishonesty (James above)”

31. The dishonesty was repeated false statements, found to be made knowingly, over a period of several months. The nature, scope and extent was thus repeated instances of basic and clear falsehoods, made over an extended period of time. The Tribunal had regard to the comments of Lord Justice Flaux in James at [112]:

“The SDT having concluded that, notwithstanding mental health issues, each of the respondents was dishonest, I consider that it was contrary to principle for it then to conclude that those mental health issues could amount to exceptional circumstances”.

He also stated at [113] that *“Pressure of work or of working conditions cannot ever justify dishonesty by a solicitor”*. The Tribunal did not consider the matters raised by the Respondent related to the dishonest conduct nor amounted to exceptional

circumstances. The Tribunal was not persuaded that any exceptional factors were present such that the normal penalty would not be appropriate.

32. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

“to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth”.

33. The Tribunal determined that the findings against the Respondent including dishonesty required that the appropriate sanction was strike off from the Roll.

Costs

34. The total costs claimed in the Applicant’s schedule of costs dated 29 September 2020 was £12,413. Mr Bullock applied for these costs, less a reduction to reflect the fact that his preparation time had been reduced as he knew that the Respondent would not be attending and the hearing had lasted less than one day rather than the anticipated three days. By reducing his preparation time from 21 to 14 hours and reducing the time claimed for advocacy from 18 to 3 hours, Mr Bullock applied for the Applicant’s costs in the revised sum of £9,553. Mr Bullock noted that all allegations had been substantiated. In the Respondent’s absence he also directed the Tribunal to the statement of means submitted by the Respondent and stated that the case of D’souza v Law Society [2006] EWHC 987 (Admin) provided authority for the Tribunal to reduce the costs awarded to reflect a Respondent’s financial means.
35. The Respondent provided a Statement of Means dated 15 September 2020 and various supporting bank statements. As at the date of his Statement of Means the Respondent was employed a solicitor. As stated above, he stated that without employment or other income, and given his liabilities, he faced almost certain bankruptcy in the immediate future. He stated that he held no assets and set out details of various liabilities. By his email of 2 October 2020 the Respondent requested that the Tribunal give consideration to these details.
36. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal accepted that it was appropriate to reduce the costs to reflect the fact the hearing had concluded within one day rather than lasting three days as anticipated and Counsel’s reduced preparation time. The Tribunal accepted that the reduction of £2,860 proposed by Mr Bullock, equating to 22 hours, was appropriate. The Tribunal considered that having regard to the level of documentation and the work necessarily involved in the Application, the remaining costs claimed were reasonable in all the circumstances. The Tribunal carefully reviewed the Statement of Means and supporting documents provided by the Respondent. The Tribunal considered that as a legal regulator regulating in the public interest the Applicant was experienced in reaching workable instalment arrangements for the recovery of costs and that the Respondent’s ability to pay would thereby be taken into account. The allegations had been of serious professional misconduct and all allegations, including four aggravating allegations of dishonesty, had been found

proved. The Tribunal considered that in all the circumstances it was appropriate for the Respondent to pay the Applicant's reasonable costs. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £9,553.

Statement of Full Order

37. The Tribunal ORDERED that the Respondent, GARY JAMES BURNS, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,553.

Dated this 25th day of January 2021

On behalf of the Tribunal

A Ghosh
Chair