SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12064-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

VINCENT HOWARD O'NEIL Respondent

Before:

Mr D Green (in the chair)
Mr P Lewis
Mrs C Valentine

Date of Hearing: 6-7 October 2020

Appearances by Video link

Simon Griffiths, solicitor of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The amended allegations against the Respondent were that:

1.1 By virtue of a contract dated 4 July 2014 the Respondent agreed to purchase Property A from Person A, who was his client in relation to a related transaction, but failed to complete the purchase and properly discharge a mortgage. He then failed to disclose that failure to Client A. In doing so he:

1.1.1 Breached Principle 2 and/or Principle 6 of the SRA Principles 2011.
1.1.2 Failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.

1.2 From a date unknown between 28 April 2014 and 4 July 2014 the Respondent continued to act on behalf of Persons A and B in their linked purchase of Property B in the knowledge that a conflict had arisen (or that there was a significant risk that such a conflict might arise) between his own interests and those of his clients. In doing so he:

1.2.1 Breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.
1.2.2 Failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.

1.3 In the course of the purchase of Property B the Respondent knowingly failed to disclose to Person C that:

(a) A first charge over Property A in favour of L Bank PLC would not be redeemed by him upon completion; and/or

(b) That the balance of the purchase monies for Property B would not be coming from the sale of Property A

in circumstances where he was bound to disclose that information to Person C. In doing so the Respondent breached Principle 2 and/or Principle 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly in relation to Allegation 1.3.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 13 March 2020 together with attached Rule 12 Statement (amended on 24 August 2020) and all exhibits

- Emails from the Applicant to the Tribunal and the Respondent dated 7 May 2020, 13 May 2020, 21 May 2020, 2 June 2020, 8 June 2020, 11 June 2020, 17 June 2020, 29 June 2020, 6 July 2020, 7 July 2020, 8 July 2020, 9 July 2020, 15 July 2020, 20 July 2020, 28 July 2020, 29 July 2020, 31 July 2020, 24 August 2020, 8 September 2020, 14 September 2020, 15 September 2020,

18 September 2020, 23 September 2020, 28 September 2020, 29 September 2020, 2 October 2020 and 5 October 2020

- Letters from the Applicant to the Respondent dated 11 June 2020, 15 July 2020, 22 July 2020, 28 July 2020, 29 July 2020, 24 August 2020, 18 September 2020, 28 September 2020, 29 September 2020 and 30 September 2020
- The Applicant's Statements of Costs dated 16 March 2020, 29 June 2020 and 28 September 2020

- Royal Mail Track and Trace Proof of Delivery dated 22 September 2020

- Royal Mail Track and Trace Pending Delivery dated 1 October 2020

Respondent:

- The Respondent's emails dated 7 May 2020 and 12 May 2020 containing his Answer

- Emails from the Respondent to the Tribunal dated 22 April 2020 and 23 April 2020

- Emails from the Respondent to the Tribunal and the Applicant dated 14 May 2020, 2 June 2020, 15 June 2020, 28 June 2020, 2 July 2020, 5 July 2020, 6 July 2020, 7 July 2020, 8 July 2020, 9 July 2020, 31 July 2020, 3 August 2020, 4 August 2020, 8 September 2020, 16 September 2020, 18 September 2020, 23 September 2020, 29 September 2020, 30 September 2020, 1 October 2020 and 5 October 2020

Preliminary Issues

Service of Proceedings

3. The Respondent did not attend the hearing and was not represented. Mr Griffiths, on behalf of the Applicant, reminded the Tribunal that this matter was previously listed for a substantive hearing on 7-9 July 2020, however the case had been adjourned on 8 July 2020 on the Respondent's application. He had not attended that hearing and his application had been dealt with in his absence. Mr Griffiths referred the Tribunal to the Memorandum of that hearing which had confirmed the hearing had been relisted to today: 6-8 October 2020. The Applicant had notified the Respondent by email on 9 July 2020 of the adjournment and also of the new substantive hearing date. The Memorandum of that hearing which contained the date of the new substantive hearing on 6-8 October 2020 had been sent by the Tribunal to both parties by email on 20 July 2020.

4. On 22 July 2020, the Applicant had posted a copy of the Memorandum of the hearing of 7-8 July 2020 together with a copy of the Master Bundle to the Respondent by registered post. Proof of delivery of that letter was provided which confirmed the letter was delivered on 23 July 2020.

5. Mr Griffiths also reminded the Tribunal that on 30 September 2020, the Respondent had made a further application by email to adjourn this substantive hearing. Mr Griffiths submitted it was therefore clear the Respondent had been served with notice of the substantive hearing date.

6. The Tribunal carefully considered all the documents and the Applicant's submissions. The Respondent had been notified of the substantive hearing date by the Applicant on 9 July 2020 and by the Tribunal on 20 July 2020. Indeed he had applied for an adjournment of today's hearing on 30 September 2020, so was clearly aware of it. That adjournment had been refused by the Chairman on 1 October 2020 and the Respondent was notified of this by the Tribunal by email on the same day. The Tribunal was satisfied that the Respondent had been notified of these proceedings and the substantive hearing date in accordance with Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007.

Application to Proceed in the Respondent's Absence

7. Mr Griffiths advised the Tribunal that the Respondent's position was that he had not received all of the documents in this case and that until he received all of the documents he would not take part in the hearing. Accordingly, Mr Griffiths made an application for the substantive hearing to proceed in the Respondent's absence.

8. Mr Griffiths took the Tribunal through a detailed chronology of the correspondence, copies of which were provided. He confirmed that on 15 July 2020, the proposed amendments to the allegations had been sent to the Respondent by email and by a letter sent by registered post. Proof of delivery of that letter was provided and this confirmed the letter had been delivered to the Respondent's home address on 16 July 2020. Mr Griffiths reminded the Tribunal that a Master Bundle had also been posted to the Respondent by registered post on 22 July 2020 and the proof of delivery confirmed it had been delivered to him at his home address on 23 July 2020. A further email and letter were sent to the Respondent on 28 July 2020 setting out further proposed amendments to the Rule 12 Statement.

9. Mr Griffiths stated that on 31 July 2020, the Respondent had sent an email to the Applicant stating:

> "I confirm receipt of one file of papers which was received yesterday evening when my wife opened the front door to water tubs and discovered the package on the doorstep. It had not been signed for by me as we were out all day……..
>
> There was no covering letter so I assume you are seeking my comments on the pack which I will send later today once I have had an opportunity to consider it….."

10. Mr Griffiths stated that on 3 August 2020, the Respondent had sent a further email stating:

> "With reference to the above I refer to the bundle of papers which were received by me on 30 July and found on our doorstep by my wife when watering the flower pots. As there was no covering letter I am somewhat at a

> loss to understand what I am required to do with them. I have read through the bundle and would make the following comments…."

Mr Griffiths stated the Respondent then provided further explanations in response to the allegations in that email.

11. Mr Griffiths stated that on 4 August 2020, the Respondent had sent an email to the Applicant confirming that he did not oppose the application for amendments sought by the Applicant.

12. Mr Griffiths stated that on 24 August 2020, he had sent an email and a letter to the Respondent attaching a copy of the amended Rule 12 Statement.

13. On 16 September 2020, the Respondent had sent an email to the Tribunal and to the Applicant in which he stated:

> "….I confirm that I have received only one bundle which I received on 30 July as referred to in my letter dated 2 August. I cannot identify which bundle it is as it is not dated nor was it accompanied by a covering letter
>
> Mr Griffiths has indicated that he has signatures from me confirming receipt of other bundles. That is not possible as I have not signed for any documents from him. Indeed I requested to see copies of the evidence some weeks ago but once again my request has been ignored…….
>
> You are or at least should be aware that I have no access to documentation and materials other than by way of hard copy. Despite my requests in this respect it seems that I may still not have a complete set of papers. How can I be expected to handle this matter without sight of such documentation?"

14. Mr Griffiths stated that on 18 September 2020, the Respondent had sent an email to the Tribunal and to the Applicant stating:

> "I will not take any further part in these proceedings until I receive a full set of papers and have been given an opportunity to consider them and comment on them.
>
> Mr Griffiths indicated previously that he had evidence that I had eceived [sic] all the papers. This now appears not to be the case. No such evidence of my signature has been produced. I would certainly not sign my name as 'O'NEILL' as that is not my name nor my signature….."

15. Mr Griffiths confirmed that he had sent a letter dated 18 September 2020 to the Respondent by registered post, enclosing a copy of the Hearing Bundle. The Tribunal was provided with a copy of the Post Office Proof of Delivery which confirmed the letter had been delivered to the Respondent's home address on 22 September 2020.

16. Mr Griffiths confirmed that on 23 September 2020, the Respondent had sent an email to the Applicant and to the Tribunal stating:

> "Whilst I received a package from you yesterday - found on my doorstep but not signed for!
>
> I have not looked at it as I have still not received the bundles which you informed me had been sent some time ago and which you indicated I had signed for. This was of course not the case as previously indicated despite my request in August 2019 for hard copies to be provided to me……..
>
> As indicated I will not take any further part in these proceedings until I receive such documents and have been given an opportunity to consider them.
>
> The longer this goes on the more I believe that the outcome of these proceedings was predetermined…."

17. Mr Griffiths confirmed that on 28 September 2020 he had sent an email and the Applicant's Statement of Costs to the Respondent. This had also been sent by letter on the same day by registered post. The Tribunal was referred to the Post Office Proof of Delivery which stated that attempts had been made to deliver that letter on 1 October 2020 "but there didn't seem to be anyone in."

18. Mr Griffiths stated that the Respondent had sent an email to him and to the Tribunal on 29 September 2020 in which he had stated:

> "It should be clear to you from my previous emails that I have not received all of the bundles you alleged had been signed for by me. I would repeat that I have not signed for any communications from you or anybody else for several months. I requested sight of this so called evidence but you have failed to provide it. All you have indicated is that it was signed for by "O'NEILL". This is not my signature and if it were me i [sic] would at least have spelt my name correctly.
>
> As it was you who sent the bundles I can only assume that they are of some significance as why else would you have sent them. It is quite preposterous to think that you can proceed with this matter given that I have not been provided with a full set of papers to consider and upon which to comment. Given that I indicated weeks ago that I had only received one bundle left on my front steps I fail to understand why you have not sent a duplicate set. What are you seeking to conceal from me?
>
> It was of course as long ago as August last year that I requested hard copies be sent to me but of course you appear to have ignored that request seemingly preferring me to attempt to deal with these allegations on my mobile phone. Having been made aware of my situation to continue as you did shows no respect for justice. …….
>
> Any delays in this matter have been caused by the SRA ignoring reasonable requests made by me and any resultant costs should be borne by the SRA.
>
> My position remains unchanged."

19. Mr Griffiths stated that in a further email to him and to the Tribunal also dated 29 September 2020, the Respondent stated:

> "As I have still not received the outstanding bundles my position remains unchanged. I will take no further part in the proceedings.
>
> It is quite unfathomable as to why Mr Griffiths will not supply them even though I understand that this was a requirement of the Tribunal. Quite unjust. Any costs thrown away should be borne by the SRA."

20. Mr Griffiths reminded the Tribunal that in an email dated 30 September 2020, the Respondent had applied for an adjournment stating:

> "…until I receive replies to my requests for hard copy documentation I repeat that I will take no further part in the proceedings.
>
> Please therefore accept this email as an application for a further adjournment on the basis that the SRA has failed quite unreasonably to supply copy bundles as requested which is potentially prejudicial to me."

21. Mr Griffiths stated that on 1 October 2020, the Respondent sent two emails to the Tribunal and to the Applicant, stating that he had not received "the missing bundles" or the Applicant's letter to him dated 28 September 2020. In a further email to the Tribunal and to the Applicant on the same day the Respondent stated:

> "Further to my earlier email given that the reason for my application is the failure of the SRA to provide documents requested on several occasions surely it would only be reasonable for the SRA to consent to the application. Surely an undertaking should be obtained from the SRA to provide them within a specified period of time? And a timetable produced for me to comment on the documents and raise enquiries not less than 28 days thereafter."

22. Mr Griffiths reminded the Tribunal that the Respondent's application for an adjournment was refused by the Chairman of the Tribunal on 1 October 2020 on the basis that the Tribunal was satisfied the Respondent had been served with the relevant documents and he had had adequate time to prepare for the hearing due to take place remotely on 6-8 October 2020. This Decision had been sent to the Respondent on the same day by the Tribunal. A further copy of the Decision had been sent by the Tribunal to the Respondent by email on 2 October 2020 at the Respondent's request as he informed the Tribunal by email on 2 October 2020 that he had not received the attachment sent to him the previous day on 1 October 2020.

23. Mr Griffiths stated that on 2 October 2020, he had sent an email to the Respondent to inform him that the Post Office had attempted to deliver documents to him on 1 October 2020 but there had been no answer. He attached to his email the Statement of Costs again together with a copy of an authority he intended to rely upon.

24. Mr Griffiths stated that the Respondent had sent an email to the Tribunal and to the Applicant dated 5 October 2020 in which he stated:

> "I regret that my phone will not open or download the attachment.
>
> Owing to the perceived collusion between the SRA and SDT it is inconceivable that my application will have been granted but perhaps my scepticism is misplaced?
>
> I have no doubt that had I sent something to the SRA which had not been delivered they would have insisted that a copy be provided. Why am I treated so differently?...."

25. On the same day Mr Griffiths stated he had replied to the Respondent advising him that a bundle of documents was posted to him on 2 October 2020 which included the updated documents. He stated that the Respondent had replied by email on the same day stating:

> "I regret that I have not had time to prepare for the hearing as I have not received from you all of the recent paperwork. I have advised you on numerous occasions s [sic] that I have not received the bundles which you claimed I had signed for. I have shown that I did not sign for those bundles
>
> I would repeat my perception that the SRA and SDT are in collusion to deny me a fair hearing.
>
> Until I receive the outstanding documents I will not take any further part."

26. Mr Griffiths stated that the last email received from the Respondent was also dated 5 October 2020 in which he had stated:

> "I have not received any bundle from you posted on Friday."

Mr Griffiths confirmed there had been no further communications from the Respondent.

27. Mr Griffiths submitted that as well as the correspondence provided, the Respondent's conduct throughout these proceedings was also relevant to the application to proceed in the Respondent's absence. He stated that the Respondent's purported issues with receiving documents had been considered by the Tribunal at previous hearings.

28. Mr Griffiths stated that in April 2020, the Respondent had been granted access to the Tribunal's online portal where all the documents relating to the hearings in this case had been uploaded. Mr Griffiths confirmed that the Respondent had not accessed this at all, as he claimed he could not access online services. Mr Griffiths stated that due to the pandemic there had been a number of virtual case management hearings and the Respondent had not participated in any of these, despite being specifically invited to participate by telephone on the second day of the hearing on 7-8 July 2020 when his first application to adjourn the substantive hearing on 7-9 July 2020 was considered. Nor had the Respondent provided any contact telephone number in response to requests for a number to be provided.

29. Mr Griffiths stated that a Case Management Hearing had taken place on 26 June 2020. The Respondent had not attended but had raised concerns about being able to access documents on the Tribunal's online portal as he stated he did not have access to his usual office facilities due to the pandemic. The division of the Tribunal dealing with that hearing had directed the Respondent to confirm to the Applicant what he required to be able to participate in the hearing and explain what steps he had taken in order to be able to participate in the substantive hearing. Mr Griffiths stated that the Respondent had failed to comply with those directions.

30. At the previous substantive hearing which took place on 7-8 July 2020 and was adjourned, Mr Griffiths stated that the division of the Tribunal which had dealt with the hearing on that occasion, had given a great deal of consideration to the Respondent's submissions, which had been that he could not access materials and documents on his mobile phone and that a hard copy of the documents had been requested. On that occasion, as there had also been issues raised by the Applicant about amending the allegations, that division of the Tribunal decided to grant the adjournment. That division had expressed a concern that paper copies of documents had not been provided to the Respondent and Mr Griffiths submitted that he had taken reasonable steps to rectify this position thereafter.

31. Mr Griffiths submitted that on a number of occasions the Respondent had stated he would not participate further in hearings. He submitted the Respondent had voluntarily absented himself from this hearing. He submitted the Tribunal had addressed all of the Respondent's concerns regarding his access to documents during the course of these proceedings and the Respondent was aware of this. Mr Griffiths also reminded the Tribunal that the Respondent had been given a number of opportunities to clarify his version of events and that although he had provided brief responses to the Allegations, Mr Griffiths submitted the Respondent had declined to provide further information. Mr Griffiths submitted that a witness was due to give evidence remotely at this substantive hearing and it was in the interests of justice for matters to proceed in the Respondent's absence, as he was unlikely to attend at a future hearing.

The Tribunal's Decision on the Application to Proceed in the Respondent's Absence

32. The Tribunal carefully considered all the documents provided and the Applicant's submissions. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal took into account the criteria set out in the case of R v Hayward and Jones [2001] QB 862 when considering whether it was appropriate to proceed in the Respondent's absence.

33. The Respondent had engaged with these proceedings but only to a limited extent. He had not participated in any of the previous hearings, all of which had taken place virtually, and at which he had been given the option to attend by telephone. He had written numerous emails asserting that he had not received documents or was unable to access material, yet the Tribunal had been provided with evidence that the Hearing Bundle and other hearing documents had been delivered to the Respondent's home address. Indeed, the Master Bundle had been delivered to the Respondent on 23 July 2020 and the Hearing Bundle had been delivered to him on 22 September

2020. The Tribunal was satisfied that he had been provided with copies of the documents and had been given sufficient time to consider these and prepare his case. Indeed, the Applicant had taken such reasonable measures as were available during a pandemic to ensure the Respondent was sent all the documents by email and by post. The Respondent's assertions that he had not received documents were not true.

34. Furthermore, there was no real information from the Respondent to suggest that he would attend a hearing on a future date. He had simply stated he would take no further part in the proceedings.

35. The Tribunal concluded that the Respondent had voluntarily absented himself and was unlikely to attend at a future hearing even if the case was to be adjourned for a second time, as he had a history of non-engagement with hearings. The Tribunal took into account the Respondent had provided a response to the Allegations. There were also letters within the Applicant's bundle which had been written by the Respondent to the SRA. Any prejudice to the Respondent could be addressed as these emails/letters all provided further information that the Tribunal could take into account.

36. The Tribunal also noted the serious nature of the allegations which had been made against the Respondent. These involved an allegation of dishonesty and related to events that had taken place in 2014. A significant period of time had elapsed since then and the Tribunal was mindful that a witness was ready to give evidence today. It was not in the public interest to delay matters any further, indeed it was in the public interest to conclude the case expeditiously. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence. The Tribunal granted the application.

Factual Background

37. The Respondent, born in 1954, was admitted as a solicitor on 12 December 1980.

38. Between 1 November 2000 and 30 June 2015 the Respondent was a Partner at Town and Country Property Lawyers ("the firm"). The Respondent was currently employed by Davies and Partners Solicitors Limited as a Conveyancing Manager. He did not hold a current practising certificate.

39. On 15 November 2018 the SRA received a report from H Solicitors relating to the Respondent's conduct of conveyancing matters involving members of the Respondent's family. On 27 November 2018 the Solicitors Regulation Authority ("SRA") received a report from Person C, a Partner at the firm. An investigation by the SRA into these matters followed.

<u>Property A</u>

40. On 4 July 2014 the Respondent entered into a contract in a personal capacity to purchase Property A from Person A. Person A was the fiancé of Person B at the time of the agreement and they subsequently married. Person A was therefore the Respondent's daughter-in-law.

41. The sale price of Property A was £146,000 and was due to complete on 4 July 2014 as set out in the signed Contract of Sale. The Form TR1 was signed by Person A.

42. Property A was subject to 2 Charges, the first secured a loan from Person A's father (Person D) and the second was a mortgage in favour of L Bank PLC. The Respondent had made payments totalling £27,400 to Person D during the period 14-18 August 2014 to redeem his Charge on the property.

43. The Respondent stated that he intended to use his pension funds towards the purchase of Property A. However, on discovering that using the pension funds in this manner would incur a tax liability of around £28,000, the Respondent decided to not to redeem the L Bank PLC Charge. The Respondent did not therefore complete the purchase pursuant to the contract.

44. Notwithstanding his failure to complete, the Respondent assumed control of Property A after the intended completion date. From taking control of Property A until around November 2018 the Respondent privately rented the property to tenants for £700-£775 per month.

45. The Respondent's failure to discharge Person A's mortgage with L Bank PLC resulted in the monthly payments continuing to be taken by L Bank PLC from Person A, as the bank was unaware of the abortive conveyance. It was this that alerted Person A to the Respondent's failure to complete. The Respondent therefore paid around £420 per month to Person A (representing the amount of her ongoing mortgage repayments). The Respondent retained the excess sum from the rental income generated by Property A. This remained the position from the purported date of completion in 2014 through to late 2018, when H Solicitors were instructed to resolve the issues arising from the Respondent's failure to complete the purchase of Property A.

46. On 5 November 2018 H Solicitors served a Notice to Complete on the Respondent. On 20 November 2018 the Respondent made a payment of £90,022.53 in an attempt to complete. In a letter dated 1 February 2019, H Solicitors set out why this amount was some £24,967.49 short of the amount needed to complete under the terms of the agreement for sale.

47. As a consequence of the Respondent failing to complete, and only after Person A had engaged H Solicitors to rectify the difficulties that the Respondent had created for her, the agreement was rescinded by Person A, who reassumed control of the Property A to arrange its sale. Property A was sold on 16 August 2019 for £170,000.

48. Following the sale, a dispute arose regarding the amount of the Respondent's entitlement from the sale proceeds of Property A. The Respondent instructed D Law to pursue his entitlement and sought £146,000 of the sale proceeds.

49. H Solicitors set out that the correct amount to which the Respondent was legally entitled was £110,452.53. An offer of £120,000 in full and final settlement was made to the Respondent and ultimately accepted on 15 January 2020 bringing the matter concerning Property A to a close.

Property B

50. On 28 April 2014 the firm commenced acting in the purchase of Property B on behalf of Person A and B. Notwithstanding that the Respondent was privately purchasing Property A from Person A, the Respondent had professional conduct of the purchase of Property B. Persons A and B were both members of his family.

51. Persons A and B purchased Property B for £249,995. The purchase was funded by a Help to Buy Loan of £49,999 and a mortgage from L Building Society in the sum of £187,495. The remainder of £12,501 and the solicitors' fees were supposed to be covered by the net proceeds of sale from Property A. Both the sale of Property A and the purchase of Property B were to proceed simultaneously.

52. It was a condition of the Lender in respect of Property B (L Building Society) that the mortgage over Property A in favour of L Bank PLC was to be discharged on or prior to completion.

53. Person C was a partner in the firm. In his witness statement dated 12 March 2020 he explained that:

> "It was a requirement of the [L Building Society] (the Lender) that a person unrelated to [Person B] and [Person A] carried out the perfection of their mortgage over the Property which I undertook. In order to seek the release of the mortgage monies I signed off on the certificate of title which was sent to the Lender. By sending the certificate this meant that the condition relating to the redemption of the L mortgage over [Property A] would be fulfilled no later than completion of the purchase of the Property."

54. Completion of Property B therefore completed albeit on a false premise (from the Lender's perspective) because the mortgage for Property A was not discharged.

Allegation 1.1

55. In a letter to the SRA dated 5 August 2015, the Respondent stated that his purchase of Person A's property was intended altruistically to assist his family members in their onward purchase of Property B. He stated that Person A had freely consented to the sale and was not under any duress. He provided a signed statement from her confirming this.

56. The Respondent stated that he had intended to release pension funds and use them towards the purchase of Property A. However, he subsequently discovered that doing so would incur a tax liability of £28,000. Simultaneous completion in respect of Property A and B was scheduled to take place on 4 July 2014.

57. The Respondent was aware that it was a requirement of the lender in relation to Property B that the mortgage over Property A was to be discharged on or prior to completion. Nevertheless the Respondent proceeded with the purchase but failed to redeem the mortgage with L Bank PLC. His purchase of Property A therefore did not complete and he took possession of Property A as a licensee as opposed to as the legal

owner of the property, which was what had originally been intended under his agreement with Person A.

58. The contract incorporated the Standard Conditions of Sale (5th Edition). The Respondent's status and entitlement in respect of Property A (i.e. as a licensee of Person A) derived from 5.2 of the Standard Conditions of Sale (5th Edition). He failed to complete the purchase and occupied Property A for over 4 years as a licensee and thereby failed to fulfil his agreement with Person A.

59. Regardless of the Respondent's original intention when entering into the agreement to purchase Property A, the Respondent's professional conduct obligations in respect of his dealings with Person A persisted throughout. Therefore his professional obligations existed when entering into the agreement and continued until it was ultimately rescinded by Person A, who instructed solicitors to compel the Respondent to resolve the irregularities concerning his possession of Property A.

Allegation 1.2

60. Outcome 3.4 of the SRA Code of Conduct 2011 confirms that a solicitor can never act where there is a conflict, or a significant risk of conflict, between the solicitor and his/her client. The Respondent's proposed, but ultimately abortive purchase of Property A, brought his financial interests into a direct conflict with those of his clients.

61. Notwithstanding the inferred good intentions at the outset of the proposed arrangement between the Respondent and Persons A and B (whereby the Respondent would purchase Property A facilitating the onward purchase of Property B by his family members, Persons A and B) the Respondent also acted for both Person A and Person B in their purchase of Property B.

62. As a consequence of the engagement letter dated 28 April 2014 prepared by the Respondent, relating to his appointment on behalf of Persons A and B in their purchase of Property B, there were professional conduct obligations incumbent upon the Respondent to ensure that his own interests were not in conflict with his clients. However the sale and purchase of Properties A and B were so intrinsically linked that the Respondent's status as purchaser of the former, while simultaneously having professional conduct over the purchase of the latter, came with an obvious significant risk (which ultimately crystallised) of a conflict arising.

63. In the course of progressing the purchase of Property B the Respondent was aware of the Lender's requirements that the mortgage over Property A was to be discharged prior to or on completion. The Respondent placed his clients in breach of their mortgage terms and misled the Lender. Furthermore upon taking possession of Property A in those circumstances, he created an unintended ongoing relationship with his client in which the Respondent's interests directly conflicted with those of Person A.

64. Simultaneous completion in respect of Property A and Property B was due to take place on 4 July 2014. The Respondent was aware of the prejudice to his own financial position arising from the unforeseen tax liability should he complete the

purchase of Property A. The Respondent decided to forego completion in respect of Property A to avoid this financial liability from becoming due.

65. In order to complete the purchase of Property B, notwithstanding the Lender's requirement for the prior discharge of the mortgage over Property A, the Respondent misrepresented to Person C (who acted for the Lender), that this mortgage would be redeemed imminently and prior to 4 July 2014. This caused Person C to sign a Certificate of Title misinforming the Lender as such, and enabling the purchase to take place.

66. The Respondent had at this stage adopted a position that set him completely at odds with his professional obligations and one which was directly in conflict with his clients i.e. in occupation of Property A as a licensee rather than legal owner and with his clients in breach of their mortgage terms over both Property A and Property B.

67. Person A became aware of the issue when mortgage payments continued to be taken after the purported completion date. Thereafter a period of 4 years ensued during which the Respondent failed to complete the purchase of Property A.

Allegation 1.3

68. Person C explained the circumstances in which he came to act on behalf of the Lender in respect of Property B in his witness statement dated 12 March 2020. The Respondent could not certify to the Lender that the conditions of the mortgage were met given his role on behalf of his clients. Person C was therefore appointed on behalf of the Lender to ensure that its pre-conditions were met, which included the mortgage in respect of Property A being discharged prior to or on completion. Person C also sought to assure himself that the balance of funds for the purchase of Property B were coming from the sale of Property A.

69. To ensure the purchase of Property B could proceed Person C stated in his witness statement:

> "….I questioned Mr O'Neil about his private arrangement with [Person A] and it's progress. Mr O'Neil verbally confirmed to me that the transaction was about to complete and that the balance monies for the purchase of [Property B] were coming from the sale of [Property A]. I had no reason to doubt Mr O'Neil's integrity, nor the truthfulness of his response. Mr O'Neil had thirty-five years' experience as a residential property solicitor. Mr O'Neil would have fully understood the implications of not informing me that as a matter of fact the Lender's mortgage would not be discharged and that in reality the transaction would not complete. If Mr O'Neil had disclosed the true facts of the case, I would not have signed the exchange check list and I would have emphatically refused to send the certificate of title to the Lender. I fully relied upon Mr O'Neil's verbal assurances before I signed off the Exchange check list and before I signed the certificate of title for the Lender."

70. Person C emphatically stated that he would not have signed the Certificate of Title or completed the Exchange Checklist had the Respondent not misrepresented the position concerning Property A to him.

71. Completion in respect of Property A was not imminent when the Respondent informed Person C that it was. The Respondent had taken no steps to facilitate the discharge of the mortgage over the property in favour of L Bank PLC. Completion never ultimately transpired at all and, after 4 years, Person A rescinded the agreement and instructed solicitors to extricate her from the position the Respondent had placed her into.

72. Furthermore the balance monies for the purchase of Property B were not coming from the sale of Property A at the time the Respondent made this representation to Person C. Property A was not purchased by the Respondent, who occupied the property as a licensee. The Respondent could not complete the purchase as to do so would incur a tax liability for him.

73. The Respondent made these misrepresentations to Person C to ensure that the Lender in respect of Property B was assuaged and his clients could complete their purchase. In doing so he compromised his professional obligations.

Witnesses

74. The following witnesses gave evidence:

- P Wilson (a Partner at the firm)

Findings of Fact and Law

75. The Tribunal had carefully considered all the documents provided, the evidence given and the Applicant's submissions. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

76. **Allegation 1.1: By virtue of a contract dated 4 July 2014 the Respondent agreed to purchase Property A from Person A, who was his client in relation to a related transaction, but failed to complete the purchase and properly discharge a mortgage. He then failed to disclose that failure to Client A. In doing so he:**

1.1.1 Breached Principle 2 and/or Principle 6 of the SRA Principles 2011.
1.1.2 Failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.

76.1 Mr Griffiths, on behalf of the Applicant, confirmed that the Respondent had been the solicitor who was responsible for this purchase and he took the Tribunal to the engagement letter and various other documents on the file to confirm this. He submitted the Respondent had voluntarily exchanged contracts on Property A in the knowledge that he could not complete that purchase, as he had chosen not to use funds available to him to allow him to complete. Mr Griffiths accepted that he was unable to confirm the date the Respondent became aware of this but submitted the Respondent had known at the time of exchange. He referred to the Respondent's email to the Applicant dated 3 August 2020 in which the Respondent had stated:

> "I was only able to partially complete the transaction on 4 July 2014 as it became apparent that I could not purchase the property for my pension fund (SIPP) without paying income tax….."

76.2 Mr Griffiths submitted there was no such notion as a 'partial completion' and in referring to this, the Respondent was referring to exchanging contracts. Mr Griffiths submitted that this indicated the Respondent knew he had the funds to complete the purchase, but had chosen not to use those funds, yet he exchanged contracts without having the funds to complete the purchase. Mr Griffiths submitted the Respondent was an experienced solicitor with many years of practice who would have known what his professional obligations were. He submitted the Respondent had acted with a lack of integrity, he had breached Outcome 11.1 and he had breached Principle 6 of the SRA Principles 2011.

76.3 Mr Griffiths referred the Tribunal to its Practice Direction No 5 and the case of Muhammed Iqbal v SRA [2012 EWHC 3251] in which it was stated that ordinarily the public would expect a professional man to give account of his actions. The Practice Direction confirmed that in appropriate cases, where the Respondent denied some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts, and does not give evidence, or submit himself to cross-examination, the Tribunal will be entitled to draw an adverse inference from the position the Respondent had chosen to take. Mr Griffiths submitted the Tribunal should draw an adverse inference in this case.

76.4 The Tribunal considered the Respondent's emails which provided some information. In his email of 7 May 2020, the Respondent had stated:

> "…The actions of the Respondent may be considered as foolhardy but it is denied that the actions of the Respondent were undertaken with any dishonest intention. A dishonest man does not act in such a way as to ensure his daughter in law does not incur any financial loss. Indeed the only people to ha e [sic] suffered loss are the Respondent and his wife. The Respondent's daughter in law secured a profit on the resale of the flat of £21,000 and retained £26,000 of the money paid to her by the Respondent for the flat despite her solicitors [H] having indicated at various times that the Respondent had repudiated the contract that their client had rescinded the contract and then claiming to serve Notice to Complete in connection with a contract which had been repudiated or rescinded. The Respondent has ensured that neither his daughter in law nor anyone else has suffered any financial loss."

76.5 The Tribunal also considered the Respondent's email dated 12 May 2020, which elaborated on his first email of 7 May 2020. In the second email, the Respondent stated:

> "1.1 It is agreed that the Respondent agreed to purchase the flat from his daughter in law. The Respondent partially completed the transaction on 4 July 2014 and redeemed the outstanding mortgage in November 2018 having continued to make monthly mortgage payments in the intervening period to ensure that his daughter in law incurred no loss. The Respondent's daughter in law was fully aware that the flat had been let by the Respondent as

he assumed responsibility for payment of the service charges letting costs and incidental repairs as well as payment for the car parking permit."

76.6 In his email of 3 August 2020 to the Applicant the Respondent had stated:

"….My daughter in law [Person A] did wish to sell her flat to enable her and our son to buy a new home at [Property B]. She did not put the flat on the market.

2. My wife and I were of course aware of their intention to move house. They found a new home to buy but to secure the advantageous deal they needed to act quickly. We discussed the position with our son and daughter in law and it was agreed that I would purchase the flat from them with my pension fund to provide me and my wife with a monthly rental income. Our daughter in law was fully aware of our intention to let the flat at this time. Indeed from 4 July 2014 our daughter in law ceased to make payments of service charges and these were paid by me……

…… 5. I was only able to partially complete the transaction on 4 July 2014 as it became apparent that I could not purchase the property for [sic] my pension fund (SIPP) without paying income tax and I was advised ….. that I needed to convert my SIPP to a platinum SIPP whereupon I would be able to complete the transaction as envisaged…. Whilst I admit that in view of the length of time involved and with hindsight I should have advised my daughter in law to notify [L Bank PLC] that the mortgage over the flat should have been converted to a Buy to Let mortgage it has now been redeemed and no further action has been taken by the Bank against my daughter in law……"

76.7 In an earlier email to the SRA dated 6 March 2019, the Respondent had stated:

"…… I offered to buy [Property A] as I believed I would be able to use funds invested from my pension…….

…….When I was not able as envisaged to redeem the [L] Bank mortgage I agreed to pay [Person A] the amount of her monthly mortgage payment so that she was not out of pocket. [Person A] would not have been in breach of her mortgage conditions as there was a valid contract in place for the sale of [Property A] It is regrettable that it took so long for the mortgage to be redeemed and I sincerely regret that but I did endeavor to ensure that [Person A] would not be out of pocket. Perhaps I should have advised [Person A] to inform [L] Bank to convert her mortgage over [Property A] to a Buy to Let mortgage but I did not expect it to continue for so long.

It is correct that I paid [Person A] between 410.00 pounds and 420.00 pounds a month from July 2014 until redemption of the mortgage in November 2018…..

It is indeed correct that I let out the property from 2014 until November 2018. [Person A] was fully aware of my intention to let out the property even before the sale contract was made as it was intended to provide me with pension

> income given that my pension ……. was considerably less than I was expecting. It is quite unbelievable that [Person A] now appears to be suggesting that she had no knowledge of the fact that the flat was to be let and that I would retain the rent over and above the expenses. Had the sale been completed on time then [Person A] would of course not have expected to have received any rent from the flat. [Person A] incurred no loss as I ensured that her mortgage was paid and I took over the responsibility for payment of the service charges for the flat….
>
> ….10. I was acting in [Person B] and [Person A]'s interests in securing them [Property B]. [Person A] and [Person B] suffered no financial loss. I was certainly not acting in my own interest and I resent any such suggestion.
>
> 11. It was a family arrangement.
>
> ….2. [Person A] was fully aware of the letting even prior to the arrangement for the sale. Indeed if she had not agreed with such an arrangement then the sale would not have been possible.
>
> 3. Between 700.00 pounds and 775.00 pounds per month for periods when the property was let. Out of the rent received I paid the monthly mortgage, service charges, parking permit fee, estate agents fees, annual electrical and gas inspections and certificates and necessary repairs to the boiler and washing machine.
>
> 4. I paid the service charges to the Managing Agents [A] on a monthly basis."

76.8 In a further email to the SRA dated 5 August 2019, the Respondent stated:

> "… I held funds in my pension account but was not able to access them as anticipated. [Person A]… was aware of the situation and the fact that the flat had been let out with her consent. Indeed she was aware of the fact that the flat would be let out prior to entering into the contract….
>
> ….I admit that perhaps the mortgage lender should have been informed. Indeed they were informed latterly and after the mortgage had been redeemed I understand that they have confirmed that they do not intend to take any action….
>
> …….I have not acted dishonestly at all. All that I did was done to assist [Person B and Person A] to achieve their acquisition of [Property B]. I always believed that the mortgage on the flat would be redeemed as I had sufficient funds in my pension account even if I could not access them as required. Indeed eventually after having tried various other means I was able to access sufficient of the pension funds and together with the sale of other Investments the mortgage was redeemed. I admit that it took a lot longer than envisaged but I was always confident that redemption would be achieved. In the meantime I ensured that [Person B] and [Person A] were not out of pocket at all by maintaining regular monthly payments of the mortgage account."

76.9 The Tribunal noted from the Respondent's emails that he accepted that he had agreed to purchase Property A from his daughter in law, Person A by exchanging contracts. He also accepted that the funds for completion were not paid by him until November 2018, over four years later. He further accepted that he did not discharge Person A's mortgage on Property A until November 2018.

76.10 The Tribunal was therefore satisfied that the Respondent had agreed to purchase Property A from Person A with completion to take place on 4 July 2014. The Tribunal was also satisfied that the Respondent had failed to properly discharge a mortgage as he had not paid the funds to redeem Person A's mortgage on Property A until November 2018. This could not be considered to be a "proper" discharge of the mortgage, particularly as Person A only realised the mortgage had not been discharged when mortgage payments continued to be taken from her bank account by the Lender. It was irrelevant that the Respondent had reimbursed these mortgage payments to Person A over the four year period, as the mortgage should have been discharged on 4 July 2014 and indeed, Person A thought it had, until she saw that payments continued to be deducted from her account.

76.11 Allegation 1.1 as drafted also alleged that the Respondent had "failed to complete the purchase". There was no reference in the Allegation to any time period or any mention of the delay. As the Respondent had attempted to complete the purchase in November 2018, albeit some four years later, the Tribunal did not find proved that the Respondent had failed to complete.

76.12 Outcome 11.1 of the SRA Code of Conduct 2011 states that a solicitor should not take unfair advantage of third parties in either his professional or personal capacity.

76.13 The Tribunal was satisfied that the Respondent had breached Outcome 11.1 of the SRA Code of Conduct 2011 and he had also acted with a lack of integrity in breach of Principle 2 of the SRA Principles 2011. A solicitor acting with integrity would not have agreed to purchase a property and then fail to discharge the mortgage on that property for over four years, particularly in circumstances where he had funds available to him but had made a conscious decision not to use those funds in order to avoid a tax liability he might have to bear. He had used his professional position to take possession of a property and subsequently rent it out over a four year period generating a profit for himself. He had clearly taken unfair advantage of Person A, who was a family member.

76.14 The matter was further aggravated by the fact that Person A only became aware of his conduct because she saw that mortgage payments continued to be deducted from her back account. The Respondent had allowed her to potentially be in breach of a mortgage condition as the mortgage had been granted on the premise that Property A would be used as a residential property and not as a property let to tenants, as he had done. He did not notify the Lender of the change of status and had thereby also taken unfair advantage of the Lender. This course of behaviour on the part of the Respondent did not connote a steady adherence to an ethical code or acting with moral soundness and rectitude. He had therefore acted with a lack of integrity and in breach of Outcome 11.1.

76.15 The Tribunal was also satisfied that the Respondent had breached Principle 6 of the SRA Principles 2011 as his conduct had not maintained the trust the public placed in him or in the provision of legal services. Person A had eventually instructed another firm of solicitors, H Solicitors, to take over the matter and serve a Notice to Complete on her behalf. Furthermore, the public would not expect a solicitor acting in a professional capacity to take advantage of a family member and/or a Lender in this manner.

76.16 The Tribunal found proved that the Respondent had breached Principles 2, 6 and Outcome 11.1.

77. **Allegation 1.2: From a date unknown between 28 April 2014 and 4 July 2014 the Respondent continued to act on behalf of Persons A and B in their linked purchase of Property B in the knowledge that a conflict had arisen (or that there was a significant risk that such a conflict might arise) between his own interests and those of his clients. In doing so he:**

1.2.1 Breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.
1.2.2 Failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.

77.1 Mr Griffiths submitted there had been not only a significant risk of a conflict of interest but also an actual conflict of interest in the Respondent continuing to act on behalf of Person A and Person B in their linked purchase of Property B. He submitted Person A had not received independent advice in a situation where the Respondent had agreed to buy Property A from her whilst also acting for her and Person B to buy Property B. Mr Griffiths submitted the Respondent had a financial interest in Property A which directly conflicted with his clients' interests. It may not have been in their interests to sell to him or at all, but it would have been in his interest to acquire Property A. Mr Griffiths submitted the Respondent was an experienced solicitor and should have known that he could not act for Person A and Person B in these circumstances.

77.2 The Respondent in his email dated 12 May 2020 stated that Person A and Person B had been represented by another firm of solicitors in connection with their purchase. In his email to the Applicant dated 3 August 2020, the Respondent stated:

> "Town and Country Property Lawyers acted for my son and daughter in law in connection with the purchase of [Property B]. The initial letter from Town and Country Property Lawyers to my son and daughter in law addresses them as [Person B] and [Person A] whereas If I had been acting I would have addressed them as "[X] and [Y]"."

77.3 In his email to the SRA dated 5 August 2019, the Respondent stated:

> "I believe that Town & Country Property Lawyers acted for [Person B] and [Person A] in the purchase of [Property B]. I do not consider that there was any conflict of Interest as all that I did was done to assist [Person B] and [Person A] to complete their purchase of [Property B]……"

77.4 The Tribunal heard evidence from Person C, Mr Paul Wilson, who was the Senior Partner of the firm and who also dealt with property work. He confirmed that the Respondent was also a partner at the firm at the relevant time and had acted on behalf of Person B and Person A, who were the Respondent's son and daughter in law respectively. Mr Wilson confirmed that the Respondent had had conduct of the purchase of Property B which was to be purchased with a mortgage from L Building Society.

77.5 Mr Wilson stated that he was aware that the Respondent was also purchasing Property A from Person A as a linked sale. Mr Wilson stated that he had requested Person A to provide a statement to confirm she was happy with this private arrangement.

77.6 The Tribunal noted that although the Respondent had asserted in his emails that Person A and Person B were represented by Town and Country Property Lawyers, he had also admitted in his emails that he was employed there until 30 June 2015 when he left.

77.7 The Tribunal carefully considered the evidence given by Mr Wilson and the documents provided in relation to the purchase of Property B. The Tribunal found Mr Wilson to be a straightforward, credible witness. His oral evidence was unchallenged and the Tribunal had no reason to doubt what he had said. The Tribunal accepted his evidence.

77.8 The Tribunal noted that the client engagement letter sent to Person A and Person B from the firm dated 28 April 2014 in relation to the purchase of Property B confirmed the Respondent would carry out most of the work under the supervision of Mr Wilson. It also stated the clients should contact the Respondent with any queries.

77.9 The Tribunal was satisfied that the Respondent had acted on behalf of Person A and Person B between the dates of 28 April 2014 and 4 July 2014 on their purchase of Property B. He had been the fee earner with conduct of the matter and for him to assert in his emails that Town and Country Property Lawyers had acted rather than accept he had been the relevant fee earner was, in the Tribunal's view, obfuscation on his part. To assert that a fee earner could hide behind an entity was quite disingenuous.

77.10 The Tribunal then considered whether in so acting, the Respondent was aware that a conflict of interest had arisen between his interests and his clients' interests or there was a significant risk that such a conflict might arise. Outcome 3.4 of the SRA Code of Conduct 2011 precludes a solicitor acting if there is an own interest conflict or a significant risk of an own interest conflict.

77.11 The Respondent had been an experienced solicitor with over 34 years of practice at the time of the alleged conduct. As such he would or should have been acutely aware of the risks involved in this transaction. There was no evidence that he had advised Person A and Person B about any potential risks or ensured they received independent legal advice, which would have been even more important given that this transaction involved members of his family.

77.12 There was no doubt that Property A and Property B had a link. The clients, and indeed the Lender, had expected the mortgage on Property A to have been redeemed before the purchase of Property B completed. The Respondent knew this was not the case as he had chosen not to draw down funds that were available to him and thereby did not complete the purchase of Property A. However, he progressed the purchase of Property B knowing the purchase on Property A would not be completing as originally envisaged. He therefore allowed his client, Person A, to unknowingly contravene the condition imposed by her Lender for Property B. That Lender required the mortgage over Property A to be discharged on or prior to completion. At this point, when the Respondent knew that the first mortgage would not be redeemed, an actual conflict of interest had arisen and yet the Respondent continued to act for Person A and Person B on their purchase of Property B.

77.13 Person A did not know the purchase of Property A had not been completed until she realised mortgage payments continued to be taken from her account. The Respondent's response to this was to pay her mortgage payments from the rent that he was taking from tenants at her property, keeping the balance for himself. He knew that he had not completed the purchase due to his desire to avoid a tax liability, which he believed would have been incurred if he had drawn down his pension funds. This placed him in a further actual conflict of interest as he was gaining financially from his conduct and yet he allowed that situation to continue for over four years.

77.14 Even after the conflict had crystallised, and Person A instructed another firm of solicitors to serve a Notice to Complete on the Respondent in relation to Property A some four years later, the Respondent continued to dispute the amount that was outstanding. This placed Person A in a position where the prospect of litigation against the Respondent, who was also her father in law, was a real possibility.

77.15 The Tribunal was satisfied that the Respondent had failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011 as he continued to act for Person A and Person B in the knowledge that a conflict had arisen between his own interests and their interests. The Tribunal was further satisfied that his conduct did not connote a steady adherence to an ethical code or acting with moral soundness and rectitude as any competent solicitor, and certainly one who had been in practice for 34 years, would have had potential conflicts of interest at the forefront of his/her mind and know not to act when such a conflict arose. A solicitor acting with integrity would have been alert to the risks involved and would not have continued to act, especially after those risks materialised. The Tribunal found that the Respondent had acted with a lack of integrity in breach of Principle 2 of the SRA Principles 2011.

77.16 The Respondent's conduct was a failure to act in the best interests of his clients. This was evidenced by the fact that Person A eventually had to instruct another firm of solicitors to take over and serve a Notice to require the Respondent to complete the purchase of Property A. Person A had been unable to sell Property A for a long period of time and did not receive the full rent from that property even though she continued to own it. Furthermore it was not in the clients' best interests to allow their Lender to be misled about the fact that the previous mortgage had not been paid thereby placing them in breach of a mortgage condition over a long period of time. The Tribunal found that the Respondent's conduct had breached Principle 4 of the SRA Principles 2011.

77.17 The Tribunal was satisfied that the Respondent's conduct did not maintain the trust placed in him or in the provision of legal services as members of the public would not expect a solicitor to act where his own interests conflicted with those of his clients. The Tribunal found that the Respondent had also breached Principle 6 of the SRA Principles 2011.

77.18 The Tribunal found Allegation 1.2 proved.

78. **Allegation 1.3: In the course of the purchase of Property B the Respondent knowingly failed to disclose to Person C that:**

(a) A first Charge over Property A in favour of L Bank PLC would not be redeemed by him upon completion; and/or

(b) That the balance of the purchase monies for Property B would not be coming from the sale of Property A

in circumstances where he was bound to disclose that information to Person C. In doing so the Respondent breached Principle 2 and/or Principle 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly in relation to Allegation 1.3.

78.1 Mr Griffiths submitted the Respondent had known, before he exchanged contracts on Property B that there was a mortgage on Property A which needed to be discharged under the conditions of the mortgage on Property B. He had received a copy of the mortgage offer on Property B dated 9 June 2019 which clearly stated this. He also knew, at some point, that he would not discharge the mortgage on Property A by virtue of his decision not to draw down funds available to him. However, he failed to disclose this to Person C, Mr Wilson, either before or after Mr Wilson signed the Certificate of Title.

78.2 The Checklist for Exchange of Contracts for Purchase was an internal risk management form which the Respondent had discussed with Mr Wilson and the Respondent would have understood the importance of this. Mr Griffiths submitted that the Respondent knew before completion of the purchase of Property B that the balance of the funds would not be coming from completion on Property A, and that the mortgage on Property A would not be redeemed. He did not inform Mr Wilson of this and Mr Griffiths submitted this had been dishonest conduct.

78.3 The Tribunal had heard evidence from Mr Wilson (Person C). He confirmed that the Checklist for Exchange of Contracts for Purchase ("the Checklist") was completed by the fee earner, so in this case by the Respondent. It was a checklist that had been used at the firm for many years. Mr Wilson stated that he went through the completed Checklist with the Respondent and signed it. He confirmed that it had been a requirement of the mortgage for Property B that the mortgage on Property A was discharged on completion. He confirmed he had been instructed to act on behalf of the Lender for Property B as it was a requirement of the Lender that a person unrelated to Person A and Person B would act for the Lender. This meant that Mr Wilson was required to complete and sign a Certificate of Title and send it to the Lender, which he had done.

78.4 Mr Wilson stated that normally, if he had been dealing with an external third party, he would have sought written confirmation that the Charge would be paid on completion. However, in this case the Respondent had been a partner at the firm for many years and in such circumstances, Mr Wilson did not consider he needed to ask for written evidence from a colleague in his own firm.

78.5 Mr Wilson recalled the conversation that had taken place between him and the Respondent on 1 July 2014. He stated that the Respondent had come to his room and presented him with the file for the purchase of Property B together with the Checklist "for sign off". He stated that he had questioned the Respondent on both the sale of Property A for Person A, as well as on Property B. He stated the Respondent had told him that the transaction on Property A was about to complete and the balance of the purchase monies for Property B were coming from the sale of Property A. Mr Wilson stated that he had no reason to doubt what the Respondent had said, as he had worked with the Respondent over the last 15 years.

78.6 Mr Wilson also stated that it was fundamental in sale and purchase transactions that an existing mortgage was discharged before a buyer could take out another mortgage. Mr Wilson stated that the Respondent would have known that the impact of him informing Mr Wilson that he intended to leave the mortgage on Property A outstanding and did not plan to complete on that transaction, would have meant that Mr Wilson would not have signed the Certificate of Title.

78.7 The Tribunal considered the responses that the Respondent had given in his emails to Allegation 1.3. In his email of 12 May 2020, the Respondent stated:

> "The Respondent does not recall any conversation with Mr Wilson as alleged or at all. The balance of the purchase price of the house was provided by the Respondent as part performance of the contract to buy the flat. The Respondent also discharged the second charge over the flat in favour of his daughter in law's father. It was he who had caused the issue for his daughter in the first place by insisting on having his loan and gift to his daughter repaid instead of transferring the second charge to the new house as previously agreed. The Respondent denies any element of dishonesty. He merely attempted perhaps in a foolhardy manner to salvage the situation and ensure that his daughter in law and son could complete their house purchase and to ensure that nobody suffered any financial loss other than perhaps himself."

78.8 In his email of 3 August 2020, the Respondent stated:

> "It is denied that any such statement was made to Person C as alleged or at all and there was no element of dishonesty."

78.9 In his letter to the SRA dated 5 August 2019, the Respondent had stated:

> "4. I believe that Paul Wilson was representing the [L] Building Society not me as I would not have been in a position to sign the Report on Title given the relationship to [Person B and Person A].

> 5. I have not acted dishonestly at all. All that I did was done to assist [Person B] and [Person A] to achieve their acquisition of [Property B]. I always believed that the mortgage on the flat would be redeemed as I had sufficient funds in my pension account even if I could not access them as required. Indeed eventually after having tried various other means I was able to access sufficient of the pension funds and together with the sale of other investments the mortgage was redeemed."

78.10 The Tribunal had found Mr Wilson to be a credible witness and had no reason to doubt his evidence which was unchallenged. Mr Wilson had remembered the conversation clearly. The Tribunal accepted his evidence in full.

78.11 The Tribunal noted that the Respondent had engaged to a limited extent with these proceedings in that he had only responded by email, he had not attended any hearing or given oral evidence himself, or subjected himself to cross-examination. This Allegation in particular included an allegation of dishonesty which was very serious. In such circumstances, the Tribunal, in accordance with Practice Direction 5, did draw an adverse inference from the Respondent's failure to give a proper account of himself at the hearing.

78.12 The Tribunal was satisfied that the Respondent had knowingly failed to disclose to Mr Wilson that the mortgage on Property A would not be redeemed on completion and that the balance of the purchase monies for Property B would not come from the proceeds of Property A when he should have done so. He was a long experienced conveyancing solicitor who would have known full well how important this information was and what the impact on the transaction of Property B was likely to be. The Tribunal was further satisfied that in doing so, the Respondent had failed to show a steady adherence to an ethical code or act with moral soundness and rectitude, and as such, he had acted with a lack of integrity in breach of Principle 2 of the SRA Principles 2011. A solicitor acting with integrity would not have knowingly given false information to another solicitor, regardless of whether he worked with that colleague or not.

78.13 The Tribunal was also satisfied that the Respondent had breached Principle 6 of the SRA Principles as his conduct did not maintain the trust placed in him or in the provision of legal services. Members of the public expected solicitors to disclose all material information to colleagues, and not mislead them, during the course of conveyancing transactions. The Respondent had failed to do this.

78.14 The Tribunal then considered whether the Respondent had acted dishonestly. The Tribunal had been referred to the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. Firstly the Tribunal was required to ascertain the actual state of the Respondent's knowledge or belief as to the facts. Having done so, the Tribunal had to consider whether the Respondent's conduct was dishonest by the standards of ordinary decent people. Lord Hughes had set out the test to be applied when considering the issue of dishonesty as follows:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence

(often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to 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"

78.15 The Tribunal had already considered the state of the Respondent's mind. The Respondent knew that the two transactions were intrinsically linked. Person A was required to discharge the mortgage on Property A, as a condition of the mortgage for Property B. He knew that Mr Wilson was representing the Lender and needed to be reassured that the conditions of the mortgage would be met. He also knew that the condition had not been met as he had chosen not to use the funds he had intended to use, so as to avoid a potential tax liability. He knew that Mr Wilson was the independent person appointed to act for the Lender. The crux of the issue was that the Respondent was entirely motivated by his own financial greed. He did not want to pay a tax liability and he did not want to lose Property A which he had agreed to purchase. As a result of his conduct, the Respondent received the rent from Property A and did not reimburse all of this to Person A, giving her only an amount to cover the mortgage payments that continued to be taken from her account. The Tribunal was satisfied that the Respondent's conduct was premeditated and he had known full well exactly what he was doing as it was to his financial benefit.

78.16 Having established the actual state of the Respondent's knowledge, the Tribunal was satisfied that the Respondent's conduct would be regarded as dishonest by the standards of ordinary decent people. Ordinary, decent people would regard it as dishonest for a solicitor to misrepresent the true position to a colleague by providing information which he/she knew was false and would cause that colleague to be misled. The Respondent would also have appreciated that by misleading Person C, this would also cause the Lender to be misled by the incorrect information on the Certificate of Title, and allow his client's purchase to proceed. By making these misrepresentations to Mr Wilson, the Tribunal was satisfied that the Respondent had acted dishonestly.

78.17 The Tribunal found Allegation 1.3 proved including the allegation of dishonesty.

Previous Disciplinary Matters

79. None.

Mitigation

80. There was no mitigation from the Respondent save for the information in his documents. In his email of 3 August 2020 to the Applicant, the Respondent had stated that with hindsight he should have advised Person A to notify L Bank PLC (who had provided a mortgage on Property A) that the mortgage should have been converted to a Buy to Let mortgage.

81. In his letter to the SRA dated 6 March 2019, the Respondent had stated:

> "As I am approaching 65 years old and hoping to retire in the not too distant future I am not intending to return to the profession at any time in the future."

Sanction

82. The Tribunal had considered carefully the emails submitted by the Respondent. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

83. The Tribunal firstly considered the Respondent's culpability. The motivation for the Respondent's conduct was to gain financially from the transactions. Indeed he had confirmed in his correspondence that Property A had been let to tenants and that he had received £700 to £775 per month for the periods when then property was let. He stated he had given Person A the sum of £410 to £420 per month from 2014 to November 2018 when the mortgage on Property A was redeemed. The Respondent had also stated that the reason why he had decided not to use his pension fund was because he had been told he would have to pay income tax on it. He was clearly trying to save money for himself. His conduct was planned and he made a conscious decision not to discharge the mortgage on Property A. He had direct responsibility for his actions having been placed in a position of trust by Person A and by Mr Wilson. He had abused that trust. The Tribunal concluded that his level of culpability was high.

84. The Tribunal then considered the harm caused by the Respondent's conduct. A family member had instructed the Respondent to deal with the sale of her property to him. He had failed to complete the purchase as promised and ultimately that family member had been forced to instruct another firm of solicitors to serve a Notice to Complete on the Respondent to try and force him to complete the purchase of Property A. She had suffered loss both in terms of the expense of instructing another firm of solicitors and she had been placed in a position where she was in breach of at least one mortgage condition. On the Respondent's own admission, the property was subsequently rented to tenants and with hindsight he stated that the Lender on Property A should have been informed of this so that the mortgage could be changed to a Buy to Let mortgage. Person A had not received the full rental payments from a property that she owned as the Respondent had not accounted fully to her, instead choosing to keep the balance for himself.

85. Harm had also been caused to the reputation of the profession. Person A had been forced to instruct another firm of solicitors to progress matters for her. The Respondent's dishonest conduct had led to a misleading Certificate of Title being sent to a lender client by one of the partners at his firm who had relied upon and trusted him. This was harm that could reasonably have been foreseen. The Tribunal concluded that the level of harm caused was high.

86. The Tribunal then considered the aggravating factors in this case and identified those as follows:

- The Respondent had acted dishonestly

- His conduct had been deliberate, calculated and, certainly in relation to Person A, repeated over a very long period of time

- The Respondent had acted with the deliberate and blatant self-interest in that his intention was of financial gain for himself. He had taken advantage of both Person A and a Lender for his own personal benefit.

- He had not shown any real insight or remorse but instead had sought to justify his actions as being in the interests of his clients when this clearly was not the case.

- The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

87. The Tribunal next considered the mitigating factors and identified that the Respondent had a previously long unblemished record.

88. The Tribunal then considered each of the sanctions in turn. As the Respondent had been found to have acted dishonestly, the Tribunal concluded that to make no Order, or to order a Reprimand, a Fine or a Restriction Order would not be sufficient to mark the seriousness of the conduct in this case. The Respondent's culpability and the level of harm caused had been high. It was difficult to formulate conditions that could address dishonest conduct.

89. The Tribunal then considered whether a Suspension was an appropriate sanction. The Respondent had used his position as a trusted solicitor to take advantage of Person A, a Lender and also to dishonestly mislead Mr Wilson. He had acted where he had a clear conflict of interest, he had failed to fulfil his obligations to discharge a mortgage and complete on the purchase of Person A's property and he had allowed that situation to continue for over four years. It was only after a Notice to Complete was served on him by another firm of solicitors that he paid the funds to discharge the mortgage. He had also deliberately lied to Mr Wilson in order to induce him to sign a Certificate of Title which contained material information that was not true, and that he knew would be relied upon by a Lender. He had not shown any remorse or proper insight and indeed had asserted that he had not acted for Person A and Person B in the purchase of Property B so there had been no conflict of interest. Rather he sought to shift the attention towards the firm by claiming the firm had acted. The Tribunal concluded that the risk of repetition was high. These were all very serious matters indeed and the Tribunal concluded that a Suspension would not be sufficient to protect the public.

90. The Tribunal also took into account the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. That is the normal and necessary penalty in cases of dishonesty…."

91. The Tribunal concluded that although the Respondent had had a previously long unblemished career, as a very experienced solicitor, he should have known that it was absolutely sacrosanct that solicitors did not take advantage of clients or dishonestly mislead a colleague for their own personal financial gain. The Respondent could not be trusted. There were no exceptional circumstances and the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

92. Mr Griffiths requested an Order for the Applicant's costs in the total sum of £12,576. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Griffiths stated that the amount of costs needed to be reduced to take into account the fact that the hearing had taken less time than had been estimated.

93. Mr Griffiths confirmed that the Statement of Costs dated 28 September 2020 had been sent to the Respondent. He took the Tribunal to the relevant email and letter dated 28 September 2020 attaching the Statement of Costs which had been sent to the Respondent to confirm this. In the email of 28 September 2020, the Respondent had been informed that a letter was also being sent to him that day. The letter of 28 September 2020 had been sent by registered post but had not been delivered as nobody had been at the Respondent's address to accept delivery.

94. As a result of this Mr Griffiths had sent a further email to the Respondent on 2 October 2020 and had set out the Statement of Costs in the body of that email. He had also informed the Respondent that the letter of 28 September 2020 was awaiting collection at the Respondent's local post office. Mr Griffiths confirmed that that letter had still not been collected. He submitted the Respondent had chosen not to collect the letter but he was fully aware and had been informed of the amount of costs being claimed. Mr Griffiths also reminded the Tribunal that the Respondent had failed to file any Statement of Means and there was little if any financial information from him.

95. Mr Griffiths submitted the costs claimed were reasonable, subject to a reduction as the hearing had not taken three days as listed. He confirmed that no costs had been claimed for the hearing in August 2020 when the Applicant's application for amendments to the allegations was considered and granted. Having recalculated the costs to take into account the shorter hearing time, Mr Griffiths confirmed that the total amount of costs claimed was £11,081.

96. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £11,081.

97. The Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

98. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

99. The Tribunal Ordered that the Respondent, VINCENT HOWARD O'NEIL, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,081.00.

Dated this 18th day of December 2020
On behalf of the Tribunal

D Green
Chair