

The Respondent appealed the Tribunal's decision dated 10 November 2020 to the High Court (Administrative Court). The appeal was dismissed by consent on 5 October 2021.

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12080-2020

### BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT IAN CARTMELL

Respondent

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Before:

Mr A N Spooner (in the chair)

Mr S Tinkler

Mr R Slack

Dates of Hearing: 29-30 September 2020

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### Appearances

Inderjit Johal, barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Simon Butler, barrister of 9 Gough Chambers, 5 Norwich Street, London, EC4A 1DR.

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## JUDGMENT

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## Allegations

1. The Allegations against the Respondent were that, while in practice as a managing director at, Cartmell & Co Limited (“the Firm”):

1.1 Between 23 October 2013 and 29 September 2015, he:

1.1.1 failed to ensure that Wills and/or Trust deeds were properly executed, in that he asked witnesses to witness the signatures of clients, despite knowing that this was not done in the presence of his clients, thereby potentially invalidating the Wills and/or Trusts;

1.1.2 caused and/or permitted a second certificate provider for Lasting Powers of Attorney (“LPA”) to sign declarations certifying that she had formed an opinion that the donors understood the purposes of the LPA and were not being pressured into granting the LPA, when she could not have formed this opinion, as she was not present when the donor clients signed the documents;

and in doing so, he:

1.1.3 breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“the Principles”);

1.1.4 failed to achieve Outcomes 1.2 and/or 1.5 of the SRA Code of Conduct 2011 (“the 2011 Code”).

1.2 Between June 2017 and July 2018 he acted for clients, Mr and Ms S, in circumstances:

1.2.1 where his own duties as a Trustee conflicted with the interests of his clients and/or the beneficiaries of the Trust;

1.2.2 [withdrawn]

In doing so, he:

1.2.3 breached any or all of Principles 3 and 6 of the Principles;

1.2.4 [withdrawn]

1.3 He prepared a “Statement of Fact” for his client dated 23 May 2018 for the purposes of appointing new beneficiaries to a Trust, which:

1.3.1 he knew was materially untrue and/or misleading;

1.3.2 alternatively, he ought to have known was materially untrue and/or misleading.

In doing so, he breached any or all of Principles 2 and 6 of the Principles.

- 1.4 Between June 2014 and July 2015, he failed to act in the best interests of Mr and Ms M, in that he delayed in registering their Notices of Severance of Joint Tenancy with HM Land Registry. In doing so, he:
  - 1.4.1 breached Principles 4 and/or 5 of the Principles; and
  - 1.4.2 failed to achieve Outcomes 1.2 and/or 1.5 of the 2011 Code.
2. In addition, Allegations 1.1 and 1.3.1 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegations.

The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2019.

### **Factual Background**

3. The Respondent was admitted to the Roll on 2 December 1996. At the material time he was one of two directors in the Firm and was the Firm's Managing Director. The Firm's head office was based at Chalfont St Giles, Buckinghamshire, with branch offices in Stone and Great Missenden. The Respondent was suspended from the Firm on 25 July 2018 and left the Firm on 31 December 2018. At the time of the hearing the Respondent held a practising certificate free from conditions.
4. The SRA had received information raising concerns about the Respondent's conduct when arranging Wills for clients and dealing with a Trust Settlement.
5. The Firm carried out an internal review of private client matters which included Wills, Deeds and Trust instruments drafted by the Respondent and executed by clients, which were attested by staff at the Firm. On 28 August 2018, the Firm set out its investigation and findings in a letter to the SRA which led to the Respondent being suspended and eventually dismissed from the Firm. The SRA duly commenced an investigation and this led to a Forensic Investigation Report ("FIR") dated 2 April 2019.

#### Allegation 1.1

6. The FIR identified that twenty-four deeds and nine Wills had not been properly attested, as the clients had not been present when the witness signed the documents and Wills. The documents were dated between 23 October 2013 and 29 September 2015.
7. Ms C, a legal secretary at the Firm, confirmed in a witness statement dated 14 February 2019, that a table of documents exhibited to her statement listed matters in which documents bore her signature as a witness to the signature of the client, when in fact she had not been present at the signing of those documents and did not witness any of the documents being signed by the client. In each case she stated that she had been told by the Respondent to add her signature as if she had witnessed the client's signature when in fact in each case the document had already been signed by the client. Ms C stated that she believed that the documents exhibited to her statement were signed by the client outside the office and probably at the client's home.

8. The Wills purported to confirm that they had been signed by the clients, the Respondent and Ms C, “in our joint presence and then by us in his and in the presence of each other”. KM, a secretary at the firm, also confirmed to the Firm that the Respondent had “met with clients at home and asked me to sign the next day. He would say he had seen and he saw them sign if I could witness also”. The forensic investigator noted that the Will and Trust’s potential invalidity was referred to the Firm’s professional indemnity insurers.

### Allegation 1.2

9. The FIR noted that the Respondent was a co-trustee of the AS Trust from June 2017 to July 2018. The Applicant’s case was that the Respondent had continued to act for the Trust when there was a conflict of interest.
10. The AS Settlement Trust was settled in 1996 and was created to provide for the clients’ daughters. The clients, Mr and Mrs S, were joint Trustees. A deed of appointment was executed in 2000 to allow Mr and Ms S to exercise the power of appointment conferred on them by clause 4 of the settlement. Mr and Ms S later considered the Trust to be too restrictive in that it did not allow Mrs S to benefit from the Trust or allow new beneficiaries to be included. One of clients’ daughters had also died and the clients were estranged from the surviving daughter. As a result, the clients wished to vary the Trust which contained an investment of approximately £240,000. The clients were referred to the Respondent by E Ltd.
11. On 17 May 2017, a meeting took place with the Respondent, Mr and Mrs S and a representative from E Ltd at the home of Mr and Mrs S. It was agreed at the meeting that the Respondent would become a co-Trustee with Mr and Mrs S. The Respondent pointed out differences in Mrs S’s signatures on documents and difference in spellings of Mrs S’s names. In response to a question from the Respondent about different signatures, Mrs S stated “That’s not mine”. The transcript of that meeting recorded the following:
- “Respondent: That is quite an interest [sic] idea. Interestingly, just go with me on this. So, you don’t think that is your signature?”
- Mrs S: It doesn’t look like mine. Let me have your pen.
- Respondent: Ok, yeah you can write on that as it’s a spare copy, if that wasn’t your signature maybe you can undo the trust and say it wasn’t really [Ms S] signing it and therefore it wasn’t really brought into play and therefore... it actually comes back...
- Mrs S: No its my signature
- Respondent: Oh it is. Forget it then”
12. The Respondent subsequently instructed counsel to advise on the Trust. Counsel produced an Advice on 8 March 2018 which advised that the living beneficiary should be made aware of their interest in the Trust and that any claim for rectification would require the beneficiary to be a party.

13. Counsel also provided an “Opinion” dated 14 May 2018 and confirmed that the Court had no jurisdiction to grant the trustees powers that they did not have already. Counsel also confirmed that all decisions of the Trustees would have to be made in good faith and with the best interests of the beneficiaries.
14. The Respondent sent an email on 1 June 2018 to the clients’ accountants in which he confirmed that the Firm would make an application to the Court based on Mrs S’s revised signed statement (set out in more detail below in relation to Allegation 1.3) to have the power to appoint new beneficiaries. The Respondent also proposed to either continue to act as trustee with indemnification from the clients, investing the Trust funds as they wished, or alternatively, the Respondent would retire as trustee allowing the clients to continue as trustees. The FIO noted that the proposals which the Respondent put forward made no reference to either the disclosure of the Trust to the clients’ estranged daughter. The Respondent resigned as Trustee on 3 July 2018.

### Allegation 1.3

15. The FIR noted that the Respondent had drafted and obtained a signed statement of truth dated 23 May 2018 from the client in the AS Trust matter and it was the Applicant’s case that the Respondent knew or ought to have known that the contents were materially untrue and/or misleading.
16. Mrs S had signed a Statement of Fact on 29 November 2017 in which she had stated the following concerning her knowledge of the creation of the trust:

“3. I created the [AS] Settlement (the “Trust”) on 20th May 1996. My husband [Mr S] instructed a firm of Solicitors, who I am now told was a company called, Rowe and Maw Solicitors of London (a firm that my husband [Mr S] was using at the time to handle a company sale) (“the Solicitors”) to create a trust to house monies that were received from a company sale. [Mr S] explained to me briefly that the Trust was for inheritance tax planning purposes and was for the primary benefit of our children on our deaths.

4. I do not remember being specifically consulted on the Trust document itself as the funds arose from my husband’s business sale and it was he that controlled the overall process. I do not specifically recall having any discussions or advice as to the structure of the Trust or who benefited from it other than it was set up for my family who were the people I would have intended to have received the benefit on my death at that time.”

17. Mrs S had signed a further Statement of Fact on 23 May 2018 in which she had stated the following concerning her knowledge of the creation of the trust:

“3. I purportedly created the [AS] Settlement (the “Trust”) on 20th May 1996. I have in fact no idea or knowledge or recollection about the trust. I have never actually seen the funds that I am told were paid into trust but I understand from my husband [Mr S] that they were the proceeds of a sale of a business he owned.

4. [Mr S] has told me that a firm of Solicitors, who I am now told was a company called, Rowe and Maw Solicitors of London (a firm I am told by [Mr S] was

one he was using at the time to handle a company sale) (“the Solicitors”) created the trust to house monies for tax purposes for our children.

5. I do not remember being specifically consulted on the Trust document or the matter generally. I see that I have signed the document and it looks itself as though it is my signature although I cannot recall signing it. I do not specifically recall having any discussions or advice as to the structure of the Trust or who benefited from it.”

#### Allegation 1.4

18. The Respondent had acted for Mr and Ms M in the preparation of their Wills and Trusts. The client file contained two “Notices of Severance of Joint Tenancy” dated 15 June 2015, which should have been effective from 17 June 2014 being the date that the Wills were executed. A letter was sent to the clients dated 23 April 2015 asking them to “please sign the enclosed Notices of Severance of Joint Tenancy for our two properties in order that we can register your tenants in common status with the Land Registry in line with your Will trusts.” HM Land Registry confirmed that registration was completed on 29 July 2015, more than 12 months after the clients had signed their Wills.

#### **Live Witnesses**

19. The Respondent

- 19.1 The Respondent confirmed that his statement was true to the best of his knowledge and belief.
- 19.2 The Respondent admitted Allegation 1.1 but denied dishonesty. He denied Allegations 1.2-1.4 in their entirety.
- 19.3 The Respondent admitted asking staff to witness signatures when they had not been present when the clients signed the Wills and trust documents. On the majority of occasions he had asked legal secretaries to do this and one or two occasions he had asked a trainee solicitor to do the same. The Respondent agreed that this had become “a bit of a habit” but denied it was regular practice as the overwhelming majority of such documents were signed in the normal way. However in cases where clients were away from the office it did become regular. The Respondent conceded that this had been wrong and inappropriate.
- 19.4 Mr Johal put to the Respondent that it was obvious to him at the time that it was wrong and inappropriate. The Respondent replied that he knew he needed two witnesses and knew he could not get the two witnesses at the point of signing. He had explained to his clients that he would ask his secretary to sign as if it had taken place in the office. The Respondent accepted that he had known that such an arrangement had the potential to invalidate the documents. Mr Johal put to the Respondent that he had clearly and knowingly been dishonest. The Respondent denied this. The Respondent told the Tribunal that it had been his intention to help the clients, not deceive them. He maintained that the documents were “ostensibly valid” as they accurately reflected the client’s wishes.

- 19.5 The Respondent confirmed that he admitted the following assessment of his state of knowledge, set out in the Rule 12 statement was true:

“48.1 He knew from his legal training that two witnesses needed to be present when executing documents.

48.2 He knew that the execution process had not been correctly adopted as witnesses were not present when clients signed documents.

48.3 He knew that clients had not signed their Wills in the presence of Ms C and KM and he knew that when he asked Ms C and KM to witness signatures of his clients, this was not done in the presence of the clients.

48.4 He knew that Ms C, as second certificate provider could not have formed an opinion as to his clients’ understanding about the purposes of the Lasting Powers of attorneys and that they had not been pressured into making them, as she was not present when the clients signed the documents.”

- 19.6 Mr Johal suggested to the Respondent that he had known what he was doing and knew it was dishonest. The Respondent did not accept this and again explained that he had been full and frank with the clients. He had not been trying to gain anything for anyone or deceive anyone. He accepted that his actions were wrong but maintained there was no intention to deceive.
- 19.7 The Respondent accepted that someone reading the documents in the future would assume that Mrs C had been present, when in fact she had not.
- 19.8 In relation to Allegations 1.2 and 1.3, the Respondent confirmed that he had initially taken instructions from Mr S but also considered himself responsible to Mrs S. The Respondent accepted that it was in Mr and Mrs S’s interests to void the trust to avoid a pay-out having to be made to the beneficiary. The Respondent told the Tribunal that it never reached the point of conflict as a distribution of trust funds never took place as the trust did not produce any income.
- 19.9 Mr Johal put to the Respondent that his duty was to disclose existence of the trust to the beneficiary. The Respondent stated that counsel had advised him to notify the beneficiary but had said that this could be done as part of an application to set aside the trust and since that process had not commenced, the Respondent had not notified her. He accepted that maybe he should have done so, based on counsel’s advice.
- 19.10 The Respondent told the Tribunal that this was an unusual trust in that it did not allow for the appointment of new beneficiaries. The Respondent had felt that this was un-just and was exploring ways to challenge this. However they did not go anywhere and no applications were made.
- 19.11 Mr Johal put to the Respondent that he had not treated the beneficiary fairly, despite his duties to do so and he had not had any intention to treat her fairly because he had been aligning with the interests of the clients. The Respondent agreed that he had been aligning himself with the interests of my clients because that was what he thought was the right thing to do. However he told the Tribunal that he would not have made

applications without giving the appropriate notice to the beneficiary. The Respondent was unable to say whether he considered that he had breached his fiduciary duties.

- 19.12 In relation to the statements of fact, Mr Johal put to the Respondent that the two explanations about Ms S's knowledge of the creation of the trust were inconsistent with each other and that the Respondent knew when he drafted the second statement of fact that what he was drafting was untrue. The Respondent denied this and told the Tribunal that nobody had taken the statement as saying anything different. Mrs S had not said it was false and so the Respondent also did not accept that it was false.
- 19.13 Mr Johal did not put questions in cross-examination in relation to Allegation 1.4

### **Findings of Fact and Law**

20. 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.
21. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.
22. **Allegation 1.1**

### Applicant's Submissions

- 22.1 Mr Johal told the Tribunal that the Respondent considered himself to be an expert and specialist in the field of Wills and Trusts and would therefore know from his legal training that two witnesses needed to be present. The Respondent therefore knew that the validity of the Wills and Trust Deeds would be affected if not correctly witnessed. The Respondent had accepted that the execution process was not correctly followed.
- 22.2 In relation to the LPAs, Mrs C had confirmed in her statement that she had never met some of the clients. In her email of 26 March 2020 she had confirmed that she could not say for certain whether she had met them on the occasions when she signed or witnessed documents. Mr Johal submitted that taking the evidence as a whole, the Tribunal could be satisfied that it was more likely than not that Mrs C did not carry out the assessments as to whether the donors understood the purposes of the LPAs and were not being pressured into making them.
- 22.3 Mr Johal submitted that in asking witnesses to witness the signatures of clients knowing that this was not done in the presence of his clients and causing and/or permitting a certificate provider for LPAs to sign declarations when she could not have formed an opinion as to the donors' understanding, the Respondent had failed to act with integrity. The Tribunal was referred to Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, and it was submitted that a solicitor acting with integrity would not have asked witnesses to witness the signatures of clients knowing that this was not done in the presence of clients. A solicitor acting with integrity would not have asked



a certificate provider to sign declarations on Lasting Powers of Attorney forms when they were not present when the clients signed the documents.

- 22.4 It was also submitted that the Respondent failed to act in his clients' best interests and failed to provide his clients with a proper standard of service as he had failed to ensure that Wills and Trusts Deeds were properly executed. He had also failed to maintain the trust the public placed in the provision of legal services and the trust that clients had placed in him.
- 22.5 Mr Johal further submitted that the Respondent had acted dishonestly. He referred to the Respondent's admitted state of knowledge, set out above in the summary of the Respondent's evidence. Mr Johal submitted that the Respondent had deliberately procured the relevant signatures the Wills, Trusts and LPA documents, thereby rendering them materially untrue and/or misleading. He submitted that the Respondent's conduct was dishonest by the standards of ordinary decent people. Mr Johal had put his case in respect of dishonesty to the Respondent in the course of cross-examination.

#### Respondent's Submissions

- 22.6 Mr Butler submitted that there was no question that when the Respondent had been visiting clients at their home he had discussed the matter with them and had advised them that the signatures needed to be witnessed by a second person who was present. He specifically asked the clients if they would agree to the secretary signing them at the office and they agreed.
- 22.7 Mr Butler submitted that there was no evidence that the legal secretary or trainee solicitor were deceived or pressured into signing the documents. The documents were truthful as the contents of the documents were accurate. Mr Butler submitted that the Respondent had been transparent with the client and he had reasonably believed at the time he was acting in an honest manner. Mr Butler accepted that a third party reading it would be misled into believing that the second witness was present. However he told the Tribunal that the allegation was one of dishonesty, not of being misleading. Mr Butler invited the Tribunal to accept the Respondent's evidence.
- 22.8 Mr Butler accepted that the manner in which the documents were executed did not comply with good practice. It had been unprofessional and lacked integrity, but a misleading statement was not synonymous with being dishonest. Mr Butler submitted that ordinary people would not consider the Respondent's actions to have been dishonest.

#### The Tribunal's Findings

- 22.9 The Tribunal noted that the Respondent had admitted all aspects of this Allegation save for dishonesty.
- 22.10 The Tribunal found these admission to be properly made on the basis of the evidence. It therefore found the factual basis of Allegation 1.1 proved on the balance of probabilities together with the breaches of Principles 2, 4, 5 and Outcomes 1.2 and 1.5.

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

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

22.12 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty 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 that conduct was honest or dishonest by the standards of ordinary decent people.

22.13 The Respondent’s state of knowledge was not in dispute. The Respondent knew that two witnesses needed to be present when executing documents. He knew that this process had not been followed as he was aware that Mrs C had not been present when the clients signed the documents. The Respondent also knew that Mrs C could not have formed an opinion as to the clients’ understanding of the LPA and could not have known that no pressure had been brought to bear.

22.14 The Respondent had accepted in his evidence that the documents would be misleading to someone reading them at a later time as they gave the impression that the witnesses had both been present when they had not and so give the impressions that they had been correctly executed, when they had not. The Respondent had known that this was the case at the time he arranged for Ms C to provide those signatures.

22.15 The Tribunal considered whether the Respondent’s conduct would be considered dishonest by the standards of ordinary, decent people. The documents that had been created were misleading in that they purported to be correctly executed when this was not the case. It was intended that these would be the documents used to distribute the estate, manage the trust and discharge a power of attorney. It was intended that the document would be presented as a valid document that was incapable of challenge. The Tribunal accepted that the Respondent may have been well-intentioned and it noted the contents of the character references. However the fact remained that knowingly creating a document that was misleading would be considered dishonest by the standards of ordinary, decent people. The Tribunal found that members of the public would not

expect an honest solicitor to act in this way. The Tribunal also noted that this happened on 33 occasions over a period of two years.

22.16 The Tribunal was satisfied on the balance of probabilities that the Respondent had acted dishonestly and found this part of Allegation 1.1 also proved.

### 23. **Allegation 1.2**

#### Applicant's Submissions

23.1 Mr Johal had put his case to the Respondent in the course of cross-examination and the Tribunal took account of the questions put to the Respondent when assessing the Applicant's case.

23.2 The Applicant's submissions in the Rule 12 statement noted that counsel had provided an opinion dated 8 March 2018, which confirmed that the beneficiary should be made aware of their interest in the AS trust and counsel's opinion dated 14 May 2018 repeated the point. The Respondent had taken no steps to inform the beneficiary of her interest despite this advice and despite being under a duty to act in the best interests of beneficiaries. It was submitted that in placing Mr and Mrs S's interests above those of the beneficiary, the Respondent allowed his independence to be compromised and had undermined the trust the public placed in him and in the provision of legal services.

#### Respondent's Submissions

23.3 Mr Butler submitted that the Respondent understood his duties to the trust and to the beneficiary. It was not alleged that he had breached his duties on any specific date. The Respondent was not under conflict of interest at the point where he was appointed as a trustee.

23.4 The Respondent had told the Tribunal that he had delayed notifying the beneficiary. Mr Butler urged the Tribunal to be cautious about the way the allegation had been formulated with regard to the stage at which the conflict was said to arise. The Respondent had taken the view that there was nothing unreasonable in his conduct. Mr Butler submitted that the failure to notify the beneficiary was not one of the Allegations and it was not right to put the Allegation that was pleaded on basis of a "wide-open" conflict. Mr Butler submitted that it had never been the Respondent's desire or objective not to notify the beneficiaries.

23.5 Mr Butler reminded the Tribunal that the Respondent had not released any trust fund monies to any beneficiaries in breach of the trust and that all the funds had been protected. When the Respondent had believed he was at potential risk of a conflict of interests, he had rightly retired as a Trustee.

#### The Tribunal's Findings

23.6 The Respondent had a duty to act in the best interests of his clients, Mr and Mrs S. The interest of Mr and Mrs S lay in altering the terms of the AS trust such that the existing beneficiary may receive less than she might otherwise do if the trust remained in its present form.

- 23.7 Upon becoming a trustee, the Respondent assumed a fiduciary duty to the trust which included a duty to uphold the terms of the trust. The Respondent had what was, on the face of it, a very clear trust document. The instructions of Mr and Mrs S were effectively to undermine the very terms that the Respondent had a duty to uphold. Counsel had advised the Respondent on more than one occasion that he was under a duty to notify the beneficiary and he had not done so.
- 23.8 The Tribunal was satisfied that there was a clear conflict of interest between the Respondent's duties to his clients and his duties to the trust. The Respondent had accepted in his evidence that he had aligned himself with the interest of his clients. In doing so he had set himself against the interests of the trust. The Tribunal found the factual basis of Allegation 1.2 proved on the balance of probabilities.
- 23.9 The Tribunal found in acting where there was a conflict of interest, the Respondent had allowed his independence to be compromised and in doing so he had undermined the trust placed in him and in the provisions of legal services. The Tribunal found the breaches of Principles 3 and 6 proved on the balance of probabilities.

#### 24. **Allegation 1.3**

##### Applicant's Submissions

- 24.1 Mr Johal submitted that the Statement of Fact dated 23 May 2018 contradicted the one dated 29 November 2017 in that Mrs S said that she had no idea or knowledge of recollection about the Trust and that she could not recall signing it.
- 24.2 The Applicant's case was that TB, an assistant solicitor at the Firm, had reviewed the client file on 21 July 2018 and noted that the Respondent had drafted the first statement without taking any instructions on the content. The same applied to the second statement.
- 24.3 The Applicant's case was that there was doubt as to whether Mrs S had capacity when she signed the statement, something which the Respondent had not explored further.
- 24.4 It was submitted that the Respondent must have known, or ought to have known, that the contradictions in the second statement cast doubt on its veracity, particularly as Mrs S had already confirmed at a meeting on 17 May 2017 that she was aware of the Trust and had signed the deed.
- 24.5 Mr Johal submitted that the Respondent's actions in preparing the "Statement of Fact" dated 23 May 2018 for the purposes of appointing new beneficiaries to a Trust, amounted to a failure to act with integrity and was also a breach of Principle 6.
- 24.6 In addition, the Applicant's case was that the Respondent had been dishonest. The Rule 12 statement set out the Applicant's case as to the Respondent's state of knowledge as follows:

"99. At the time that the Respondent prepared the "Statement of Fact" dated 23 May 2018, the Respondent knew or believed the following matters:

- 99.1 He knew having prepared the “Statement of Fact” dated 29 November 2017 that there was no power to add beneficiaries and no prospect whatsoever of the Court granting a power to add beneficiaries, that advice already having been provided by Counsel.
- 99.2 He knew that Mrs S had previously confirmed that she was aware of the Trust, the purposes of the Trust and that she wanted the power to appoint the Trust assets to other beneficiaries.
- 99.3 He knew Mr and Mrs S were estranged from their daughter, the only living beneficiary of the Trust and that the beneficiary should have been made aware of her interest in the Trust.
- 99.4 By May 2018, he knew that the Court had no jurisdiction to grant the Trustees powers that they do not have already.
- 99.5 He must have known that what was stated in the Statement of Fact was not true, as Mrs S previously confirmed that she knew about the Trust and had signed the deed.
- 99.6 He knew that there was some doubt about whether Mrs S lacked capacity when she signed the “Statement of Fact” dated 23 May 2018.
- 99.7 He knew that when he sent the email to accountants on 1 June 2018 confirming that the firm would make an application to the Court to appoint new Trustees, there was no prospect of the Court granting this power.”
- 24.7 The Applicant’s case was that given the Respondent’s state of knowledge, his conduct would be considered dishonest by the standards of ordinary decent people.
- 24.8 Mr Johal had put the Applicant’s case to the Respondent during the course of cross-examination.

#### Respondent’s Submissions

- 24.9 Mr Butler submitted that the Applicant had not produced any evidence from Mrs S to confirm whether the content in the documents were in fact true. The Respondent had prepared a statement of fact from the best of his recollection and sent it to Mrs S to approve. The client had signed the statement confirming the facts were correct and true. Mr Butler reminded the Tribunal that the Respondent had not been drafting a witness statement, as suggested by the Applicant.
- 24.10 Mr Butler described this as a “most unusual” Allegation. He submitted that on reading the two statements, the first of which the Applicant accepted was true, there was in fact nothing different between the two statements. Mr Butler submitted that the two statements produced a consistent account about Mrs S. Mr Butler invited the Tribunal to ask itself how the Respondent ought to have known that the statement was not true when he had given Ms S the document to check and she had confirmed it as being true.

24.11 Mr Butler reminded the Tribunal that Ms S had not produced any evidence and submitted that it was therefore most unusual for an allegation of dishonesty to be made in respect of a statement which the client had signed and confirming as having been correct. There had been no allegation of, and no evidence of, a conspiracy.

#### The Tribunal's Findings

24.12 The Tribunal carefully compared the wording of the two statements, which are set out above.

24.13 The Tribunal was not satisfied on the balance of probabilities that they were materially inconsistent. Any differences of emphasis that did exist did not reach the level of making the statement materially untrue or misleading. The account given across both statements was that Mrs S had set the trust up but was unable to remember the details or circumstances of having done so.

24.14 The Tribunal did not find the factual basis of this Allegation to be made out and therefore found Allegation 1.3 not proved.

#### **25. Allegation 1.4**

#### Applicant's Submissions

25.1 In response to a query from the Tribunal as to whether the conduct complained of in the Rule 12 statement amounted to an allegation of negligence rather than professional misconduct, Mr Johal told the Tribunal that the delay of 12 months in registration was significant and that there could have been serious consequences of something had happened in those 12 months. Mr Johal initially submitted that it therefore tipped into issues of professional conduct.

25.2 Mr Johal told the Tribunal that there was no suggestion that the failure to register was deliberate. Mr Johal accepted that there was a high threshold before such matters could become professional misconduct and he told the Tribunal that he did not seek to argue against the matter not having passed that high threshold. Mr Johal did not put his case to the Respondent in cross-examination.

#### Respondent's Submissions

25.3 Mr Butler submitted that while the facts were not in dispute, this was more a case of negligence case that clearly could not amount to misconduct.

#### The Tribunal's Findings

25.4 The Tribunal noted that the Respondent did not dispute the facts in relation to this Allegation. Mr Johal had not pursued the submission that it amounted to professional misconduct and he had not put this to the Respondent in cross-examination.

25.5 The Tribunal was not satisfied on the balance of probabilities that the admitted facts amounted to professional misconduct and therefore it found Allegation 1.4 not proved.

### **Previous Disciplinary Matters**

26. There was no record of any previous disciplinary findings by the Tribunal.

### **Mitigation**

27. Mr Butler again referred the Tribunal to the character references and the additional matters set out in the Respondent's witness statement. He then called the Respondent to give evidence in mitigation.
28. The Respondent told the Tribunal that he was very sorry for his misconduct, which he deeply regretted. He told the Tribunal that he had only been trying to help his clients and he had been mistaken in how he went about it. He apologised to the profession, telling the Tribunal that he was "astonished" that he had handled matters in the way he had. He asked for forgiveness and for an opportunity to prove to the profession that he had learned a very hard lesson that had affected him and his family significantly.
29. The Respondent told the Tribunal that he "would love" the opportunity to continue working in a field that he was devoted to. The Respondent did not believe he had caused any clients any loss.
30. Mr Butler submitted that it did not automatically follow that a finding of dishonestly would lead to a particular sanction.
31. In respect of Allegation 1.2, Mr Butler submitted that the conflict matter had not resulted in any financial loss to beneficiaries as no income was generated by the trust.

### **Sanction**

32. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
33. In assessing culpability, the Tribunal found that the misconduct had been planned in relation to the signing of the Wills. The motivation had been to cut corners in the Respondent's mistaken belief that he had been helping his clients. In doing so he had breached his client's trust to the extent that the documents were potentially invalid by reason of not having been properly executed. The Respondent was an experienced solicitor who had direct control over circumstances giving rise to the misconduct, including the matters relating to the conflict of interest.
34. In terms of harm caused, there was clearly harm to the reputation of the profession. The Respondent was potentially fortunate that no harm had actually been caused to individuals, though it was reasonably foreseeable that harm might have been caused. The Tribunal also noted that by involving others, most particularly staff, in wrongly signing the documents the Respondent had potentially jeopardised their career prospects.

35. The misconduct was aggravated by the finding of dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:
- “34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”
36. In addition, the Tribunal found that the misconduct had been deliberate, calculated and repeated on more than 30 occasions over a period in excess of two years. The Respondent had been in a position of responsibility towards his junior staff as well as his clients and he knew or ought reasonably to have known that his conduct was a material breach of his professional obligations.
37. The misconduct was mitigated by the fact that the Respondent had a previously unblemished career. He had demonstrated some insight in his evidence in mitigation, though the Tribunal was not certain that the Respondent fully appreciated how serious it could have been if the wills and LPAs had been invalidated as a result of his actions. The Respondent had co-operated with the SRA and had made some admissions. The Tribunal noted the references provided by people he was currently working with, all of which were very complimentary. The Tribunal acknowledged that there had been no gain to the Respondent from his actions.
38. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less.
39. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Respondent had not fully thought through the consequences of his actions but the Tribunal found they were potentially extremely serious and he had known what he was doing. It was intended that the wills/LPAs would be presented as properly done in the years ahead. The Tribunal found there to be no exceptional circumstances that would justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck off the Roll.

## **Costs**

### Applicant's Submissions

40. Mr Johal applied for the Applicant's costs. The costs schedule was in the sum £25,426.52, but Mr Johal invited the Tribunal to reduce this to reflect the fact that the hearing had concluded sooner than estimated.

### Respondent's Submissions

41. Mr Butler invited the Tribunal to determine what was reasonable and proportionate. He welcomed the reduction proposed by Mr Johal and further noted that the Tribunal had found some matters not proved.



42. The Respondent had set out his income and overheads. His business had been built up to a value of £75,000 over two years. The Respondent's income was equivalent to around £42,000 per year.

The Tribunal's Decision

43. The Tribunal calculated that the starting point, after the reduction suggested by Mr Johal, was £24,700.
44. The Tribunal was satisfied that all the Allegations had been properly brought, though two of them had not been proved. The Tribunal accepted that the SRA had been required to conduct quite a detailed investigation. In the circumstances the appropriate overall reduction was one of 30%, bringing the total to £17,500.
45. The Tribunal considered the Respondent's means. He was earning in the region of £42,000 per year and had no debts. On the basis of the documents put before the Tribunal there was no basis to reduce the sum further.
46. The Tribunal therefore ordered that the Respondent pay the Applicant's costs fixed in the sum of £17,500.

**Statement of Full Order**

47. The Tribunal Ordered that the Respondent, ROBERT IAN CARTMELL, 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 £17,500.00.

Dated this 10<sup>th</sup> day of November 2020

On behalf of the Tribunal



A N Spooner  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**

**10 NOV 2020**