

The Respondent appealed the Tribunal's decision dated 6 January 2022 to the High Court (Administrative Court). The appeal was dismissed by consent on 10 January 2023.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12213-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JULIA COOPER

Respondent

Before:

Mr A Ghosh (in the chair)

Mr G Sydenham

Mrs N Chavda

Date of Hearing: 11 – 15 and 27 October 2021

Appearances

Andrew Bullock, barrister in the employ of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

Susan Rodway QC of 39 Essex Street Chambers, 81 Chancery Lane, London WC2A 1DD for the Respondent.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority Ltd (“SRA”) were that:
 - 1.1 Between August 2012 and March 2015 she facilitated an attempted purchase of a residential property in London, E7 (“the Property”) by Person G, the Respondent’s civil partner, from an elderly client (Ms S) at a price that she knew, by the time of any attempted purchase, to be an undervalue to the potential detriment of Ms S and the benefit of Person G and/or the Respondent. She thereby breached, or failed to achieve, any or all of:
 - (i) Principles 2, 3, 4 and 6 and 10 of the SRA Principles 2011 (“the 2011 Principles”).
 - (ii) Outcomes 1.1, 11.1 and 3.4 of the SRA Code of Conduct 2011 (“the 2011 Code”).
 - 1.2 In furtherance of the proposed purchase referred to in allegation 1.1, in or around August 2012 she drafted or prepared an agreement for Person G to potentially purchase the Property from Ms S (“the S-G Agreement”), which contained terms potentially disadvantageous to her client and potentially advantageous to Person G. In doing so she breached, or failed to achieve, any or all of:
 - (i) Principles 2, 3, 4 and 6 of the 2011 Principles;
 - (ii) Outcomes 1.1, 3.4 and/or 11.1 of the 2011 Code.
 - 1.3 On or about 28 August 2012 she caused or permitted Ms S to sign the S-G Agreement in circumstances where she knew that it contained declarations that Ms S had been invited to receive independent legal advice and had taken such independent advice on its terms, when she did not know or believe this was the case. In doing so she breached, or failed to achieve, any or all of:
 - (i) Principles 2, 4 and 6 of the 2011 Principles.
 - 1.4 Between 5 September 2018 and 10 May 2021 she made one or more statements to the SRA regarding her dealings with Ms S which were false and misleading. In doing so she breached:
 - (a) For periods up to 25 November 2019, either or both of Principles 2 and 6 of the 2011 Principles.
 - (b) For period after 25 November 2019, any or all of Principles 2, 4 and 5 of the SRA Principles from the SRA Standards and Regulations (“the 2019 Principles”).

- 1.5 In April 2020 she drafted and arranged execution of a will for Ms S which appointed herself as executrix and sole beneficiary of Ms S's estate. In doing so she breached any or all of:
- (i) Principles 2 and 5 of the 2019 Principles;
 - (ii) Rule 6.1 of the Code of Conduct for Solicitors, REL's and RFL's ("the 2019 Code").
2. Allegations 1.1, 1.3 and 1.4 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.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):
- Rule 12 Statement and Exhibit JRL1 dated 10 June 2021
 - Respondent's Answer and Exhibits dated 21 July 2021
 - Respondent's Supplementary Answer and Exhibits dated 26 July 2021
 - Applicant's Reply to the Respondent's Answer and Exhibit JRL2 dated 27 August 2021
 - Applicant's Schedule of Costs dated 4 October 2021

Preliminary Matters

Respondent's application to adduce additional evidence

4. The Respondent applied to adduce additional evidence in support of her case. Mr Bullock confirmed that there was no objection to the same. The Tribunal determined that it was in the interests of justice to allow the Respondent to adduce the additional evidence.

Factual Background

5. The Respondent was a solicitor having been admitted to the Roll in November 1993. She traded on her own account as a Recognised Sole Practitioner/Sole Practice under the style of J Cooper Solicitors ("the Firm") since 1997. The firm currently practiced from offices in London. She held all relevant management and compliance roles, with the Applicant's

records showing no other solicitors working with the firm since May 2010. The Respondent held an unconditional Practising Certificate.

Witnesses

6. The following witnesses provided statements and gave oral evidence:

- Jason Gregory – Forensic Investigation Officer
- James Allen – Investigation Officer
- Jacqueline Starling – Partner at Firm A
- Martin Simpson
- Julie Dickson

7. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

8. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral, together with the submissions of both parties.

Dishonesty

9. The test for dishonesty was that set out by Lord Hughes in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] 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 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.”

10. When considering dishonesty, the Tribunal first 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. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

11. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

“Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one’s own profession”.

12. When considering whether the Respondent’s conduct was dishonest or lacking in integrity, the Tribunal had regard to the testimonials supplied on the Respondent’s behalf.
13. **Allegation 1.1 - Between August 2012 and March 2015 she facilitated an attempted purchase of a residential property in London, E7 (“the Property”) by Person G, the Respondent’s civil partner, from an elderly client (Ms S) at a price that she knew, by the time of any attempted purchase, to be an undervalue to the potential detriment of Ms S and the benefit of Person G and/or the Respondent. She thereby breached, or failed to achieve, any or all of: (i) Principles 2, 3, 4 and 6 and 10 of the 2011 Principles 2011; Outcomes 1.1, 11.1 and 3.4 of the 2011 Code.**

The Applicant’s Case

- 13.1 The Respondent was first instructed by Ms S on 29 June 2010 in relation to obtaining probate over her ex-husband’s estate (“TH’s estate”). The major asset in the estate was a substantial but dilapidated house (“the Property”). Ms S was not of substantial means and lived alone in a council owned flat. The Respondent also prepared a Will for Ms S, leaving any assets to charities and family members. Probate was challenged with a caveat by Ms S’s son, but was ultimately granted to Ms S on 13 June 2014.

- 13.2 On 30 September 2011, Ms S purportedly entered into an agreement to sell the Property to a Mr P, at a price of £230,000 (with a £10,000 cash deposit). In August 2012, the Respondent drafted, witnessed, and ‘stamped ’with her firm stamp, a Legal Agreement (“the S-G Agreement”) for Ms S to agree to sell the Property for £240,000 to G, who was the Respondent’s civil partner. A £20,000 deposit was to be paid by G, with this amount transferred to G from the Respondent’s joint account with G.
- 13.3 In June 2014 probate was obtained by Ms S over TH’s estate, including the Property. In November 2014 the Respondent obtained a valuation of the Property at £450,000. Between November 2014 and March 2015, the Respondent assisted both Ms S and G to instruct solicitors regarding a proposed transfer of the Property from Ms S to G for £200,000 or £180,000.
- 13.4 On 25 March 2015 the Respondent’s civil partnership with G was dissolved.
- 13.5 From December 2014 – September 2019 the Respondent engaged in correspondence with solicitors acting for Mr P (and the Court), disputing Mr P’s claim of an agreement allegedly reached on 30 September 2011 that Ms S sell him the Property for £230,000 (but did not go on the Court record). The litigation was ongoing, with independent solicitors (Firm A) having been instructed for Ms S between Autumn 2019 and March 2021, after Mr P previously obtained a favourable order. The Respondent funded the litigation/fees of Firm A.
- 13.6 Between at least 2012 to 2017, the Respondent corresponded with the Local Authority (“LA”) on behalf of Ms S, mainly regarding getting the property back into use and resisting a compulsory purchase order.
- 13.7 In April 2020, the Respondent drafted and arranged the execution of a new Will for Ms S. The new Will appointed the Respondent as the sole executrix and beneficiary of Ms S’s estate.
- 13.8 On 17 January 2021 Ms S died. Firm A then came off the record in relation to the ongoing litigation with Mr P.
- 13.9 On 4 October 2017 the SRA was sent a report from Mr P’s solicitors, raising concerns about the S-G Agreement and the Respondent’s role in the relevant matters. This led the SRA to request documents and information from the Respondent and then raise initial allegations on 19 March 2019. Subsequently on 5 November 2019 a duly authorised Forensic Investigation Officer (“FIO”) began an inspection of the books of account and other documents of the Firm. This resulted in a report dated 28 May 2020 being produced (“the FIR”).

- 13.10 The Applicant was informed by third parties of developments in the matter, namely of Ms S having passed away and of the Respondent's position being that a will made her the sole beneficiary of Ms S's estate. Following receipt of a Production Notice from the Applicant this was confirmed by Ms S's erstwhile litigation solicitors providing a copy of the Will.
- 13.11 The factual background of the preparation of Ms S's April 2020 Will, appointing the Respondent sole executrix and beneficiary was subsequently queried with the Respondent and the witnesses. The Respondent drafted the Will and arranged its execution, the Will being witnessed by friends of the Respondent.
- 13.12 On 9 June 2011 the Respondent described Ms S in correspondence to the LA as "an elderly and extremely vulnerable lady".
- 13.13 On 7 July 2012 the Respondent entered into a civil partnership with G.
- 13.14 From August 2012 onwards the Respondent engaged in a course of dealing with Ms S, which was directed at procuring the acquisition of the Property by G at less than its full market value. As the civil partner of G, the Respondent would inevitably have benefited financially from its acquisition during the continuance of their relationship and, in the event of its dissolution, its value would have been taken into account by the Court upon the making of an order for financial provision under the Civil Partnership Act 2004.
- 13.15 On or around 28 August 2012, while still instructed by Ms S to obtain probate over TH's estate, the Respondent prepared a 'Legal Agreement' between Ms S and G ("the S-G Agreement"), which was executed by Ms S on 28 August 2012.
- 13.16 The S-G Agreement provided for the proposed future sale of the Property from Ms S to G, upon Ms S obtaining grant of probate over TH's estate, for £240,000 with a £20,000 deposit to be paid. It was witnessed by the Respondent, bore her solicitor 'stamp' and:
- (i) contained provisions as to what should happen if either Ms S or her estate was unable to have the Property transferred to her name (or if she and her son sold the property to others). These provisions obliged Ms S to return the deposit monies together with damages of £20,000 and interest at 20% above base rate.
 - (ii) included a declaration that "both parties have been invited to receive independent legal advice and it is understood by signing this agreement that both parties have taken the opportunity to seek independent legal advice" ... [and] "I confirm that I have had the benefit of legal advice before signing the Agreement and that I fully understand the contents".

- 13.17 The terms of the S-G Agreement concerning the consequences of the failure of Ms S (or her Estate) to complete the sale of the Property were, it was submitted, plainly onerous. The cost of preparing that agreement and undertaking any necessary requisitions upon the title would have been modest so that there was no obvious reason why Ms S should suffer a loss of £20,000 if completion did not take place. The interest rate being applied was also obviously excessive – at the relevant date the Bank of England base lending rate was 0.5 per cent and the interest applicable to judgment debts had been fixed at 8 per cent since 1 April 1993.
- 13.18 In March 2015 the Respondent asserted, on behalf of Ms S, that Mr P’s earlier purported contract to purchase the Property for £230,000 was “a considerable under value...[and] the purchase price offered...was unreasonable”; that Ms S had not understood the document; that Ms S had not had the benefit of legal advice and that Mr P had attempted “to take advantage of a very vulnerable, and unrepresented member of the public”.
- 13.19 The Applicant made no comment on the actions of Mr P, however, it was noted that house prices had not changed significantly between September 2011 and August 2012 – indeed, the Nationwide House Price Index (of which the Tribunal was entitled to take judicial notice) showed that properties in the Greater London area increased in price by an average of 2.08 per cent between the third quarter of 2011 and the third quarter of 2012.
- 13.20 The declaration by Ms S that she had received independent legal advice in the S-G Agreement, was therefore highly significant because it demonstrated (on its face) that she had received advice which might have been expected to encompass:
- (i) The risk of the sale taking place at an undervalue and any steps which might be taken to guard against that risk (in particular, the need to obtain an independent valuation before proceeding); and
 - (ii) the onerous nature of the terms which would apply if the Property was not sold to G once Ms S had been granted probate of TH’s estate.

But that she had nevertheless decided to proceed.

- 13.21 That declaration would also have assumed obvious significance in the event of a subsequent claim by Ms S, or those claiming under her, to set aside the S-G Agreement on grounds that its execution had been procured by the Respondent by improper means, including the exercise of undue influence arising from the solicitor-client relationship.

- 13.22 By witnessing the S-G Agreement, the Respondent not only confirmed the physical act of signature by Ms S but lent the credibility attaching to her status as a solicitor to the document as a whole. Members of the solicitors' profession were to be trusted to the ends of the earth and consequently were not expected to endorse documents which contained untruthful statements or were otherwise improper. Any subsequent reader of the document would have taken this into account when considering its evidential value.
- 13.23 The Respondent confirmed in correspondence with the SRA that she prepared the S-G agreement at the request of G, rather than Ms S, her client, and that she neither provided legal advice to Ms S on its terms nor advised her to seek independent legal advice. She also confirmed that she had no reason to believe that Ms S had sought independent legal advice on its terms of her own volition.
- 13.24 Furthermore, although the Respondent denied an intention to use G in order to purchase the property, she has stated that she [the Respondent] "financed most of our relationship" and that G was capital rich but income poor, so "probably could not have obtained a mortgage". G could not therefore have purchased the Property from Ms S without the assistance of the Respondent.
- 13.25 On 19 December 2012, a few months after drafting the S-G Agreement, the Respondent confirmed to the LA (in the context of a compulsory purchase proposal) that "Our client has a solid purchaser for the property who has already paid a significant deposit ... The proposed purchaser intends to develop the property". Since the Respondent was, at that stage unaware of the purported agreement with Mr. P, this must necessarily be a reference to G and the S-G Agreement.
- 13.26 On 13 June 2014 Ms S obtained probate over TH's estate (including the Property). This marked the end of the Respondent's original work and was nearly two years after the S-G Agreement was signed.
- 13.27 On 6 November 2014 a firm of solicitors ("NBM") were asked to act for Ms S in relation to the proposed transfer of the Property to G. The Respondent assisted Ms S in this instruction, certifying her identity and completing some paperwork. The purchase price provided for the solicitors in a document dated 19 November 2014 was £200,000 (rather than the £240,000 set out in the S-G Agreement). The Respondent confirmed that she had completed this price in the paperwork.
- 13.28 Also on 19 November 2014, a local estate agent/valuer provided the Respondent with a valuation for the Property of "in the region of £450,000". There was no evidence of that valuation being communicated to NBM, or of it being sent to Ms S.

- 13.29 On 1 December 2014 solicitors for Mr P wrote to Ms S, seeking to pursue the purportedly agreed transfer of the Property to Mr P for £230,000. On 16 December 2014 the Respondent wrote to the solicitors of Mr P, disputing Mr P's claim. The Respondent described Ms S as her client, as being "frail" and having no intention of selling to Mr P, and added that Ms S had: "located a buyer and has every intention of selling to this person...the buyer has already undertaken significant internal work on the property. We understand that the buyer will oppose any attempt by your client to obstruct the sale".
- 13.30 There was no evidence that the Respondent was aware of any potential purchasers other than G at the relevant time, so the reference to "...the buyer..." in that letter must necessarily have been a reference to G.
- 13.31 On 18 December 2014, just two days later, the Respondent contacted another firm of solicitors, Attwells, to quote for acting on the purchase of the Property. She stated a purchase price of £200,000 but that "this may drop as the property is derelict and in a very poor state ... [it is] being sold by a lady who inherited it from her former husband."
- 13.32 On 19 December 2014, Attwells sent initial client care documentation to the Respondent. Other documentation included a further reduced figure of £180,000, with G identified as the purchaser.
- 13.33 On 29 January 2015, the Respondent asked G in an email to:
- "please confirm that we are to buy the Property together so that this can be confirmed to Attwells....I would like us to confirm this particular detail to Attwells tomorrow please". Later on 29 January 2015, G stated by email that the Respondent had said she called Attwells but they had not yet set up a file, which seemed odd as the paperwork had been sent and the Respondent had said she had called them the previous week. G also stated that the Respondent could "do what you want with Capel. It seems [Ms S] is as confused as I am about its availability...you're the only one who knows what's going on Julie, with the other solicitor or whatever...". (Pages 23 and 453 - 454).
- 13.34 On 12 February 2015, after G had forwarded an email to her, the Respondent wrote to Attwells asking to be copied into the email exchange in the future and stating she would consider the form identified.
- 13.35 On 25 February 2015, NBM wrote to Ms S stating that they could not progress the sale due to the dispute with Mr P and the Unilateral Notice he had placed on the title. They advised that litigation solicitors would initially be required to have Mr P's unilateral notice removed.

- 13.36 On 24 March 2015 the Respondent wrote in aggressive terms to Mr P’s solicitors, stating that she had now taken “detailed instructions” and was instructed to commence litigation on behalf of Ms S, if Mr P did not take steps to remove his Unilateral Notice within seven days. Mr P did not do this and the dispute escalated. The following day, the Family Court ordered that the Respondent’s civil partnership with G be dissolved.
- 13.37 On 1 June 2015, Attwells withdrew from acting on the proposed purchase, on the basis that it appeared to involve a pre-sale agreement for a below market value purchase and it was their policy not to undertake those types of purchases.
- 13.38 In relation to the S-G Agreement the Respondent’s position was that Ms S and G made their own decisions and there had ultimately been no loss to Ms S with no sale taking place. She also claimed that she later encouraged Ms S to have the Property valued (via herself) and acted protectively toward Ms S. However, the contemporaneous paperwork showed the Respondent actively involving herself in attempts to transfer the Property from Ms S to G up to early 2015. This was potentially for an even lower price than previously agreed and at a time when the Respondent had received a valuation for the Property of £450,000. There was no evidence of the valuation being sent to Ms S’s instructed conveyancing solicitors.
- 13.39 Regardless of the strength of any subsequent friendship that the Respondent developed with Ms S, the Respondent had indicated a relaxed attitude to the potential consequences for Ms S of the S-G Agreement. When asked about whether Ms S could face litigation as a result of the S-G Agreement, she said the risk of another litigation existed but “that’s up to [Ms S] ... If that happens, that happens. That’s not, it’s not my litigation it’s [Ms S’s] ... It won’t be my litigation ... That is not going to happen”.
- 13.40 In summary, it was submitted, the Respondent was a solicitor who was acting for an elderly client, Ms S, in a contentious probate matter where the Property was ultimately the major asset in dispute. In that context she drafted the S-G Agreement for the proposed sale of the Property to her own civil partner, containing some onerous terms against her elderly client if she could not comply with the agreement.
- 13.41 The S-G Agreement sought or purported to create legal rights and made express statements that the parties had been invited to receive, and had obtained, independent legal advice on its terms when this was not the case. The Respondent prepared those statements and knew, or should have known, that she had not asked Ms S to obtain independent advice and there was no evidence of her having done so. The document was clearly potentially contentious. The value and importance of independent legal advice having been provided on its terms, particularly if any disputes arose, would or should have been clear to the Respondent as a solicitor.

- 13.42 In particular, a third party considering the document as signed by Ms S, and witnessed/stamped by the Respondent, would see a document stamped and witnessed by a solicitor purporting to confirm that independent legal advice had been provided. In the context of any disputes, such a third party may be unlikely to know the full background and that independent legal advice had not in fact been offered or advised by the Respondent, or otherwise known or believed to have been obtained.
- 13.43 It was the Applicant's case that based on the contemporaneous documents, if the proposed transfer to G had taken effect when it was possible for it to do so, either at the original suggested price of £240,000 or the subsequent lower price suggested by the Respondent, this would have amounted to a known undervalue at that stage of around £200,000. That figure, if realized, would have been gained by the Respondent's civil partner – with the Respondent having a clear interest in such a gain, either directly during the relationship or potentially through financial proceedings under the Civil Partnership Act 2004.
- 13.44 G listed the S-G Agreement (as an agreement to purchase) as one of her assets within the subsequent financial proceedings between G and the Respondent under the Civil Partnership Act 2004.
- 13.45 When questioned about her involvement in instructing solicitors on behalf of Ms S and G for a proposed sale, the Respondent stated that:
- i) she did provide Ms S with the valuation in person, soon after receiving it;
 - ii) she completed the NBM paperwork on behalf of Ms S, including entering the £200,000 price, but did not know where that price had come from;
 - iii) Ms S did not want to sell the Property to G, and wanted to “really really annoy [G]...and [for G] to incur expense”. However, the Respondent later adjusted her position under questioning to state that she was not entirely sure what Ms S was going to do, and that she had suggested to Ms S that she, the Respondent, should assist Ms S to find solicitors to act for Ms S.
 - iv) She contacted Attwells to get a discount for G, but that she only helped her instruct solicitors “to cause her [G] some inconvenience”. She contacted Attwells at the request of G and believes G was “trying to embroil me in the transaction”;
 - v) She became involved in “winding up” G because of “all the things” G did to her. In this respect, she claimed that she suggested a price of £200,000 that may be reduced further because she “...wanted [G] to be as inconvenienced as possible. I

don't care how much money she spends. If you think that's very poor behaviour for a solicitor, then so be it...I don't care that she spent 300 quid, good;"

- vi) that with ancillary relief proceedings having been "looming", it would be "entirely wrong to suggest that I would derive any benefit...from [G] purchasing [the Property"].

13.46 Mr Bullock submitted that the Respondent's explanation that she engaged in multiple lines of correspondence to "wind up" G should not be accepted. He submitted that the contemporaneous correspondence supported the view that the Respondent was in fact facilitating an attempted transfer of the Property from Ms S to G at an undervalue, initially with the S-G Agreement being prepared and subsequently by helping to instruct solicitors after probate had been obtained. In relation to G supposedly "embroiling" the Respondent in the transaction, there was no indication of G being involved in the Respondent's decisions to help Ms S instruct a solicitor or to state to both the LA and Mr P's solicitors that a sale was progressing.

13.47 Mr Bullock also submitted that Ms S was the Respondent's client notwithstanding that there was no retainer in place. He referred the Tribunal to the Privy Council's judgment in McMaster v Byrne [1952]:

"On the first question their Lordships find themselves in complete agreement with Smily J., that, notwithstanding that the respondent was not acting as solicitor for McMaster in the transaction now in dispute, the confidence arising from the relationship of solicitor and client which had existed between the respondent and McMaster must be taken to have continued to be in existence at the time of the interview between them on Mar. 22, 1947. The Court of Appeal, or at any rate Henderson, J.A. and Hogg, J.A., came to the conclusion, no doubt correctly, that the respondent was not acting as solicitor for McMaster on that date. They seem to have been under the belief, but, as the observations of Parker J, in Allison v. Clayhills ... show, under the erroneous belief, that that was the end of the matter. The passages from the judgment of Parker J., which were cited by Smily J., clearly show that the duty of the solicitor may continue after the relationship of solicitor and client in its strict sense has been discontinued. Parker J., goes on to say (97 L.T. 712):

"In considering whether in any particular transaction any duty exists such as to bring the ordinary rule into operation, all the circumstances of the individual case must be weighed and examined. Thus, a solicitor may by virtue of his employment acquire a personal ascendancy over a client and this ascendancy may last long after the employment has ceased, B and the

duty towards the client which arises out of any such ascendancy will last as long as the ascendancy itself can operate. Again, a solicitor may by virtue of his employment acquire special knowledge, and the knowledge so obtained may impose upon him the duty of giving advice or making a full and proper disclosure in any transaction between himself and his client, C though such transaction may take place long after the relationship of solicitor and client in its stricter sense had ceased to exist. And there may be other circumstances which may impose a duty on a solicitor, which duty may continue to exist after the relationship of solicitor and client in the strict sense has ceased.”

It is impossible to define precisely what circumstances will justify the inference that the confidential relationship continues.”

13.48 In Longstaff v Birtles [2001] EWCA Civ 1219, Mummery LJ in the Court of Appeal had observed:

“Of course, I do not doubt the correctness of the statements of principle in those cases. What I do question, however, is whether it is either necessary or appropriate to invoke them in this case to establish a duty of care and a breach of such a duty. This case can and, in my judgment, should be decided on the simple ground that there was a relationship of trust and confidence between the Longstaffs and the solicitors; that that relationship did not cease on the termination of the retainer in respect of the intended purchase of the Moorcock Inn ; that during the course of that relationship a personal business opportunity presented itself to the solicitors; that the solicitors took advantage of that opportunity to propose that the Longstaffs buy into the partnership of the Castle Hotel at Brough; that in the context of the relationship the proposal gave rise to a situation in which the duty of the solicitors might conflict with their interest; and that they acted in breach of fiduciary duty, in continuing to deal with the Longstaffs in a situation of a conflict of duty and interest, without insisting that they obtain independent advice.”

13.49 Longstaff related directly to the question of conflict of interests. Whilst McMaster contained statements of principle, since it was a Privy Council matter it was highly persuasive but was not binding precedent, whereas, Mr. Bullock submitted, Longstaff was a Court of Appeal decision and therefore binding. Longstaff supported the proposition that a conflict may arise after the termination of a solicitor’s contractual relationship.

13.50 Mr Bullock submitted that a person in a fiduciary position had a duty not to act when in a position of potential conflict. This was the principle that underpinned the obligations in the Applicant’s rules which prohibited a solicitor from acting where there was a potential

conflict of interest. The purpose of the equitable jurisdiction and the rules were the same. It was to prevent a trusted advisor acting in circumstances where they might find their interests in conflict with those of their client. The definition of client for the purposes of the Code of Conduct and the Principles extended to former clients and prospective clients.

13.51 Accordingly, Ms S, who trusted the Respondent as her legal advisor, was in the position of the Respondent's client at all material times.

Allegation 1.1

13.52 Principle 6 required solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services. Any behaviour either within or outside a solicitor's professional practice which undermined that trust damaged not only the solicitor, but also the ability of the legal profession as a whole to serve society.

13.53 As detailed, the Respondent was instructed by Ms S in relation to obtaining probate over the estate of TH. In the context of this the Respondent would have learnt of Ms S's financial affairs and her potential inheritance of the Property (a potentially much higher value asset).

13.54 The public, and in particular elderly and/or vulnerable clients who may have limited dealings with legal matters, would trust solicitors not to facilitate an attempted purchase of a main asset of a client at a price which would have been an undervalue. This was all the more the case where the proposed purchaser was closely connected to the solicitor.

13.55 The Respondent's actions in facilitating the attempted purchase of the Property by G, by preparing the S-G Agreement and, after obtaining probate for Ms S, helping to instruct conveyancing solicitors in relation to the proposed/attempted purchase – at a price known by her to be an undervalue – would be likely to reduce trust in her and in the provision of legal services, in breach of Principle 6.

13.56 Solicitors were required to act with independence. The Respondent was acting for Ms S in seeking to obtain probate over TH's estate (and thereby control of the Property). The Respondent had a clear potential personal interest in any proposed transfer of the Property from Ms S to her own civil partner. This meant that her independence when advising Ms S on her dealings with G and Mr. P were necessarily impaired, in breach of Principle 3.

13.57 A solicitor acting in the best interests of their client would clearly not facilitate an attempted purchase of the client's main property asset at an undervalue. The Respondent's actions, in preparing the S-G Agreement and subsequently helping to instruct solicitors for an even lower proposed sale price, were actions facilitating the attempted purchase of the Property.

This purchase was at a price that would have been an undervalue, that by the time the attempted purchase was being pursued was known by the Respondent to be an undervalue. The Respondent's actions on these issues were not in the best interests of her client, Ms S, in breach of Principle 4.

13.58 Further a sale at an undervalue would have been an asset loss to Ms S. In facilitating the attempted purchase, the Respondent put her client's assets at risk in breach of Principle 10.

13.59 Principle 2 required the Respondent to act with integrity. In Wingate Lord Justice Jackson said:

“Integrity is a broader concept than honesty. In professional codes of conduct the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members...The duty to act with integrity applies not only to what professional persons say, but to what they do.”

13.60 A solicitor acting with integrity would not involve themselves in facilitating an attempted purchase of a property by their civil partner from a client at a known undervalue, in particular where the client is an elderly and/or vulnerable client. The Respondent's actions, in preparing the initial S-G Agreement and subsequently (after obtaining the required probate) assisting both S and G in instructing conveyancing solicitors relating to the attempted purchase and resisting a claim from Mr. P to ownership of the property were clearly designed to facilitate the purchase of the Property by G at an undervalue. She thereby demonstrated a lack of integrity in breach of Principle 2.

13.61 Outcome 1.1 required solicitors to treat their clients fairly. Outcome 11.1 required solicitors not to take unfair advantage of third parties in either a professional or personal capacity. A solicitor treating their clients fairly would not seek to facilitate an attempted purchase of a client's asset by their civil partner, at a price that would be a substantial undervalue. The Respondent, in acting as she did, facilitated an attempted purchase of the Property at a price that would have been an undervalue. Mr Bullock submitted that the Applicant's primary position was that this failed to treat her client fairly and failed to achieve Outcome 1.1. Additionally, or alternatively, her actions in facilitating such an attempted purchase involved an attempt to take advantage of Ms S, and a failure to achieve Outcome 11.1.

13.62 Outcome 3.4 prohibited solicitors acting where there was an own interest conflict or a significant risk of an own interest conflict. There were no exceptions to that prohibition. The Respondent had a clear financial interest in any property sale by a client to her civil partner. As such, a situation of facilitating an attempted purchase of the Property from her

client to her civil partner placed the Respondent in a clear position of conflict – as the interests of her client and the financial interest of her civil partner (and herself) were clearly not aligned. The Respondent’s facilitation of an attempted purchase of the Property by her civil partner, at a price that would have been an undervalue, involved the Respondent preparing documents and taking steps in correspondence that were clearly in situations that involved an own interest conflict or a significant risk of such a conflict. As such, the Respondent failed to achieve Outcome 3.4.

Allegation 1.2

- 13.63 Whether or not G asked the Respondent to prepare an Agreement (the S-G Agreement), the Respondent had a clear financial interest in the matter. Further, a solicitor protecting their independence, in being able to properly draft and consider the issues, would not draft an Agreement relating to the transfer of a substantial asset in such circumstances. In preparing the S-G Agreement and including terms that were manifestly disadvantageous to her own, elderly client (and advantageous to her own civil partner), the Respondent allowed her independence to be compromised in breach of Principle 3.
- 13.64 As an existing client of the Respondent, it was in the best interests of Ms S to receive proper, independent guidance in relation to any agreement to potentially transfer her most significant asset to a third party. Even if such a transfer was something she had decided she did wish to do, as a relatively vulnerable member of the community it would be in her best interests for any such agreement to be for the best price and not include onerous terms against her. A solicitor acting in the best interests of their existing client in the circumstances faced by the Respondent would, if either considering drafting such an agreement or asked to do so by their civil partner:
- i) Refuse to be involved in the separate, connected matter involving a solicitor drafting and witnessing a legal agreement for the client to potentially transfer a valuable asset to the solicitor’s civil partner, or alternatively face potential financial penalties.
 - ii) At the very least advise, and insist, that the unrelated client obtain independent legal advice.
- 13.65 The Respondent’s actions, in drafting the S-G Agreement and including potentially draconian interest and penalty clauses in favour of G, were not in her existing client’s best interest in breach of Principle 4. This was particularly as she did so without adequately or at all advising Ms S to obtain independent legal advice.

- 13.66 The public trust solicitors to produce legal documentation in a fair, accurate and suitable manner. This was particularly likely to be the case for vulnerable members of the community who are likely to place greater trust in solicitors they have instructed to help them with their legal affairs. The Respondent drafted and prepared a document that, on its face, favoured her civil partner against her existing elderly client, both in terms of the penalty clauses inserted and the proposed sale price – which was only £10,000 more than an earlier agreement the Respondent argued later was “a considerable under value”. There were many firms of solicitors within her area of London the Respondent could have involved in this matter, but she chose to retain the preparation of the S-G Agreement to herself.
- 13.67 The existence of another potentially “under value” agreement did not absolve the Respondent of her responsibilities as a solicitor. Her actions were likely to reduce the trust placed in her as a solicitor and in the provision of legal services, in breach of Principle 6.
- 13.68 A solicitor of integrity would under no circumstances exploit their client. They would not therefore prepare an agreement for signature by an elderly and vulnerable client which provided for the potential sale of property by the client to an associate of the solicitor at an undervalue, on onerous terms, in circumstances where the solicitor themselves would, or might reasonably expect to, benefit from any sale. The Respondent’s actions in so doing in relation to the S-G Agreement demonstrated a lack of integrity.
- 13.69 Drafting a legal agreement between your spouse or civil partner and an existing client, regarding the client’s potential main asset, created a clear situation of conflict or a significant risk of conflict. The Respondent failed to achieve Outcome 3.4 as, in the circumstances, she should not have drafted the S-G Agreement at all.
- 13.70 Beyond any breach arising from preparing the S-G Agreement at all, the Respondent included within the agreement she prepared terms which were manifestly disadvantageous and unfair to her client, Ms S, e.g., in relation to the payment of damages and the use of an onerous interest rate. The S-G Agreement also ultimately made provision for a potential transfer of the Property to G at a significant undervalue. In this respect, the Respondent did not treat her client fairly and failed to achieve Outcome 1.1.
- 13.71 Outcome 11.1 set out that solicitors must not take advantage of third parties in either their professional or personal capacities. Additionally, or alternatively, the Respondent failed to achieve Outcome 11.1 in producing a document that included clauses manifestly in favour of her civil partner against Ms S, both in relation to proposed purchase price and in particular in relation to the clauses dealing with the potential payment of damages and interest. Ms S is someone the Respondent otherwise described as “extremely” or “very”

vulnerable and the Respondent's drafting took advantage of Ms S and failed to achieve Outcome 11.1.

Allegation 1.3

- 13.72 Ms S was an existing client of the Respondent and the Respondent's knowledge of the Property was gained through her instructions. A solicitor dealing with an agreement involving their vulnerable, elderly client potentially transferring their major asset to their civil partner would not, if acting in the best interests of that existing client, cause or permit them to erroneously declare in the agreement that they had been invited to receive independent legal advice and had received such legal advice. The Respondent's actions, in causing or permitting Ms S to declare that she had received independent legal advice on the terms of the S-G Agreement, when she did not know or believe this to be the case (and without ensuring that it was), were not in the best interests of her client in breach of Principle 4.
- 13.73 The public would not expect a solicitor to cause or permit their elderly client to sign such an agreement such as the S-G Agreement, particularly when it contained a declaration as to the giving of legal advice which they did not believe to be true. If they did so, then the public would expect them to ensure that the client had obtained independent legal advice on its terms in line with the declarations being made. Despite the ready availability of other firms of solicitors, the Respondent failed to do so. Further, the public would not expect a solicitor to cause or permit an elderly and vulnerable client to sign such an agreement, knowing it contained declarations of having received independent legal advice, when the solicitor did not know or believe this was the case. Nevertheless, the Respondent drafted, witnessed and 'stamped' the S-G Agreement. The Respondent would (or should) have known of the importance of independent legal advice, and caused or allowed the creation of a document that she knew or believed to be misleading on its terms. This would be likely to reduce trust placed in her and/or in the provision of legal services. The Respondent therefore breached Principle 6.
- 13.74 The Respondent was not in a position to provide proper independent legal advice. She maintained that she did not provide advice or ask Ms S to obtain independent legal advice and did not believe Ms S had wished to. There was also no other evidence of independent legal advice being provided, recommended or obtained. A solicitor in those circumstances, if acting with integrity, would not cause or permit their elderly client to sign an agreement including false declarations about being invited to receive, and having obtained separate, independent legal advice. The Respondent prepared the S-G Agreement and so knew its terms, including the declaration by Ms S that she had received independent legal advice (which she had no reason to believe was true). She also witnessed the signature of Ms S upon the document (which she also 'stamped') and thereby lent credibility to the document.

Both the Respondent and Ms S lived in London, with many other firms of solicitors available, yet the Respondent retained control of preparing and witnessing the agreement. As a solicitor, the Respondent would (or should) have known the potential importance of the declarations regarding the receipt of independent legal advice, but her actions created a situation where the document drafted, witnessed, and ‘stamped ’by her confirmed that Ms S had received independent legal advice on an important legal issue – when this was not known or believed to be true. In this respect, her actions lacked integrity in breach of Principle 2.

Dishonesty

- 13.75 The intention of the Respondent between August 2012 and March 2015 was to help procure the Property for G from Ms S. She knew that this would confer a substantial benefit upon G and, consequently, herself as G’s civil partner to the detriment of her client with whom she stood in a fiduciary relationship.
- 13.76 The Respondent gained her knowledge of the Property from her involvement with Ms S as her solicitor. The Respondent also lived locally to the Property and obviously knew that G was her civil partner. She also knew (and had asserted) that Ms S was a vulnerable, elderly lady, and that G was to some extent an “entrepreneur” who already owned several other properties.
- 13.77 The Respondent knew that the balance of property and legal experience and knowledge between G (and herself) and Ms S was heavily one-sided and that Ms S would place trust and confidence in her as her legal adviser and expect her to act in her best interests.
- 13.78 Despite this the Respondent repeatedly retained to herself the role of preparing the SG Agreement and then, after probate had been obtained, helped both parties with the instruction of solicitors in relation to the attempted transfer of the Property. The latter actions, in liaising with third party solicitors, involved the Respondent proposing a lower price than had been agreed originally, when this was known to be over £200,000 lower than a contemporaneous valuation obtained. There was no indication that the Respondent shared the valuation with Ms S’s solicitors.
- 13.79 Taken together, and based on the Respondent’s knowledge of the facts of the Property and the parties involved, the ordinary, decent person would consider her overall actions in facilitating the attempted purchase to be dishonest.
- 13.80 The Respondent knew, or should have known, that she could not provide independent legal advice to Ms S on S-G Agreement. Indeed, her position is that she actively did not provide advice or ask Ms S to obtain independent legal advice, and did not believe Ms S had wished

to obtain it. There is also no other evidence of independent legal advice being provided, recommended or obtained. The Respondent's state of knowledge was therefore that she did not know or believe that Ms S had obtained independent legal advice – and she knew that she had not asked her to do so.

- 13.81 The Respondent prepared the S-G Agreement so would have been well aware of its terms whereas Ms S, a vulnerable and elderly person with no legal background, would not have been well-placed to understand its meaning and effect.
- 13.82 Despite her state of knowledge, the Respondent caused or permitted Ms S to sign the S-G agreement including false declarations about being invited to receive, and having obtained separate, independent legal advice. In this respect, she witnessed and 'stamped' the agreement in relation to Ms S signing – providing the appearance of confirmation of the position by a solicitor.
- 13.83 As a solicitor (and the solicitor who prepared the agreement), the Respondent would have known the potential importance of the declarations regarding the receipt of independent legal advice, particularly if disputes arose.
- 13.84 In all the circumstances, with the Respondent having no basis for believing Ms S had been invited to receive independent advice, or had received any such legal advice, ordinary decent people would consider her actions in causing or permitting Ms S to sign the S-G Agreement, stating otherwise, to be dishonest

The Respondent's Case

- 13.85 The Respondent denied allegations 1.1, 1.2 and 1.3.
- 13.86 The Respondent explained that Ms S was not a client throughout. It was accepted that a Will was made in 2010, leaving various bequests to charity, Ms S's brother and his wife. The Respondent stated that Ms S gave her brother a cheque in the sum of £10,000 when his wife died. Ms S regarded those monies as her bequest to him.
- 13.87 With regard to any agreement to sell to Mr P, the Respondent was not aware of this. The valuation of the property in 2014 was undertaken at the request of Ms S.
- 13.88 The Respondent explained that she assisted Ms S and G to locate solicitors. This was done with the intention "to encourage G to incur expense and inconvenience in attempting to purchase the property". Ms S agreed to this. At that time the Respondent and G were in "bitter litigation with regard to child contact matters". In the circumstances, it was inconceivable that the Respondent and G were on good terms. The Respondent explained

that the low price was suggested “purely to entice G”, and that she had no interest in obtaining the Property. Further, the Respondent had made no application for financial relief from G, so would not have benefited had G purchased the Property. The Respondent accepted that she had described Ms S as elderly and vulnerable. Ms S was, as a matter of fact, elderly. The Respondent considered that in a potentially litigious situation, Ms S was also vulnerable.

- 13.89 It was not accepted that the S-G Agreement was a sale agreement. The Respondent explained that it was an option to purchase. Nor was there any intention to contribute to the purchase of the Property. The Respondent did not accept that there had been any agreement for sale. In the circumstances, the terms were not onerous. Ms S understood that G had been granted an option to purchase. That that was the position could have been clarified by the Applicant had it spoken to Ms S. There had been no undue influence exerted over Ms S by the Respondent.
- 13.90 In her oral evidence, the Respondent explained that at the time of the S-G Agreement, Ms S was her client but solely for the purposes of the ongoing probate dispute. Whilst G had met Ms S through the Respondent, G and Ms S had formed their own relationship. G was interested in purchasing the property. The agreed price of £240,000 was more than the £200,000 that Ms S had previously been offered. When drafting the S-G Agreement, she was not acting in her capacity as a solicitor, but as Ms S’s friend. It was G that wanted the S-G Agreement. Ms S and G were happy with the arrangement, which they considered to be an option to purchase. The Respondent explained that she did not consider the S-G Agreement to be part of a conveyancing transaction, she was simply assisting her friend in the sale of her property at what was considered to be a really good price.
- 13.91 With regard to the onerous terms, it was not accepted that the terms were onerous. Further, if the terms were onerous, the agreement would be unenforceable. The Respondent explained that the 20% interest referred to in the S-G Agreement was a typing error and should have been 2%. In any event, G knew that Ms S did not have funds to pay damages and G did not pursue Ms S for damages or interest. Further, the deposit had not been paid by G to Ms S. It was accepted that the £20,000 damages payment was “way in excess of any conveyancing costs G would incur in effecting the transfer”.
- 13.92 The Respondent explained that the agreement was a template that she had downloaded from the internet. It was the intention of the parties to create an option to purchase agreement. The Respondent did not accept, having examined the terms of the agreement that it was not an option to purchase agreement. That was what she had intended to create, and that was the intention of the parties.

- 13.93 The Respondent considered that it was helpful but not essential that Ms S received legal advice before entering into the contract. As to whether Ms S received legal advice prior to signing the contract, the Respondent relied on the fact that Ms S had signed the agreement, confirming that she had received legal advice. It was not accepted that had Ms S obtained legal advice, she would have told the Respondent, or that the Respondent would have known. The S-G Agreement was given to both Ms S and G to take away and consider. Thus, they both had the opportunity to obtain legal advice, and in any event, had both signed confirming that such advice had been obtained.
- 13.94 Ms S did not consider the terms of the option to purchase onerous and was happy to give an option to purchase. It was not accepted that the Respondent would have gained from the sale of the Property as Ms S would not have sold to G. Further, in listing the S-G Agreement as an asset, the Respondent considered that G regarded the asset as her own and not the Respondent's.
- 13.95 As to the assertion that G could not have purchased the Property, the Respondent stated that as a property owner, G could have raised finance if she needed it, and had in fact raised finance to fund other litigation. Further, G's financial form in the ancillary relief proceedings showed that she had raised a mortgage in the sum of £150,000.
- 13.96 In her Answer, the Respondent accepted that in her letter to the LA of 19 December 2012, Ms S was referred to as the Respondent's client. The Respondent explained that she had not charged Ms S any fees, nor did she open a file. The Respondent acted for Ms S as a friend and on a pro bono basis. The reference to a sale was not a reference to any purported sale to G.
- 13.97 In oral evidence, the Respondent accepted that the reference to a purchaser did relate to G. The letter was written a couple of months after the S-G Agreement. G was still around and it was "useful" to tell the LA of a solid purchaser. The Respondent stated that G "was the only identifiable person" and that she would "say whatever was going to reassure the LA from Ms S's point of view".
- 13.98 The valuation obtained in November 2014 was obtained at the instigation of Ms S and was shown to her. The Respondent repeated that had the SRA spoken to Ms S, it could have clarified her knowledge, but it had failed to do so. In her oral evidence, the Respondent explained that she had completed the sale of property form, and Ms S had signed it. The sale price of £200,000 was on the document, notwithstanding that the Respondent was aware of the valuation of £450,000. That needed to be considered in the context where there was no intention to sell the Property to G at that time, and this was part of "the game and subterfuge" with G. Ms S and the Respondent were acting together to annoy G and for

her to waste time and money in attempting to purchase the Property when it was not going to be sold to G.

13.99 The Respondent accepted that in her letter to the solicitors acting for Mr P, the reference to a buyer was a reference to G. However, as already explained, there was no intention to sell the Property to G. The email to G of 29 January 2015 was sent to encourage G. The Respondent stated that the comments made by G were “typical of her trying to create written records/documentation that she can rely upon at a later date”. The Respondent explained that she had discovered that G was sending herself abusive emails from the Respondent’s email account. She would then delete them so that the Respondent was not aware of what G had done.

13.100 With regard to Attwells withdrawing from acting on the proposed purchase, the Respondent stated in her Answer:

“This is odd. Why would somebody seek to purchase a property, pay fees to the solicitor and then raise an issue with them unless there was a vested interest in obtaining such a letter? I suspect she raised this issue with her solicitors herself, again to obtain some form of documentary ‘evidence ’from a professional that she could use against me.”

13.101 The Respondent stated that she had known G for a long time and had dealt with her manipulative behaviour. G had no intention of proceeding with the purchase or she would have done so.

13.102 The Respondent referred to G’s manipulative and dishonest behaviour. G had admitted accessing the Respondent’s email accounts to send herself abusive and racist messages, so that would appear to have been sent by the Respondent. The Respondent explained that the email of 29 January 2015 purportedly sent from the Respondent to G had not been written by the Respondent. The email stated:

“Can you please confirm that we are to buy the property together so that this can be confirmed to Attwells. The name(s) that it will be registered in, along with what financial contributions we will be making, will be discussed and formalised by us subsequently. I would like us to confirm this particular detail to Attwells tomorrow please.”

13.103 The Respondent explained that this email was sent from an email account that she rarely used and was sent from an iPad; the Respondent did not own an iPad. The Respondent did not accept that she had sent the email. As to G’s email in response, the Respondent considered that that email was self-serving.

- 13.104 The Respondent denied that her conduct was in breach of the Principles and Outcomes alleged. Further, she denied that her conduct was dishonest.
- 13.105 Ms Rodway submitted that it was important to bear in mind the circuitous route by which the complaints against the Respondent had been made. There had been no complaint by Ms S or any relative. Instead, the complaint had been initiated by G and the solicitors to Mr P.
- 13.106 It was accepted that once a complaint had been raised, the Applicant was under a duty to investigate it, however, it was important to keep in mind what was known of G's character. G, it was submitted, was demonstrably dishonest.
- 13.107 The actions of Mr P's solicitors was also questionable. In the attendance note of December 2014, there was reference to a date in 2016, further, the note itself was undated. Ms S denied that the attendance note was a correct record. The letter of 23 December 2014 was a file copy and the content of that letter was not accepted.
- 13.108 Ms Rodway submitted that both G and Mr P had a personal interest; G wished to destroy the Respondent and her career, and Mr P wished to obtain the property. It was of note that the complaint made to the SRA by Mr P's solicitors was sent in the same week that Mr P issued proceedings to recover the Property.
- 13.109 It should also be noted that the Respondent was adamant that she had, at all times, acted in the best interests of her friend.

Allegation 1.1

- 13.110 It was clear that there were valuations in 2009 of between £170,000 to £190,000. Such valuations undermined the suggestion that the time of the S-G Agreement, there was an intended sale at an undervalue. The only valuation of which the Respondent was aware at the time of the S-G Agreement was one of £200,000. It was clear that Ms S wanted to sell the Property. There was nothing nefarious about the proposed sale at the time or the amount.
- 13.111 The Respondent asserted that she was acting solely as a friend and not in her capacity as a solicitor. She downloaded the agreement in order to assist. Ms Rodway submitted that even if there was a solicitor and client relationship, the Respondent had not acted improperly. Mr Bullock complained that a number of the conditions in the S-G Agreement were onerous, however the S-G Agreement identified the recommendation of obtaining legal advice and confirmed that such advice had been taken. Even if it could be established

that the Respondent was acting, there was no evidence that her conduct was dishonest or that she sought to make a gain to the detriment of Ms S.

13.112 As to the 2014 valuation, there was the caveat that the Property could not be purchased with a mortgage; any purchaser would need to be a cash buyer. Any suggestion that Ms S was not aware of the value of the Property at that time necessarily fell away, given the statement made by Ms S of 24 April 2019, in which she expressly stated that she was shocked to learn the true value of the Property in 2014.

13.113 Ms Rodway highlighted other matters dealt with by Ms S in her statement:

- Ms S did not accept the content of the December 2014 attendance note created by Mr P's solicitors and asked that the firm be investigated.
- Ms S made further complaints about Mr P's solicitors misleading the Court.
- Ms S considered that the Respondent was not acting as her solicitor at the time of the S-G Agreement, but as her friend.
- Ms S wanted G to waste money on solicitors, and agreed a reduction in the sale price, knowing that when the time came, Ms S would not proceed with the sale.
- Ms S found it strange that G had contacted Mr P's solicitors when they were competing with G to purchase the Property.

13.114 Ms Rodway submitted that by the end of 2014, both the Respondent and Ms S knew of the restriction placed on the property by Mr P. It was the knowledge of the restriction that led to the ploy with regard to the sale to G. There was no risk to Ms S or any detriment to her. The Property had not been, and was never, transferred into Ms S's name, and the deposit had never been paid to Ms S by G.

13.115 It was submitted that the Applicant had failed to establish that there had been any attempted purchase at an undervalue to the detriment of Ms S. All that had happened was a ploy to cause annoyance to G. No attempted purchase could have taken place in circumstances where the deposit had not been paid. Having looked at the evidence in detail, the only evidence upon which the Tribunal could rely was the evidence that the 'sale' was in fact a sham.

13.116 The Respondent, it was submitted, had discharged any duty to safeguard Ms S's assets. She had intervened in the compulsory purchase and the Mr P litigation to ensure that Ms S retained the Property. Even if, which was not accepted, there was a client solicitor relationship between Ms S and the Respondent, there was no evidence that the Respondent was in breach of her duties; she had, at all times, acted with honesty and integrity in the protection of Ms S and her assets.

13.117 Further, and importantly, it was submitted that the only evidence of Ms S's views and her state of mind at the time, was contained in Ms S's witness statement. The Tribunal should afford that statement substantial weight. Allegation 1.1, it was submitted, could not be substantiated.

Allegation 1.2

13.118 Ms Rodway noted that there was no file opened and Ms S had not paid the Respondent any monies to act. Neither Ms S nor G were clients. There was no evidence that Ms S was other than of sound mind and had full capacity. There was no evidence that Ms S was unable to retain a solicitor or provide instructions.

13.119 It was submitted that, as Ms S stated, there was no solicitor client relationship. Further, it was not accepted that the Respondent stood to benefit. It had been the Respondent's evidence that had she wished to purchase the Property, she could have done so without involving G. That the Respondent was not trying to obtain the Property was evidenced by the Respondent making no claim to the Property in the ancillary relief proceedings following the dissolution of the civil partnership with G.

13.120 The Respondent considered that she was assisting Ms S in selling the Property. She did not know that it was a document that she should not have prepared. Further, there was no evidence that the sale was at an undervalue, or that the Respondent stood to gain from the sale.

13.121 As to the onerous terms, Ms Rodway submitted that both G and Ms S had been advised to obtain legal advice. Both signed the S-G Agreement, confirming that they had received legal advice. The Applicant had elected not to interview Ms S to ask her about whether she had indeed received any legal advice. In the event that she did so, there was nothing in the S-G Agreement that could support allegation 1.2.

Allegation 1.3

13.122 Ms Rodway submitted that in circumstances where Ms S had signed a document saying that she had received legal advice, it was not open to the Tribunal to find that she had not

by inference. In any event, if the terms of the S-G Agreement were onerous, it would be set aside. If Ms S did indeed obtain legal advice, the Respondent could not be held responsible for any potential harm Ms S might suffer as a result of the S-G Agreement. It was the Respondent's evidence that the last thing she wanted to do was to cause harm to Ms S. In those circumstances, allegation 1.3 could not be substantiated.

13.123 As to the Applicant's submission that the Tribunal was entitled to take judicial notice of the likelihood of house prices rising, the Tribunal needed to consider the recession of 2009. Further, if it was suggested that at the time of the S-G Agreement, the agreed price was at a known undervalue, the Applicant had failed to provide any evidence in support of such an assertion.

13.124 The Respondent had given evidence as to her knowledge with regards Ms S taking legal advice. It was her position that if Ms S said that she had obtained advice, the Respondent would believe that. The Applicant, it was submitted, in failing to ask Ms S whether she had obtained advice, had fatally undermined its case.

13.125 The investigation conducted by the Applicant had been lengthy, commencing in October 2017. Over the course of three years, the Applicant had actively decided not to interview Ms S. In the absence of any direct evidence from Ms S that she did not obtain legal advice, allegation 1.3 could not be made out.

13.126 There was no credible evidence upon which the Applicant could rely to show that the Respondent either knew or believed that Ms S had not obtained legal advice. Accordingly, allegation 1.3 ought to be dismissed.

The Tribunal's Findings

Allegation 1.1

13.127 The Tribunal noted that the following facts were not in dispute:

- in August 2012, the Respondent drafted, witnessed, and 'stamped' the S-G Agreement
- at the time the S-G Agreement was created, the Respondent was instructed by Ms S in relation to the probate matter
- the Respondent and G were in a civil partnership at the time the agreement was signed
- Ms S and G were the parties to the S-G Agreement

- the Respondent assisted Ms S in the instruction of NBM in relation to the proposed transfer of the Property from Ms S to G
- the Respondent completed the sale of property form and other papers on behalf of Ms S in relation to the proposed transfer
- on the sale of property form, the sale price was detailed as £200,000
- the Respondent contacted Attwells on behalf of G requesting a quote for acting in the purchase of the property and stating that the purchase price was £200,000 but might be reduced given the state of the Property
- G had first been introduced to Ms S by the Respondent
- by the time of the attempted purchase, the Respondent was aware that the Property had been valued at £450,000
- the Respondent completed forms on behalf of Ms S stating that the purchase price was £200,000 on the same day that she received the valuation of £450,000.

13.128 The Tribunal determined that these facts evidenced that the Respondent was facilitating the purchase. She drafted the S-G Agreement in August 2012, and was involved in the instruction of solicitors for both Ms S and G for the sale of the Property from Ms S to G.

13.129 The Tribunal found that at the time, Ms S was the Respondent's client, and that a client solicitor relationship continued throughout. It was clear that Ms S relied on the Respondent for legal advice. This was the position notwithstanding that a friendship developed between Ms S and the Respondent. Further, at the time of the attempted purchase, Ms S was still the Respondent's client, as the final bill in the probate matter had not been delivered to Ms S. The Respondent asserted that she did not consider that the matter ended when the final bill was delivered, but that it ended when probate was granted. The Tribunal rejected that assertion.

13.130 The Respondent argued that as no file was open and no payment was received, Ms S was not her client. The Tribunal considered that there was no requirement for a file to be opened or for payment to be received in order for a person to be a client. Ms S was relying on the advice she received from the Respondent, knowing that she was a solicitor, and sought advice from her in that capacity. The Tribunal found that the facts clearly evidenced that the Respondent was acting as Ms S's solicitor. The Respondent had referred to Ms S as her client on numerous occasions. The Tribunal did not accept that the Respondent did not

consider Ms S to be her client at the time of the drafting of the S-G Agreement, or when solicitors were instructed in the sale.

- 13.131 The Tribunal found that at the time of the attempted purchase, the Respondent knew that the sale was at an undervalue. The evidence clearly demonstrated that the Respondent was in possession of the valuation of £450,000 when she completed the sale of property form with a sale price of £200,000. It was the Respondent's case that the sale was not intended to go through, and that both the Respondent and Ms S were pretending that there was to be a sale of the property to cause G inconvenience. The Tribunal considered such an assertion to be untenable.
- 13.132 It was clear that the attempted sale was to the potential detriment of Ms S and the advantage of G.
- 13.133 The Tribunal was satisfied that the Applicant had substantiated the facts with regard to allegation 1.1.
- 13.134 The Respondent suggested that the email of 29 January 2015, asking about the names that the Property was to be registered in and purportedly sent by the Respondent to G, was not sent by the Respondent. The Respondent explained that the email address was not one that she routinely used, and that G had access to all of the Respondent's email accounts, and may well have sent that email to herself. The Respondent further explained that had she wanted to purchase the Property herself, she would not have gone through G to do so.
- 13.135 The Tribunal noted that the Respondent had written to Mr P's solicitors using that email address. The Respondent did not suggest that that email had been sent by G. The Tribunal found that the Respondent did use the email address for the purposes of communicating with others in relation to the Property.
- 13.136 As to the Respondent's submission that she had no desire to obtain any interest in the Property, the Tribunal noted her email to RW of 17 December 2019, in which she stated (amongst other things):

“... I knew that she wanted me to have the house but we did everything on trust. We made each other promises - including where to bury her. There are no documents that I can put my hand to the show that I have any interest in that property. If I did, now might be a good time for me to raise it since there are so many competing interests for it. I was a lifeline for her within these proceedings. I see absolutely no reason for me to suffer any more reputational or financial damage when I have no way of protecting myself or my interests. Put yourself in my shoes. Why would you finance a case like this for nothing? Going forward, the only

way that I would be prepared to continue to help Margaret is if an interest in this property and these proceedings is actually established for me. Formally and properly.”

- 13.137 The Tribunal considered that whilst this email was sometime after the events upon which the Applicant relied in allegation 1.1, it demonstrated that the Respondent’s evidence as to her never having any interest in obtaining the Property was incorrect.
- 13.138 The Tribunal found that there was an own conflict, or significant risk of an own conflict interest in all the circumstances. In facilitating the attempted sale from her client to her then former civil partner at an undervalue, the Respondent failed to achieve Outcome 3.4, and failed to act with independence in breach of Principle 3.
- 13.139 In facilitating the attempted purchase at an undervalue, the Respondent had not acted in her client’s best interests and had failed to protect her client’s assets in breach of Principles 4 and 10.
- 13.140 The Tribunal considered that members of the public would be extremely concerned that a solicitor, representing an elderly client, had sought to facilitate the sale of that client’s major asset at an undervalue to the solicitor’s former partner. Accordingly, the Tribunal found that in acting as she did, the Respondent had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6.
- 13.141 That such conduct fell below the ethical standards of the profession was plain. No solicitor, acting with integrity, would facilitate a sale in the circumstances that the Respondent did. Accordingly, the Tribunal found that the Respondent’s conduct lacked integrity in breach of Principle 2.
- 13.142 The Respondent had failed to treat Ms S fairly and had taken unfair advantage of her. Accordingly, the Respondent had failed to achieve Outcomes 1.1 and 11.1.
- 13.143 The Tribunal found that the Respondent knew that the attempted sale was at an undervalue and therefore potentially detrimental to her client. The Respondent also knew that the Property was her client’s only significant asset. The Respondent was also aware that her client was depending on her expertise as a solicitor and believed that as her solicitor, the Respondent was acting in Ms S’s best interests. The Tribunal found that ordinary and decent people would consider that it was dishonest for a solicitor to knowingly facilitate the sale at an undervalue of her client’s only significant asset to that solicitor’s former partner.

13.144 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

Allegation 1.2

13.145 As detailed above, it was not disputed that the Respondent had drafted the S-G Agreement, and that she signed and stamped the S-G Agreement.

13.146 The Tribunal examined the terms of the S-G Agreement with care. The Tribunal found that the S-G Agreement was not an option to purchase. Ms S was bound, by the terms of the S-G Agreement to sell the Property to G in circumstances that did not require either Ms S or G to exercise an option.,

13.147 The Tribunal found that as a result of the terms of the S-G Agreement:

- Ms S was bound to sell the Property to G once she was registered as the owner of the Property
- in the event the Property was not transferred into Ms S's sole name, Ms S was still bound to sell the Property to G
- if the Property was registered in the names of Ms S and her son, and the Property was not sold to G, Ms S would pay G the sum of £20,000 together with interest at the rate of 20% above the bank lending rate and further, would pay the sum of not less than £20,000 in respect of damages for breach of contract
- in the event that Ms S died before completion of the sale, her executors were bound to sell the Property to G
- in the event that the Property could not be transferred into the name of Ms S for any reason either during her lifetime or after her death, G was entitled to payment of £20,000 together with interest at the rate of 20% above the bank lending rate and further, would pay the sum of not less than £20,000 in respect of damages for breach of contract.

13.148 That such terms were onerous, and to the potential advantage of G and disadvantage of Ms S was plain. The Respondent had accepted in her evidence, that damages of £20,000 were excessive. The Tribunal considered that the damages Ms S was liable to pay bore no relation to any costs that she would have incurred in attempting to purchase the Property. Further, the interest rate detailed was excessive.

- 13.149 The Tribunal found the Respondent's evidence with regard to allegation 1.2 to be incredible. It was the Respondent's case that, notwithstanding the clear provisions of the S-G Agreement, Ms S was not bound to sell the Property to G by the terms of the S-G Agreement. The Respondent stated that Ms S could simply not register the Property in her name and that if she did not register the Property, there would be no consequences. The Tribunal found that this was not the case. The S-G Agreement contained a specific clause as to damages if the Property was not transferred into Ms S's name "for any reason". The terms of the S-G Agreement also meant that Ms S was liable to pay penalties, even if she was unable to sell the Property to G even in circumstances where the inability to sell was not the fault of Ms S.
- 13.150 The Respondent also asserted that Ms S was protected by being able to pull out of the S-G Agreement in the event that the Property increased in value. The Tribunal found that under the terms of the S-G Agreement, Ms S would still be bound to pay damages and interest.
- 13.151 It was the Respondent's evidence that if the Court considered the terms to be onerous, then the S-G Agreement would not be enforceable. Thus, the S-G Agreement was not potentially disadvantageous. The Tribunal found the Respondent's evidence in that regard to be astonishing. The Tribunal was likewise astonished by the Respondent's evidence that she did not consider that the S-G Agreement was a conveyancing document notwithstanding that it was a legal document detailing terms of the sale of the Property.
- 13.152 The Respondent confirmed that she did not provide any advice to Ms S on the terms of the S-G Agreement.
- 13.153 That there was a conflict was clear, and noted by G's solicitors who stated in their letter of 9 October 2015:
- "Our instructions are that you prepared the form of agreement notwithstanding the fact that you were acting for Ms S in relation to the Probate of the estate of the late [TH]. Can you please provide confirmation of that and how you addressed the question of the evident conflict of interest [the Tribunal's underlining]. On the face of it there would appear to be a clear breach of the SRA Code of Conduct." ().
- 13.154 The Tribunal noted that in her response, the Respondent did not address the issue of acting where there was an "evident conflict". The Tribunal found that the Respondent, in drafting the S-G Agreement on the instruction of her then civil partner, for the sale of the Property from her client to her then civil partner, the Respondent had acted where there was a clear conflict, or significant risk of a conflict. The Respondent, it was determined, had a financial interest in the sale of the Property from Ms S to G, as G was the Respondent's civil partner at the time the S-G Agreement was drafted.

- 13.155 The Tribunal found that in acting as she did, the Respondent had failed to act with independence in breach of Principle 3; her independence was necessarily compromised in circumstances where G was her civil partner and the document was created on G's instruction, not that of her client. The Respondent had also acted where there was an own client conflict, or significant risk of such a conflict, thus the Respondent had failed to achieve Outcome 3.4.
- 13.156 It was not in Ms S's best interests to be party to an agreement where the terms were onerous and disadvantageous to her, including in circumstances over which she had no control. Nor was it in her best interests not to be advised to obtain independent legal advice on the terms of the S-G Agreement in circumstances where the Respondent did not provide any advice and the sale was to the Respondent's civil partner. Further, it was not in Ms S's best interests to be represented by the Respondent in circumstances where there was an own client, or significant risk of an own client conflict, and the Respondent's independence was compromised. Accordingly, the Tribunal found that the Respondent had failed to act in Ms S's best interests in breach of Principle 4.
- 13.157 Members of the public would not expect a solicitor to draft an agreement that contained onerous and disadvantageous terms for their client, with advantageous terms for their partner, and thereafter certify the signatures on the agreement. Nor would members of the public expect that having drafted such an agreement, a solicitor would not advise their client to take independent legal advice. Members of the public would not expect a solicitor to act when their independence was compromised and there was the significant risk of a conflict with their client. In doing so, the Respondent had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6.
- 13.158 The Tribunal found that a solicitor acting with integrity would not draft an agreement with terms that were onerous and detrimental for their client to the advantage of that solicitor's civil partner and thus to the solicitor's potential advantage. Having done so, a solicitor acting with integrity would have advised their client to take independent legal advice before signing such an agreement. The Respondent's conduct, the Tribunal found, plainly evidenced a lack of integrity. Accordingly, the Tribunal found that the Respondent's conduct was in breach of Principle 2.
- 13.159 It was plain, as a result of the Tribunal's findings, that the Respondent had not treated her client fairly and had taken advantage of her. The Tribunal thus found that the Respondent had failed to achieve Outcomes 1.1 and 11.1.

Allegation 1.3

13.160 The S-G Agreement stated:

“Both parties have been invited to receive independent legal advice and it is understood that by signing this agreement that both parties have taken the opportunity to seek independent legal advice and that both parties wish to be bound by the terms herein.”

and also:

“I understand that by signing this Agreement I am entering into a legally binding and enforceable Agreement and I confirm that I have had the benefit of legal advice before signing this Agreement and that I fully understand the contents.”

13.161 The Tribunal noted that in her statement, Ms S did not refer to obtaining, or being advised to obtain independent legal advice.

13.162 In her interview, the Respondent was asked whether she had provided either Ms S or G with advice or guidance about obtaining independent advice on the S-G Agreement. The Respondent replied “No”, explaining that as it was an option to purchase the Property, it was not a legally binding contract.

13.163 During the telephone call with Ms S’s legal team in the Mr P litigation, when asked about the S-G Agreement, the Respondent was recorded as explaining that she did not see the S-G Agreement as a sale contract, but that it was an option to purchase. G had asked her to type the agreement which was then signed by Ms S and G.

13.164 In her email to the Applicant of 24 April 2019, the Respondent stated:

“I did not ask [Ms S] to seek independent legal advice before signing [the S-G Agreement] as it was simply an option to purchase ... I did not advise [Ms S] to seek independent legal advice before agreeing to sell the property to [G]. [Ms S] is quite a formidable person and she does not do anything that she does not want to do. [Ms S] was not interested in seeking independent legal advice. She was happy to agree a price with [G] and she thereafter instructed solicitors to represent her.”

13.165 It was not in dispute that the Respondent drafted the S-G Agreement. Having done so, it was for the Respondent to advise the parties to obtain advice. On her own admission she had not done so, but certified the signatures on the S-G Agreement, stating that they had

been so advised. The Tribunal found that the Respondent knew that Ms S had not been advised to take independent legal advice.

13.166 During her evidence, the Respondent stated that Ms S had been given a copy of the SG Agreement, and had had time to seek independent legal advice on its terms. The Respondent denied that she would have been aware if such advice had been sought.

13.167 The Tribunal found that it was plain from the explanations provided by the Respondent both in her correspondence with the Applicant and her interview that the Respondent did not believe, at the material time, that Ms S had taken legal advice. Indeed, in her representations to the Applicant, the Respondent positively stated that Ms S was not interested in taking legal advice. Accordingly, the Tribunal rejected the Respondent's oral evidence in which she asserted that having signed the S-G Agreement, the Respondent believed that independent legal advice had been sought.

13.168 The Tribunal found that in failing to advise her client to obtain independent legal advice before signing the S-G Agreement, and in allowing her client to sign that agreement when she was aware that her client had not obtained such advice, the Respondent failed to act in her client's best interests in breach of Principle 4.

13.169 Members of the public would not expect a solicitor to allow their client to attest make attestations that the solicitor knew were untrue, and thereafter to certify that document with a signature and the Firm's stamp. In doing so, the Respondent had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 6.

13.170 That such conduct lacked integrity was plain. A solicitor acting with integrity would not allow their client to make attestations that the solicitor knew was untrue. Still less would that solicitor sign and stamp that document so as to validate the truth of the statements made therein. In doing so, the Respondent's conduct lacked integrity in breach of Principle 2.

13.171 The Tribunal found that the Respondent knew (i) that she had not advised Ms S to seek independent advice and (ii) that Ms S had not sought independent advice when the Respondent signed and stamped the S-G Agreement. Ordinary and decent people would consider that it was dishonest for a solicitor to witness and endorse an agreement that they knew contained statements of fact that were untrue.

13.172 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

14. **Allegation 1.4 - Between 5 September 2018 and 10 May 2021 she made one or more statements to the SRA regarding her dealings with Ms S which were false and misleading. In doing so she breached: (a) For periods up to 25 November 2019, either or both of Principles 2 and 6 of the 2011 Principles; (b) For period after 25 November 2019, any or all of Principles 2, 4 and 5 of the SRA Principles from the SRA Standards and Regulations (“the 2019 Principles”).**

The Applicant’s Case

- 14.1 The Respondent made various contemporaneous statements asserting the vulnerable nature of Ms S to third parties. These included:
- stating on 9 June 2011 to the LA that “our client is an elderly and extremely vulnerable old lady”
 - stating on 16 December 2014 and 24 March 2015, in correspondence with Mr P’s solicitors, that Ms S was “frail” and “extremely vulnerable”, seemingly both at that time and when purportedly signing an agreement with Mr P, i.e., on or around 30 September 2011
 - stating on 10 January 2017 to both the LA and Mr P’s solicitors that Ms S is an “elderly and vulnerable lady”.
- 14.2 By contrast, when later questioned by the SRA about her role in drafting and witnessing the S-G Agreement, the Respondent asserted to the SRA that Ms S was:
- “a clear minded and competent adult...I did not advise [Ms S] to seek independent legal advice before agreeing to sell the property to [G]. [Ms S] is quite a formidable woman and she does not do anything that she does not want to do” (24 April 2019)
 - “feisty...very strong...not a pushover at all” and she didn’t seem vulnerable at the time [in relation to her] (13 February 2020).
- 14.3 Ms S was an elderly client who lived alone who was in failing health, and who was stated to have been on “substantial medication” from at least 2011 onwards. It was clear to the Tribunal that the Respondent was very aware of the fact that Ms S was “extremely vulnerable. Her statements to the SRA, in relation to her own and G’s dealings with Ms S, that Ms S was “very strong” and did not seem vulnerable, being “a formidable woman [who] does not do anything she does not want to” were therefore untruthful or misleading, because they did not reflect her true belief at the time relevant to the SRA’s investigation.

- 14.4 Moreover, the Respondent must have known that her statements to the SRA were false or misleading at the time they were made. She had had dealings with Ms S over an extended period of time, in connection with a range of matters. It was inconceivable that the Respondent would have forgotten and dismissed her previous assessment of her as a vulnerable client between 2011 and 2017, by 2019 – 2021.
- 14.5 With regard to being instructed by Ms S, the Respondent had repeatedly stated to the SRA that, apart from for her initial instructions to obtain probate over TH's estate (mainly the Property), she subsequently had no formal instructions from Ms S or solicitor/client relationship with Ms S, and was not acting as a solicitor. These included:
- stating on 5 September 2018 that all discussions with Ms S regarding Mr P's claim and contract were "not in the context of solicitor/client"
 - on 24 April 2019 stating that save for the work obtaining probate "at all other times I have assisted her in the capacity as a friend"
 - in her interview on 13 February 2020, she explained in relation to correspondence with Mr P's solicitors there were no instructions on file, but she acted as Ms S's friend [and did not open a file]
 - on 6 November 2020, stating "I do not accept I was acting as her solicitor after the probate matter"
 - on 10 May 2021 stating that "I do not accept that [Ms S] was my client in a formal sense beyond the probate matter. She was my friend."
- 14.6 Mr Bullock submitted that the Respondent's central assertion was contradicted by contemporaneous correspondence sent by her in which she repeatedly represented to third parties that she was acting on behalf of Ms S:
- (i) Detailed correspondence with the Local Authority/government departments, including but not limited to:
- 19 December 2012 (a few months after the agreement with Ms G is signed): Confirming to the Local Authority (LA) in the context of a compulsory purchase proposal that "Our client has a solid purchaser for the property who has already paid a significant deposit.... The proposed purchaser intends to develop the property..."

- January 2016 – January 2017: extensive correspondence in relation to various matters, including committing Ms S to a cross-undertaking relating to building works, corresponding in relation to Ms S withdrawing objections to Council action (on agreed terms) and stating amongst other things that:
 - (06/06/16): “To be clear, my client intends to keep the property and either rent it out or sell it once it has been refurbished...” (Page 337)
 - (10/01/17 – while disputing the appropriateness of a public enquiry): “our client is proceeding with the refurbishment of the property and it remains her intention to live in the property as her home when this is done” (page 349).
 - (18/01/17): “I am putting you on notice that my client intends to oppose any attempt to compulsorily purchase her property...” (Page 352)
 - (19/02/18): [my client] ...remains intent on moving into the property as her home...” (Page 355)
- (ii) Extensive correspondence with solicitors acting for Mr P from December 2014 onwards, i.e., six months after probate granted on TH’s estate. This included:
- 16 December 2014: Noting Ms S as her client, disputing the agreement to sell to Mr P and saying (amongst other issues): “Our client has located a buyer and has every intention of selling the property to this person. Indeed, the buyer has already undertaken significant internal work on the property. We understand that the buyer will also oppose any attempt by your client to obstruct the sale”.
 - 24 March 2015: stating she had “taken detailed instructions [and was] ...instructed to commence correspondence with the Land Registry and to commence litigation on our client’s behalf...”
 - 20 April 2015: confirming that she was instructed to receive service.
 - 10 January 2017: confirming that her firm “remains fully instructed on behalf of [Ms S] and...are instructed to accept service of any application made by your client”

- 30 November 2017 (after Particulars of Claim were served on 6 November 2017): saying that “Whilst we are not instructed at this stage, we are aware that it is Ms S’s intention to defend any action brought by [Mr P]”
- 14.7 This correspondence was undertaken using the name, letterhead and/or email address of her authorised firm and would therefore necessarily have been understood by the recipient to be sent by her in the course of her practice as a solicitor.
- 14.8 Mr Bullock submitted that it was inconceivable that the Respondent could have repeatedly made such statements to others in formal correspondence between the period 2012 and 2017 but not appreciated that she had done so, or the consequences of this, at the time of the SRA’s investigation. The Respondent had on several occasions provided statements to the SRA which were false or misleading in light of the contemporaneous correspondence.
- 14.9 The public expected solicitors, who were members of a profession which was to be trusted to the ends of the earth, to be strictly truthful when dealing with others in a professional capacity. This expectation extended to a solicitor’s dealings with the SRA, which regulated the profession in the public interest. The Respondent’s failure to be straightforward in her dealings with the SRA therefore undermined the trust that the public would place in her and in the provision of legal services in breach of Principle 6 of the 2011 Principles, and Principle 2 of the 2019 Principles.
- 14.10 A solicitor of integrity was strictly truthful in their dealings with their regulator and did not provide them with information which they knew to be false or misleading. This principle extended to statements about belief (for example, whether a client was considered vulnerable) as well as fact (for example, whether the solicitor was or was not acting for a given individual). The Respondent provided false and misleading information to the SRA and thereby demonstrated a lack of integrity in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

Dishonesty

- 14.11 In relation to matters regarding dishonesty, relevant factors to the Respondent’s state of mind included some or all of:
- She was a very experienced solicitor, having qualified in 1993 and run her own firm since 1997.
 - She was in control of all relevant matters, with all relevant decisions and actions directly decided on and taken by her.

- She was dealing with the SRA, her professional regulator, in its capacity as such.
 - The SRA required information from her for the purposes of an investigation into her conduct.
 - The SRA would expect her answers to be straightforward and honest.
 - She knew the true position in relation to the relevant time periods.
- 14.12 It was therefore incumbent on her to give full and wholly frank information to the SRA in response to its enquiries. Mr Bullock submitted that it was settled law that SRA investigators were entitled to expect honest responses from solicitors being investigated, and that failure to provide honest answers was a serious matter.
- 14.13 In relation to matters before 25 November 2019, the Respondent’s replies and statements were to the SRA’s Investigation Officer on 5 September 2018 and 24 April 2019, e.g., that:
- all discussions regarding Mr P’s proposed purchase were “informal and not in the context of solicitor/client”;
 - she was not “acting in the capacity of a solicitor” (when drafting the S-G Agreement)
 - she had always assisted Ms S “in the capacity as a friend” [as opposed to a solicitor]
 - that she had considered Ms S to not seem vulnerable to her [in 2012] and to be “feisty...very strong...not a pushover at all” and “a clear minded and competent adult...[a] formidable woman [who] does not do anything that she does not want to do...”
- 14.14 In relation to matters post 25 November 2019, the Respondent made assertions in interview regarding Ms S not being vulnerable in 2012 and continued to maintain her assertions that, in relation to the Property, she was not carrying out any correspondence or work on documents for Ms S as a solicitor and Ms S was not her ‘client’.
- 14.15 The Respondent’s specific state of knowledge was that she was, or should have been, aware of her own contemporaneous views on Mr S’s vulnerability (as well as her age and increasing infirmity), and she would clearly have been aware of the large amount of legal correspondence that she had undertaken on Ms S’s behalf explicitly accepting she was writing with her as her client, having “taken instructions”.

14.16 Given the above state of knowledge, and the contemporaneous evidence, it was not credible that the Respondent genuinely considered Ms S not to have been at all vulnerable as stated, or that she was not acting as a solicitor. Accordingly, given this state of knowledge the ordinary, decent person would consider the contrary positions put forward to the SRA to be untrue, and not honest.

The Respondent's Case

14.17 The Respondent denied allegation 1.4.

14.18 The Respondent accepted that she had described Ms S as elderly, extremely vulnerable, frail and an elderly and vulnerable lady in correspondence. The Respondent explained that these statements were true in context. With regard to the way that the Respondent described Ms S to the Applicant, the Respondent explained that they were close friends and trusted each other. Ms S was not vulnerable around the Respondent, and the Respondent's description of Ms S in a safe setting was correct.

14.19 The Respondent did not accept that Ms S had increasingly failing health and was on substantial medication. The Respondent explained that Ms S did take some medication, but the amount was not unusual given her age and lifestyle. Whilst Ms S had some health problems, she had full capacity, and prior to a specific medical incident, Ms S had been very mobile.

14.20 The Respondent accepted that she had sent correspondence using the name, letterhead and/or email address of her firm. Whilst she had referred to Ms S in correspondence as her client, there was no file opened and no fees charged as she acted pro bono. In relation to Mr P's litigation, the Respondent did not refer to Ms S as her client after receipt of the Claim form.

14.21 In her oral evidence, the Respondent explained that she had referred to Ms S as her client to lend weight to the contents of the letters, and to protect Ms S's interest in the Property. Letters were written on Ms S's behalf to assist Ms S as the Respondent's friend. The Respondent ceased referring to Ms S as her client when Mr P issued proceedings, as it would not help Ms S, given that Mr P had named the Respondent in the claim. Further, Mr P's solicitors suffered no prejudice or detriment from the Respondent referring to Ms S as her client. It was not accepted that in referring to Ms S as her client, the Respondent had misled Mr P's solicitors or the LA. In addition, there had been no detriment to Ms S. The Respondent's actions were for the benefit of Ms S, who the Respondent was determined to assist.

- 14.22 The Respondent did not accept that she had been dishonest in correspondence naming Ms S as her client. Nor had she been dishonest in correspondence with the Applicant stating that Ms S was not her client.
- 14.23 Ms Rodway submitted that allegation 1.4 presented an odd conundrum. It rested on the Respondent being truthful to the LA and Mr P's solicitors, but being untruthful to the SRA.
- 14.24 The Respondent had acted as Ms S's friend and had done her best to prevent Ms S being abused or taken advantage of. The Respondent acted to protect her friend from exploitation.
- 14.25 The Respondent's evidence, it was submitted, had been consistent throughout, namely, Ms S was a client solely for the purposes of the probate matter, and her vulnerability related to matters of litigation and the compulsory purchase. Ms Rodway submitted that there was no inconsistency with the use of the words "vulnerable" or "client" when they were used in relation to those who were seeking to take advantage of Ms S. Ms Rodway argued that it's highest, it could be said that the Respondent had made misrepresentations to the LA and Mr P's solicitors. Ms Rodway submitted that the Applicant, in failing to speak to Ms S, had deprived itself of the ability to assess the veracity of the solicitor client relationship or the vulnerability of Ms S. The Applicant had failed to establish (and indeed could not establish) that Ms S was not a feisty and independent lady. That this was the case was supported by the evidence of Ms Dickson.
- 14.26 Ms Rodway submitted that the use of the word "vulnerable" was a term of art. RW had also described Ms S as vulnerable in order to protect her interests in the Mr P litigation. A person could be vulnerable in some circumstances but not in others. Ms S had made it clear in her witness statement that she was capable of making her own decisions, making her views known and that she did not regard the Respondent as her solicitor.
- 14.27 Ms Rodway reminded the Tribunal that the source of this complaint was not from Ms S, but from G and Mr P's solicitors.

The Tribunal's Findings

- 14.28 The Tribunal found that the Respondent had referred to Ms S both as her client and as vulnerable in the correspondence with the LA and Mr P's solicitors as alleged. Indeed, those facts were not disputed.
- 14.29 The Tribunal noted that the Respondent neither accepted that she had been misleading when telling the LA and Mr P's solicitors that Ms S was her client, or when she told the SRA that Ms S was not her client. The Respondent explained that up to the time that the

- claim was issued by Mr P, it was of assistance to Ms S for the Respondent to refer to her as her client, thereafter, as it was no longer of assistance to Ms S, the Respondent stopped referring to Ms S as her client. Further, and in any event, Mr P was not prejudiced by the Respondent referring to Ms S as her client. The Tribunal considered that either Ms S was her client at the times the letters were written, in which case her assertion to the SRA that Ms S was not her client was misleading, or Ms S was not her client at the times the letters were written, in which case her assertions to the LA and Mr P's solicitors were misleading.
- 14.30 When it was put to the Respondent that Ms S was either her client or was not her client, the Respondent stated that it 'depended on the context'. The Respondent also accepted that there came a point where she could no longer "represent" Ms S.
- 14.31 The Tribunal noted that a number of the communications sent included the file reference for the probate matter for which the Respondent was originally instructed. In evidence the Respondent accepted that some of the letters did contain the probate file reference, but that that was not the case on all letters. The Tribunal found that the Respondent, whilst not opening separate files for the Mr P litigation and the LA, was writing to them using the probate file on which she was instructed. The Tribunal also found, as detailed above, that it was not necessary for a file to be opened or for the Respondent to receive payment for Ms S to be her client. It was clear, as a matter of fact, that Ms S was the Respondent's client at the time the letters were written.
- 14.32 The Tribunal noted that during the course of her cross-examination, when asked about the email of 24 March 2015, sent by the Respondent to Mr P's solicitors, in which she had referred to Ms S as her client and that she had been instructed to "... commence litigation on our client's behalf", the Respondent stated: "this is a standard letter **exchanged between solicitors** to try to resolve" the position (**the Tribunal's emphasis**). The Tribunal considered that the Respondent's evidence demonstrated that she considered that she was acting as a solicitor at the time. The Tribunal determined that in referring to Ms S as her client, Ms S was, as a matter of fact, the Respondent's client, and that the Respondent considered Ms S to be her client at the time. The Tribunal did not accept that the Respondent referred to Ms S as her client simply to add weight to the matters dealt with.
- 14.33 The Tribunal considered that Ms S was vulnerable as described. It accepted that a person could be vulnerable in some circumstances and not in others. It was the Respondent's case that with regard to the compulsory purchase and the Mr P litigation, that Ms S was vulnerable, but generally, she was not. The Tribunal did not consider that in stating in correspondence that Ms S was vulnerable, and telling the SRA that she was not, the Respondent had misrepresented the position either in her correspondence with Mr P's solicitors and the LA, or in her correspondence with the SRA.

- 14.34 The Tribunal determined that members of the public would expect a solicitor to provide accurate answers when the subject of an investigation by their regulator. In failing to do so, the Respondent had undermined the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the 2011 Principles, and Principle 5 of the 2019 Principles, with regard to her representations that Ms S was not her client.
- 14.35 Additionally, a solicitor acting with integrity would not provide answers which they knew were false and misleading. In providing false and misleading information as to the status of Ms S as a client, the Respondent had failed to act with integrity in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.
- 14.36 The Tribunal found that the Respondent considered Ms S to be her client at all material times. In asserting that Ms S was not her client during the course of the Applicant's investigation, the Respondent had knowingly provided false and misleading answers. Members of the public would consider that a solicitor who deliberately and knowingly provided false information was dishonest.
- 14.37 Accordingly, the Tribunal found allegation 1.4 proved on the balance of probabilities, including that the Respondent's conduct was dishonest, to the extent that it related to the Respondent's statements regarding Ms S's status as her client. The Tribunal did not find any professional misconduct with regard to the statements relating to Ms S's vulnerability.
15. **Allegation 1.5 – In April 2020 she drafted and arranged execution of a will for Ms S which appointed herself as executrix and sole beneficiary of Ms S's estate. In doing so she breached any or all of: (i) Principles 2 and 5 of the 2019 Principles; (ii) Rule 6.1 of the 2019 Code.**

The Applicant's Case

- 15.1 The Respondent's initial instructions from Ms S included to prepare a Will. Ms S was in dispute with her son over TH's estate and the Will on file showed the instructions were to leave specific legacies to various animal charities, with other legacies and the residuary estate being left to Ms S's brother and his wife.
- 15.2 In the subsequent ongoing litigation between Mr P and Ms S (and now her estate), the role of the Respondent when engaging in the proceedings became highly contentious. On 29 August 2019, with the litigation resolving at that stage in favour of Mr P, a District Judge wrote to the Respondent stating that Ms S was "urged to take independent legal advice". An independent firm of solicitors (Firm A) was subsequently instructed by Ms S, with the Respondent meeting the legal fees.

- 15.3 Issues in evidence included the influence of the Respondent, and whether or not the Respondent stood to gain from the proceedings/was a beneficiary under the Will of Ms S (which would give the Respondent a contingent but formal interest in the transaction).
- 15.4 On 17 and 18 December 2019 the Respondent sent emails to Ms S's solicitors in which she stated or said (amongst other things and in summary) that:
- the Will that she (the Respondent) had drafted for Ms S had left assets to Ms S's brother, her sister-in-law and animal charities.
 - that she "wouldn't dare" draft a will for Ms S, who "obviously needs to get someone else to draft it".
 - she knew that Ms S wanted her to have the Property, but they did everything "on trust" and there were no documents to confirm this.
 - she would not be prepared to continue funding the proceedings unless an interest is established for her, or her position was protected.
 - she would be happy to fund the matter, provided she had security, but that it was "Ms S's call".
 - Firm A could establish Ms S's wishes and prepare a simple Will leaving the Respondent everything (if those wishes are confirmed) and prepare an agreement for Ms S to reimburse the Respondent for monies spent on the litigation, if Mr P ultimately purchased the Property.
- 15.5 The FIO found no evidence of a will or legal agreement being prepared by Firm A during its review of documents and information. Firm A had also subsequently confirmed that they were never instructed by Ms S to prepare a Will.
- 15.6 In interview with the FIO on 13 February 2020 the Respondent stated, in summary, that:
- Ms S's brother was the beneficiary of her estate in her will;
 - Ms S wanted her [the Respondent] to be her beneficiary;
 - Ms S had asked [Firm A] to draft one for her but they had not;

- She [the Respondent] had not “marched [Ms S] round to a friend” or “wheeled her round to any solicitors” to get a will she had drafted signed or done.
- 15.7 Firm A confirmed that legal costs had been paid by the Respondent. The ledger showed the first two payments being made by the Respondent’s friend, Ms X, and a payment of £7,200 then being made by the Respondent on 18 December 2019. The Respondent further funded the matter in 2020, including a substantial payment in January 2020 of multiple costs orders for issues prior to the instruction of Firm A and then further payments including on 24 April 2020 for the preparation of witness statements, and later payments in July and December 2020.
- 15.8 On or before 11 April 2020, the Respondent prepared a new Will for Ms S which stated that the Respondent was appointed sole executrix and made the sole beneficiary of Ms S’s estate. No legacies were left to charity, or any other third party or organisation.
- 15.9 The Respondent has confirmed that she drafted the Will. She stated that she did so at the request of Ms S, as with the Covid lockdown she was concerned about her affairs generally. The Respondent stated that she “reluctantly agreed” but told Ms S that when lockdown eased “it would be appropriate for her to meet with a different solicitor”. The Respondent arranged the execution of the will with both witnesses being friends/associates of the Respondent, one witness was a former partner of the Respondent.
- 15.10 The SRA did not accept this explanation. It would have been quite possible for Ms S to instruct another solicitor to prepare a will, notwithstanding the restrictions which were in force as a result of the Covid pandemic. It is also to be noted that Ms S was able to give instructions in relation to her litigation matter at the relevant time
- 15.11 The Respondent has stated that in November 2020 she contacted another firm of solicitors, to try and arrange for an independent solicitor to prepare a will for Ms S. The independent solicitor insisted on direct discussion with Ms S before accepting payment from the Respondent. Such contact then became difficult (or perhaps impossible) due to the hospitalisation of Ms S, followed sadly in January 2021 by her passing away.
- 15.12 The Respondent has confirmed that she intends to apply for probate in relation to Ms S’s estate.
- 15.13 Rule 6.1 of the 2019 Code provided that: “You do not act if there is an own interest conflict or a significant risk of such a conflict. Mr Bullock submitted that solicitors were trusted to prepare legal documents in an appropriate manner. The public would not expect a solicitor to prepare a will for an elderly, vulnerable individual which appointed that solicitor as the sole executor and beneficiary, with no other independent legal advice having been

provided. This would be the case however and wherever the solicitor was instructed. The situation, even if dealt with for no payment, created one of the most obvious potential (and actual) conflicts of interest and the need for independent legal advice.

- 15.14 In particular, a solicitor would not prepare such a will where the solicitor had previously:
- Prepared the individual's previous will, leaving their estate to charities and family members;
 - Gained knowledge of the individual's potential assets from their work for them as a solicitor; and
 - Been previously involved in preparing an agreement purporting to arrange the potential transfer of the individual's major asset to someone connected to the solicitor.
- 15.15 The Respondent's drafting, preparing and arranging the execution of a Will that, if approved, gave her sole control and beneficial title to the (potentially) substantial estate of an elderly ex-client would almost certainly become known to various third parties in due course, including potentially disappointed family members, if it had not already.
- 15.16 The situation was one of a very clear and obvious own interest conflict or significant risk of such conflict. As such, the Respondent's decision to proceed in the manner she did was in breach of Rule 6.1 of the 2019 Code. In addition, irrespective of Ms S's true desires the Respondent's actions in dealing with matters in the way she did were likely to reduce trust in the solicitors' profession in breach of Principle 2 of 2019 Principles.
- 15.17 A solicitor acting with integrity was careful not to act to their own substantial financial advantage, in situations where an individual or client might be conferring a financial benefit. In particular, if asked to prepare a Will by an elderly vulnerable individual, such a solicitor would refuse to do so if the instructions involved leaving them a very substantial part or the whole of the individual's estate, instead ensuring that the individual obtained independent legal advice. The Respondent's actions, in proceeding with drafting and arranging execution of the Will of 11 April 2020 (even "reluctantly"), failed to adhere to the ethical standards and expectations of the profession and therefore lacked integrity, in breach of Principle 5.

The Respondent's Case

- 15.18 The Respondent denied allegation 1.5.

- 15.19 The Respondent explained that she accompanied Ms S to court on one occasion as she was then in a wheelchair. The Respondent sat behind Ms S in Court. Ms S sat in the front row and spoke for herself. It was at that hearing that the DJ urged Ms S to obtain legal advice. The Respondent discussed this with Ms S and it was agreed that the Respondent would find a solicitor, and would fund the litigation as Ms S did not have the funds to do so. It was due to Ms S's lack of funds that she did not have a solicitor up to that point.
- 15.20 The Respondent did not accept that issues in evidence included the influence of the Respondent and whether she stood to gain from the proceedings. RW, it was submitted, made statements about the Respondent without the knowledge or consent of Ms S. The Respondent observed that the statement was made after RW was found to have failed to notify the Court that he was acting for Ms S. There was a breakdown in communication between the Respondent and RW. The Respondent considered that RW had made the statements as he felt criticised by the Respondent and wished to conceal his own negligence. The Respondent stated that RW had since written to her asking if he could take the case back and represent the estate. RW had stated that it was his view that on reflection the Respondent was always trying to act in Ms S's best interests. That correspondence has been passed on to the SRA.
- 15.21 Further, RW made a statement to the court suggesting that I was, at the time, a beneficiary under Ms S's will. That was not true at all. Again, he made this statement without instructions or the knowledge of Ms S. Even if he thought that I was a beneficiary under the will, he did not even think to ask to see a copy of the will in order to corroborate that belief. In short, his comment was untrue. Ms S and the Respondent asked RW to arrange for a solicitor from Firm A to meet with Ms S in order to take instructions regarding her will. He failed to do so. Ms S was anxious to settle her affairs and wanted to make a Will.
- 15.22 With regard to the emails of 17 and 18 December 2019, they were sent immediately after the hearing where RW's statement was produced. RW informed the Respondent that he felt it was a good strategy to use Mr P's arguments against him by suggesting that Ms S really was under the Respondent's influence. RW believed that this would assist Ms S's case.
- 15.23 The Respondent accepted that she had made payments to Firm A as detailed. She explained that the poor conduct of RW had generated excessive additional costs. The payment made by Ms X had been reimbursed by the Respondent.
- 15.24 Ms S chose to make the Respondent the sole executrix and sole beneficiary. With regard to drafting the will, solicitors were not doing home visits at the time and Ms S was anxious to make a Will. She was in the shielding category therefore any face-to-face contact between her and a stranger would have been very dangerous. One of witnesses was a good friend of Ms S.

- 15.25 The Respondent contacted a firm. The solicitor from that firm wanted to meet personally with Ms S. Unfortunately, the solicitor was not immediately available, and nobody knew that Ms S was going to be hospitalised. Even though she was able to be released home five days after admission when the Respondent knew a hospital bed had been delivered for her and her care package had been increased, her brother complained to the hospital and suggested that she should go into a care home. This meant that she remained in hospital for over two months where she contracted Covid. Her brother, whom the Respondent had only met once, was extremely angry with the Respondent because Ms S had identified me as the next of kin to the hospital upon admission.
- 15.26 The Respondent explained that the circumstances were unusual. Another solicitor was contacted and instructed to meet with Ms S in order to obtain her instructions. Every effort was made to ensure that a separate solicitor spoke to Ms S about her wishes. Firm A failed to do so, despite being asked so to do.
- 15.27 The Respondent stated that Ms S had no close relationships within the family. Her brother spoke to her occasionally by telephone but he only visited her once from 2017 when she had a medical event. Ms S's medical notes made it clear that she did not enjoy a close relationship with family members. The Respondent had supported Ms S over many years. She had undertaken all kinds of tasks for her including collecting her shopping, paying bills, washing and cleaning her. The Respondent had liaised with the GP and was known as Ms S's friend to social services and to her GP. The doctor had the Respondent's contact number, and the Respondent would help to organise appointments for Ms S. The Respondent had been involved in her day-to-day care for very many years. Ms S's family had been invisible. One of her sisters lived only a couple of miles from where Ms S lived. Despite this, she never visited Ms S. Ms S felt very isolated from her family and she and the Respondent became genuine friends and cared very much about each other. During the conversation the Respondent had with Ms S, before the Respondent spoke to the other firm, the Respondent specifically asked her if she would like to leave anything to her brother. She said no. Ms S was very clear in her views.
- 15.28 The Respondent denied that her conduct was in breach of the Principles as alleged.
- 15.29 In oral evidence, the Respondent explained that Firm A had been instructed to draft the Will. All the guidance on the drafting of Wills suggested that instructions should be taken in person. The Respondent had drafted the Will as Ms S was becoming increasingly distressed. Ms S knew that the Respondent was funding the Mr P litigation. She wanted the Will to be drafted and the Respondent drafted it as her friend.
- 15.30 The Respondent explained that she did not consider the preparation of the Will to be a legal matter; it was an expression of Ms S's wishes. The Respondent explained that the Will she

drafted was intended to be a holding document, and was the best that could be done given the circumstances of the Covid-19 pandemic.

- 15.31 The Respondent agreed that it was a clear principle that solicitors should not accept significant gifts without first ensuring that their client had received advice. The Respondent did not consider that Ms S was a client in circumstances where she was living with her and taking care of all her personal needs. The Respondent had instructed other solicitors to attend and take instructions to draft a Will.
- 15.32 The Respondent explained that whilst it would have been preferable for someone else to draft the Will, there was nothing improper in the Respondent having drafted it.
- 15.33 Ms Rodway submitted that the Applicant accepted that the Will drafted by the Respondent was valid, and it was no part of the Applicant's case that the Will did not represent Ms S's genuine wishes. It was important to consider the context in which the Respondent drafted the Will. The country was in lock-down. Firm A was unable to attend Ms S personally, and had huge difficulty in obtaining her signature for documents relating to the Mr P litigation. At that stage, no solicitors were visiting clients.
- 15.34 This supported the Respondent's evidence. With the sinister implications of Covid-19, Ms S was becoming increasingly distressed and wanted the Will to be drafted. Firm A had done nothing in respect of drafting the Will. The Respondent, in order to help her friend, drafted the Will on her behalf. As the Respondent stated, given the personal care that she was providing for Ms S at the time, it was hard for the Respondent to consider Ms S to be her client. The Respondent considered the Will to be a temporary document until such time as another solicitor was able to draft the Will.
- 15.35 Further, the documentary evidence clearly demonstrated that the Respondent sought another Firm to draft a Will in November 2020.
- 15.36 Ms Rodway submitted that even if the Tribunal considered that there was a client/solicitor relationship, the Respondent had not acted without integrity. In addition, members of the public who were aware of the full circumstances would not consider that the Respondent had undermined the trust placed in her or in the profession. Given the extremity of the circumstances at the time, there was no own interest conflict. Accordingly, the Tribunal should not find allegation 1.5 proved.

The Tribunal's Findings

- 15.37 As detailed above, the Tribunal found that there was a client solicitor relationship between the Respondent and Ms S. It was clear that at the time the Respondent drafted the Will, she was still Ms S's trusted legal advisor.
- 15.38 In her email of 17 December 2019, the Respondent stated:
- "With all this nonsense going on about the property I wouldn't dare draft a Will for her. If that is her wish she obviously needs to get someone else to draft it."
- 15.39 The Tribunal found that this evidenced the Respondent's knowledge at the time, that drafting a Will in which she was to be the sole beneficiary, given her status, was wholly improper. Her oral evidence to the contrary was not accepted.
- 15.40 During cross-examination, the Respondent asserted that the preparation of the Will as a legal matter, but as an expression of Ms S's wishes. The Respondent explained that as the Will was not prepared using her firm's details, it was not a Will drafted by her as a solicitor but as a friend. The Respondent accepted that the Will detailed what was to happen with Ms S's property, might have an effect on capital taxes, was capable of substantially enriching a beneficiary and was a document which was important to get right. The Respondent also accepted that it was a valid Will pursuant to Section 9 of the Wills Act 1837.
- 15.41 The Tribunal found the Respondent's evidence that the Will was not a legal matter, and that the Will drafted was a temporary document to be incredible. The Tribunal did not accept that the Respondent believed, (either at the time she drafted the Will, or during her evidence) that the Will was not an important legal document.
- 15.42 When it was put to her that if there was nothing wrong in drafting the Will, the Respondent would not have attempted to find another firm to draft a Will 6 months later, the Respondent stated that it was "all about perception", and that "given everything that's gone on, we, especially me, would prefer if someone else..." drafted a Will. The Respondent also stated that "I didn't want this to be the last Will in the chain." The Tribunal found that it was clear that the Respondent knew that it was improper for her to draft a Will for her client when she was to be the sole beneficiary of that Will.
- 15.43 The Tribunal found that in preparing the Will, the Respondent was acting where there was an own interest conflict, or a significant risk of an own interest conflict, irrespective of whether the Will represented Ms S's testamentary intentions.

- 15.44 Members of the public would not expect a solicitor to draft a Will in which they were the sole executor and beneficiary without first advising the testator to obtain independent legal advice. In doing so, the Respondent had failed to maintain the trust the public placed in her and in the provision of legal services in breach of Principle 2 of the 2019 Principles.
- 15.45 Likewise, members of the profession would not expect a solicitor to prepare a Will where they were the sole beneficiary and executor without ensuring that independent advice had been received. This was the case even if the Testator was adamant about the terms of the Will and was anxious for the Will to be drafted and executed. The Tribunal did not accept that the Covid-19 pandemic meant that improper conduct was justified. The Tribunal found that in acting as she did, the Respondent had acted without integrity in breach of Principle 5.

Previous Disciplinary Matters

16. None.

Mitigation

17. Ms Rodway submitted that in considering the appropriate sanction, the Tribunal should take into account that the misconduct stemmed from the sole issue of the sale of the Property.
18. The Respondent, it was submitted, was motivated solely by her misguided sense of support and friendship for someone who the Tribunal found was the Respondent's client, but who the Respondent did not consider was her client, and indeed, Ms S did not consider herself to be the Respondent's client.
19. With regard to the misleading allegations, they were not the most serious, and the conduct was not deliberate. The words 'client' and 'vulnerable' were terms of art used by the Respondent to assist Ms S. There had been no active deceit by the Respondent and no information had been withheld.
20. The allegation relating to the S-G Agreement was that it was an incorrectly drafted legal agreement. That had to be balanced against any harm caused, of which there was none; there was no identifiable harm to Ms S and no loss was suffered.
21. The proven dishonesty was an aggravating feature, however this needed to be balanced with the deception of G and the fact that there had been no harm and no loss.

22. Ms Rodway submitted that this was a single episode proscribed around a singly area of acting. The Respondent had demonstrated genuine insight, and had stated repeatedly in her evidence that she would not conduct herself in the same way again. The Respondent had co-operated fully with the Applicant and had provided numerous documents.
23. The Tribunal was directed to the testimonials submitted on the Respondent's behalf, including one from a District Judge. All of the writers were aware of the nature of the allegations the Respondent faced.
24. Ms Rodway submitted that the area of law in which the Respondent practised was one where there was a significant need for assistance. There was nothing in any of the allegations that had any bearing on her practise. The Respondent was a kind person, and it was her kindness that had led her astray.
25. The Tribunal should keep in mind that due to the allegations, the Respondent had had to wind down her firm. She considered that she could not honourably keep staff employed or accept new clients when facing allegations that her conduct had been dishonest. The Respondent had been subject to the investigation and thereafter the proceedings before the Tribunal for the last four years. Given that extensive length of time, the Respondent had, to some extent, suspended herself.
26. Ms Rodway submitted that a sanction at the lowest level was appropriate in all the circumstances. There was no identifiable harm, and the likelihood of any repetition was non-existent. If the Tribunal considered that a reprimand did not reflect the seriousness of the misconduct, then a fine was appropriate. Any financial penalty should not be at the highest level; there had been no misappropriation or misuse of client monies. Any sanction that was more serious than a financial penalty would be an enormous loss to clients. The misconduct did not justify the imposition of a more severe sanction. There was no necessity to protect the public and there was no risk of future harm.
27. Ms Rodway submitted that the exceptional circumstances in this case were the nature of the work the Respondent undertook, and the importance of that work to her clients. Her area of practise was not well remunerated, and was selfless work for the wider good. Further, the misconduct found proved did not relate to the work the Respondent ordinarily did.

Sanction

28. The Tribunal had regard to the Guidance Note on Sanctions (8th Edition – December 2020). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the

Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

29. The Tribunal found that the Respondent was motivated by financial gain. Had the purchase of the Property been successful, the Respondent stood to gain. Her actions were planned. She had drafted the S-G Agreement and signed and stamped it when she knew that no legal advice had been sought, and that she had not advised her client to seek such advice. The Respondent also knew that it was improper for her to draft a Will for her client, when the Respondent was the sole beneficiary and sole executor. The Respondent had acted in flagrant breach of the trust placed in her by her elderly client. The Respondent was fully and solely responsible for her misconduct and had direct control of the circumstances. She was an experienced solicitor, who was fully aware of her regulatory obligations and the duties she owed to her client. She had sought to deliberately mislead the Applicant by stating that Ms S was not her client when the Respondent knew that she was, and had written letters to others expressly stating that Ms S was her client.
30. The Respondent's conduct had the potential to cause significant financial loss to her client and had caused extensive harm to the reputation of the profession. In SRA v Sharma [2010] EWHC 2022 Admin, Coulson J stated:

“34. There is harm to the public every time that 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”.”
31. The Respondent's conduct was aggravated by her proven dishonesty, which was in material breach of her obligation to protect the public and maintain public confidence in the reputation of the profession. The Respondent's conduct was deliberate and calculated. It had continued over a period of time. She had taken advantage of her elderly client whom she knew trusted her. She had sought to conceal her conduct by making allegations against her former civil partner, and suggesting that Ms S was not her client when she knew (and had expressly stated to others) that she was. The Respondent had continuously and repeatedly failed to conduct herself with the standards of probity and integrity expected of a solicitor.
32. The Tribunal did not find that there were any factors that mitigated the Respondent's misconduct. The Respondent had displayed no insight into her misconduct. Indeed submissions had been made that notwithstanding the seriousness of the matters found proved, the appropriate sanction was one at the lowest level.

33. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

“... Lapses from the required standard (of complete integrity, probity and trustworthiness) may....be of varying degrees. The most serious involves proven dishonesty ... In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors.”

34. The Tribunal did not accept that the nature and importance of the Respondent’s work to her clients and the “selfless work for the wider good” amounted to exceptional circumstances in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction in order to protect the public and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll.

Costs

35. Mr Bullock applied for costs in the sum of £44,978.90.
36. Ms Rodway submitted that the schedule of costs was served out of time. In accordance with the Tribunal’s directions, the schedule should have been served on Friday 1 October 2021, but was in fact served on Monday 4 October 2021. Accordingly, the Tribunal should take no account of any costs that exceeded the amount of costs claimed at issue.
37. Further, the costs claimed in respect of preparing the Rule 12 Statement and reviewing information were excessive.
38. In reply, Mr Bullock conceded that the schedule of costs for the final hearing were served a day late. It was not accepted that the late service prejudiced the Respondent, and certainly did not provide a justification for disallowing the additional costs incurred from the issue of the proceedings to the conclusion. Further, the costs claimed for the proceedings were based on a five-day hearing, whereas the hearing had taken six days. No additional costs were claimed for the additional day.

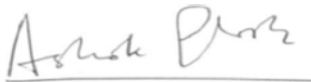
39. With regard to the time taken to prepare the Rule 12 Statement, it was a legal pleading and was not simply a re-hashing of the forensic investigation report. As a legal pleading it had to be properly considered which took time and thought.
40. The Tribunal found that there was very little prejudice to the Respondent in the late service of the costs schedule. The Tribunal noted that there was no claim made for the sixth day of the hearing. The Tribunal considered that in not claiming for the sixth day, the Respondent was compensated for the late service. In addition, the Tribunal noted that the Respondent had filed and served numerous documents during the course of the proceedings, whilst evidence was being heard.
41. The Tribunal considered that it would be entirely disproportionate, in all the circumstances, to disallow all costs incurred since the issue of the proceedings due to the marginally late service of the final costs schedule.
42. The Tribunal considered that the costs claimed were reasonable and proportionate and did not consider that the time spent in the preparation and presentation of the matter were excessive. Accordingly, the Tribunal ordered costs in the amount claimed.

Statement of Full Order

43. The Tribunal Ordered that the Respondent, JULIA COOPER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £44,978.90

Dated this 6th day of January 2022

On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY

06 JAN 2022

A Ghosh
Chair