SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 12254-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. — Applicant

and

VIRINDER KUMAR GHAIWAL — First Respondent
IAN McLACHLAN — Second Respondent

Before:

Mr P Lewis (in the chair)
Mr W Ellerton
Mr P Hurley

Date of Hearing: 28 January 2022

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against Mr Ghaiwal made by the Solicitors Regulation Authority Ltd ("SRA") were that whilst in practice as a solicitor at GQS Limited he:

1.1 In or around May 2014, while acting as the certificate provider in respect of Client A's two Lasting Power of Attorneys ("the LPAs"), failed to meet his obligations as certificate provider, in that he:

1.1.1 failed to verify instructions from Client A;

1.1.2 failed to ensure that Client A understood the purpose of the LPAs and/or the scope of the authority they provided;

and by reason of such failures, or any of them, breached any or all of Principle 6 of the SRA Principles 2011 ("the Principles").

2. Mr Ghaiwal denied that he failed to advise Client A of the options for choice of Attorney; or that he failed to advise Client A on the risks of abuse, or to discuss measures to safeguard the LPAs being misused or exploited. He further denied that his conduct was in breach of Principles 4 and 5 of the Principles.

3. The parties considered that proof of the denied matters was likely to add much (if anything) to the seriousness of the admitted matters, or to make any material difference to the sanction.

4. The Tribunal agreed with the assessment as to seriousness and sanction. The Tribunal determined that it was not in the interests of justice, or the public interest to proceed with the disputed matters. Accordingly, the Tribunal granted the application to withdraw those matters.

Documents

5. The Tribunal had before it the following documents:-

- Rule 12 Statement and Exhibit HVL1 dated 16 September 2021
- Mr Ghaiwal's Answer dated 19 November 2021
- Correspondence from the parties
- Agreed Outcome Proposal in relation to Mr Ghaiwal dated 10 January 2022

Background

6. Mr Ghaiwal was admitted to the Roll in December 1999. He held an unconditional practising certificate and was currently employed as a consultant. At the time of the conduct alleged he was practising as a solicitor at GQS Limited ("the Firm").

Application for the matter to be resolved by way of Agreed Outcome

7. The parties invited the Tribunal to deal with the Allegations against Mr Ghaiwal in accordance with the Agreed Outcome Proposal annexed to this Judgment. The parties

submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

8. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Ghaiwal's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Ghaiwal's admissions were properly made.

10. The Tribunal considered the Guidance Note on Sanction (9th Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal determined that Mr Ghaiwal was wholly responsible for his misconduct, notwithstanding that it had occurred in an area that was outside his usual area of practise. The Tribunal considered that the admitted misconduct was too serious for sanctions such as no order or a reprimand. The Tribunal considered that a financial penalty appropriately reflected the seriousness of the misconduct. The Tribunal assessed Mr Ghaiwal's conduct as falling within its Indicative Fine Band Level 2, having assessed his conduct as moderately serious. The Tribunal determined that a fine in the sum of £6,000 adequately reflected the seriousness of the misconduct. Accordingly, it approved the sanction proposed by the parties.

Costs

11. The parties agreed that Mr Ghaiwal should pay costs in the sum of £11,000. The Tribunal considered that the costs agreed were reasonable and proportionate. Accordingly, the Tribunal ordered Mr Ghaiwal to pay costs in the agreed sum.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, VIRINDER KUMAR GHAIWAL, solicitor, do pay a fine of £6,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00.

Dated this 8TH day of February 2022
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
08 FEB 2022

P Lewis
Chair

Case No: 12254-2021

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

VIRINDER KUMAR GHAIWAL (SRA ID: 43870)

First Respondent

and

IAN MCLACHLAN (SRA ID: 104248)

Second Respondent

AGREED OUTCOME PROPOSAL IN RELATION TO THE FIRST RESPONDENT
Pursuant to Rule 25 of the Solicitors (Disciplinary Proceedings) Rules 2019

A Introduction

1. By an Application and Statement made by Hannah Victoria Lane on behalf the Applicant, Solicitors Regulation Authority Limited (**"the SRA"**), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 (**"the Rules"**), dated 16 September 2021 (**"the Rule 12 Statement"**), the SRA brought proceedings before the Tribunal making allegations of misconduct against Mr Ghaiwal (**"the First Respondent"**). The matter has been listed for substantive hearing before the Tribunal between 7 and 10 February 2021.

2. Having reviewed his position as set out in his Answer and taken legal advice, the First Respondent is now prepared to make **admissions** which are acceptable to the SRA and, subject to the Tribunal's approval, to accept a **sanction** which is commensurate with the Tribunal's Guidance Note on Sanction (9th Edition) (**"the Guidance Note"**). For its part, the SRA is prepared to seek the Tribunal's permission to **withdraw** certain particulars of the charge faced by the First Respondent, on the basis that proof of those disputed matters adds little if anything to the seriousness of what is now admitted and is unlikely to make a material difference to sanction.

3. The agreed factual matrix underlying the First Respondent's admissions is set out below. Given the seriousness of his admissions, the First Respondent is prepared to accept a **Level 2 fine** in the sum of £6,000.00.

4. In addition, the First Respondent has agreed to contribute towards the SRA's **costs** of the Application and Enquiry, in the agreed sum of £11,000.00 (including VAT).

5. The SRA has considered the admissions made and whether those admissions, and the outcomes proposed in this document, meet the public interest having regard to the gravity of the matters alleged. For the reasons explained in more detail below, and subject to the Tribunal's approval, the SRA is satisfied that the admissions and outcome do satisfy the public interest.

6. In accordance with Practice Direction 1, a copy of this document is being served upon the Second Respondent. The SRA and the First Respondent do not consider that approval of this Agreed Outcome Proposal would prejudice the Second Respondent in any way but will of course be pleased to consider any submissions to the contrary made within seven days, in line with the Practice Direction.

B Admissions

7. The First Respondent **admits** the gravamen of the allegation against him pleaded at paragraph 1 of the Rule 12 Statement and, specifically, admits the following particulars of the allegation:

"*… whilst in practice as a solicitor at GQS Limited he:*

1.1. In or around May 2014, while acting as the certificate provider in respect of Client A's two Lasting Power of Attorneys ("the LPAs"), failed to meet his obligations as certificate provider, in that he:

1.1.1. failed to verify instructions from Client A;

1.1.2. failed to ensure that Client A understood the purpose of the LPAs and/or the scope of the authority they provided; …

… and by reason of such failures, or any of them, breached … Principle… 6 of the SRA Principles 2011."

8. The First Respondent **denies** the remaining particulars of the allegation, namely that he:

"… *1.1.3. failed to advise Client A of the options for choice of Attorney;*

1.1.4 failed to advise Client A on the risks of abuse, or to discuss measures to safeguard the LPAs being misused or exploited;

and by reason of such failures, or any of them, breached any or all of Principles 4 [and] 5… of the SRA Principles 2011."

9. The First Respondent's ongoing denial of these discrete matters is predicated on a denial that Client A was his "*client*" within the meaning of that term set out in the Glossary to the SRA Handbook 2011.[1] Proof of the alleged breaches of Principles 4 and 5 would require proof that Client A was indeed the First Respondent's "*client*".

10. While not conceding the point as such, the SRA does not consider that proof of the disputed particulars is likely to add much (if anything) to the seriousness of that which the First Respondent is now prepared to admit, or to make a material difference to the sanction which is now, in principle, agreed. The essential core of the allegation is not whether Client A was the First Respondent's "*client*" but whether the First Respondent failed to discharge his obligations as "*certificate provider*" in respect of two Lasting Powers of Attorney granted by Client A. The First Respondent now accepts that he did and is prepared to accept an appropriate sanction. The SRA therefore considers that there is little if any public interest in a contested hearing over the disputed particulars and, subject to the Tribunal's approval of this proposal, seeks permission to withdrawn them under Rule 24.[2]

C Agreed facts

Professional details

11. The First Respondent was admitted to the Roll on 1 December 1999. The First Respondent is currently employed as a consultant at Lexton Law Solicitors Limited. He holds a current practising certificate free from conditions. At the time of the conduct alleged he was practising as a solicitor at GQS Limited (**"the Firm"**).

Background

12. On 19 October 2017, West Midlands Police made a report to the SRA, in which they raised concerns identified in the course of an ongoing investigation relating to the financial affairs of an elderly man (born in 1922), who had since died (**"Client A"**). The report stated that:

    12.1. Client A had been persuaded to move in with his nephew (**"Person B"**);

[1] "*client means: (i) the person for whom you act and, where the context permits, includes prospective and former clients…*"
[2] "*No allegation made in an application may be amended or withdrawn without leave of the Tribunal.*"

12.2. Person B had persuaded Client A to enter into a Lasting Power of Attorney over Client A's finances;[3]

12.3. Client A was persuaded to complete a will;

12.4. Client A was advised to sell his property in 2014 after the Lasting Powers of Attorney had been registered; and

12.5. Client A was not made aware of the amount that the property sold for, and only a small amount of the total sale proceeds were placed into Client A's bank account.

Allegation 1.1

Lasting Powers of Attorney

13. On 12 May 2014, Client A signed a Lasting Power of Attorney for Property and Financial Affairs (**"LPA"**), which appointed Person B as his attorney. This allowed Person B to have control of Client A's finances and property. The First Respondent witnessed the LPA, and also signed the certificate to the LPA in his capacity as a solicitor, by entering "*solicitor*" in the box asking him to confirm that he has "*relevant professional skills*". For all addresses pertaining to himself, the First Respondent gave the Firm's address, although as certificate provider he did not refer to the name of the Firm.

14. The First Respondent was a skills based certificate provider, i.e. a person who believes he has the relevant professional skills and expertise to provide the certification. Solicitors are one of the professional groups permitted to act as a certificate provider. This is distinct from providing a certificate as a "*non-professional*", where the certifier has known the donor personally for more than 2 years and "*as more than an acquaintance*". The First Respondent had struck through the "*non-professional*" section on the form and had confirmed he had the "*relevant professional skills*". As the First Respondent was acting as a skills based certificate provider, he was required under the terms of the LPA instrument, to ensure that Client A understood the terms of the LPA, the authority being granted and that it was made without undue influence. For example, page 10 of the LPA for health and welfare states: "*before signing this certificate you must establish that the donor understands what it is, the authority they are giving their attorneys and is not being pressurised into making it*". The following page states: "*I certify that, in my opinion, at the time of signing Part A: the donor understands the purpose of this lasting power of attorney and the scope of the authority conferred under it; no fraud or undue pressure is*

[3] In fact, Client A had entered into two Lasting Powers of Attorney (one for his financial affairs, and one for health and welfare).

being used to induce the donor to create this lasting power of attorney; and there is nothing else which would prevent this lasting power of attorney from being created by the completion of this form".

15. The LPA for Property and Financial Affairs was then registered with the Office of the Public Guardian (**"OPG"**) on 25 July 2014, giving Person B full control of Client A's finances and property to Person B. A letter from the OPG to Client A confirms that it had been registered.

16. On 12 May 2014 Client A also signed a Lasting Power of Attorney for Health and Welfare. The First Respondent witnessed the LPA, and again signed the certificate to the LPA in his capacity as a solicitor on 12 May 2014.

17. The LPA for Health and Welfare was also registered by the OPG on 25 July 2014, as confirmed in a letter from the OPG to Client A.

18. Both LPAs were revoked by Client A pursuant to a deed of revocation dated 2 May 2017, which was filed with the OPG on 4 May 2017.

First Respondent's position in correspondence

19. In correspondence with the SRA dated 19 June 2018 the First Respondent stated:

    19.1. he "*did not sign an LPA but signed a Power of Attorney and simply witnessed a document, that* [Client A] *had pre-prepared*";

    19.2. he "*did not act in the capacity of a solicitor*";

    19.3. he "*did sign as a solicitor but was simply witnessing a document not prepared by the firm*";

    19.4. he "*did not sign a LPA but a Power of Attorney*" (however it is clear from the documentation that both documents were Lasting Powers of Attorney);

    19.5. he "*did not take any personal or financial history"* as he was *"simply witnessing a document that he had prepared and was content with*";

    19.6. he "*did not keep any notes as it was to simply witness the Power of Attorney and not a LPA*"; and

    19.7. his "*understanding was that the deceased was making these decisions of his own free will and was not being influenced by anyone or being oppressed by anyone to make these dispositions*".

The Law Society's Practice Note on Lasting Powers of Attorney

20. The Law Society issued a Practice Note on Lasting Powers of Attorney on 8 December 2011. This Practice Note states at section 3.1: "*you should be satisfied that the donor has the mental capacity to make a power of attorney. It is important that the donor is aware of the implications of their actions and should be alerted to possibilities of exploitation*". The Practice Note refers to the relevant sections of the Mental Capacity Act 2005 and the Code of Practice, and a further guidance note on assessment of mental capacity.

21. The Practice Note also states at section 7:

> "*A person who signs an LPA as a certificate provider will also need to be able to demonstrate that they:*
>
> - *understand what is involved in making an LPA*
> - *understand the effect of making an LPA*
> - *have the skills to assess that the donor understands what an LPA is and what is involved in making an LPA*
> - *can assess that the donor also understands the contents of their LPA and what powers they are giving to the attorney(s)*
> - *can verify that the donor is under no undue pressure by anyone to make the LPA, and*
> - *have sufficient knowledge and understanding of the donor's affairs to able to be satisfied that no fraud was involved in the creation of the LPA.*"

22. The Note continues at section 7.1, that:

> *"before signing the certificate you should take a suitably detailed personal and financial history from the donor, and if necessary insist on seeing them on their own, to satisfy the requirements concerning undue pressure and fraud. This may have both time and cost implications. You should also be aware that if, for example, a family member objects to the LPA during the registration process then the certificate provider may be called to the Court of Protection to account for their opinion. You should retain any notes you have made in your role as a certificate provider for as long as is necessary and at least until the LPA is registered, and provide these to the Court of Protection if they are relevant to any challenge regarding the LPA"*

Expert report

23. The SRA has commissioned the report of an expert in mental health and capacity, Ms Turner, which the Tribunal has previously admitted into evidence following consideration at a case management hearing. So far as relevant:

    23.1. Ms Turner identifies the sources of guidance for certificate providers which applied in 2014.[4]

    23.2. Ms Turner would "*expect a solicitor with the relevant qualifications to have regard to the test for capacity as set out in ss2-3 MCA 2005*", which "*incorporates the guidance in the LPA that the donor must understand the purpose and scope of the LPA but contains additional limbs such as that the donor must be able to retain and use / weigh the information in order to make a decision. As set out above there is no evidence that an assessment, let alone a full mental capacity assessment, was carried out*".

    23.3. At the time both of the LPAs were entered into in 2014, a certificate provider to an LPA could not simply act as a witness to the donor's signature. The obligations were far greater, and included:

        - reading Part A of the LPA, including any continuation sheets;
        - reading the section entitled "*information you must read*" on page 2 of the LPA;
        - understanding the role and responsibilities of a certificate provider;
        - having particular skills to enable one to sign the certificate;
        - assessing whether Client A understood the purpose of the LPA and the scope of the authority conferred under it;
        - assessing whether any fraud or undue pressure was being used to induce Client A to create the LPA;
        - assessing whether there was anything preventing the LPA from being created by the completion of the form.

    23.4. Ms Turner's evidence is that the First Respondent failed to discharge these obligations. For example, the First Respondent stated in an email to the SRA of 19 June 2019 that he was "*simply witnessing a document not prepared by the firm*". Ms Turner states that the First Respondent "*failed to understand in advance his role and responsibilities as certificate provider*", and that "*carrying*

[4] Specifically: The Code of Practice to the Mental Capacity Act 2007, published on 22 July 2013; The Law Society's Practice Note on Powers of Attorney 2011; A practitioner text entitled "Assessment of Mental Capacity: a practical guide for doctors and lawyers" (published by the Law Society in 2010).

out such a role to a reasonable standard would take considerably more time" than a "*few minutes*".

23.5. In addition Ms Turner identifies that once the First Respondent had had sight of the LPA's, he had the opportunity and was required to read Part B of the LPA's, however the First Respondent simply states he witnessed the documents and therefore he did not properly consider Part B.

23.6. Ms Turner states that there is a "*legitimate expectation*" written records would have been kept. Whilst there is no express duty to keep notes, the guidance notes and Law Society Practice Note recommends that such notes are taken, particularly given that the LPAs relate to a potentially vulnerable adult, and an LPA may be challenged at a later date: "*It is important that the certificate provider is aware of the significance of making clear notes relating to the certification of the LPA*". In this case, no records were kept as the First Respondent's understanding was that he was simply present to witness Client A's signature.

23.7. Ms Turner maintains that "*the practice note advises that donors are seen on their own*" and whilst the First Respondent states he did so, "*this alone does not mean that undue influence was not exerted*" and "*there is no record of any exploration of this*".

23.8. Ms Turner states that the First Respondent should not have acted as a certificate provider, pointing to a concession made by his solicitors in correspondence to the SRA in which they stated: "*it was not within his expertise*". Furthermore, although the First Respondent contends he provided the certificate as a non-professional, he has described himself as a "*solicitor*" on both LPAs and given the Firm's address. It therefore appears he was a certificate provider in a professional capacity. Ms Turner states "*if this is not accepted, the Law Society practice note states: "As a solicitor or retired solicitor, you may be approached by clients, former clients, friends or acquaintances asking you to provide a certificate on the basis that you have known them personally over the last two years. You should exercise considerable caution before providing a certificate on this basis". Mr Ghaiwal has not demonstrated any caution in this regard*".

23.9. The guidance on the LPA instrument itself suggests that the requirement to know the donor "*personally*" means the certificate provider must know the donor for *"at least two years and as more than an acquaintance*".

23.10. Ms Turner further states that there is *"a complete absence of contemporaneous evidence, or representations made to the SRA, that Mr Ghaiwal attempted to carry out the first fundamental part of the assessment: that* [Client A] *understood the purpose of the LPA and the scope of the authority conferred under it*". For example, the Law Society Practice Note states that *"An attorney appointed in a registered health and welfare LPA has no authority to make a decision which the donor has capacity to make for himself or herself. This is not the case for a registered property and financial affairs power and you should ensure that your client understands the difference".* Ms Turner states although the First Respondent was not acting as an advisor, as certificate provider he needed to explain information to Client A and ensure he understood it, and this was not done.

23.11. Ms Turner also identifies that the First Respondent failed to undertake the second fundamental assessment adequately or at all. For example, the First Respondent "*informed the SRA of his understanding that* [Client A] *"was making his decisions of his own free will and has not been influenced by anyone or been oppressed by anyone to make these dispositions" however no evidence has been given for why Mr Ghaiwal holds this view other than that* [Client A] *was content with the documents, which is insufficient given the purpose of the document"*.

23.12. Whilst it is correct that the First Respondent was not under an express obligation to take a personal or financial history, Ms Turner's evidence is that "*the taking of these is intrinsic to any assessment as to whether there is fraud or undue pressure as a more detailed understanding enables the certificate provider to better analyse the circumstances surrounding the making of the LPA"*.

23.13. Ms Turner states that the First Respondent's conduct "*fell outside an acceptable range of professional practice*".

23.14. Ms Turner concludes: "*Mr Ghaiwal's case is that he was a witness, however he was far, far more than that: a certificate provider. His failure to recognise this and therefore his failure to recognise the resulting duties and responsibilities meant that there was an egregious breach of his obligations to* [Client A]".

Particular 1.1.1 – failure to verify instructions from Client A

24. The First Respondent stated in a letter to the SRA dated 19 February 2018 that giving advice to Client A was "*not in his remit*" as he had only been instructed to "*solely deal with witnessing the signature on the document that the deceased had pre-prepared*". The First Respondent was not entitled artificially to limit the scope of his obligations in this manner, which was inconsistent with the requirements on the First Respondent as a solicitor signing the certificate to the LPAs. The First Respondent stated in this letter of 19 February 2018 that the "*only enquiry*" he made of Client A was to ensure that Client A was "*content with the documents and the advice*" and that he understood Client A was making the "*decisions of his own free will and not being influenced*". There is no note of this meeting with Client A on the client file.

25. The First Respondent stated in his response to the SRA that Client A "*had contacted the firm to solely deal with witnessing the signature on the document that he had pre-prepared"*. However, there is no evidence on the file that this was the limit to the remit of the instructions given to the First Respondent, or that Client A understood the limitations on the scope of the First Respondent's role. The First Respondent claims to have had a meeting with Client A but did not take any contemporaneous notes. Therefore there is no evidence of him verifying instructions from Client A about entering into two powers of attorney. Doing so would have ensured he was acting in accordance with the recommendations of the Law Society's Practice Note to satisfy himself that Client A was not under undue pressure.

26. By failing to verify Client A's instructions, the First Respondent failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011. The public expects solicitors to act with extra vigilance when dealing with elderly and potentially vulnerable clients. A solicitor acting in such a way as to maintain public confidence in the profession and provision of legal services would have ensured that he satisfied himself that Client A's instructions were to take out two LPAs and the significance of doing so.

Particular 1.1.2 - failure to ensure that Client A understood the purpose of the LPAs and/or the scope of the authority they provided

27. The First Respondent did not follow the guidance for skills-based certificate providers, as there is no evidence of the First Respondent recording any of Client A's personal and financial history, nor is there any evidence of the reasons for Client A needing two LPAs, and there is no evidence of steps being taken to establish whether Client A understood the implications of obtaining the LPAs.

28. For example, there is no evidence of Client A being asked any open questions regarding the creation of the LPAs, to ascertain his understanding of the LPAs and their effect; whether Client A understood the differences between the two types of LPAs being created; who his attorneys were; when his attorneys could act; how the attorneys could act; and any decisions that he did not wish his attorneys to take. By asking such open questions the First Respondent would have satisfied himself that Client A understood the purpose of the LPAs and the scope of the authorities they provided, however the First Respondent failed to do so.

29. By failing to ensure that Client A understood the purpose of the LPAs and/or the scope of the authority they provided, the First Respondent failed to behave in a way that maintains the trust the public places in him and in the provision of legal services, in breach of Principle 6 of the SRA Principles 2011. The public expects solicitors to act with extra vigilance when dealing with elderly and potentially vulnerable clients. A solicitor acting in such a way as to maintain public confidence in the profession and provision of legal services would have ensured that his client was made fully aware of the purpose of the LPAs and the scope of their authority.

D Non-agreed mitigation

30. The First Respondent advances the following points by way of mitigation but their inclusion in this document does not amount to acceptance or endorsement of such points by the SRA:

30.1. "*The First Respondent's conduct was not intentional. It was a 'one-off' unrelated to his usual area of practice, which resulted from his innocent misunderstanding of the role and obligations of an LPA certificate provider. He has a previously unblemished professional career.*

30.2. "*The First Respondent signed the LPAs as a favour for a friend and made no charge. He had no improper motive and has not departed from the "complete integrity, probity and trustworthiness" expected of a solicitor.*

30.3. "*The First Respondent is a criminal defence solicitor who has no experience of private client law. Client A was a friend of the First Respondent's father who the First Respondent had known for more than two years.*

30.4. "*When Client A first contacted him, the First Respondent states that his initial response was that he did not deal with Powers of Attorney and could not advise on one. However, Client A informed the First Respondent that he had already got a Power of Attorney typed and he required someone to witness his signature. The*

First Respondent therefore agreed to attend Client A's home on his way home from the office.

30.5. "*He understood that he was being asked to witness a signature on a Power of Attorney because Client A had mobility problems that made it difficult for him to manage his finances. He did not appreciate the difference between a Power of Attorney and an LPA or the role and obligations of an LPA certificate provider.*

30.6. "*The First Respondent nonetheless appreciated that he should satisfy himself that Client A was signing the documents of his own free will. Having met with Client A on his own, the First Respondent's understanding was that Client A had mental capacity, that he was making the decision to sign the documents of his own free will and that he was not being influenced or oppressed by anyone into signing the documents.*

30.7. "*The First Respondent had no reason to think that Client A did not understand the purpose of the documents that he was signing or their scope.*

30.8. "*With hindsight the First Respondent accepts that he mistakenly selected the "professional skills" option in Part B of the LPAs rather than the "personal knowledge" option.*

30.9. "*The Applicant does not allege that had the First Respondent taken the steps which the Applicant says he should have taken, he would have become aware of matters which would have made it inappropriate to provide the certificate. There is no evidence that the failure by the First Respondent to meet the obligations of a certificate provider were causative of or enabled any later misconduct by the attorney (if such occurred)*.

30.10. "*The First Respondent has co-operated with the SRA and offered frank admissions.*"

E Proposed sanction including explanation of why such an order would be in accordance with the Tribunal's sanctions guidance

31. Subject to the Tribunal's approval, it is agreed that the First Respondent should receive a **Level 2 fine** in the sum of £6,000.00.

32. In reaching this agreement, the parties have carefully considered and had regard to the Guidance Note on Sanction and, in particular, paragraphs 17-21 and 26-30 of that document. The parties have also had regard to the principle of proportionality and have considered the possible sanctions in ascending order of seriousness.

33. In respect of culpability (paragraph 18 of the Guidance Note), the First Respondent's actions cannot be described as "*spontaneous*". The First Respondent had ample opportunity to ascertain and consider his obligations as a certificate provider before signing each of the two LPAs. The First Respondent had direct control of and responsibility for the circumstances giving rise to the misconduct. He was an experienced solicitor, albeit in this instance he acted outside of his area of expertise. He should not have done so.

34. In respect of harm (paragraph 19 of the Guidance Note), the First Respondent admits breach of Principle 6, i.e. that he failed to behave in a way that maintains public trust in himself and the provision of legal services. The public expects solicitors to exercise extra vigilance when providing services to the vulnerable and the potentially vulnerable. While the First Respondent may not have intended any harm, Client A was elderly and entitled to expect that the First Respondent would know and have scrupulous regard to his obligations. It is reasonably foreseeable that a solicitor's failure carefully to discharge his obligations as a certificate provider may have seriously adverse effects upon the donor of a lasting power of attorney, including the loss of control over their finances and property.

35. In respect of aggravating features (paragraph 20 of the Guidance Note): the First Respondent signed two different LPA's without proper understanding of or regard to his obligations as a certificate provider; Client A was vulnerable; the First Respondent's position in correspondence outlined above failed to show insight into the seriousness of the misconduct; and the First Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

36. In respect of mitigating factors (paragraph 21 of the Guidance Note): although there were two different LPA's, the conduct was a "*single episode*" in an otherwise unblemished career; the First Respondent has developed better insight into the seriousness of the misconduct since the correspondence referred to above; the First Respondent has now admitted the gravamen of the charge against him and has cooperated with the SRA.

37. Given the First Respondent's failings to discharge his obligations as a certificate provider in respect of Client A's two LPA's outlined above, it is agreed that the admitted misconduct was too serious to justify either 'no order' or a reprimand. It is also agreed that the SRA's internal powers of sanction would have been insufficient to mark the admitted breach of Principle 6, such that a Level 1 fine ("*Lowest level for conduct*

assessed as sufficiently serious to justify a fine (rather than a reprimand)") would not be sufficient to dispose of this case or to meet the public interest.

38. In agreeing to a Level 2 fine ("*Conduct assessed as moderately serious*") of £6,000.00, the SRA has born in mind that there is no allegation of lack of integrity or dishonesty and that the First Respondent's admissions relate solely to Principle 6 ("*you must… behave in a way that maintains the trust the public places in you and in the provision of legal services*"). In the recent case of Bingham 12211-2021, the Tribunal approved an Agreed Outcome including a Level 3 fine of £7,600.00, in respect of what was (arguably) somewhat more serious conduct, including breaches of Principle 6 (though not including any breach of Principle 2/ lack of integrity). In the case of Jones & Hillyer McKeown LLP 12262-2021, the Tribunal approved an Agreed Outcome including a Level 2 fine of £7,000.00 in respect of Ms Jones, again in respect of arguably somewhat more serious conduct, including breaches of Principle 6 (though not including any breach of Principle 2/ lack of integrity), albeit this fine had been reduced in light of Ms Jones' means. In the case of Seddon & Gowlings Solicitors Limited 12236-2021, the Tribunal approved an Agreed Outcome whereby the Respondents paid a Level 3 fine of £12,000.00 on a joint and several basis, in respect of breach of undertakings giving rise to a breach of Principle 6 and a failure to achieve Outcome 11.2. Assuming a 50:50 apportionment as between Mr Seddon and the Firm, that equates to a Level 2 fine of £6,000.00 each. It is acknowledged that every case is different and turns on its own particular facts but, having regard to those comparators, the SRA is satisfied that a Level 2 fine of £6,000.00 would be both reasonable and proportionate to mark the breach of Principle 6 admitted in this case and to meet the public interest.

39. Both parties agree that this is not a case which requires the First Respondent's temporary or permanent removal from the Roll of Solicitors.

F Costs

40. As noted above, subject to the approval of this Agreed Outcome Proposal, it is agreed that the First Respondent should pay £11,000.00 towards the SRA's costs of the Application and Enquiry. The SRA is satisfied that this is a reasonable and proportionate contribution by the First Respondent in all the circumstances and will deduct this amount from any claim for costs against the Second Respondent.

Signed:

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On behalf of the SRA

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On behalf of the First Respondent

Dated: 10 January 2022