

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12255/2021

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

MICHAEL ROBERT THOMPSON

Respondent

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Before:

Mr D Green (in the chair)

Mr P S L Housego

Dr P Iyer

Dates of Hearing: 15-16 March 2022 and 11 July 2022

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## Appearances

Michael Collis, barrister of Capsticks LLP for the Applicant.

Christopher Hamlet, barrister of 23 Essex Street Chambers, instructed by Richard Nelson LLP for Mr Thompson.

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## JUDGMENT

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## **Allegations**

1. The Allegations against Mr Thompson were that while in practice as a Solicitor and Partner of Marchant Harries (“the Firm”):

### Property 1

- 1.1. In a conveyancing transaction regarding Property 1, Mr Thompson:
  - 1.1.1 In January 2019, inappropriately caused or allowed Person A, a trainee Solicitor, to amend the date on the mortgage deed and to send it to Companies House;
  - 1.1.2 In January 2019, inappropriately caused or allowed Person A to re-amend the date on the same mortgage deed and to send it to the Land Registry;
  - 1.1.3 In February 2019, inappropriately caused or allowed Person A to respond to a query raised by the Land Registry stating that the certificate of registration related to the mortgage deed dated 2 January 2019 and/or that it was a true copy of the original, when this was not the case.

In doing so, Mr Thompson acted in breach of Principles 2 and 6 of the SRA Principles 2011.

### Property 2

- 1.2 In a conveyancing transaction regarding Property 2 in or around July 2019, Mr Thompson inappropriately submitted, or caused to be submitted, a false certified copy of a mortgage deed dated 24 July 2019 instead of the correct date of 24 June 2019 to the Registrar of Companies.

In doing so, Mr Thompson acted in breach of Principles 2 and 6 of the SRA Principles 2011.

### Dishonesty

2. Dishonesty was expressly alleged in relation to Allegations 1.1 and 1.2 above but proof of dishonesty was not required in order to establish those allegations or any of their particulars. Dishonesty if proved, would be an aggravating feature of the misconduct alleged.

## **Executive Summary**

3. In relation to Property 1, Mr Thompson was found to have caused Person A to make an amendment, followed by a re-amendment, to a mortgage deed and submit it to Companies House and to the Land Registry in order to conceal the fact that the registration to Companies House had been out of time. The re-amendment was done in order to conceal the initial amendment. This was followed by Mr Thompson causing Person A to respond incorrectly and misleadingly to requisitions raised by the Land Registry concerning the dates.

4. In relation to Property 2, Mr Thompson himself had made an amendment to a mortgage deed in similar circumstances.
5. Mr Thompson gave evidence before the Tribunal that he had been acting in a way consistent with training he had received during his training contract from Mr Rabaiotti, who also gave evidence. Mr Rabaiotti denied that he had given any such training or guidance to Mr Thompson.
6. The Tribunal found all Allegations proved including dishonesty. The Tribunal concluded that Mr Thompson should be struck off and should pay the SRA's costs in the sum of £22,200.

To view:

Factual Background – [click here](#)

Witnesses – [click here](#)

Findings of Fact and Law – [click here](#)

Mitigation – [click here](#)

Sanction – [click here](#)

Costs – [click here](#)

## Documents

7. The Tribunal considered all the documents in the case which were included in an agreed electronic bundle on CaseLines.

## Preliminary Matters

### Anonymisation of Person A

8. There was no application for anonymity in respect of Person A. The Tribunal was nevertheless mindful of her Article 8 rights and the possible effect of publicity on her, having regard to the fact that the events in question took place before she was admitted to the Roll.
9. The Tribunal had regard to the Guidance Note on Applications for Special Measures (November 2020) and to the relevant sections of Rule 35 of the SDPR 2019, which stated:

“35.—

- (1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.
- (2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of—
  - (a) exceptional hardship; or
  - (b) exceptional prejudice

to a party, a witness or any person affected by the hearing.

- (5) The Tribunal may, before or during a hearing, direct without an application from any party that the hearing or part of it be held in private if—
    - (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or
    - (b) the Tribunal considers that a hearing in public would prejudice the interests of justice.”
10. Although Rule 35 dealt with applications for a hearing to take place in private, which was not sought in this case, the Tribunal considered that the same principles applied to anonymity of witnesses.
11. The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin).
12. The Tribunal noted that Person A had been a trainee solicitor at the time of these events and that her own integrity and honesty had not been impugned. There was a risk that the publicity given to this case, for example on social media, could have ramifications for her which would not be appropriate in those circumstances. The Tribunal did not consider that the quality of her evidence would be diminished by being anonymised and her identity was not necessary for members of the public to follow the issues in the case and understand the basis of the Tribunal’s findings.
13. The Tribunal was concerned that Person A could suffer exceptional hardship and prejudice if her career was blighted in a disproportionate way by reason of identification in these proceedings. Given the persistence of matters searchable on the internet, the potential was for this case to haunt Person A’s entire professional career. The Tribunal did not think that the importance of transparency was more important than the right of Person A to conduct their career free of the blight of this judgment.
14. The Tribunal therefore directed that Person A should not be identified during the hearing or in the written Judgment.

### **Factual Background**

15. At the time of the Allegations Mr Thompson was a partner at the firm having joined as a paralegal in 2005 and having been admitted to the Roll on 1 November 2007. He was suspended from his firm on 31 August 2019 and resigned on 21 September 2019. At the time of the hearing Mr Thompson held a practising certificate without conditions. Person A had been a trainee solicitor at the firm in 2018-2019.

### **Property 1**

16. The firm acted for the purchaser, who had the benefit of a mortgage. The exchange of contracts took place on 5 December 2018 and completion on 2 January 2019. The mortgage had to be registered with Companies House within 21 days of completion. Person A sent the mortgage deed dated 2 January 2019 to Companies House and it was

received on 22 January 2019. The application was rejected because the filing fee had not been attached. Person A re-submitted the paperwork with the filing fee and this was received on 26 January 2019. This was again rejected as it was now out of time.

17. Person A spoke to Mr Thompson and he told her that there was no need to apply to the Court for an extension and that she should change the date of the mortgage deed to a later date, such as to appear to bring the application back within the 21-day time limit, and send it back to Companies House. Person A asked if this was allowed, and Mr Thompson said that there was a discretion to amend the deed. Person A altered the date on the mortgage deed from 2 January 2019 to 12 January 2019 and re-submitted the application to Companies House. The deed was certified, by Person A, as being a true copy of the original. The application was accepted, and the certificate of registration showed the charge date as 12 January 2019.
18. An application was then made by Person A to apply to register the charge at the Land Registry. Person A attached the relevant forms showing the transfer date as 2 January 2019 and supplied the re-amended the copy of the mortgage deed back dated to 2 January 2019. The Applicant's case was that Person A had done so following a discussion with Mr Thompson, during which he advised Person A either to submit the original mortgage deed of 2 January 2019 or to re-amend the date on the document back to 2 January. Mr Thompson denied this. The Applicant's case was that Person A had asked if this was permissible and been told that it was.
19. On the 4 February 2019, Person A received a requisition from the Land Registry. It asked for confirmation of the following:
  - “(i) that the certificate of registration relates to the charge dated 2nd January 2019 submitted for registration, and
  - (ii) that the charge lodged for registration is a certified copy of the original charge of which either a copy or redacted copy has been filed at Companies House (in accordance with s.859G of the Companies Act 2006).”
20. The response to the requisition was as follows:
 

“Dear Sirs,

Further to this application and your requisition of today's date, we respond as follows:-

  - (i) We confirm that the certificate relates to the Charge dated 2nd January 2019.
  - (ii) We confirm that the Certificate lodged is a true and certified copy of the original.”
21. The Applicant's case was that this response was dictated by Mr Thompson to Person A, who then provided the answers he suggested to the Land Registry.

## Property 2

22. The firm acted for the purchaser in this matter and exchange of contracts took place on 19 June 2019. Mr Thompson had conduct of this matter. When he tried to register a legal charge with Companies House on 3 July 2019, it was rejected because it did not

include the mortgage deed. A second application was submitted and rejected for the same reason. A further application was submitted to Companies House with the mortgage deed showing a date of 24 July 2019 attached. It was certified by Mr Thompson as a true copy of the original. The original date had been 24 June 2019. It was Mr Thompson who brought the application to the Land Registry in respect of Property 2 to the attention of the SRA following the referral to the SRA by the firm of his conduct, which occurred on the 9 September 2019.

### **Witnesses**

23. The written and oral evidence of witnesses is quoted or summarised 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 of all witnesses. 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. The following witnesses gave oral evidence:
24. Person A
- 24.1 Person A confirmed that her witness statement was true and she adopted it as her evidence before the Tribunal.
- 24.2 Mr Hamlet made clear that he was not suggesting that Person A had in anyway lied or been deliberately misleading.
- 24.3 Person A confirmed that she had not approached Mr Thompson for advice in respect of Property 1 until five days before the deadline for registration, which she accepted had put some pressure on the registration process. Mr Hamlet asked Person A whether there had been any indication from Mr Thompson that what she had been doing was wrong when she amended the date from 2 January to 12 January. Person A told the Tribunal that she had asked Mr Thompson if this was acceptable, and he had told her it was “fine” and that he had done this before. Person A did not get the impression that this was “dodgy” and she told the Tribunal that she had trusted Mr Thompson to give sound advice.
- 24.4 In relation to the re-amendment, Mr Hamlet suggested to Person A that Mr Thompson had advised her that the original deed should be submitted to the Land Registry rather than a re-amended document. Person A told the Tribunal that this was not how recalled that conversation.
- 24.5 In relation to the responses to the requisitions, Mr Hamlet suggested that rather than dictating a response to each inquiry there had been a short discussion in which Mr Thompson had advised her to simply to reply in the affirmative. Person A told the Tribunal that Mr Thompson had given clear direction as to how to respond and, although it was not word for word, it was very similar.

25. Stefano Rabaiotti

- 25.1 Mr Rabaiotti confirmed that his witness statement was true to the best of his knowledge and belief. He relied upon it as his evidence before the Tribunal.
- 25.2 Mr Hamlet made clear that he was not suggesting that Mr Rabaiotti had advised Mr Thompson to amend executed documents.
- 25.3 Mr Rabaiotti confirmed that Mr Thompson had spent a great deal of his training contract under his supervision and that they worked closely together throughout the period 2005-2007. This included a seat in the conveyancing department from 2005. Mr Rabaiotti told the Tribunal that Mr Thompson had been hard working, respected and popular.
- 25.4 Mr Hamlet suggested to Mr Rabaiotti that once Mr Thompson became a partner in 2007, he (Mr Thompson), had been effectively running the conveyancing department. Mr Rabaiotti did not think that it was fair to say that he was running it entirely as KB did a lot of the administration work. He confirmed however that Mr Thompson had been working to expand the firm's business. He agreed that when KB was not in the office the responsibility fell to Mr Thompson as the partner in charge but he also had the help of other partners as well.
- 25.5 Mr Rabaiotti confirmed that no client suffered any loss as a result of the deadline for registration being missed and it was not the sort of matter that would lead to internal disciplinary action.
- 25.6 Mr Rabaiotti told the Tribunal that he would correct errors made on a document pre-execution but never post-execution. Mr Hamlet suggested to Mr Rabaiotti that he had shown Mr Thompson a process whereby a date on a deed could be "tippexed out" to bring it within a timeframe. Mr Rabaiotti denied this and told the Tribunal that this would amount to falsifying a document. If a deadline was missed there was no alternative to making an application to the Court. Mr Rabaiotti agreed this would be time consuming and expensive but there was no alternative way to rectify the situation. Mr Rabaiotti denied having any conversation with Mr Thompson about an alternative route as one did not exist. Mr Rabaiotti was adamant that while he might copy draft document, and typex details on it, this would only be to correct a document before its execution, and never afterwards.

26. Simon Bird

- 26.1 Mr Bird confirmed that his witness statement was true to the best of his knowledge and belief. He relied upon it as his evidence before the Tribunal.
- 26.2 Mr Bird agreed that Mr Thompson was hard working and competent. He had effectively been running the conveyancing department although KB also had responsibility for it. Mr Bird did not agree that Mr Thompson had taken over the compliance aspects of the firm in 2017 following the retirement of the managing partner, telling the Tribunal that most of that burden had fallen to him. Mr Thompson had assisted with some aspects of it including dealing with the website. At the time of these matters Mr Thompson had a busy caseload as well as some administrative responsibilities as a partner in the firm.

- 26.3 Mr Bird confirmed that Mr Thompson had not indicated that he thought he had done anything wrong when the other partners asked to meet him on his return from his honeymoon. Mr Bird agreed with the suggestion made by Mr Hamlet that Mr Thompson would have been devastated to find that he was being accused of, effectively, acting dishonestly. Mr Bird further agreed that Mr Thompson had fully accepted his role in what had taken place and had volunteered the information about Property 2.
- 26.4 Mr Bird told the Tribunal that Mr Thompson had said that he was shown how to do this by Mr Rabaiotti, but had given no further details. Mr Bird rejected the suggestion by Mr Hamlet that he had tried to explain but been shut down by Mr Bird and the other partners.
- 26.5 Mr Bird twice told the Tribunal that Mr Thompson had not offered to resign at the first meeting and that this had occurred at the second meeting. In re-examination, however, Mr Bird accepted that in his letter to the SRA dated 12 February 2020 he had “offered to resign immediately” at the first meeting. Mr Bird agreed that his recollection would have been better at the time he wrote the letter but stated that the resignation would not have been accepted at the first meeting as the matter was still being investigated.

27. Mr Thompson

- 27.1 Mr Thompson relied on the following documents as his evidence before the Tribunal:
- First and second witness statements both dated 17 January 2022;
  - Letter to SRA – undated but received on 8 January 2020 and responding to a letter from SRA dated 23 January 2019;
  - Email to SRA dated 25 March 2020; and
  - Letter to SRA – undated but received on 4 December 2020 and responding to notice of decision to refer the matter to the Tribunal.
- 27.2 Mr Thompson told the Tribunal that the accounts given in these documents were factually true and accurate.
- 27.3 Mr Thompson told the Tribunal that Mr Rabaiotti had, during his training contract, shown him how to copy the mortgage deed, ‘tippex’ the date to bring it within the 21 days, photocopy it and send it as a true copy to Companies House. Mr Thompson stated that this was in context of dealing with a late registration. Mr Thompson also told the Tribunal that it was possible that he had misinterpreted what he was being shown by Mr Rabaiotti. Mr Thompson had not considered this to be improper. Since being shown this procedure, Mr Thompson had not had cause to deal with an out of time application until 2019. He had therefore not had cause to seek clarification from Mr Rabaiotti as to whether he had understood the procedure correctly.
- 27.4 In relation to Property 1, Mr Thompson recalled Person A coming to speak to him and he also recalled that when the deadline had been missed, Person A was in a state of distress. Mr Thompson told the Tribunal that he had been busy but nevertheless had tried to help Person A. He confirmed that he advised her to amend the date and that he did not consider at the time that he had done anything wrong in doing so. Mr Thompson explained that this view was based on his training, by Mr Rabaiotti. Mr Thompson



stated that he now accepted that amending the date was misleading and that this was inappropriate.

- 27.5 In cross-examination, Mr Collis referred to the following sentence in Mr Thompson's response to the SRA:

"I do accept, however, that there is likely to have been some conflation on my part between Mr Rabaiotti demonstrating a procedure which could be done on an original document to be presented in different circumstances, and that being the procedure for the sort of situation in question."

- 27.6 Mr Collis also referred Mr Thompson to the following paragraph in his witness statement:

"[Person A] had explained that Companies House had indicated that needed to apply to the Court to register the charge. During our discussions, I recalled an instance where during my training contract a similar situation had arisen and I had been told by Stefano Rabbotti [sic] (who had been my training principal at MH) that the document could be amended without a need to make an application to the Court. I had been told Companies House would accept the document and the charge would be registered for the benefit of our client. Without really thinking of the consequences, I told [Person A] that she could deal with the matter in the same way."

- 27.7 Mr Collis asked Mr Thompson if his case was that Mr Rabaiotti had shown him this procedure or if Mr Thompson may have been conflating what he was being shown. Mr Thompson maintained that he had been shown this procedure by Mr Rabaiotti and that he had been answering the question put to him by the SRA in the best way he could. Mr Thompson disputed that he had not gone into detail about the training he had received when he met with the partners.

- 27.8 Mr Collis asked Mr Thompson why his recollection had apparently changed between his letter to the SRA and the witness statement. Mr Thompson stated that he had tried to be as honest as possible in his answers and that he had been in a very emotional state when he had been replying to the SRA. He maintained the position as set out in his witness statement. Mr Thompson told the Tribunal that no "alarm bells" went off when he gave the advice to Person A and he did not then feel uncomfortable with what he was suggesting.

- 27.9 Mr Collis put to Mr Thompson that if amending the date, as had been done, was a legitimate solution to being out of time, there would never be any need to apply to the Court. Mr Thompson stated that applying to the Court was very difficult and that his belief at the time was that the course of action he advised was acceptable. Mr Thompson denied the suggestion put by Mr Collis that he had "latched on" to this explanation to get himself out of the "difficult position" he found himself in.

- 27.10 In re-examination Mr Thompson accepted that it was possible that he had misunderstood the advice that Mr Rabaiotti had given him.

- 27.11 Mr Thompson told the Tribunal that his workload was significant and that the other partners had not taken on any significant managerial responsibilities. When KB was absent, he said that most of the additional work would come to him. Mr Thompson told the Tribunal that Person A had been allocated to him indirectly. Upon being offered a training contract had been placed in his department.
- 27.12 In relation to the Land Registry, Mr Thompson told the Tribunal that he advised Person A to send the original mortgage deed and he denied advising to re-amend the certified copy. Mr Thompson told the Tribunal that he did not see what was actually submitted to the Land Registry. Mr Thompson stated that he had not given this much thought at the time as he was under a lot of pressure. He denied seeking to mislead the Land Registry.
- 27.13 In relation to the requisitions, Mr Thompson told the Tribunal that Person A had read them to him, and he had advised her to answer them in the affirmative. Mr Thompson denied that he had thought his advice was inappropriate or misleading. He now accepted that one of the answers was incorrect and that he ought to have been clearer with the Land Registry.
- 27.14 In cross-examination Mr Thompson denied that he had dictated the response to the requisitions. Mr Collis took Mr Thompson to his response to the SRA in which he stated that he agreed with the statement of Person A in which she had said that he had dictated those responses. Mr Thompson told the Tribunal that he had not had the benefit of legal advice at this point.
- 27.15 Mr Collis put to Mr Thompson that responding in the affirmative was untrue because the deed was dated 12 January 2019, and so the certificate of registration could not relate to a document dated 2 January 2019. Mr Thompson maintained that he had told Person A to send the original document and not the amended one. If she had done so then the answer would not have been untrue. Mr Thompson denied knowing the answers to be incorrect but persisting in order to persist with the registration based on the amended deed.
- 27.16 Mr Collis put to Mr Thompson that he had chosen to provide a false answer to the Land Registry as it was an easier way of dealing with matters and would conceal the fact that a false document had been provided coming to light. Mr Thompson denied this.
- 27.17 Mr Collis referred Mr Thompson to his letter to the SRA of 15 December 2019, in which he accepted that with hindsight his conduct amounted to serious misconduct and asked him if that remained his position. Mr Thompson told the Tribunal that had been honest about what had taken place.
- 27.18 In relation to Property 2, Mr Thompson told the Tribunal that he had missed this date due to the pressure he was under. He was operating on the same understanding in relation to his training as he had in respect of Property 1. Mr Thompson told the Tribunal that at this stage, no concern had been raised with him about Property 1.
- 27.19 Mr Thompson described the circumstances of his meeting with the other partners and told the Tribunal that he had felt devastated to be told he had done something wrong. He had offered to resign immediately but had been told to think about it. Mr Thompson

had self-reported to the SRA in relation to Property 2 as he realised at that stage that he had done something wrong.

- 27.20 Mr Thompson had set out a number of personal factors, including health, which he had been dealing with at this time. The details of this were set out in his witness statement and it is not necessary to rehearse them here. Mr Thompson told the Tribunal that the effect of these issues had been that he “was not thinking straight” and was on “autopilot” at the time of these events. He apologised to the Tribunal for what had happened.

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

28. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (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 Thompson’s rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

#### **29. Allegation 1.1.1**

##### Applicant’s Submissions

- 29.1 Mr Collis submitted that Mr Thompson had acted without integrity according to the definition set out in Wingate & Evans v SRA and SRA v Malins (2018) EWCA Civ 366. Mr Collis submitted that Mr Thompson had instructed or advised Person A to alter the date on the deed and had displayed a wilful disregard of the standards expected from him as a solicitor and the legal requirements in submitting legal documents. The public would expect that any legal document to be submitted on their behalf would not be altered after execution. Mr Collis submitted that altering the dates had the potential to affect the validity of the legal charge (because the date of the only charge was different at the Land Registry and at Companies House).
- 29.2 In relation to the allegation of dishonesty, Mr Collis submitted that Mr Thompson knew at the material time that his actions were wrong, and that ordinary and decent people would find his conduct to be dishonest. Mr Thompson was an experienced solicitor and would know that original documents, and the information contained therein, were not to be tampered with so as not to mislead the recipient as to the correct information. Mr Collis reminded the Tribunal of the evidence of Mr Rabaiotti in relation to the training point raised by Mr Thompson.

##### Respondent’s Submissions

- 29.3 Mr Hamlet reminded the Tribunal that Mr Thompson was of good character “in all respects”. This was relevant to Mr Thompson’s credibility and his lack of propensity to act dishonestly or without integrity. Mr Hamlet also reminded the Tribunal of the burden and standard of proof and submitted that the graver the allegations, the greater the care that should be taken in assessing the evidence.

- 29.4 Mr Hamlet referred the Tribunal to the two limbs of the dishonesty test set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 and submitted that the Tribunal could not “pay lip service” to the first limb. The question for the Tribunal was what Mr Thompson subjectively knew or believed and that belief did not have to be reasonable, it only had to be genuinely held.
- 29.5 Mr Hamlet referred to Maxfield-Martin v Solicitors Regulation Authority [2022] EWHC 307 (Admin) and submitted that if the Tribunal found that Mr Thompson had a genuine belief that Mr Rabaiotti had taught him to amend the document in the way he had then he should not be found to have acted dishonestly simply because the dates were wrong. Mr Hamlet submitted that Mr Thompson genuinely believed that he had seen Mr Rabaiotti do exactly what he had later done. Mr Thompson was not blaming Mr Rabaiotti and was not positively asserting that he had shown him how to do this. Mr Thompson conceded the possibility that he had misunderstood what Mr Rabaiotti had shown him, but that did not undermine Mr Thompson’s genuine belief. Mr Hamlet submitted that this belief was based on a credible set of circumstances, and he reminded the Tribunal of the evidence of Mr Rabaiotti that he accepted that, while a long time ago, he (Mr Rabaiotti) used tippex to correct an error, albeit before the document was executed. He also reminded the Tribunal that there had been no opportunity for Mr Thompson to clarify that advice for 14 years until these matters arose.
- 29.6 Mr Hamlet submitted that on the substance of matters, Mr Thompson had been consistent, and submitted that he could not be expected to recall the same amount of exact detail throughout. Mr Hamlet submitted that the public did not expect solicitors to be infallible and that solicitors must be able to make mistakes without automatically lacking integrity or losing the trust of the public. There had been no wilful disregard of the standards and his actions had arisen out of a genuine mistake. Mr Hamlet submitted that there had to be a knowing departure from the required standards for the Tribunal to make a finding that Mr Thompson had lacked integrity.
- 29.7 Mr Hamlet’s submission on dishonesty were applicable to all the Allegations but are set out here for the avoidance of repetition. The Tribunal had them in mind as it considered each Allegation separately.
- 29.8 Mr Hamlet submitted that Mr Thompson had no motivation to act dishonestly and that his actions were not those of a dishonest man. Mr Thompson had not denied Person A’s account of matters and had immediately raised the training issue when these matters were first brought up. Mr Hamlet noted that it was Mr Thompson who had drawn attention to Property 2. Mr Hamlet submitted that Mr Thompson had been under significant personal and professional stress at the time these issues arose. He had given advice to Person A without properly thinking it through. Mr Thompson had “nothing to gain and everything to lose” by acting as the Applicant alleged.
- 29.9 Mr Hamlet reminded the Tribunal of the character references submitted on Mr Thompson’s behalf, which went to Mr Thompson’s credibility and the issue of his lack of propensity to have acted dishonestly.

### The Tribunal's Findings

29.10 The Tribunal noted that the factual elements of the Allegation had been admitted by Mr Thompson in that he accepted advising Person A to alter the date on the document. The Tribunal therefore found the factual basis of Allegation 1.1.1 proved on the balance of probabilities.

### Principle 2

29.11 In considering whether Mr Thompson had lacked integrity, the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

29.12 Tribunal took careful note of the character references provided on Mr Thompson’s behalf. It had these in mind when considering both propensity and credibility.

29.13 The Tribunal considered the defence advanced by Mr Thompson which was that he had been trained that it was acceptable to amend documents in these circumstances. The Tribunal acknowledged that Mr Thompson had raised this point from the outset but rejected his case on this point. Mr Rabaiotti had given consistent and credible evidence in which he had explained the circumstances in which he would use tippex and it was quite clear that he was not referring to documents being altered after they had been executed. This was an entirely different scenario to one in which the document had already been executed and was being amended simply to give the appearance of having been within time, when in fact it was late.

29.14 Mr Thompson had been inconsistent in his evidence about whether he had actually been advised that this was permissible or whether he had possibly conflated two different scenarios. The Tribunal observed that when faced with specific, direct questions, Mr Thompson’s evidence would often not engage with the detail.

29.15 The Tribunal also accepted Mr Rabaiotti’s evidence that the procedure, for making the necessary application to the Court if the mortgage deed was out of time, was relatively straightforward and was the only possible route. If there was a legitimate ‘shortcut’ of the sort described by Mr Thompson, then nobody would ever need to make such an application to the Court. Mr Rabaiotti’s evidence was therefore more credible on this point than that of Mr Thompson.

29.16 The Tribunal was satisfied on the balance of probabilities that Mr Thompson had lacked integrity. He had caused or allowed a document to be altered which was intended to give the impression that a deadline had been met when in fact it had been missed. The Tribunal found this was clearly inappropriate and inconsistent with the duty not to mislead and to be scrupulously accurate and found the breach of Principle 2 proved.

## Principle 6

29.17 The Tribunal found that the trust the public placed in solicitors depended on them ensuring that important legal documents were not altered, which created a misleading impression as to when they had been created. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

## Dishonesty

29.18 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

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

29.19 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- First, the Tribunal established the actual state of Mr Thompson’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

29.20 The Tribunal continued to have regard to Mr Thompson’s character references.

29.21 In considering Mr Thompson’s state of knowledge, the Tribunal found that he knew that the mortgage deed was out of time. He was also aware that by having the date altered in the way that he caused to happen, the deed would give the appearance of having been in time, when in fact the deadline had been missed. The Tribunal had, for the reasons set out above, rejected his case that he genuinely believed that Mr Rabaiotti had trained him to act in this way. It was fundamentally implausible that any solicitor would believe that such a course of action would be permissible. Even if Mr Rabaiotti had taught Mr Thompson that this was acceptable, by the time Mr Thompson was a partner and had 7 years post-qualified experience, he would (if honest) have been incapable of believing that having the deed altered in this way would be acceptable.

- 29.22 The Tribunal found that Mr Thompson knew that the only route to correct the position was to make an application to the Court. The notion that there was some sort of legitimate ‘shortcut’ was incredible and Mr Thompson could not have believed otherwise. For if it was as Mr Thompson said there would never be a need to apply to the Court. Further, the course taken by Mr Thompson led to the date of the same charge being differently recorded at the Land Registry and at Companies House. No honest solicitor could think this was acceptable.
- 29.23 The Tribunal noted that Mr Thompson was under significant personal and professional stress at the material time. However, there was no evidence before the Tribunal that the balance of his mind was affected in such a way as to displace the state of knowledge and belief identified above.
- 29.24 The Tribunal concluded on the balance of probabilities that Mr Thompson’s conduct would be considered dishonest by the standards of ordinary decent people. In light of the state of Mr Thompson’s knowledge, ordinary decent people would not consider it honest for him to have caused or allowed the document to be altered so as to create a misleading impression as to when it had been created.
- 29.25 The Tribunal found the allegation of dishonesty proved on the balance of probabilities.

### 30. Allegation 1.1.2

#### Applicant’s Submissions

- 30.1 Mr Collis submitted that this Allegation was a continuation of the conduct set out in Allegation 1.1.1 and as such it engaged the same breaches of principle and the same dishonesty as set out in respect of that Allegation. Mr Collis submitted that the date on the mortgage deed document had been re-amended in order to try to conceal the deception perpetrated upon Companies House. It was for that reason that the Applicant’s case was that the submission of that document to the Land Registry was dishonest.

#### Respondent’s Submissions

- 30.2 Mr Hamlet submitted that this Allegation was “bizarre”, and he submitted that it would make no sense for Mr Thompson to have asked Person A to re-amend the document when he had the original deed. Mr Hamlet submitted that Person A was wrong and that it was far more likely that Mr Thompson had advised her to submit the original deed and for whatever reason she had not done so. Mr Hamlet submitted that the Allegation was such that it would have involved Mr Thompson highlighting the different dates if true.

#### The Tribunal’s Findings

- 30.3 The Tribunal was required to determine the factual basis of this Allegation, as the evidence of Mr Thompson was in conflict with that of Person A. Person A gave credible evidence, which the Tribunal accepted. Mr Thompson had admitted advising Person A to amend the mortgage deed in the first place, hence his admission to the factual basis of Allegation 1.1.1. It was therefore more likely than not that he had advised further

amendment to the document. The re-amendment had the effect of aligning the dates of the transfer and the mortgage deed. The Tribunal found that Person A had consulted Mr Thompson at various points in this process in order to seek his guidance as to how to rectify the missed deadline. The Tribunal was satisfied that Mr Thompson had provided the advice described by Person A. The Tribunal rejected Mr Thompson's evidence that Person A had made the re-amendment in circumstances where she had simply been told to send the original deed. The Tribunal acknowledged that it did not make a great deal of sense to re-amend the deed in this way. However, it made even less sense for Person A to seek Mr Thompson's advice on this specific question and then to do something completely different to what he had advised. The Tribunal found that Person A's account was more plausible and credible than Mr Thompson's and it therefore found the factual basis of Allegation 1.1.2 proved on the balance of probabilities.

### Principle 2

30.4 The Tribunal noted that the context of the re-amendment was an initial amendment that the Tribunal had found to be a dishonest act. The re-amendment had the effect of concealing the initial amendment. The Tribunal was satisfied that causing any amendment to a document in these circumstances demonstrated a lack of integrity and it found the breach of Principle 2 proved on the balance of probabilities.

### Principle 6

30.5 The Tribunal found the breach of Principle 6 proved on the balance of probabilities on the same rationale as it had in relation to Allegations 1.1.1.

### Dishonesty

30.6 The Tribunal assessed Mr Thompson's state of knowledge in relation to the re-amendment. The Tribunal found that Mr Thompson knew that the original amendment had been made as he had accepted causing it to be. The Tribunal found that Mr Thompson knew that Person A was relying on his advice and would act on it, as she had already done so when making the initial amendment. Mr Thompson would also have been aware that the re-amendment would bring the date back to the original date on the deed, but that it would now show a different date to that submitted to Companies House. In short, it reinforced the deception that had occurred in relation to the initial amendment.

30.7 The Tribunal was satisfied on the balance of probabilities that causing the deed to be re-amended in these circumstances would be considered dishonest by the standards of ordinary, decent people. It therefore found the allegation of dishonesty proved in relation to Allegation 1.1.2.

## **31. Allegation 1.1.3**

### Applicant's Submissions

31.1 Mr Collis submitted that Mr Thompson had been responsible for the provision of false information to Land Registry. Mr Collis submitted that Mr Thompson had known it



was false information and that in those circumstances then it followed that it had been provided in an effort to conceal what had taken place in relation to Companies House. Mr Collis therefore submitted that the breaches of Principles 2 and 6 were again engaged and that Mr Thompson had acted dishonestly.

### Respondent's Submissions

- 31.2 Mr Hamlet submitted that it was entirely predictable that the Land Registry would raise a requisition. Mr Thompson had not been surprised when it came in. Mr Thompson had believed that Person A had sent in the original deed, hence him instructing her to answer in the affirmative. Mr Hamlet submitted that “broadly speaking the answer given was accurate” but Mr Thompson accepted that it could have been clearer.
- 31.3 Mr Hamlet reminded the Tribunal of Mr Bird’s evidence and submitted that “for reasons best known to him”, he had refused to accept his recollection of the meeting was imperfect but repeatedly backtracked on the details that were important. Mr Hamlet submitted that Mr Bird’s evidence was unreliable and had deliberately avoided references to Mr Thompson’s explanations as to why his actions had not been inappropriate.

### The Tribunal's Findings

- 31.4 The Tribunal found that while Mr Thompson had not dictated the responses to the requisitions word for word, he had made clear to Person A what they should contain. The replies to the requisition were untrue. The certificate of registration could not relate to a charge dated 2 January because the charge was dated 12 January. The reply to requisition was also untrue when it confirmed that the charge lodged for registration was a certified copy of the original that had been filed at Companies House, because that document was dated 12 January, and the document now being presented to the Land Registry had been altered twice.
- 31.5 Mr Thompson had given evidence to the effect that he had told Person A to send the original document to the Land Registry. That evidence had been rejected for the reasons set out above in relation to Allegation 1.1.2. However, even if that had been the case, the reply was still untrue as the document submitted to Companies House was dated 12 January, not 2 January.
- 31.6 It was clear to the Tribunal and appeared not to be strongly disputed in any event, that Mr Thompson had caused the replies that were untrue to be sent to the Land Registry. The Tribunal found the factual basis of Allegation 1.1.2 proved on the balance of probabilities.

### Principle 2

- 31.7 The Tribunal considered that the requisitions amounted to straightforward, specific questions which required a straightforward, specific, accurate and truthful answer. The answers provided were not true and were misleading. Mr Thompson was responsible for those untrue answers being provided and this was the opposite of his duty to ensure scrupulous accuracy. That in itself amounted to a lack of integrity, exacerbated by the fact that the consequence of providing truthful answers to the requisitions would have

been to expose the alterations to the document that Mr Thompson had caused to happen as discussed in Allegations 1.1.1 and 1.1.2. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

### Principle 6

31.8 The Tribunal was clear that the trust the public placed in the profession was undermined in circumstances where untrue answers were provided to requisitions. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

### Dishonesty

31.9 The Tribunal assessed Mr Thompson's state of knowledge at the time he caused the replies to be provided to the requisitions.

31.10 The Tribunal found that Mr Thompson was fully aware that the answers he had given were untrue and misleading. The context of the answers provided was his earlier decision to cause Person A to alter, and then re-alter, the dates on the one document. Mr Thompson would inevitably have known that providing truthful answers to the requisitions would have exposed his actions in relation to the alteration of the documents. The provision of untrue answers was clearly an attempt at avoiding this deception and the Tribunal was satisfied on the balance of probabilities that Mr Thompson was aware of this at the material time.

31.11 Mr Thompson was also fully aware of what it was that was being asked in the requisitions. The questions were not complicated or highly technical and there could therefore have been no misunderstanding – indeed no suggestion was made by Mr Thompson that there was.

31.12 The Tribunal was satisfied on the balance of probabilities that Mr Thompson's actions, in light of his state of knowledge, would be considered dishonest by the standards of ordinary decent people. It therefore found the allegation of dishonesty proved in relation to Allegation 1.1.3.

## **32. Allegation 1.2**

### Applicant's Submissions

32.1 Mr Collis did not make specific submissions in relation to Allegation 1.2 but the basis of the Applicant's case in respect of integrity and dishonesty was essentially the same as for Allegations 1.1.1.

### Respondent's Submissions

32.2 Mr Hamlet, similarly, did not make extensive reference to Allegation 1.2, but it was understood that the basis of Mr Thompson's case was, as with Allegations 1.1.1, the issue of the training he had received from Mr Rabaiotti.

### The Tribunal's Findings

- 32.3 Mr Thompson had admitted the factual basis of this Allegation and relied on the same defence as he had advanced in relation to Allegation 1.1.1 in that he had believed he was permitted to make such an amendment based on his training by Mr Rabaiotti.
- 32.4 The Tribunal found the factual basis of Allegation 1.2 proved on the balance of probabilities, on the basis of the evidence and Mr Thompson's admission.

### Principle 2

- 32.5 The Tribunal's reasoning for finding a lack of integrity in relation to Allegation 1.1.1 applied equally to Property 2. In this case it was Mr Thompson himself who had made the amendment to the document and subsequently submitted it. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

### Principle 6

- 32.6 The Tribunal found the breach of Principle 6 proved on the balance of probabilities on the same basis as it had in relation to Allegation 1.1.1.

### Dishonesty

- 32.7 The Tribunal assessed Mr Thompson's state of knowledge at the time he submitted the certified document. Mr Thompson had told the Tribunal that his state of knowledge was very similar to that when he had caused the amendment to be made on Property 1 and for that amended document to be sent to Companies House. The Tribunal had rejected his evidence in relation to the matter of his training and on the availability of some sort of shortcut. Again, while the Tribunal noted what Mr Thompson had said about the pressures he was under, there remained no evidence that it had an impact on his state of knowledge. Mr Thompson knew the document was out of time and knew that by amending it as he did, it would give the impression of having been within time when it was not.
- 32.8 The Tribunal was satisfied on the balance of probabilities that Mr Thompson's actions in amending the document and sending it as he did would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved in relation to Allegation 1.2.

### **Previous Disciplinary Matters**

33. There were no previous disciplinary findings at the Tribunal.

### **Mitigation**

34. Mr Hamlet submitted that the Guidance Note on Sanction stood "alone among regulators" and that the guidance "should never wag the dog" of the Tribunal's decision making. He invited the Tribunal to exercise its professional judgment in line with the discretion available to it. Mr Hamlet submitted that there was exceptional mitigation, such that Mr Thompson would not be struck off.

35. Mr Hamlet referred the Tribunal to Bolton v Law Society [1994] 1 W.L.R. 512 and invited the Tribunal to consider whether the fact that the public expected solicitors to be trusted to the ends of the earth was such that it should result in the immediate and permanent exile from the profession in all cases. Mr Hamlet submitted that dishonesty was not a monolithic concept and referred the Tribunal to the remarks of Kerr J in Lusinga v Nursing and Midwifery Council [2017] EWHC (Admin) 1458 in support of this point:
- “[103] I hope the Indicative Sanctions Guidance will be looked at again in the light of this judgment. The guidance does not differentiate between different forms of dishonesty, and takes one of the most serious forms of dishonesty (fraudulent financial gain) as the paradigm, without alluding to the possibility that dishonest conduct can take various forms; some criminal, some not; some destroying trust instantly, others merely undermining it to a greater or lesser extent.
- [104] The guidance, in my respectful opinion, needs to be more nuanced in that respect. It should not lump the thief and the fraudster together with the mere contract breaker”.
36. Mr Hamlet submitted that Mr Thompson was a safe, competent, and professional man and, while not wishing to dismiss the significance of the Tribunal’s findings, he invited it to look at this dishonesty and place it in its proper context on scale of seriousness. Mr Hamlet submitted that it would undermine the approach of the regulator if Mr Thompson was treated the same as a fraudster who has sought to make, or who had made, financial gain.
37. Mr Hamlet submitted that someone could be dishonest on just one occasion but not inherently untrustworthy. Mr Hamlet submitted that although this case had not involved a single occasion it could be viewed as a single episode.
38. Mr Hamlet submitted that there were no aggravating factors in this case. Mr Thompson had not gained personally or professionally. There was the small financial loss of a Court fee that had been avoided and some reputational harm from missing the deadline. It had been Person A’s error that Mr Thompson had been trying to rectify in relation to Property 1. The Property 2 matter did not amount to a repetition but an extension of the same error. This was an isolated incident in the context of his entire career.
39. Mr Hamlet submitted that there were a number of mitigating factors. As submitted above, it had not been Mr Thompson’s original error. He had demonstrated insight by self-reporting and he had accepted that in hindsight what he had done was dishonest, though at the time he had a genuine belief that making the amendments constituted an acceptable work-around. There had been no concealment of wrongdoing and Mr Thompson had fully co-operated with the SRA.
40. Mr Hamlet submitted that the appropriate sanction was a suspension. The Tribunal was reminded to read the character references, which demonstrated that Mr Thompson had much to offer the profession. Mr Hamlet submitted that the matters found proved were wholly out of character and represented misconduct at the lowest end of the scale. Mr Hamlet submitted that it would be disproportionate, unnecessary and unwarranted

to impose the ultimate sanction and the public would not desire it. Mr Hamlet urged the Tribunal to impose a fixed term suspension instead.

### **Sanction**

41. The Tribunal referred to its Guidance Note on Sanctions (June 2022) when considering sanction. Although Mr Hamlet had appeared to imply criticism of the Guidance Note on Sanctions, the Tribunal was satisfied that this was the appropriate starting point. The Tribunal assessed the level of culpability and harm and identified the relevant aggravating and mitigating factors.
42. In assessing culpability, the Tribunal found that Mr Thompson's motivation had been to conceal an error in relation to both properties. This started as an instinctive reaction, but there was an element of planning thereafter and there was a series of actions to perpetuate the initial amendment. The Tribunal considered that there was a breach of trust in that Mr Thompson had caused a trainee, who was relying on his guidance and advice, to amend a document twice and submit it to Companies House and the Land Registry. Mr Thompson was in full control of these matters. The Tribunal found the level of culpability to be high.
43. In assessing harm, the Tribunal noted that Mr Thompson was trying to effect a transaction that all parties wanted to happen. However, the way he went about doing so was dishonest and there was always considerable harm to the reputation of the profession when a solicitor acted dishonestly.
44. The misconduct was aggravated by the fact that it was deliberate, repeated and calculated in the sense that Mr Thompson made the decision to act as he did. Mr Thompson had been acting in a supervisory capacity and had put the trainee in a difficult position. In his defence and in mitigation Mr Thompson had blamed Mr Rabaiotti and Person A respectively. The Tribunal rejected those submissions. Person A was a trainee who had come to Mr Thompson to discuss how to rectify a mistake. That was the entirely proper course of action, and she could not be held responsible for Mr Thompson's response to that request for advice.
45. The misconduct was mitigated by the fact that Mr Thompson had self-reported and had a previously unblemished career and was clearly a well-regarded, competent solicitor. Mr Thompson had co-operated fully with the SRA and had made some admissions to the Allegations. The misconduct had not been over a long period of time. The Tribunal found that there was developing insight on Mr Thompson's part, and the Tribunal recognised that the risk of repetition was low.
46. The Tribunal had regard to R on the Application of SRA v Imran [2015] EWHC 2572 (Admin) and Nazari v SRA [2022] EWHC 1574 (Admin), which made clear that the Tribunal's approach to sanction as set out in the Guidance Note on Sanction was appropriate and that low level sanctions for dishonesty were not appropriate. Applying those principles to Mr Thompson's case, the Tribunal concluded that the misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the reputation of the profession.

47. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and had regard to Solicitors Regulation Authority v Sharma [2010] EWHC 2022. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as “a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.
48. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:
- “First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in *Sharma, Imran and Shaw*, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”
49. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James. Mr Hamlet had advanced that there was exceptional mitigation, which is set out above. It was apparent that Mr Thompson continued to place blame on to others and it was for this reason that the Tribunal was unable to conclude that he had full insight into the seriousness of his actions and his personal responsibility for them. As the Tribunal had previously noted, the stresses and pressures that Mr Thompson was under at the material time had not, on the evidence put before the Tribunal, been such as to amount to exceptional circumstances, though that did not mean that the Tribunal was unsympathetic.
50. The Tribunal could not identify any exceptional circumstances. The personal mitigation and the character references were impressive but could not be described as exceptional. The only appropriate sanction was therefore that Mr Thompson be struck off the Roll.

### **Costs**

51. Mr Collis applied for an order for the Applicant’s costs in the sum of £22,200.00. Mr Thompson took no issue with the level of costs and had not submitted a statement of means. He was therefore not arguing an inability to pay, though it was indicated that he might seek to reach agreement with the SRA as to the timescale for payment.
52. The Tribunal was satisfied that the costs incurred were reasonable and proportionate and therefore ordered that Mr Thompson pay them in full.

### **Statement of Full Order**

53. The Tribunal Ordered that the Respondent, Michael Robert Thompson, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,200.00.

Dated this 28<sup>th</sup> day of July 2022  
On behalf of the Tribunal



D Green  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**28 JUL 2022**