SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12268-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

MOHINUZ ZAMAN First Respondent

and

C & G SOLICITORS LIMITED Second Respondent

Before:

Mr M N Millin (in the chair)
Mr A Ghosh
Mrs C Valentine

Date of Hearing:
4 to 6 July and 12 August 2022

Appearances

Victoria Sheppard-Jones, counsel, of Capsticks Solicitors LLP, for the Applicant

Mohinuz Zaman, the First Respondent, represented himself

Mark Bradley, counsel, of Deans Court Chambers, instructed by Murdochs Solicitors, for the Second Respondent

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JUDGMENT

Allegations

The First Respondent

1 The allegations against Mr Zaman were that, while in practice as a solicitor at C&G Solicitors ("the Firm"):

1.1 Between 28 August 2014 and 6 October 2014, he failed to advise the transferor to a property transaction, either adequately or at all, as to the implications of the transaction, and thereby acted in breach of Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles").

1.2 Between 28 August 2014 and 6 October 2014, he acted for both the transferor and transferee to a property transaction, where there existed a conflict of interest or a significant risk of a conflict of interest as between the parties, and he thereby breached any or all of Principles 4 and 6 of the Principles and failed to achieve Outcomes 1.2, 3.5 and 3.6 of the SRA Code of Conduct 2011 ("the Code").

1.3 Allegations 1.1 and 1.2 were advanced on the basis that Mr Zaman's conduct was manifestly incompetent or, in the alternative, reckless. Manifest incompetence and recklessness were alleged as aggravating features of Mr Zaman's alleged misconduct.

The Second Respondent

2. The allegation made against the Firm, was that:

2.1 Between at least August and October 2014, the Firm, having been alerted to the existence of a conflict of interest or significant risk of a conflict of interest by the First Respondent, acted for both the transferor and transferee to a property transaction and it thereby breached any or all of Principles 4 and 6 of the Principles and failed to achieve any or all of Outcomes 1.2, 3.5 and 3.6 of the Code.

The relevant Principles and Outcomes of the Code

3. The allegations involved alleged breaches of the following Principles and Outcomes of the Code:

Principle 4 *You must act in the best interests of each client*

Principle 5 *You must provide a proper standard of service to your clients*

Principle 6 *You must behave in a way that maintains the trust the public places in you and in the provision of legal services*

Outcome 1.2 *You provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice*

Outcome 3.5 *You do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 and 3.7 apply*

Outcome 3.6 *where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:*

(a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;

(b) all the clients have given informed consent in writing to you acting;

(c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and

(d) you are satisfied that the benefits to the clients of you doing so outweigh the risks.

Executive Summary

The First Respondent

4. The Tribunal found that Mr Zaman had failed adequately to advise the transferor to a property transaction, who was relinquishing his interest in his home for no consideration in circumstances where the relationship with the transferee was unclear. He also acted when there was a very clear and significant risk of a conflict of interest between transferor and transferee. All alleged breaches of the Principles and the Code were found proved, including the aggravating allegation of manifest incompetence in relation to both allegation 1.1 and 1.2.

5. The Tribunal's reasoning is set out below and can be accessed as follows:

- The Tribunal's Decision on allegation 1.1
- The Tribunal's Decision on the aggravating allegation of manifest incompetence and recklessness in relation to allegation 1.1
- The Tribunal's Decision on allegation 1.2
- The Tribunal's Decision on the aggravating allegation of manifest incompetence and recklessness in relation to allegation 1.2

The Second Respondent

6. The Tribunal found the allegations against the Second Respondent were unsubstantiated. The Firm had not been made aware of the risk of a conflict of interest and accordingly it had not been proved that the various consequential failings could be attributed to the Firm. The Tribunal's reasoning can be accessed as follows:

- The Tribunal's Decision on Allegation 2

Sanction

The First Respondent

7. Mr Zaman was struck off the Roll of Solicitors. The Tribunal found that the misconduct, was sufficiently serious to warrant that sanction. Furthermore, the Tribunal considered that Mr. Zaman manifestly to be incompetent and for that reason it would not be safe for him to remain on the roll. The Tribunal's reasoning on sanction is set out below and can be accessed as follows:

- The Tribunal's Decision on Sanction

Documents

8. The Tribunal considered all the documents in the case which were included in an electronic bundle agreed and supplied by the parties.

Preliminary matters

Delay in proceedings and whether the hearing should proceed

9. At the outset of the hearing Mr Zaman stated that the legal representative who had prepared his Answer was on holiday and unable to attend. He did not request an adjournment of the hearing. He stated that he wished to get the hearing over with and referred to the devastating impact it had had on him personally and professionally. In the absence of any request to adjourn, the Tribunal was satisfied that it was appropriate for the hearing to proceed.

10. Mr Zaman also stated that it was difficult for him to remember the details of the events given the time which had passed and his initial lack of access to the case file. The allegations related to events in 2014, some 8 years ago. This was a point which had been made previously in writing several times. The Tribunal invited submissions from the parties as to whether Articles 6 (fair trial) and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") were engaged and breached, in the case of Mr Zaman in respect of both Articles and in the case of the firm, Article 6 as a result of the lengthy period between the relevant events and the hearing

11. The Tribunal drew the parties attention to the judgment of the European Court of Human Rights in Müller-Hartburg v Austria (ECHR application number 47195/06), in particular, the comment in [58] of the judgment that breaches of Article 8 had "frequently" been found where the delay in disciplinary proceedings lasted between three years and one month and five years and seven months.

The SRA's Submissions

12. Ms Sheppard-Jones for the SRA explained that the matter came to the SRA's attention in November 2018 when Staffordshire Police contacted them. The SRA had been informed that there was a possibility of an investigation into solicitors at the Firm. Information was sought from the Police in February 2019. This request was chased by

the SRA in March 2019 and documentation was provided by the Police that month. The SRA opened their case file in the same month. Further documents from the criminal case were sought from the Police in July 2019 and attempts were made to contact the key witness who had been the victim of the fraud from August 2019.

13. The SRA first contacted the Firm in September 2019 and Mr Zaman was first contacted about the matter in January 2020.Guilty pleas in the criminal proceedings had been made in January 2020. In response to a question from the Tribunal, Ms Sheppard-Jones submitted that it had been reasonable for the SRA to await the outcome of the criminal process to assess how to proceed.

14. From March 2020 there had been some element of delay caused by the constraints of the Covid-19 emergency. However, Ms Sheppard-Jones submitted that the papers before the Tribunal demonstrated that there had been continuing correspondence and progress on the matter. The proceedings had been issued in October 2021, which Ms Sheppard-Jones submitted was reasonable and did not involve excessive or unreasonable delay. She accepted that Article 6 and Article 8 rights were engaged but submitted this did not translate to a right to a hearing within a specific timeframe and that on the facts of this case there was no unreasonable or unfair delay and no breach of those rights.

15. When Mr Zaman had raised, in 2020, being unable to recall the relevant events, the SRA had taken formal steps to obtain the full legal file from the Firm to ensure he had all relevant materials available. It was submitted that the case was based on documentation and was not one which relied upon memories where the delay would not have a significant impact.

16. Ms Sheppard-Jones also stated that some of the delay was attributable to the Firm seeking, and being granted, two extensions of time to serve an Answer to the allegations. The delay since the proceedings were issued, some ten months, had not been caused by the SRA.

17. Ms Sheppard-Jones submitted there was a huge difference in the periods of time involved in the present case and those referred to in Müller. That case, and those referred to within it, were concerned with delays in the disciplinary proceedings themselves, rather than the period from the alleged misconduct with which the proceedings were concerned. Additionally, in Müller the lawyer had been unable to practise in the intervening period, which had not been the case for Mr Zaman.

18. It was submitted that the SRA had not ‘sat on its hands’. Accordingly, the overall delay in the proceedings, during which progress was nevertheless made, was closer to 3 years than to 8. This was submitted to fall well short of that which would infringe either parties’ Article 6 or 8 rights. It was submitted that the Tribunal should balance fairness to the Respondents with the public interest in serious misconduct allegations, which related to events in which an individual lost their house, being determined.

The First Respondent’s submissions

19. Mr Zaman submitted that his Article 6 and 8 rights had been engaged and infringed. He was obliged to rely on his failing memory of events from 8 years ago. There had been

a delay him having access to the file which disadvantaged him. He had already been affected by this case, as had his family. The Statutory Declaration had been the crucial factor. He had done all he could have done.

The Second Respondent's Submissions

20. Mr Bradley, for the Firm, noted that 8 years had passed since the relevant events. He submitted that this was a significant and concerning delay. Mr Zaman had referred to his failing memory and this was a factor which would also be prejudicial to the Firm. The Firm asserted various things about Mr Zaman's actions and was likely to be disadvantaged if he was unable to recall the relevant events.

21. In Müller the delay had been 9 years, and reference had been made to cases infringing Article 6 where the delay had been around 3 ½ years. Mr Bradley submitted that the delay in the case before the Tribunal was towards the top of the range mentioned in Müller and that there had been no adequate explanation from the SRA of the delay from 2018 to 2020. The allegations were not complex and there was said to be no reason why progress could not have been made without awaiting the outcome of the criminal proceedings.

22. The case had had a profound impact on the Firm. When the investigation had been disclosed to the Firm's insurer it had proved impossible to obtain insurance and the Firm had closed. It was submitted that the unexplained and significant delay amounted to a breach of articles 6 and 8 and that the proceedings were unfair to the Firm and should not be allowed to continue.

The Tribunal's Decision

23. The Tribunal accepted that the delay in this case attributable to the SRA was closer to 3 years than to 8. The time before the SRA had been made aware of the issues could not be described as delay. Since that notification the SRA had progressed matters reasonably.

24. The Tribunal accepted that the Müller case, and the various cases to which reference was made within it, focused primarily on delay within proceedings rather than the passage of time since the events themselves.

25. The Tribunal also accepted that the case appeared to be largely documentation, rather than witness, based. The Tribunal considered that there was a significant public interest in the hearing proceeding. The fact that the victim of the fraud had a legal remedy for their loss did not undermine this public interest in allegations of serious professional conduct being heard and determined. The Tribunal accepted that Articles 6 and 8 were engaged, but found that, in these particular circumstances, the public interest in proceeding outweighed any detriment to the respondents. The Panel determined that the hearing should proceed.

Factual Background

26. Mr Zaman was admitted to the Roll of Solicitors in December 2003. At the time of the alleged events, he was employed as a solicitor at the Firm. At the date of the Rule 12

Statement, he had a practising certificate free from any conditions and was employed as a solicitor by Ian Henery Solicitors Limited.

27. The Firm was a limited company and a recognised body, with a registered office in Birmingham. At the time of the relevant events, Mr Jagdish Chopra and Mr Gurdeep Gill were the only partners in the Firm. Mr Jagdish Chopra supervised the client matter out of which the allegations arose. The Firm specialised in crime, wills and probate and immigration.

28. The issues out of which the allegations arose came to the SRA's attention in November 2018, when the Staffordshire Police had contacted the SRA to advise it of a criminal investigation into two rogue traders who had fraudulently secured the transfer of the title in a property for no consideration. The Firm had acted for both the transferor and the transferee to the transaction and Mr Zaman was the solicitor with conduct of the matter. In January 2020, following guilty pleas, the two rogue traders were sentenced to 54 months' imprisonment for fraud and three years' imprisonment for stalking the transferor respectively.

Witnesses

29. The written and oral evidence of witnesses is quoted or summarised in the Findings of fact and law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal considered all of 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:

- Mr Zaman, the First Respondent
- Jagdish Chopra, solicitor, and director of the Second Respondent

The following witness was not required by the parties to attend, but the Tribunal was invited to, and did, read his statement:

- Harsimran Saini, solicitor and director of HS Lawyers Ltd

Findings of Fact and Law

30. The SRA was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the civil standard - 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 the Respondents' right to a fair trial under Article 6 and, in respect of Mr. Zaman, to respect for his private and family life under Article 8 of the ECHR.

The First Respondent

31. **Allegation 1.1: Between 28 August 2014 and 6 October 2014, Mr Zaman failed to advise the transferor to a property transaction, either adequately or at all, as to**

the implications of the transaction, and thereby acted in breach of Principles 4, 5 and 6 of the Principles.

The Applicant's Case

Background

31.1 The circumstances giving rise to the criminal case and the SRA's investigation were that on 28 August 2014, Person 1 and Person 3 attended the office of the Firm (along with three others including Person 2). Person 1 was 26 years of age at the time and Person 3 was 65. They were seen by Mr Zaman, who recorded in handwritten notes that both parties wished to instruct the Firm to act for them in transferring Person 3's home, "the property", to Person 1 for no consideration as a "*gift of love + affection*".

31.2 A Statutory Declaration was prepared by the Firm which set out Person 3's intention to transfer his interest in the property to Person 1 as a gift for no consideration and stated that he was entering into the transaction freely. The Statutory Declaration was executed in September 2014 at the offices of HS Lawyers and witnessed by a solicitor, Mr Saini, of HS Lawyers.

31.3 Mr Zaman conducted the conveyancing. In November 2014, Person 1 was advised by the Firm in writing that he was the registered owner of the property.

31.4 In 2015, Person 3 made a complaint to Trading Standards about Persons 1 and 2 which ultimately resulted in the criminal convictions mentioned in paragraph 13 above. At the date of the Rule 12 Statement (27 October 2021) proceedings were said to be ongoing in relation to transferring ownership of the property back to Person 3.

Alleged failure to advise adequately or at all

31.5 The firm's file contained a one-page handwritten note from the meeting of 28 August 2014. This note contained minimal information about Person 1 and Person 3, the bald fact of the instruction to transfer the property as a gift, and the Firm's fees. The email address of Person 4 was also written on the note and featured in the client care letters sent to Persons 1 and 3, although it was said there were no further details about why Person 4 attended the meeting. Mr Zaman did not record the details or roles of Persons 2 or 5 in his note or elsewhere in the client file.

31.6 Mr Zaman completed a "Conflict of Interest Register". This stated that he had identified a conflict on 28 August 2014, had discussed it with the parties in individual meetings and stated: "*Clients aware of common interest regarding transfer. Clients agree with instructions"*. Under the heading "able to continue to act" Mr Zaman had stated:

> *"Yes. Both clients make informed decision. No exchange of funds. Gift transfer."*

The form further stated, under "safeguards":

> *"Fee Earner to do continuing checks regarding instructions; validating instructions separately by attending separately on each party. One party to attend upon an independent solicitor"*.

31.7 There was said to be no independent record on the file of any individual meetings with Person 1 or Person 3. Given that the proposed transaction was the transfer of Person 3's home to Person 1 for no consideration, in circumstances where there did not appear to be any clarity as to the relationship between the parties, it was submitted that had independent meetings been held with each party, a detailed note would have been made. No such notes appeared on the client file or were located by the Firm. It was further stated that there did not appear to have been any consideration by Mr Zaman of how Person 3's possession of his home might be protected.

31.8 Person 3 provided a witness statement dated 7 January 2017 to the police during the criminal investigation, a copy of which was before the Tribunal. He stated that he went to the Firm with Person 1 and three other men, and that they "*all went into an interview room*" and that they saw the solicitor for about "*20 to 30 minutes*". After which, he stated that they moved to a different firm to have the paperwork countersigned. Person 3 told the SRA on 25 October 2019 that he did not have an appointment with the relevant solicitor alone.

31.9 There were two client care letters on the file: one to Person 1 and one to Person 3. Despite their very different positions, the letters were said to be in all material respects the same. The section headed "Advice" referred to instructing an independent solicitor but was the same in both letters:

> *"We prepare your Transfer and Solvency of Declaration documents. We arrange an appointment to execute the Transfer and advise you to instruct an independent solicitor to execute the Solvency of Declaration form.*" [sic]

31.10 There was submitted to be no clarity in the letter as to who was to instruct an independent solicitor and the reason given for such instruction. There was no tailored advice in the letter to Person 3 stating that he would be giving up a substantial interest for no consideration which may result in him losing possession of his home unless safeguards were taken to protect him. There was no indication that independent advice should be sought in relation to the transaction.

31.11 A further letter to Person 3 dated 28 August 2014 requested that he "*please forward the relevant deeds to our offices as a matter of urgency*". That letter also did not address any risks to Person 3 in the proposed transaction.

31.12 The Statutory Declaration prepared by the Firm stated:

> *"I, [Person 3] of [the property] situated in the County of West Midlands.*
>
> *I/We do hereby solemnly and sincerely declare that:*
>
> *1. The property known as [the property] was given to me in the Probate of [name].*

2. I am now transferring the property as a gift for his love and affection to [Person 1].

3. I confirm that it is for nil consideration and I am freely entering in to the transaction knowing that I will no longer be the owner.

4. I confirm that I am solvent and there are no insolvency proceedings against me.

AND I make this solemn declaration conscientiously believing the same to be true by virtue of the provisions of the Statutory Declarations Act 1835."

31.13 The Statutory Declaration was signed by Person 3 on 5 September 2014. There were two stamps on the document, one from HS Lawyers Ltd and one from "Commissioner of Oaths, Harsimran Singh LLB", which had a signature over the top. Mr Saini confirmed in his witness statement that he witnessed the execution of the document. HS Lawyers Ltd provided a walk-in service for a fee of between £5 and £10. Mr Saini was not instructed to provide independent advice to Person 3 about the nature of the conveyancing transaction or the risk of a conflict of interest between Person 3 and Person 1. The Applicant's case was that the Statutory Declaration did not record that any independent advice was to be given or had been given in relation to the transaction.

31.14 On 7 November 2014, the Firm wrote to Person 1 to confirm that registration of the property had been completed and that he was now the registered proprietor. In contrast, despite the fact that he had transferred the entire interest in his property to Person 1, there was said to be no evidence of any letter to Person 3 to confirm the completion of the transaction.

The Law Society's Conveyancing Handbook

31.15 The Applicant cited Chapters 10 and 11 of the "The Law Society's Conveyancing Handbook" which stated that "*conveyancing is an area in which there is a high risk of conflict arising during the course of the transaction*". It further stated:

"As a general rule, you are likely to fail to achieve the outcome (Outcome 3.5) if you routinely act for both parties in conveyancing transactions, but there may be cases where it is appropriate to do so. In reaching your decision, you will not only need to assess the risk of conflict arising during the course of the transaction, but also have regard to other factors which could compromise your ability to act in the best interest of each client (Principle 4) or your independence (Principle 3). For example:

It is important to bear in mind that if you do act, this should be because of a benefit to the clients, rather than the benefit to you."

31.16 The Applicant highlighted passages from the Conveyancing Handbook which addressed the case of Royal Bank of Scotland Plc v Etridge & Others [2001] UKHL 44, 2001 WL 1135169. That case arose in the context of secured borrowing and a wife charging her interest in the matrimonial home, but was submitted to highlight the risk

of conflict and the need for independent advice in property transactions more generally. Paragraph [65] was highlighted:

> *"Typically, the advice a solicitor can be expected to give should cover the following matters as the core minimum. (1) He will need to explain the nature of the documents and the practical consequences these will have for the wife if she signs them. She could lose her home if her husband's business does not prosper. Her home may be her only substantial asset, as well as the family's home. She could be made bankrupt. (2) He will need to point out the seriousness of the risks involved. The wife should be told the purpose of the proposed new facility, the amount and principal terms of the new facility, and that the bank might increase the amount of the facility, or change its terms, or grant a new facility, without reference to her. She should be told the amount of her liability under her guarantee. The solicitor should discuss the wife's financial means, including her understanding of the value of the property being charged. The solicitor should discuss whether the wife or her husband has any other assets out of which repayment could be made if the husband's business should fail. These matters are relevant to the seriousness of the risks involved. (3) The solicitor will need to state clearly that the wife has a choice. The decision is hers and hers alone. Explanation of the choice facing the wife will call for some discussion of the present financial position, including the amount of the husband's present indebtedness, and the amount of his current overdraft facility. (4) The solicitor should check whether the wife wishes to proceed. She should be asked whether she is content that the solicitor should write to the bank confirming he has explained to her the nature of the documents and the practical implications they may have for her, or whether, for instance, she would prefer him to negotiate with the bank on the terms of the transaction. Matters for negotiation could include the sequence in which the various securities will be called upon or a specific or lower limit to her liabilities. The solicitor should not give any confirmation to the bank without the wife's authority."*

31.17 The SRA's case was that given the facts as presented to Mr Zaman, including the age difference between the parties, the absence of any apparent familial connection, the absence of any information about the nature of the relationship between the parties, the purported instruction that the transfer of a significant interest was for nil consideration, and the presence of other unidentified (and apparently unrelated) parties to the transaction at the first meeting, he failed to take adequate steps to ensure that Person 3 was properly advised of the risks of the transaction. This included the possibility that he might lose possession of his home if steps were not taken to protect that interest.

Alleged breaches of the Principles

31.18 Mr Zaman was an experienced solicitor with over ten years of experience at the time of the relevant events and it was submitted that he would have appreciated the significance of the proposed transaction. It was submitted that as such he would have been very concerned to ensure that he obtained appropriate instructions and gave robust advice to Person 3 in circumstances where the proposed transaction would result in Person 3 losing a significant asset for no consideration. It was submitted that a solicitor of his experience would have understood the need to obtain instructions as to the reason for the proposed transaction, which would include the nature of the relationship of the

parties, beyond a "*gift of love + affection*" such that he could satisfy himself that it was appropriate to act for both parties.

31.19 It was submitted that, as a minimum, individual meetings should have been held with the parties. The Conflict of Interest Register referred to such meetings but there were said to be no notes confirming them and Person 3 disputed that any took place. Had such meetings taken place, it was submitted that an experienced solicitor would have understood the importance of keeping a detailed record including, in particular, of advice about protecting the possession rights of Person 3.

31.20 It was submitted that a solicitor acting in the best interests of their client would have ensured that individual tailored advice was provided to both parties to the property transaction. In the circumstances of the transfer of the property for nil consideration, between parties with no clarity as to the reason why, a solicitor would ensure that robust advice was provided to the transferee as to the risks involved, and would provide advice regarding safeguarding possession of the property should that be the transferor's wish. In such circumstances a solicitor acting in the best interest of their client would have ensured that detailed notes of all meetings and advice was recorded. It was alleged that Mr Zaman had failed to provide appropriate advice in the circumstances presented to him, as evidenced by the absence of any notes of individual meetings and the replica client care letters to both parties. The SRA's case was that the Statutory Declaration did not in any way provide advice or state that independent advice was required. It was submitted that Mr Zaman had thereby breached Principle 4 of the Principles 2011.

31.21 It was submitted that a solicitor providing a proper standard of service to their client would ensure that they properly advised their client on all relevant matters, particularly in the circumstances of this transfer. A proper standard of service would have included tailored oral and written advice. In the absence of such written advice, and bearing in mind the account provided by Person 3, the Tribunal was invited to find that no such advice was given. It was alleged that Mr Zaman failed to provide Person 3 with a proper standard of care as he failed to ensure that Person 3 received any or adequate advice as to the risks of the transaction and submitted that Mr Zaman thereby breached Principle 5 of the Principles.

31.22 It was submitted that the public trusts solicitors to provide appropriate advice that addresses all the relevant issues, and that public trust would be seriously undermined by solicitors failing to advise about the risks involved in property transactions, particularly where the transferee was giving away the interest in their home for no consideration. It was submitted that by failing to advise Person 3 of the risks associated with the proposed transaction, Mr Zaman breached Principle 6 of the Principles.

Manifest incompetence and recklessness alleged

31.23 It was alleged that the conduct alleged above was manifestly incompetent, or in the alternative, reckless. These alternative allegations were pleaded as aggravating factors of the allegation set out above.

31.24 The SRA relied on the concept of manifest incompetence set out in the case of SRA v Iqbal [2012] EWHC 3251 (Admin), in which it was said:

> *"It seems to me that Trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgment, the Appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It seems to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the Appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the Roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence".*

31.25 The Tribunal was also referred to the Court of Appeal decision in Wingate v SRA [2018] EWCA Civ 366 in which it was said:

> *"In applying Principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and from time to time make slips which a court would characterise as negligent. Fortunately no loss results from such slips. But acts of manifest incompetence engaging the Principles of professional conduct are of a different order".*

31.26 It was alleged that Mr Zaman's conduct in relation to allegation 1.1 was such that it demonstrated manifest incompetence. Despite over ten years' experience, he had failed to address the unusual circumstances presented to him, whereby a 65-year-old man was seeking to give his home away to a 26 year old man to whom he had no apparent relationship and for no consideration, by ensuring that he gave robust advice to Person 3 as to the nature of the transaction and the risks that it involved.

31.27 Whilst Mr Zaman did not know that Person 1 was defrauding Person 3, it was submitted there were clear factors that he ought to have been alive to and been anxious to advise upon. Those factors included the age difference between the parties, the absence of information as to the nature of their relationship, the presence of other unknown men at the initial meeting, the absence of consideration and the absence of any protection as to the possession right of Person 3. It was alleged that by failing to appreciate those factors or failing to advise on them, as evidenced by the absence of any notes and the replica client care letters, Mr Zaman's actions went beyond mere negligence and demonstrated manifest incompetence.

31.28 It was alleged, in the alternative, that if Mr Zaman did in fact appreciate the relevant factors but failed to advise on them, his behaviour was reckless. The SRA relied upon the test for recklessness set out in Brett v SRA [2014] EWHC 1974. In summary this was that: (i) a solicitor was aware that a risk existed or would exist, and (ii) the solicitor, in circumstances known to them, went on to take that risk unreasonably. In reply to a question from the Tribunal, the Applicant clarified that recklessness was pleaded as an aggravating factor and not as an act of misconduct in its own right.

31.29 It was alleged that Mr Zaman would have been aware of the relevant factors set out above and the risks to Person 3 in the transaction. It was submitted that the completion of the Conflict of Interest Register suggested that he had appreciated that a risk existed. The SRA's case was that he did not seek to mitigate those risks by ensuring independent adequate advice was given to Person 3. It was alleged that had adequate advice been given it would be evident from notes of meetings, the drafting of tailored client care letters and a more detailed statutory declaration that set out the relevant issues and required Person 3 to confirm that he had received independent advice. It was submitted that in the circumstances, Mr Zaman's behaviour in acting for Person 3 without providing any or adequate advice was reckless.

The First Respondent's Case

31.30 In his formal Answer to the allegations, Mr Zaman admitted allegation 1.1, subject to mitigation and explanation. He denied the aggravating allegations of manifest incompetence or recklessness.

31.31 During the hearing Mr Zaman stated that he had made these admissions in order to seek to "resolve the matter" with the SRA. He repeatedly stated that he had made admissions with hindsight in order to resolve the matter. He also stated repeatedly that he had done nothing wrong.

31.32 It was noted in the Answer that facts giving rise to the allegations related to a discrete and isolated period, between August 2014 and October 2014, which did not form part of any pattern of behaviour.

31.33 The Answer stated that, as confirmed by the Conflict of Interests Register, Mr Zaman identified a potential conflict on 28 August 2014. This document confirmed that the potential conflict of interest was discussed with the parties and read: "*Discussed in individual meetings. Clients aware of common interest regarding transfer. Clients agree with instructions. CCL confirms*". The document also recorded the action, and safeguards, taken and reads: *"Individual meetings. Statutory Declaration to be prepared for one party. Informed decision made by each client. One objective identified; transfer of property"*.

31.34 Mr Zaman's case, as set out in his Answer, was that the Conflict of Interests Register confirmed that the *Second Respondent* (the Firm) concluded it was able to continue to act on the basis that: "*Both clients make informed decision and ... Validating instructions separately by attending on each party. One party to attend upon independent solicitor*".

31.35 Mr Zaman's case, as set out in his Answer, was that he advised Person 3, in person, verbally to seek independent legal advice and that the Statutory Declaration was sufficient. It was said in the Answer that Mr Zaman then acted, after Person 3's Statutory Declaration had been made, to complete the matter.

31.36 It was also stated in the Answer that Mr Zaman's evidence was that there were no signs to show that Person 1 was attempting to defraud Person 3. There were no signs of distress noted by Mr Zaman. Person 3 had had every opportunity to notify Mr Zaman

or the Firm or indeed Mr Saini, the independent solicitor of HS Lawyers, that he felt pressurised to enter into the transaction in 2014 but did not do so.

31.37 As evidenced by the Conflict of Interests Register, Mr Zaman's Answer stated that he had attended the parties separately and verbally advised Person 3 to seek independent legal advice. Mr Saini had confirmed that Person 3 signed the Statutory Declaration independently, and without anyone else present in the meeting room. It was submitted in the Answer that the facts, at the relevant time in August 2014, were not such as to have to put Mr Zaman on notice as to the subsequently discovered nefarious activities of Person 1. It was said that Person 3 raised no concerns in 2014 to indicate that the proposed transaction was anything other than a genuine transaction, entered into with informed consent.

31.38 In his affirmed oral evidence, Mr Zaman maintained that Mr Chopra had been aware of the matter giving rise to the allegations. Mr Zaman submitted it was not credible that as the head of conveyancing, who had signed the cheque on the file for the registration of the new ownership, he had been unaware. Mr Zaman's consistent oral evidence was that he had done all he thought was appropriate and required. He stated that he would not have acted in this transaction if his supervisor had indicated that he should not. He received no such indication.

31.39 Mr Zaman's further evidence was that Mr Chopra, and the Firm, were made aware of the case by Mr Zaman's completion of the Conflict of Interests Register. Mr Zaman had placed the Conflict of Interests Register form in a folder and this would be reviewed by Mr Chopra. The file had always been available to Mr Chopra, and he had never raised the matter at any supervision meetings.

31.40 In addition to the Firm's awareness and lack of guidance, the main focus of Mr Zaman's case was that he relied upon the fact that Person 3 had seen and been advised by a different firm of solicitors. He said that he should have been provided with copies of the Firm's Conflict, Confidentiality and Disclosure Policy and the Risk Management Policy. He said that no evidence had been presented that he had received these policies. Mr Zaman's evidence was that he did not consider that he had diverged from the Firm's policies and usual approach as he understood them. He said that he had had no appraisal or induction process and that Mr Chopra had been happy with his work. He described his workload at the relevant time as "tremendous".

31.41 Mr Zaman said that it was only at the Firm that any such problems had arisen. He had had no other issues before or since. Mr Zaman stated that it was difficult to recall the events clearly after so many years.

<u>Response to allegations of manifest incompetence or recklessness</u>

31.42 In the Answer, there was submitted to be no, or insufficient, evidence to support the aggravating allegation of manifest incompetence.

31.43 At the time of his Answer, Mr Zaman had been qualified as a solicitor for 17 years, without any adverse regulatory or disciplinary history prior to these allegations. This was submitted to be supportive, and evidence, of his competence, and wholly inconsistent with the assertion of manifest incompetence.

31.44 It was submitted in the Answer that the concept of manifest incompetence, derived from Iqbal, was deployed too readily and inappropriately. The quote relied upon by the SRA from that case referred to incompetence of such a nature that "*.... he is not fit to be a solicitor. The only appropriate remedy is to remove him from the Roll*". It was submitted that each case was fact sensitive and needed to be assessed on its own facts. It was submitted to be inappropriate to assert manifest incompetence without supporting evidence based on a single incident.

31.45 Mr Zaman's oral evidence and submissions were entirely consistent with the above, and as set out in relation to the substantive allegation. The allegation was denied on the basis that there had not been any indicators that the instructions were untoward, he had identified the conflict and applied the Firm's usual approach, meeting with both clients independently, orally advising Person 3 to obtain independent legal advice and ensuring that he signed a statutory declaration before an independent solicitor, before proceeding with the transaction according to his clients' instructions. He had done so with the knowledge of the Firm and Mr Chopra. Manifest incompetence did not arise; he had acted properly in accordance with the Firm's usual practice.

31.46 The alternative allegation of acting recklessly was also denied in the Answer. Mr Zaman's case was that he was not aware of a risk at the time. Without knowledge of any risk, he did not take an unreasonable risk in proceeding to act as he did. His oral evidence and submissions as summarised above repeated this denial.

The Tribunal's Decision

31.47 As stated above, Mr Zaman had been equivocal during the hearing about whether he stood by the admissions to allegations 1.1 and 1.2 made in his Answer. When questioned by the Panel, at some length, about whether he stood by the admissions, Mr Zaman said he had made them with hindsight in order to resolve the allegations. Accordingly, and given that Mr Zaman also said at several points that he had done nothing wrong, the Tribunal approached the allegations on the basis that they were denied in their entirety.

31.48 Mr Zaman had given oral evidence, submitted to cross-examination from Ms Sheppard-Jones on behalf of the SRA and answered questions from the Panel. He had affirmed the truth of this evidence. He had refused to be cross-examined by Mr Bradley on behalf of the Firm. The Tribunal had regard to its Practice Direction 5 and the obiter dicta of Sir John Thomas in [25] and [26] of Iqbalin which he said: "*ordinarily the public would expect a professional man to give an account of his actions".* As reflected in Practice Direction 5, the Tribunal was entitled to draw adverse inferences from a respondent's failure to submit to cross-examination where material facts were disputed. Mr Zaman had given evidence which flatly contradicted that of Mr Chopra. The Tribunal found that the refusal to answer questions put by Mr Bradley on the Firm's behalf inevitably undermined Mr Zaman's credibility to some extent.

31.49 Mr Zaman was an experienced solicitor when he joined the Firm, having qualified in 2004. By the time of the meeting with Person 1 and Person, 3 Mr Zaman had over ten years of post-qualification experience. As demonstrated by the CV to which the Tribunal was referred, his prior experience had focused on conveyancing and related matters.

31.50 The Tribunal would have expected to see confirmation that Mr Zaman had received copies of the Firm's Conflict, Confidentiality & Disclosure Policy and its Risk Assessment Policy, referred to by Mr Chopra in his evidence. There was a conflict of evidence between Mr Zaman and Mr Chopra about whether Mr Zaman had been aware of these policies.

31.51 In the circumstances of this case, the Tribunal considered that even on Mr Zaman's case, had he not been aware of the Firm's policies, the conflict of interest was so stark that any solicitor, or, indeed any rational person would have been well aware of it. Indeed, Mr Zaman's case was that he did identify the potential for a conflict in the initial client meeting of 28 August 2014 and this was recorded in the Conflict of Interests Register on the same date.

31.52 The Conflict of Interests Register form did not record on its face who it was completed by. In Mr Zaman's Answer submitted on his behalf, it was stated that the Firm concluded it could continue to act which necessarily implies that someone other than Mr Zaman was involved with the Conflict of Interests Register form or was aware of its existence and engaged with the issues in the transaction. Mr Chopra's evidence was that he was never aware of this form, that it was never added to the Firm's central register and that no one else at the Firm was aware of it.

31.53 The Tribunal did not find Mr Zaman to be a credible witness. His answers were evasive and he repeatedly failed to answer straightforward questions directly. The fact that Mr Zaman had refused to be cross-examined by the Firm further undermined his credibility.

31.54 The Tribunal accepted the SRA's characterisation of the transaction from Person 3 to Person 1 as highly unusual. The essential elements known to Mr Zaman on 28 August 2014 included the age disparity (the dates of birth were recorded on the one-page handwritten file note) and the lack of any consideration for the transfer of the property. There was no information recorded, and Mr Zaman did not suggest in his evidence that any was obtained, about the relationship between Person 1 and Person 3 beyond the statement that the transfer for no consideration was a gift of love and affection. The Tribunal considered that the disparity in the positions between the two clients was clear and that the potential for a conflict of interest was glaringly obvious. Mr Zaman had said during cross examination that Person 3 was "*not falling over or crying for help*" and did not appear to be under duress. He also said he was "*not a mind reader*". Nevertheless, the Tribunal accepted that any solicitor would have recognised the very profound risks to Person 3 including that his right to occupation may be put at risk, over and above the lack of any consideration.

31.55 The Tribunal accepted that those circumstances required that clear advice be provided to Person 3 about these risks. Mr Zaman's case was that he had met with Person 3 separately, in addition to the meeting with five attendees on 28 August 2014. His evidence was also that he had orally advised Person 3 to seek independent legal advice.

31.56 The only file note which was on the client file was the initial one made by Mr Zaman on 28 August 2014 following the meeting with Person 1 and Person 3 (at which three other people were present). Mr Zaman did not contend that there were other more

detailed notes of meetings or advice given which were not present on the copy file relied upon by the SRA and before the Tribunal.

31.57 Person 3 did not give evidence to the Tribunal. Ms Sheppard-Jones explained that this was due to ill-health. The Tribunal was referred to statements that Person 3 gave to the Police. Person 3 stated, in a signed statement dated 7 January 2017, that he went to the Firm with four individuals, and he described meeting a solicitor matching Mr Zaman's description. There was no dispute that Mr Zaman met with Person 3 and the other four individuals. Person 3 stated of Mr Zaman: "*I saw him for about 20 to 30 minutes, at a distance of 3 foot over the other side of the conference table, I had never seen him before or since*." The Tribunal recognised that this written evidence carried less weight as Person 3 had not been available for cross-examination, but considered that as a formal and detailed statement made to the Police it had some evidential value.

31.58 The Tribunal accepted the submission that any solicitor who had provided advice to a client in a situation such as this would be keen to keep a written note. The Tribunal accepted that the absence of any such note, coupled with the lack of any tailored advice in the client care letter sent to Person 3, tended to support the contention that there was no separate meeting with, or tailored advice provided to, Person 3. The Tribunal considered that the account from Person 3 that he never saw Mr Zaman before or after the 20-to-30-minute meeting at carried some weight, notwithstanding his unavailability for cross-examination. Mr Zaman's own account had been vague, hesitant, and lacking credibility. The Tribunal found it was more likely than not that Mr Zaman had not held a separate meeting with Person 3 as stated on the Conflict Register form.

31.59 Mr Zaman had placed great reliance in his oral evidence on the fact that Person 3 had been referred to an independent solicitor and had signed the Statutory Declaration. His evidence was that he had applied the Firm's usual procedures by referring Person 3 to the independent solicitor. He stated that he relied upon Person 3 having seen an independent solicitor and having sworn the Statutory Declaration before them. Mr Zaman said in his evidence that unlike in some other cases, the independent solicitor had not added to the document "no advice given" or similar. In response to the direct question about whether the circumstances amounted to "red flags" Mr Zaman replied: "*when you've got a Statutory Declaration, as a conveyancer, you can rely on it*".

31.60 The Statutory Declaration included the line "*I confirm that [the transfer] is for nil consideration and I am freely entering in to the transaction knowing that I will no longer be the owner.*" It did not include any reference to independent advice about the transaction having been received, nor any confirmation from Mr Saini that he had provided such advice. Mr Saini's evidence was that he had been asked to witness the signing of a Statutory Declaration and did so for a fee of between £5 and £10. In correspondence with the SRA, to which the Tribunal was referred, Mr Saini had stated that he had not provided advice to Person 3.

31.61 The Tribunal were of the view that it would have been plain to any competent solicitor that a Statutory Declaration was not the equivalent to the provision of independent legal advice to Person 3 on the transaction and its risks. The Tribunal did not consider it remotely credible that any rational solicitor, particularly one with the experience of Mr Zaman, could conclude otherwise. As submitted on behalf of the SRA, and set out above, the Law Society's Conveyancing Handbook highlighted the clear risk of

conflicts in conveyancing in very clear terms and the obligations on solicitors. The Etridge case relied upon by the SRA also stressed the obligations on the solicitor. The Tribunal accepted that the referral of Person 3 to sign the Statutory Declaration prepared by the Firm, before an independent solicitor paid between £5 and £10 simply to witness the execution of the document, fell far below the minimum standard of competence required of any solicitor.

31.62 There was no evidence on the client file of tailored advice addressing the implications of the transaction to Person 3. The Tribunal found that this, considered in the context set out above, supported the contention that no such advice was given. The Tribunal found that it was more likely than not, for the reasons set out above, that Mr Zaman had failed to advise Person 3 adequately about the implications of the transaction.

31.63 The Tribunal found that this failure to provide adequate advice was plainly not in Person 3's best interests. His ability to occupy his home was potentially at risk and Mr Zaman's failure to ensure clear advice was given and recorded, including in separate meetings as suggested on the Conflict of Interests Register, was not in Person 3's best interests. The Tribunal found the alleged breach of Principle 4 of the Principles proved to the requisite standard.

31.64 The Tribunal also found that the failures set out above amounted to a failure to meet the minimum standards of service to Person 3. The Tribunal accepted that a proper standard of service in this context would involve tailored advice about the risks of the transaction which had not been provided. The Tribunal found the alleged breach of Principle 5 of the Principles proved to the requisite standard.

31.65 The Tribunal also found that the failure to advise adequately was so egregious that public trust in Mr Zaman and the provision of legal services generally would be undermined by solicitors acting in such circumstances without providing clear and adequate advice, and being able to evidence such, about the risks of the transaction. The Tribunal found the alleged breach of Principle 6 of the Principles proved to the requisite standard.

The Tribunal's decision on the aggravating allegations of manifest incompetence or recklessness

31.66 The Tribunal had regard to the case of Iqbal and the comment in Wingate that "*it is important not to characterise run of the mill professional negligence as manifest incompetence*".

31.67 Even though the allegations related to a single transaction and the relevant events all took place over a relatively short period, between late August and early October 2014, the Tribunal considered that the failure reflected in the findings above was so blatant and egregious as to demonstrate manifest incompetence. The failure to provide adequate advice in the context described above, where the home of an elderly person was being transferred for no consideration to someone whose connection to Person 3 was unclear went beyond oversight or mere negligence. It was a comprehensive failure to meet the basic and obvious professional requirements to provide advice relevant to the situation, which could only be described as manifest incompetence. The Tribunal

found the aggravating allegation of manifest incompetence in relation to allegation 1.1 proved on the balance of probabilities.

31.68 Having found manifest incompetence proved, the Tribunal did not go on to consider the alternative aggravating allegation of recklessness.

32. Allegation 1.2: Between 28 August 2014 and 6 October 2014, Mr Zaman acted for both the transferor and transferee to a property transaction, where there existed a conflict of interest or a significant risk of a conflict of interest as between the parties, and he thereby breached any or all of Principles 4 and 6 and failed to achieve Outcomes 1.2, 3.5 and 3.6 of the Code.

The Applicant's Case

32.1 This second allegation relied on much of the same background set out above in relation to allegation 1.1.

32.2 In addition to the matters set out in relation to allegation 1.1, the SRA's case relied on two file review forms which were completed on 28 August 2014 in respect of Person 3 and Person 1. The form had an entry which stated, "Conflict of interest check carried out", next to which the relevant box has been checked on each form.

32.3 As stated above, despite the entry on the Conflict of Interests Register and the entries on the file review forms, the SRA's case was that there was no evidence on the client file of the purported individual meetings held with the clients. There did not appear to be records anywhere on the file of the purported advice provided to Person 3 or Person 1 about the risk of the conflict of interest. The client care letters did not identify or address the conflict or risk of conflict. There was only one reference to the issue of conflict of interest in the client care letters which stated:

> *"At this stage, we are required to inform you of any limits on our willingness or ability to act for you. We do not believe that there are any such limits (unless a conflict of interest develops) whilst you continue to instruct us properly."*

It was alleged that despite the register and the file review showing that a potential conflict was identified, the client care letters did not even address that issue and in fact indicated that there was no such issue.

32.4 It was further alleged that, contrary to Outcome 3.6 (b) of the Code, Mr Zaman did not obtain written consent from either Person 1 or Person 3 for the Firm to act in circumstances where a significant risk of a conflict of interest existed. It was submitted that once Mr Zaman had identified a potential risk of a conflict of interest, he ought to have applied the safeguards set out in Outcome 3.6 of the Code. Applying the factors set out in Outcome 3.6, it was alleged that there was no evidence that Mr Zaman had:

- explained the relevant issues and risks to the clients and that he had a reasonable belief that they understood those issues and risks;

- obtained informed consent in writing for him to act;

- satisfied himself that it was reasonable for him to act for both clients and that it was in their best interests; and

- satisfied himself that the benefits to the clients of acting outweighed the risks.

It was submitted that he therefore did not mitigate the risks and should not have acted for both parties to the transaction.

The Firm's "Conflict, Confidentiality & Disclosure Policy"

32.5 The Firm's "Conflict, Confidentiality & Disclosure Policy" initially said to have been in force in August to September 2014 set out the systems and controls in place in respect of conflicts of interest. It stated that:

- "*You should always complete a Conflict register form and consult with the Compliance Officer.*
- *Possible ways to deal with the issues are: limiting the retainer, creating an information barrier, there is a common interest, or competing for the same objective."* [sic]

32.6 The policy further stated that where there was a conflict, but the clients had the same objective: "*we need informed consent from the client*". In respect of client consent it stated that:

> *"Written consent is not required if not possible to obtain, but we should attempt to do so and must keep a record on the file if this is obtained".*

32.7 It was alleged that there was no evidence on the client file that Mr Zaman sought assistance from the Compliance Officer in addition to completing the Conflict of Interests Register. It was also alleged that this was not a matter in which written consent was not possible to obtain yet none appeared to have been obtained.

Alleged breaches of the Principles and the Code

32.8 Where a potential conflict of interest exists between clients, it was submitted that, as a minimum, the steps taken by the solicitor must include giving separate advice to both parties and obtaining written consent to act from both of the parties. Without those steps being taken, the Code stipulates that they cannot act.

32.9 The client file of the transfer of the property was submitted to have disclosed an inadequate approach to safeguarding Person 3's interests for the reasons set out above. There was alleged to have been a lack of any separate meeting with Person 3, there was no written consent to act on the file and the client care letters were materially the same for Person 3 and Person 1 and did not address the significant risk of a conflict of interest. The transaction was completed with Person 3 having only met Mr Zaman once on 28 August 2014. There were no notes or letters on the client file to show that when the Statutory Declaration was signed Mr Zaman provided any further advice at that stage. There was no completion letter on the file for Person 3, only for Person 1. In those circumstances, it was submitted that Mr Zaman did not properly consider whether he was acting in the best interests of Person 3.

32.10 The SRA's case was that, despite Mr Zaman's assertions to the contrary, the Statutory Declaration, did not equate to separate advice from an independent solicitor. It was drafted by Mr Zaman and did not refer to a conflict or to the risks to Person 3 in the transaction. Further, it was only executed at a separate firm of solicitors and Mr Saini confirmed in his evidence that neither he nor HS Lawyers Ltd were instructed to advise on the transaction itself.

32.11 Based on the above, it was alleged that Mr Zaman:

- did not act in the best interests of each client, in breach of Principle 4 of the Principles;
- behaved in a way that failed to maintain the trust the public placed in him as a solicitor and the provision of legal services, in breach of Principle 6 of the Principles;
- failed to achieve Outcomes 1.2, 3.5 and 3.6 of the Code.

Manifest incompetence and recklessness alleged

32.12 It was also alleged that the conduct on which allegation 1.2 was based displayed manifest incompetence (or, in the alternative, recklessness).

32.13 It was alleged that Mr Zaman acted for both parties having failed to undertake any of the safeguards set in Outcome 3.6 of the Code. It was submitted that as an experienced solicitor he should have been well aware of the obligations on him in such a situation and of the serious risks involved in acting for both parties to a property transaction. He should have ensured that safeguards were taken, such that both parties to the transaction were properly and fairly represented. His failure to hold individual meetings with the parties, as evidenced by the absence of any notes of such meetings, and his failure to address the conflict issue in the client care letters or the statutory declaration, were submitted to be extremely serious failings demonstrating manifest incompetence.

32.14 In the alternative, if Mr Zaman had appreciated that a risk of a conflict of interest existed, and failed to undertake necessary safeguards, his conduct was submitted to be reckless. As set out above, the Conflict of Interests Register showed that Mr Zaman identified a conflict of interest or a significant risk of one existed. Despite this, it was alleged that inadequate steps were taken to ensure he could properly act for both clients. It was submitted he failed to ensure that acting for both clients was in their best interests and failed to ensure that the benefits of acting for both clients outweighed the risks. It was submitted to have been inappropriate for him to continue to act for both parties in those circumstances.

The First Respondent's Case

32.15 As with the previous allegation, in his Answer Mr Zaman had admitted allegation 1.2, subject to mitigation and explanation, but had denied the aggravating allegations of manifest incompetence or recklessness. As noted above in relation to the previous allegation, Mr Zaman repeatedly stated that he had made admissions with hindsight in order to resolve the matter and that he had done nothing wrong.

32.16 Mr Zaman's response to this second allegation overlapped considerably with his response to allegation 1.1 and he relied on many of the points set out above in his response to allegation 1.2. The Answer stressed that Mr Zaman had identified a potential conflict of interest on 28 August 2014 (the date of the initial meeting with both clients). This was evidenced by the Conflict of Interests Register (which it was submitted gave the Firm knowledge of the matter). Mr Zaman's evidence was that he had placed the Conflict of Interests Register form in a folder and this would be reviewed by Mr Chopra. Mr Chopra had never raised the matter at any supervision meetings. It was stated in the Answer that the Firm had concluded that it could act notwithstanding the potential conflict identified by Mr Zaman, and this was evidenced by the Conflict of Interests Register.

32.17 As set out above, Mr Zaman's case and evidence was that he had advised Person 3 separately and had orally advised him to seek independent legal advice. He had also ensured that he saw an independent solicitor for advice and to make the Statutory Declaration under oath.

32.18 Mr Zaman evidence was that he accordingly considered that he had complied with the obligations on him under the Firm's usual procedures. As set out above, he submitted there was no evidence he had been provided with copies of the Firm's Conflict, Confidentiality and Disclosure Policy and the Risk Management Policy and he stated these should have been brought to his attention. Mr Chopra had been happy with his work, had not raised any issue with this particular file and there had been no comparable incident before or since at any point in his career.

Response to allegations of manifest incompetence or recklessness

32.19 In the Answer, there was submitted to be no, or insufficient, evidence to support the aggravating allegation of manifest incompetence. Mr Zaman relied upon the same evidence and submissions set out in relation to allegation 1.1.

32.20 In essence, the potential conflict had been identified and brought to the Firm's attention, Person 3 had been advised separately and had been referred to an independent solicitor. The circumstances of the transfer, assessed at the time and not with the benefit of hindsight, were not such to suggest an unusual risk. The independent solicitors, HS Lawyers, to whom Person 3 had been referred did not themselves raise any concerns having met with Person 3 and advised on the Statutory Declaration. Mr Zaman had a long unblemished regulatory and disciplinary history which was submitted to be supportive and evidence of his competence and to be wholly inconsistent with the assertion of manifest incompetence.

32.21 As with the previous allegation, the alternative aggravating allegation of recklessness was denied on the basis that Mr Zaman had not been aware of a risk at the time and did not go on to take the risk unreasonably.

The Tribunal's Decision

32.22 As above, on the basis that Mr Zaman said at several points that he had done nothing wrong, the Tribunal approached this allegation on the basis that it was denied in its entirety.

32.23 The Tribunal considered that recognising conflicts of interest, and potential conflicts of interest, was fundamental for any solicitor. It was a foundational principle of practice. Any solicitor should be able to spot, and must respond to, clear and obvious risks of conflict when they arise. In this case, the relationship, or potential lack of it, between Person 3 and Person 1 and the nature of the transaction as recorded above was such that there was a clear risk of conflict.

32.24 Mr Zaman's case was that he had identified this risk at the outset. He completed the Conflict of Interests Register on 28 August 2014, the same day on which he had met with Person 3 and Person 1 (and the other three individuals). The Conflict of Interests Register set out the steps taken to manage the risk which were primarily the individual meetings with the clients and the Statutory Declaration to be prepared for Person 3. For the reasons set out in relation to allegation 1.1, the Tribunal had found that there was no separate meeting with Person 3. The client care letter sent to Person 3, to which the Tribunal had been referred, did not address the conflict. Person 3 had not received separate or tailored advice. The Tribunal had also found in relation to allegation 1.1 that the Statutory Declaration did not come close to suggesting that independent advice on the transaction or its risks had been provided to Person 3.

32.25 During the hearing, and in his Answer, Mr Zaman's case was that the Firm was aware of the identified conflict by virtue of the Conflict of Interests Register. He also submitted that it was not credible that Mr Chopra as the head of conveyancing, who had signed a cheque on the file for the registration of the new ownership, had been unaware of the case.

32.26 Mr Bradley had been unable to put the Firm's case to Mr Zaman in cross-examination, but Mr Chopra's evidence was that he had not been aware of the Conflict of Interest Register completed by Mr Zaman on the file. His evidence was that it had not been added to the Firm's central register, and as a form on the client matter being handled by Mr Zaman this did not come to the attention of Mr Chopra or others at the Firm. The Tribunal preferred the evidence of Mr Chopra. Mr Chopra's oral evidence had been straightforward and consistent. This contrasted with the vague and evasive evidence of Mr Zaman. The Tribunal accepted Mr Chopra's evidence that in a situation where the conflict was so stark and obvious, he would have taken action as supervisor, as he had on a subsequent case to which the Tribunal was referred. The Tribunal did not consider it to be credible that Mr Chopra, as one of the two partners in the Firm, and as an experienced solicitor, would have potentially put the Firm at risk by failing to act had he been aware of such a profound conflict. The Tribunal found it was more likely than not that Mr Zaman had not added the Conflict of Interests Register to the Firm's central register or otherwise brought the case to the attention of Mr Chopra.

32.27 The Tribunal had been referred to the client care letters sent to Person 3 and Person 1. Those letters did not address the risk of a conflict of interest and in fact suggested the opposite. Both clients were told:

> *"At this stage, we are required to inform you of any limits on our willingness or ability to act for you. We do not believe that there are any such limits (unless a conflict of interest develops) whilst you continue to instruct us properly."*

32.28 In respect of client care, Outcome 1.2 of the Code states: "*you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice*". The Tribunal found to the requisite standard that by failing to take steps to provide tailored advice to Person 3 about the potential conflict with Person 1 and the risks involved in the transaction, Mr Zaman had failed to achieve Outcome 1.2 of the Code.

32.29 In respect of Conflicts of Interests, Outcome 3.5 states: "*you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply*". The relevant circumstances are in Outcome 3.6 are:

> "*where there is a client conflict and the clients have a substantially common interest in relation to a matter or a particular aspect of it, you only act if:*
>
> *(a) you have explained the relevant issues and risks to the clients and you have a reasonable belief that they understand those issues and risks;*
>
> *(b) all the clients have given informed consent in writing to you acting;*
>
> *(c) you are satisfied that it is reasonable for you to act for all the clients and that it is in their best interests; and*
>
> *(d) you are satisfied that the benefits to the clients of you doing so outweigh the risks".*

32.30 As described above, the Tribunal had found that the relevant issues and risks were not explained to Person 3. There was no separate meeting with Person 3 and informed consent had not been provided in writing. The Statutory Declaration manifestly did not amount to informed consent following an explanation of the relevant issues and risks. The circumstances in Outcome 3.6 and 3.7 did not apply or had not been satisfied. The Tribunal found to the requisite standard that Mr Zaman had failed to achieve Outcome 3.5 of the Code.

32.31 The Tribunal found that acting in such circumstances was not in the best interests of Person 3 and that the alleged breach of Principle 4 had been proved on the balance of probabilities. The identification of, and responding appropriately to, potential conflicts of interest was such an important cornerstone of client protection that the Tribunal accepted that acting in such circumstances without complying with the required steps to manage such potential conflict inevitably amounted to a failure to maintain the trust placed by the public in Mr Zaman as a solicitor and in the provision of legal service. The Tribunal found the alleged breach of Principle 6 proved to the requisite standard.

<u>The Tribunal's Decision on the aggravating allegations of manifest incompetence or recklessness</u>

32.32 The Tribunal considered the potential risk to Person 3 and the potential conflict of interest was glaringly obvious as stated above. As also stated above, the Tribunal considered that any solicitor would have recognised the very profound risks to Person 3 including that his right of occupation may be put at risk, over and above the lack of any consideration. The Tribunal found that acting as he did, without complying with

the basic and mandatory steps set out in Outcome 3.6, amounted to manifest incompetence. Proceeding in the transaction without having advised Person 3 on the risks in writing, without having strongly advised in writing that Person 3 obtain independent legal advice on the transaction and its risks, without having held a separate meeting at which the risks were highlighted and tailored advice was given and having failed to address the risk of conflict in the client care letter was conduct which no competent solicitor would undertake. The Tribunal considered that any solicitor would be alive to the risks of conflict in the circumstances confronted by Mr Zaman, and as an experienced solicitor his failure to respond adequately and to act when there was such a stark risk of conflict was manifestly incompetent. The Tribunal found the aggravating allegation of manifest incompetence in relation to allegation 1.2 proved on the balance of probabilities.

32.33 Having found manifest incompetence proved, the Tribunal did not go on to consider the alternative aggravating allegation of recklessness.

The Second Respondent

33. Allegation 2.1: Between at least August and October 2014, the Firm, having been alerted to the existence of a conflict of interest or significant risk of a conflict of interest by the First Respondent, acted for both the transferor and transferee to a property transaction and it thereby breached any or all of Principles 4 and 6 of the Principles and failed to achieve any or all of Outcomes 1.2, 3.5 and 3.6 of the Code.

The Applicant's Case

33.1 The client care letters sent to Person 1 and Person 3 included the following paragraph:

> "*We are a two Partner Practice, the partners are Mr Jagdish Chopra and Mr Gurdeep Gill. We confirm that your matter will be handled on a day to day basis by Mr Zaman whom at all times will be supervised by Mr Chopra the supervising partner. Mr Zaman can be contacted by either telephone or email during our opening hours and if he is not available then you may contact his assistant Mr Harpreet Purewal*."

Mr Zaman was accordingly to be supervised "at *all times*" by one of the partners of the Firm.

33.2 As referred to above, the Firm had provided the SRA with its "Conflict, Confidentiality & Disclosure Policy". In addition to the matters already summarised above, the policy stated that "*No decision must be taken unilaterally*" as to whether the Firm could act in a particular conflict situation.

33.3 The Firm was said to have knowledge of the conflict between Person 1 and Person 3, or at least the significant risk of it by virtue of Mr Zaman's completion of the Conflict of Interests Register. The register showed that Mr Zaman had identified a conflict of interest or significant risk of one and it was submitted that the Firm could properly be taken to have been aware of its completion. The SRA also relied on the confirmation that Mr Zaman would be supervised by a partner of the Firm.

33.4 It was alleged that despite the Conflict of Interests Register indicating the need for specific steps to be taken, the Firm failed to ensure that those steps were taken. Had the Firm ensured that those steps were taken it was submitted that there would have been evidence of a referral to the Compliance Officer, evidence that the decision to act had not been taken unilaterally and ultimately more would have been done to properly consider the significant risk of a conflict that the case presented. Further, the Firm should have ensured that Person 3 was advised of the need to obtain independent advice as to the nature of the transaction (rather than for an independent solicitor to merely witness a statutory declaration).

33.5 The SRA's case was not that had the Firm had effective system and controls in place, Person 3's vulnerability and the fraud would have been uncovered. However, it was submitted that the ineffectiveness of the Firm's approach, including by inadequate supervision and review and inadequate compliance with the Firm's policy, meant that relevant questions were not even asked of Person 3 such that the Firm could give adequate advice and, ultimately, decline to act in all the circumstances.

33.6 The Firm's initial response to the SRA, dated 29 November 2019, stated that the routine practice was to attend upon each party separately to ensure that they were under no duress, and to ask one party to make a statutory declaration before an independent solicitor and to obtain separate advice. The fact that client care letters, confirming instructions, were sent to both Person 1 and Person 3 was stressed and this was said to have given them both the opportunity to express any concerns or desire not to proceed with the transaction. The Firm also stated that upon completion of the transfer, correspondence was sent to both parties on 7 November 2014 with confirmation that the transfer had completed. This was said to be another opportunity to contact the Firm to express any concerns (neither party did express such concerns during the procedure or following completion).

33.7 On 30 September 2020, the Firm provided further comments to the SRA and confirmed that the parties were attended upon separately, the Statutory Declaration was prepared and witnessed by an independent solicitor, a conflict register was completed, and a file review form was completed. The SRA obtained a copy of the client file and the Firm's conflict policy and, despite the Firm's assertion to the contrary, there was no client letter to Person 3 upon the conclusion of the transaction on the client file disclosed.

33.8 On 5 May 2021, the Firm responded to the SRA's Notice recommending referral to the Tribunal stating that it had had effective systems and controls in place at the time. It reiterated its practice to see clients individually. It relied, again, upon the conflict register completed by Mr Zaman and the fact that the parties attended HS Lawyers for independent advice. The Firm further asserted that it was only with the benefit of hindsight that the transaction was not in Person 3's best interests. The Firm maintained that it had met Outcome 3.3 and denied acting recklessly.

Alleged breaches of the Principles and the Code

33.9 The SRA's case was that the Firm was duty bound to ensure that it had appropriate systems and controls in place to enable it to identify all relevant circumstances, as set out in Outcome 3.3 and in order to comply with Outcomes 3.5 and 3.6, to ensure that

appropriate steps were taken given its knowledge of the conflict of interest or significant risk of such a conflict of interest arising.

33.10 It was alleged that all relevant circumstances were not identified and despite the Firm's knowledge, summarised above, the Firm failed to ensure that adequate steps were taken. It was alleged that had the Firm's systems and controls been properly embedded within the Firm, and Mr Zaman been properly supervised or instructed, his actions in relation to the conflict of interest, or risk of it, would be evident on the client file and additional steps would have been taken by the Firm.

33.11 It was alleged that in the circumstances, the Firm:

- did not act in the best interests of each client, in breach of Principle 4 of the Principles;
- behaved in a way that failed to maintain the trust the public placed in it as a firm of solicitors and the provision of legal services, in breach of Principle 6 of the Principles; and
- failed to achieve any or all of Outcomes 1.2, 3.5 and 3.6 of the Code.

<u>The Second Respondent's Case</u>

33.12 The allegations were denied.

33.13 Mr Chopra, a director of the Firm and Mr Zaman's supervisor on the relevant file, gave oral evidence having affirmed the truth of his evidence.

33.14 In the Firm's Answer, it was said that the Firm did not have knowledge of Mr Zaman's actions in the case. It was said that whilst Mr Zaman had completed the Conflict of Interests Register, it had not been added to the Firm's central register and so the supervising partner, Mr Chopra, and the Firm generally, had been unaware of it. Mr Chopra explained in his oral evidence that the reason this lack of knowledge was not mentioned in the Firm's replies to the SRA prior to the Answer was that he was responding to the specific points which were raised.

33.15 Mr Chopra said that whilst the relevant events had happened in 2014, he would recall a conflict as stark as the one between Person 3 and Person 1. Asked why the Firm had initially denied there was anything wrong with the conduct of the file, Mr Chopra described his own, and the Firm's, initial responses as "defensive". He stated that this defensive approach explained why it was initially denied that there was a clear conflict of interest, in a letter from the Firm to the SRA dated 5 May 2021, whilst he said in his oral evidence during the hearing that the Firm would never have acted had he known about the conflict in the case. A conflict had to be brought to his attention for him to be able to act. He denied that he had sought to mislead the SRA. In his oral evidence he stated that this was a case he "wouldn't touch with a barge pole" where the risk was plain.

33.16 Mr Chopra had been Mr Zaman's supervisor, but this did not mean that he was familiar with the content of every one of his files. He did not supervise on a daily basis and Mr Zaman was a solicitor with over a decade of experience. Mr Chopra said that he would review two cases every month. This file relating to the transfer of Person 3's house was not one of the cases he had reviewed, and his evidence was that it was never brought to his attention. The Firm's policy had required Mr Zaman to bring the conflict to his attention and Mr Chopra's evidence was that he had not done so. Supervision was said to last a minimum of half an hour a month and would include a discussion of any concerns that the supervisee had, a discussion of the two files reviewed by Mr Chopra and training and CPD requirements.

33.17 Mr Zaman had suggested to Mr Chopra during cross examination that the Firm's policies were not brought to his attention. Mr Chopra's evidence was that having recruited Mr Zaman as an experienced solicitor, they had dealt with high-risk cases involving conflict together previously. He referred the Tribunal to an example where, having reviewed the relevant file, he had told Mr Zaman to reiterate to that client that independent legal advice be taken and consent to act be obtained in writing. Mr Chopra said in evidence that policies were brought to the attention of staff during inductions. He also said that it did not need a policy to tell you that this was a high-risk situation.

33.18 It was said in the Answer that the Conflict Policy originally supplied to the SRA by the Firm (quoted in the Rule 12 Statement) was not in fact the version in force at the relevant time. This draft had stated that "*Written consent is not required if not possible to obtain*" in situations where there was a conflict between clients but they had the same objective. However, both the 2013 and 2014 conflict policies in force at the Firm had stated that written client consent was required to act in a conflict situation. In his evidence Mr Chopra said that the wrong policy (the draft version) had initially been sent to the SRA in error in response to the formal Production Notice served on the Firm. Mr Chopra did not accept that it could have been confusing to Mr Zaman which version of the policy was in force. The draft version which had incorrectly been supplied to the SRA was only available to partners and the versions which were in force in 2013 and 2014 were clearly dated.

33.19 Mr Chopra disagreed with a suggestion from Mr Zaman, made during cross examination, that he had followed the Firm's procedures. Mr Chopra said that Mr Zaman had failed to bring the conflict to his attention, or the attention of the Firm's other partner, and failed to follow the Firm's policy. Having seen Person 1 and Person 3, seen the age discrepancy and the lack of consideration for the transfer, this was a high-risk case which should have been brought to Mr Chopra's attention. Supervision would then have been given. Mr Chopra disagreed that the fact he had signed a cheque for submission to the Land Registry meant he was aware of the details of the transaction and said he signed numerous cheques on the basis that completion of the transaction had happened.

33.20 Mr Bradley was unable to cross-examine Mr Zaman on behalf of the Firm. Mr Zaman affirmed the oral evidence he gave when being cross-examined by the SRA and when answering questions from the Panel but he declined to answer questions put on behalf of the Firm.

33.21 Mr Bradley submitted that the thrust of the one allegation against the Firm relied upon it having been "*alerted to the existence of a conflict of interest or significant risk of a conflict of interest by the First Respondent*" when this had not happened. The Firm, and Mr Chopra in his evidence, had identified the policies and procedures which were in force in relation to potential conflicts at the relevant time. There was submitted to be no evidence before the Tribunal that Mr Zaman had complied with the requirements of the policies or that Mr Chopra or the Firm had been aware of the conflict in this case. It was submitted that Mr Chopra's account on this had been consistent over time, and it was unfortunate that he had been unable to put this case to Mr Zaman as he had not submitted to cross examination from the Firm.

33.22 The Firm's risk assessment policy, dated February 2014, of which it was said Mr Zaman would be aware from his induction and as an experienced solicitor, highlighted that an indicator of medium to high risk was "*Transfer of properties by way of gifts where the parties are unrelated*". The policy required "*The Supervisor must be made aware of all cases seen as medium to high risk and must be notified without delay*". The Firm's case, as set out above, was that this did not happen.

33.23 Mr Bradley submitted that Mr Zaman's responses to questions put on behalf of the SRA about the Firm's requirement for clients to be seen separately where a potential conflict had been identified were not credible. He submitted that it appeared Mr Zaman had simply not considered safeguarding against the risks in the transaction from Person 3 to Person 1. The risk assessment policy had required that clients involved in a medium to high-risk property transaction "*should obtain independent legal advice (to be evidenced in a document provided by the independent legal advisor) where required to do so in high-risk transactions such as the transfer of assets*". The policy also stated "*Where there is a conflict, we must not act for the client unless written consent has been obtained, and approval of the Supervisor*". These policy requirements were submitted to be consistent with Mr Chopra's oral evidence. Amongst the factors in the risk policy of indicators of the vulnerability of a client was the "*Transfer of property to a family member or unrelated person for no consideration*" which was submitted to apply in this case.

33.24 The Tribunal was referred to the Firm's precedent client care letter in which it was said, in red capitalised text "*if a conflict is identified, refer to compliance officer*". The Firm's case was that despite identifying a conflict, as demonstrated by Mr Zaman's completion of the Conflict of Interests Register, this was another failure by Mr Zaman to follow the Firm's policies and procedures as he was said not to have referred the matter to the Firm's compliance officer.

33.25 Mr Bradley described what he termed a "catalogue of failures" by Mr Zaman which resulted in the Firm being unaware of the conflict between Person 3 and Person 1. In addition to the matters mentioned above, he stressed that there was no evidence Mr Zaman had seen the two clients separately as required. His one attendance note was inadequate and related only to the initial meeting with both clients (at which three additional individuals were present).

33.26 Mr Bradley submitted that the documentary evidence showing how potential conflict situations were dealt with by Mr Chopra, albeit dating from after the case involving Person 3's property, were illustrative of his likely approach and supported the evidence

that he had been unaware of the case in this instance. It was also submitted that Mr Zaman had received adequate training from the Firm and the Tribunal was referred to his training record.

33.27 It was submitted that this case was so striking that it would have been picked up had it been included on the Firm's central register as it should have been. It was further submitted that Mr Zaman had vast relevant experience before joining the Firm and that it was not credible that he would not have known how he should deal with such an obvious conflict. It was submitted that the Tribunal could be satisfied, on the balance of probabilities, that the allegation against the Firm was not proved.

The Tribunal's Decision

33.28 The allegation against the Firm rested on it "*having been alerted to the existence of a conflict of interest or significant risk of a conflict of interest by the First Respondent*".

33.29 The SRA's case highlighted the fact that the client care letters in the case stated that Mr Zaman would be supervised at all times by the Firm's partners. The Tribunal accepted the uncontentious submission that constant supervision did not mean that the supervisor made themselves aware of every aspect of every case handled by their supervisee. The Tribunal also considered it reasonable that the extent of the oversight would be informed to some extent by the experience of the supervised solicitor. Mr Zaman was an experienced conveyancer and the Firm's partners would not anticipate needing to micromanage him.

33.30 The Tribunal accepted Mr Chopra's unchallenged evidence that his supervision of Mr Zaman consisted of a monthly meeting of at least thirty minutes at which two files selected at random were discussed. There was no documentary evidence before the Tribunal that the case had been discussed during monthly supervision sessions between Mr Chopra and Mr Zaman. Mr Zaman had not suggested in his evidence or when cross-examining Mr Chopra that he had raised the case during supervision or otherwise. Rather, Mr Zaman submitted that it was not credible that as head of conveyancing and given the Conflict of Interests Register and the signing of a cheque on the file, that Mr Chopra was unaware of the matter and thereby the conflict. The Tribunal found that the case and the issues it raised were not discussed during supervision meetings.

33.31 The SRA also relied on the terms of the Firm's "Conflict, Confidentiality & Disclosure Policy" which stated that where a conflict situation had been identified, no decision must be taken unilaterally. As noted above, Mr Zaman did not suggest in his evidence or his Answer that he had directly informed Mr Chopra or anyone else at the Firm about the risk of conflict outside of supervision. He stressed his completion of the Conflict of Interests Register on the day he met with the two clients (and the three other individuals). For the reasons set out in relation to allegation 1.2, the Tribunal had found that it was more likely than not that Mr Zaman had not added the Conflict of Interests Register to the Firm's central register or otherwise brought the case to the attention of Mr Chopra.

33.32 The absence of a copy of the central register did not assist the Tribunal and was a matter of some concern. Nevertheless, on the evidence available to the Tribunal, it was not clear to the requisite standard that the Firm had in fact been aware of the conflict of

interest on this case. The Tribunal did not consider that the Firm's initial defensive stance in correspondence with the SRA, or the failure to state initially that the Firm had not been made aware of the risk of conflict by Mr Zaman, or the provision of the wrong Conflict Policy to the SRA, was sufficient to bridge this evidential gap and discharge the burden of proof on the SRA or reach the requisite standard of proof, which was the civil standard.

33.33 The Tribunal considered that the systems established by the Firm to manage the risk of conflict and to supervise an experienced solicitor were adequate. Without knowledge of the risk of a conflict, caused by Mr Zaman's actions or omissions, the Tribunal found that the allegations against the Firm must inevitably fail. Without having been alerted to the risk of a conflict, it had not been proved that the Firm acting for Person 3 and Person 1 amounted to a breach of the specified Principles or Outcomes from the Code.

Previous Disciplinary Matters

34. There were no previous Tribunal findings against Mr Zaman.

Mitigation

35. Mr Zaman was referred to the Tribunal's Guidance Note on Sanctions (10th Edition/June 2022) and given time to prepare his submissions on mitigation after the Tribunal's decisions on the allegations were announced.

36. Mr Zaman stated that he had no other disciplinary or regulatory issue before or since the issues on this one case. Some considerable time had passed since the events. This one case was not reflective of his character. He had an otherwise unblemished record.

37. Mr Zaman was supervised at all times during his employment with the Firm and no other issues had been raised. He was surprised at the Tribunal's findings and reiterated that he believed he had acted in his clients' bests interests. He suggested that had the Firm been more forthright in its policies and oversight, things would have been different. He said that it was difficult to take in the Firm blaming him for events. He also stated that he would not act in the same way again.

38. Mr Zaman reiterated that he had genuinely considered that the Statutory Declaration provided the reassurance to allow him to act and carry out the clients' instructions. He said that he had left the Firm on good terms and also that he had done nothing wrong.

39. Mr Zaman referred to the admissions he had made in his Answer. He had cooperated with the SRA and been open and his frank in his dealings with them.

40. Mr Zaman stated that he and his family had already been affected by the proceedings and he invited the Tribunal not to impose a sanction which interfered with his ability to practise. He submitted that it would be draconian for him to lose his current employment and repeated that this was something for which the Firm was responsible rather than him. He concluded by stating that he would never act in such a situation again.

Sanction

41. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of Mr Zaman's culpability and the harm caused, together with any aggravating or mitigating factors.

42. In assessing culpability, the Tribunal found there was no specific motivation for the misconduct. It had been the result of the incompetence which had been found. There had been no specific planning or conscious attempt to circumvent proper processes or to obtain any advantage for anyone; there had been a profound failure to take the basic necessary steps by reason of the manifest incompetence which had been found. Mr Zaman had had direct control and responsibility for the circumstances of the misconduct. He had made the correct initial assessment that there was a risk of conflict in the transaction but had failed to take the various steps which were necessary as a result. He was an experienced solicitor at the time of the misconduct with over ten years of experience. He had not misled the SRA. The Tribunal assessed Mr Zaman's culpability as high.

43. The Tribunal then turned to assess the harm caused by the misconduct. The reputation of the profession was inevitably seriously harmed by the misconduct which involved failing to respond appropriately to the risk of conflict. The fraudulent intentions of Person 1 could not be foreseen, but the failure to ensure that appropriate advice about the substantial risks in the transaction was provided to Person 3 contributed to significant harm to him. The Tribunal considered these risks were thoroughly foreseeable and indeed obvious.

44. The findings that Mr Zaman had acted with manifest incompetence was a serious aggravating factor. The Tribunal considered that Mr Zaman's continual blaming of others, including saying that he should have been told what to do and that the issues on the case were obvious for all to see from the file without him taking steps to alert others, was a further aggravating factor. As was the fact that Person 3 was to some extent vulnerable and Mr Zaman had failed to advise him about the risks he faced. It was a further aggravating factor that the risk of conflict and the need to advise and act accordingly was so blatant, and the steps required to manage the risk so basic and fundamental. Mr Zaman ought reasonably to have known that his conduct was in material breach of his obligations to protect Person 3's interests and the reputation of the legal profession.

45. In mitigation, the Tribunal accepted that the extent of the direct harm to Person 3 was caused by the fraud perpetrated against him by others. However, Mr Zaman's professional failings had helped create the environment in which that fraud was effected and Mr Zaman's own misconduct could not be said to be the result of fraud. It was, however, a single episode on a single file in an otherwise unblemished career. Mr Zaman had made various admissions in his Answer, but had also repeatedly stated throughout the hearing that he had done nothing wrong. The Tribunal found that he had displayed no meaningful insight and no remorse.

46. The Tribunal assessed the misconduct as very serious. The Tribunal had regard to the Sanctions Guidance and to assess the appropriate sanction began with No Order and worked up in terms of seriousness until a fair and proportionate sanction was arrived at. The seriousness of the misconduct, which included the aggravating factor of manifest incompetence in the context of the transfer of a 65 year old's client's house to a much younger man with no known relationship between them for no consideration, was such that No Order, a Reprimand or a Fine were inadequate sanctions. None of these options were commensurate with the seriousness of the misconduct or the risk to the public and the reputation of the profession.

47. The Tribunal had regard to the decision in Iqbal in which it was said:

> *"It seems to me that Trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgment, the Appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It seems to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the Appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the Roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence".*

48. Mr Zaman had displayed no meaningful insight into his misconduct. He had repeatedly stated that he had done nothing wrong, when he had failed to take the most basic steps to respond appropriately to the very obvious risks in the transaction. The Tribunal had profound concerns that this lack of insight coupled with the manifest incompetence in the circumstances in which it had been found, notwithstanding the findings relating to a single file several years ago, meant that Mr Zaman posed a very serious and continuing risk to the public and the reputation of the profession. He had refused to answer questions put on behalf of the Firm, and had been evasive. His evidence was incredible and he had repeatedly reiterated that he considered he had done nothing wrong. The Tribunal had no confidence that he would not misconduct himself in a similar way in the future.

49. The Tribunal did not consider that a Restriction Order or a Suspension from practice adequately addressed the seriousness of the misconduct or the need to protect the public and the reputation of the profession. The Tribunal saw no basis to conclude that the position would be different after a period of suspension. Whilst it may not always be inevitable that a finding that a solicitor had acted in a specific instance with manifest incompetence required that they be struck off the Roll, in this case the Tribunal was driven to this conclusion by virtue of the Tribunal's profound concerns about the risk to the public and to the reputation of the profession. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

The Tribunal determined that the findings against Mr Zaman, including manifest incompetence, required that the appropriate sanction was strike off from the Roll.

Costs

50. Ms Sheppard-Jones applied for costs on behalf of the SRA in the sum of £23,550. This included a fixed-fee, the lowest category of such fees, from Capsticks Solicitors of £18,500 plus VAT.

51. Ms Sheppard-Jones submitted that whilst no findings had been made against the Firm, it was appropriate to issue proceedings against it. Costs were not sought against the Firm. Ms Sheppard-Jones stated that, in any event, had proceedings only been issued against Mr Zaman the fee would have been exactly the same and the majority of the work undertaken would have been required.

52. Ms Sheppard-Jones acknowledged that time had been incurred in relation to the Firm and she took the Tribunal through the SRA's schedule of costs and indicated potential reductions in time where this had been the case. Ms Sheppard-Jones stated that she had prepared the Rule 12 Statement and had liaised with Person 3, and medical practitioners, in the preparation of the case. The total hours recorded on the preparation and presentation of the case was just over 250 hours. If the Tribunal was minded to discount half of those hours, on the basis that they related to work on the case against the Firm, then the notional hourly rate for the work completed by Capsticks in relation to Mr Zaman would be around £148 per hour which was submitted to be reasonable.

53. In reply, Mr Zaman stated that many of the procedural issues in the case had been caused by the Firm. This had included correspondence and applications for adjournments. He stated that the costs figure included work relating to the Firm and he should not be required to meet those costs. He was an employee of the Firm and the costs should be shared and the overall level of costs should be proportionate.

54. The Tribunal asked Mr Zaman whether he wished to provide evidence about his means (the Tribunal's Standard Directions had provided for his but he had not done so in advance of the hearing). Mr Zaman was reminded that it was incumbent on him to provide details and evidence of his means if he wished these to be taken into account. He did not do so.

55. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal carefully reviewed the Applicant's schedule of costs. The time spent on the case was significant, but the fixed-fee arrangement meant this time did not translate directly into additional fees. The Tribunal noted the submission that the fixed-fee would have been the same had proceedings only been brought against Mr Zaman, and found the notional hourly rate for the work completed to be reasonable and proportionate. However, the Tribunal considered that a small reduction to the costs figure should be applied to reflect the fact that one of the respondents had been acquitted and some proportion of the time spent was on work relating to the Firm and these costs should not be borne by Mr Zaman. The Tribunal accordingly considered that it was appropriate to reduce the costs figure to £20,000.

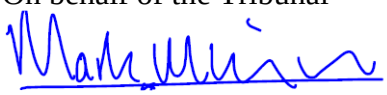
56. Mr Zaman had not provided any Statement of Means and had not sought to provide any information during the hearing when the issues was raised with him. In line with its Standard Directions, of which Mr Zaman had received a copy, the Tribunal consequently proceeded without regard to his means. The Tribunal ordered Mr Zaman to pay the SRA's costs of and incidental to this application fixed in the sum of £20,000.

Statement of Full Order

57. The Tribunal ORDERED that the First Respondent, MOHINUZ ZAMAN, 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 £20,000.

58. The Tribunal found the allegation again the Second Respondent, C & G SOLICTORS LIMITED was NOT PROVED and it made no Order against the Second Respondent as to costs.

Dated this 10th day of November 2022
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
10 NOV 2022

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Chair