SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12291-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SONIA HUNJAN Respondent

Before:

Mr P Jones (in the chair)
Mrs L Boyce
Mrs S Gordon

Date of Hearing: 5 December 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Ms Sonia Hunjan, were that whilst in practice as a solicitor at Rana & Co Solicitors ("the Firm"), she:

1.1 In June to July 2017, facilitated the sale of Property A in circumstances where she was on notice that the owner of Property A (Client A) might lack the relevant mental capacity to make decisions about the sale of Property A, without undertaking adequate enquiries as to Client A's capacity, and thereby breached Principles 4 and 6 of the SRA Principles 2011.

1.2 In July to November 2016, in respect of the sale of Property B, facilitated a transaction which bore the hallmarks of illegitimate attempts to circumvent third party interests of that property, without undertaking adequate enquiries as to the legitimacy of the transaction, and in so doing she thereby breached Principles 2 *[P2 withdrawn]* and 6 of the SRA Principles 2011 and failed to achieve Outcome 11.1.

1.3 In April to May 2018, in respect of a loan secured against Property C, acted for both the borrower and the lender so as to give rise to a client conflict or a significant risk of one, and thereby breached Principles 3, 4 and 6 of the SRA Principles, and failed to achieve Outcome 3.5.

2. Additionally it is alleged that in relation to Allegation 1.2, the Respondent acted:

2.1. Recklessly *[Recklessness withdrawn]*; and/or 2.2 With manifest incompetence. Neither of the above is pleaded as a necessary element of Allegation 1.2.

Documents

3. The Tribunal considered the documents submitted in support of the application for an Agreed Outcome which were contained within an electronic hearing bundle agreed by the parties.

Background and Factual Summary

4. The Respondent was admitted to the roll of solicitors on the 15 of June 2001. The Respondent joined the firm as an assistant solicitor on the 13 of October 2014.

5. The allegations related to three property transactions in which the Respondent acted. In two of them she either failed to notice obvious signs of potential illegitimacy or she noticed them but continued to act without undertaking adequate further inquiries or ceasing to act in the third she acted for a purchaser and a lender in a property transaction in circumstances where there was a conflict of interest or a significant risk of a conflict of interest.

6. Across all three there was a pattern of the Respondent failing to approach property transactions with sufficient attention to potential red flags. The facts of one of the three transactions were so stark that in failing to take note of the relevant warning signs she was manifestly incompetent.

Application for Leave

7. The parties lodged the application less than 28 days from the date of the substantive hearing and therefore required the leave of the Tribunal to submit the Agreed Outcome proposal.

8. The Applicant and Respondent apologised for the late submission and explained that no discourtesy had been intended to the Tribunal. It was explained that the parties had been corresponding about the terms of a potential Agreed Outcome since 27 September 2022. The Respondent had been representing herself throughout proceedings with the assistance of her daughter, Mrs Toor. The Respondent had initially indicated that she would make full admissions but, given that manifest incompetence on the one hand and recklessness/integrity on the other were pleaded in the alternative, it was necessary to ascertain precisely what was encompassed by the Respondent's admissions and the consequences that this would have upon the sanction. These issues had taken some time to be considered by both the Applicant and the Respondent.

9. The Tribunal noted that the application was submitted on 2 December 2022 with the substantive hearing listed to be heard on 5 December. The application had been made very late and on the face of it there appeared to be no persuasive reason why it could not have been made earlier. The reason for the time limit is so the Tribunal may make proper arrangements for listing matters and for the Tribunal members, who work in other roles and professions, to ensure their availability over a number of days.

10. That said, given the circumstances relating to the Respondent and the proposal set out in the Agreed Outcome, the Tribunal decided it was right to grant the parties leave.

Application to withdraw allegations

11. The Respondent admitted all the allegations set out above. She admitted allegation 1.2 on the basis that she was manifestly incompetent but not on the basis that she was reckless or lacking in integrity.

12. The allegations of manifest incompetence on the one hand and recklessness/ lack of integrity on the other were put in the alternative and were mutually exclusive: only one could be found. Both were and remained proper allegations for testing at trial. However, the Applicant conceded that a finding of manifest incompetence was an appropriate conclusion of the matter on these facts and that in any event the sanction would be material similar either way.

13. In the circumstances the Applicant sought to withdraw the allegations of a breach of principle two and of recklessness.

14. The Tribunal was not certain that recklessness and manifest incompetence had been pleaded in the alternative however for the purposes of the present application this detail was not important and again given the reasoned explanation by the parties the Tribunal granted leave to the Applicant to withdraw the allegations of recklessness and lack of integrity.

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

15. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions (10th Edition/June 2022) ("the Sanctions Guidance").

16. The proposed sanction was that the Respondent pay a fine in the sum of £15,000.

17. It was also agreed that restrictions be imposed upon the Respondent's practice for an indefinite period (with liberty to apply).

Findings of Fact and Law

18. The Applicant was required to prove the allegation on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

19. The Tribunal reviewed all the material before it and the Tribunal was satisfied on the balance of probabilities that the Respondent's admissions were properly made with respect to each allegation, including the allegation of manifest incompetence.

20. Having regard to the seriousness of the admitted misconduct the Tribunal was satisfied with the sanction proposed by the parties which it considered was appropriate and proportionate to protect public confidence in the profession and to protect the public against the risk of further harm. The serious circumstances of this case required no lesser sanction.

21. Whilst the misconduct was not calculated or deliberate and there was no financial gain for the Respondent other than the ordinary fees that she would have earned on each of these transactions they collectively demonstrated a pattern of systematically inadequate practice. A solicitor with the Respondents level of experience in a specialist area ought to have known better albeit the misconduct resulted in part from wrongdoing by her clients.

22. It was noted that the Respondent had co-operated fully with the Applicant's investigation, and she had made full and early admissions.

23. The level of the fine marked the seriousness of the misconduct and the restrictions on practice ensured that the Respondent would not be placed in a position where she was without adequate supervision and oversight.

Costs

24. The parties agreed that the Respondent should pay the Applicant's costs of this matter in the sum of £23,650.00.

25. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, SONIA HUNJAN solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £23,650.00.

2. The Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows: 2.1 The Respondent may not:

   2.1.1 Act as a manager or owner of an authorised body or authorised non-SRA firm;

   2.1.2 Subject to the condition above the Respondent may act as a solicitor only as an employee where the role has first been approved by the Solicitors Regulation Authority;

   2.1.3 Act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any authorised body or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) for any authorised non-SRA firm.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 21ST day of December 2022
On behalf of the Tribunal

P Jones
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

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

B E T W E E N:-

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

SONIA HUNJAN

Respondent

AGREED STATEMENT OF FACTS AND OUTCOME

By its application dated 22 December 2021, and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority (SRA) brought proceedings before the Solicitors Disciplinary Tribunal (Tribunal) making three allegations of misconduct against the Respondent, Ms Sonia Hunjan. Definitions and abbreviations used herein are those set out in the Rule 12 Statement (the "Rule 12 Statement").

Allegations

1. The allegations against the Respondent, made by the SRA within that Rule 12 Statement were that, whilst in practice as a solicitor at Rana & Co Solicitors ("the Firm"), she:

    1.1 In June to July 2017, facilitated the sale of Property A in circumstances where she was on notice that the owner of Property A (Client A) might lack the relevant mental capacity to make decisions about the sale of Property A, without undertaking adequate enquiries as to Client A's capacity, and thereby breached Principles 4 and 6 of the SRA Principles 2011.

    The facts and matters relating to Allegation 1.1 are set out at paragraphs 10-17 and 62 below.

1.2 In July to November 2016, in respect of the sale of Property B, facilitated a transaction which bore the hallmarks of illegitimate attempts to circumvent third party interests of that property, without undertaking adequate enquiries as to the legitimacy of the transaction, and in so doing she thereby breached Principles 2 and 6 of the SRA Principles 2011 and failed to achieve Outcome 11.1.

The facts and matters relating to Allegation 1.2 are set out at paragraphs 18-52 and 63-64 below.

1.3 In April to May 2018, in respect of a loan secured against Property C, acted for both the borrower and the lender so as to give rise to a client conflict or a significant risk of one, and thereby breached Principles 3, 4 and 6 of the SRA Principles, and failed to achieve Outcome 3.5.

The facts and matters relating to Allegation 1.3 are set out at paragraphs 53-61 and 65-67 below.

2 Additionally it was alleged that in relation to Allegation 1.2, the Respondent acted:

2.1 Recklessly; and/or
2.2 With manifest incompetence.

Neither of the above was pleaded as a necessary element of Allegation 1.2.

The facts and matters relating to Allegation 2.2 are set out at paragraphs 64 below.

Application to withdraw allegations of breach of Principle 2 and recklessness

2. The Respondent admits all the allegations set out above. She admits Allegation 1.2 on the basis that she was manifestly incompetent, but not on the basis that she was reckless or lacking in integrity.

3. The allegations of manifest incompetence on the one hand, and recklessness/lack of integrity on the other, were put in the alternative and were mutually exclusive: only one could be found. Both were and remain proper allegations for testing at trial. However, the

Applicant is of the view that (a) a finding of manifest incompetence is an appropriate conclusion of the matter on these facts; and in any event (b) the sanction would be materially similar either way.

4. In the circumstances, the Applicant seeks to withdraw the allegations of a breach of Principle 2, and of recklessness.

Agreed Facts

Professional Details

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 1 (and amended by paragraph 4) of this statement, are agreed between the Applicant and the Respondent.

6. The Respondent (SRA ID: 258478) was admitted to the roll of solicitors on 15 June 2001. The Respondent joined the Firm as an assistant solicitor on 13 October 2014.

7. Rana & Co is the trading name of Rana Legal Limited, which was incorporated on 27 April 2011. The Firm was authorised by the SRA on 3 January 2012.

8. The Firm's approximate fee income is from the following areas: immigration 44%; landlord and tenant 3%; commercial property 3.4%; residential property 36.2%; matrimonial 5.6%; and litigation 7.8%.

Executive summary

9. The allegations relate to three property transactions in which the Respondent acted. In two of them, she either failed to notice obvious signs of potential illegitimacy, or she noticed them but continued to act without undertaking adequate further enquiries or ceasing to act. In the third, she acted for a purchaser and a lender in a property transaction in circumstances where there was a conflict of interest or a significant risk of one. Across all three, there is a pattern of the Respondent failing to approach property transactions with sufficient attention to potential red flags. The facts of one of the three transactions were so stark that, in failing to take note of the relevant warning signs, she was manifestly incompetent.

The facts and matters relied upon in support of the allegations

Property A

10. An attendance note dated 19 June 2017 shows that the Firm was instructed by Client A that day in respect of the sale of her property, Property A, for a price of £140,000. Client A was an elderly lady accompanied by her two sons. The attendance note records Client A as saying that she shared a bank account with her son and wished the proceeds of sale to be paid into that account. She agreed to sign a form of authority. The Firm sent a retainer letter the same day, identifying the Respondent as the solicitor dealing with the matter.

11. The Respondent corresponded with Slough Borough Council ("SBC") regarding registered charges against Property A in favour of the Council[1]. On 4 July 2017, SBC wrote to the Respondent on three separate occasions:

    a. First, referring to outstanding care charges which "*have been held due to Court of Protection involvement"*.

    b. Second, referring to further care home charges. The weekly charge:

        > "was deferred due to [Client A] lacking capacity to enter into a formal agreement and the family were aware that these charges were pending and would be incurred on sale of the property or on deputyship being granted."

    c. Third, stating:

        > "I am [Client A's] Social Worker who has been working with her for some time. I was in the process of working with her sons to apply for deputyship to manage her property and affairs, failing this, the Council is putting an application in to the Court of Protection possibility this week if not already presented by our legal team...
        >
        > Could you please provide me with a copy of her instructions or the authority to act for her for our records as we were unaware of this new development?"

[1] Section 18 of the Care Act 2014 imposes a duty upon local authorities to meet the assessed eligible care needs of adults for whom they are responsible. Section 14 provides that a local authority may charge the adult for the cost of meeting such needs. Outstanding care fees can in certain circumstances be charged against a property.

12. Section 1 of the Mental Capacity Act 2005 creates a presumption in favour of a person having mental capacity. Nevertheless, by virtue of the emails cited in the immediately preceding paragraph, the Respondent was on notice of the possibility that Client A lacked the capacity to make decisions about her property and affairs, including decisions about the sale of her home. If the Respondent lacked such capacity then (i) decisions about whether to sell her home could only be taken in her best interests and by an appropriately authorised decision-maker: s.4 Mental Capacity Act 2005; and (ii) there may have been consequential impacts upon the validity of the sale. The information contained in the emails was thus of particular importance. Before proceeding further with the sale, the Respondent ought to have made enquiries regarding Client A's mental capacity, which she could have done (for example) by contacting Client A, Client A's sons, SBC, or the care home.

13. There were three separate emails, all of which raised issues as to the Respondent's capacity. The emails were unambiguous. They were not long or complicated. The Respondent read the emails, and responded to parts of them. Nevertheless, in interview, the Respondent says that she focussed on the fact that there were outstanding charges and overlooked the references to mental capacity.

14. The Respondent took no further steps regarding the issue that had been raised concerning Client A's capacity. Exchange and completion of Property C proceeded without further hindrance and took place simultaneously on 6 July 2017, at a sale price was £140,000.

15. The sale of Property A completed on 12 July 2017. After various charges were discharged, the residual proceeds of sale were £53,625.98 which were remitted by cheque to Client A.

16. In subsequent correspondence between SBC and the Respondent dated 25 August 2017, the Council asked the following questions amongst others:

> "2. At the time that [Client A] gave instructions to you in all matters relating to the sale of her property, did you have any reasons to believe that she may or may not have the mental capacity to make a decision in relation to the sale of her property.
> 3. If you had any reason to believe that [Client A] did not have the mental capacity to make a decision in relation to the sale of her property, please confirm whether you took any steps to ensure that she understood the significance of the decision made (sic)

4. As you were aware at the time of the sale that [Client A] was in a respite care, which was a temporary accommodation, please confirm whether you explored any options in relation to her long term care...
5. We have been instructed that [Client A] was upset at the news that her property was sold and that she could not remember instructing yourself to sell her property..."

17. The Respondent responded on 31 August 2017 as follows:

"2. No, [Client A] came to us with her two sons and said that her property was being repossessed and that she needed to sell it.
3. We did not believe that there was any issue with her mental capacity.
4. We were not aware that she was in long term care. She did not inform us that she was in care and we found out when you wrote to use.
5. We do not understand how [Client A] can say this as she did not inform us that she had any mental problems and we were not aware of any..."

Property B

18. Client B had been in a relationship with a Miss D. Together they had owned Property B, originally as joint tenants. Under a joint tenancy, either co-owner automatically inherits the other's share in the event of their death, irrespective of any will.

19. In 2011, Miss D severed the joint tenancy with notice served on Client B and filed at the Land Registry. The effect of severing the joint tenancy was to make Client B and Miss D tenants in common rather than joint tenants. Upon the death of either partner, that partner's share in the equitable interest in Property B would now pass to whomever was entitled to it under that partner's will.

20. By the notice of severance dated 21 October 2011, Miss D also sought to place two restrictions on Property B:

a. That "*No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court*" (the "Restriction"); and

b. That "*No disposition of the Registered estate by the proprietor of the registered estate is to be registered after the death of either registered proprietor without written consent of the personal representatives[2] of the deceased*."

21. The second of these restrictions is an unusual one in practice.

22. The second of these restrictions was not entered on the register of title. Nonetheless, it was included in the notice of severance a copy of which the Respondent took and had on file.

23. The purpose of such restrictions is to protect potential third party interests in a property.

24. Indeed, the standard explanatory notes explain that:

> "You and [Miss D] remain the registered proprietors of the property referred to above and together you may still sell or otherwise deal with it in the usual way. However, as a result of the entry of the above restriction on the register, the position will now be different if one or more of the proprietor dies, so that only one proprietor is left."

The explanatory notes explained that:

> "3. <u>Purpose and effect of the restriction</u>
>
> The purpose of the restriction is to safeguard the rights of the people who may have an interest in the property but who are not themselves proprietors (such as those to whom property has been left by a proprietor who has died). The restriction makes it clear that there must generally be at least two people to share the responsibility of making sure that the money received on a sale or other dealing with the property is correctly dealt with.
>
> ...if one or more of the proprietors dies, so that only one of them remains, the restriction will mean that we will not be able to register any transfer or other dealing with the property for money. In practice this means that the remaining proprietor would not be able on his or her own to sell, mortgage or otherwise deal with the property for money, because the restriction would stop registration. The remaining proprietor would then need to arrange for at least one other person to become joint proprietor(s) of the property and to act with him or her as trustee."

25. Miss D died in December 2013.

[2] i.e. those who would be responsible for protecting the interests of the beneficiaries to the estate of the deceased

26. On 25 July 2016, Client B emailed the Respondent stating "*I believe you are familiar with some of the issues surrounding a property I own, Property B, and the problem of the redundant Form A restriction, entered (improperly entered, I add) on the Land Registry*." Client B was a sole owner of (50 percent of) Property B and, in light of the Restriction, could not sell Property B without an Order of the Court. He wished to remove or otherwise avoid the Restriction so that he could sell Property B by himself.

27. On or about 28 July 2016, Client B instructed the Firm "*in relation to your intended sale of [Property B] and with the removal of the restriction on the title*" and the Firm sent a retainer letter identifying the Respondent as solicitor with conduct of the case.

28. Client B provided the Respondent with a copy of mirror wills made by him and Miss D on 16 August 2002. Under the wills, the executors of their estate were to be the partners of Cartwright Cunningham Haselgrove & Co Solicitors ("CCH") or any successor firm at the date of her death. Miss D's will left the whole of her estate to Client B but provided that, should the gift lapse, the estate was to be left instead to Miss D's two sons in equal shares.

29. On 29 July 2016, Client B wrote to the Respondent enclosing Miss D's original application dated 20 October 2011 to enter the restriction; and the notice of severance of a joint tenancy. Client B's covering email said:

> "Attached is a scan of the 3 documents I know about that constituted the application by the distinguished practitioner Mr Geoffrey Gayer of CCH, to the Land Registry to enter the Form A restriction, on behalf of his purported client, the definitely incapable [Miss D].
>
> Also attached is the Land Registry's standard notice to me of the results of this application – a B61 notice of severance of a joint tenancy."

30. The excuse Client B thus gave for the existence of the restriction was that Miss D had been incapacitous at the time she entered it. The Respondent made no further inquiries about this, whether with CCH or anyone else.

31. On 9 August 2016, Client B wrote to the Respondent as follows:

> "More importantly, we are debating the intricate pros and cons of appointing a second trustee, or removing the restriction, or doing both – and, if both, then the timing of removing the restriction. However, we definitely need to decide, and

then put in the relevant applications to the Land Registry by the end of this week at the latest.

My position is that a second trustee is a no-brainer, since it gives full legal power to side-step the restriction and over-reach what are indeed the non-existent 3rd party claims upon the equity in the property. The restriction is redundant. There is after all no administrator of the estate besides my excellent standing as PR[3], and there never will be, other than myself or agent. There are no persons having any beneficial interest in the property, other than me, as sole surviving registered proprietor. There never will be."

32. On 23 August 2016, Client B wrote to the Respondent setting out his proposal for appointing a trustee for the purposes of the sale, and stating:

"...we can get the Land Registry to automatically delete the Form A restriction as soon as we transfer the land with the requisite 2 proprietors, thereby overreaching the equitable interests that have already devolved to me, and which are thus being superfluously 'protected' by the Form A restriction."

33. By letter also dated 23 August 2016, Client B wrote to the Respondent stating amongst other things that the estimated sale price for Property B was £525,000. By 19 September 2016, however, Client B was working towards an asking price of £500,000.

34. On 9 September 2016, the Firm submitted an Application Form DJP[4] with certified copy of the death certificate for Miss D, and a copy of the 2002 will.

35. The client file contained a draft estate agents agreement dated 26 September that must have been drafted by or had the input of Client B. Client B came to see the Respondent to seek her advice about it. The draft agreement provided, amongst other things:

"(ii) cash buyers only, no buyer chains. Buyer's funds and solicitor must be ready. Serious private buyers or commercial. Proof of funds required prior to exchange.

(iii) property is 'priced to sell quickly'

Discounted offers will be considered in the region of £490,000-£500,000, which represents a very attractive discount of 10-15% on current market assessment (15 July 2016 by Spencers ☺) of £550,000-£580,000.

[3] It is not clear what this is intended to stand for. It may be "registered proprietor" (although reversed), or "personal representative". If the latter, it was incorrect: Client B had no such standing because he was not the executor and had no right to be granted letters of administration.
[4] An application to remove the name of a "deceased joint proprietor" from the register, after a death.

> "Pre-Brexit", such end of terrace properties, albeit in better decorative order, were selling by local estate agents for £635-665,000, at locations further from Leyton tube and Leyton Mills shopping bark
>
> (iv) for business reasons the property cannot be publicly advertised. No billboards or shop or on-line advertising
>
> (vi) prompt exchange and completion is <u>essential</u> (seller has business deadline)
> ...
> The timetable of 3 weeks to completion on or before 17th October 2016 is of the essence."

36. On 24 October 2016, the buyer's solicitors sought the Firm's undertaking to remove restriction B3 as there was a sole owner. By letter dated 1 November 2016, the Firm undertook to remove restriction B3 in the form of a discharge upon completion.

37. On 1 November 2016, the buyer's solicitors referred to restriction B3 on the title and asked "*you mention this will be removed in the form of a discharge. Is there money owed to a third party*?" A trainee solicitor responded "*There is no money owed to a third party*. *Please note our client will be appointing a trustee to remove the restriction*".

38. Subsequently, the Firm sought to appoint its Principal as joint legal owner of Property B, so that it could be sold by a "trust corporation" in formal compliance with Restriction B3. On 8 November 2016, Client B said that he would prefer to use his own trustee. Further and in any event the Principal said that he did not feel comfortable acting as trustee.

39. The Firm asked for the new trustee to attend their offices with his photo ID so they could witness his signature upon transfer. Person E was appointed trustee by deed of the same date, witnessed by the Respondent. The photo ID was an expired Biometric Residence Permit.

40. Such an appointment is regarded as a life-long appointment and one of high trust and integrity. Nevertheless, the Respondent does not appear to have advised Person E as to his responsibilities as a trustee, to have advised him to obtain independent legal advice, or to have satisfied herself that he would be able to discharge the obligations of a trustee.

41. The deed of appointment provided as follows:

> "WHEREAS

1. The Beneficiary[5] has a legal and beneficial interest in [Property B]
2. The Trustee[6] has been appointed by the Beneficiary to transfer the Property;
3. The Trustee has agreed to execute the Transfer of the Property for the sale to proceed so that the Beneficiary can give a good receipt for the purchase price;

AGREED
1. The Trustee will execute the Transfer to remove the Form A restriction;
...
3. The Trustee will have no beneficial interest in the Property now or in the future nor shall the Trustee have any claims to the proceeds of sale."

42. The transaction completed on 9 November 2016 for a purchase price of £445,000, between £105,000 and £135,000 less than the valuation and £190,000 to £220,000 less than the "pre-Brexit" price. Paying both trustees is the fundamental protection the beneficiaries enjoy. Nevertheless the whole of the residual proceeds of sale in the sum of £407,714.32 were remitted to Client B. None of the proceeds were remitted to Person E despite the fact that he was joint trustee. There is no evidence on the file that Person E authorised the Respondent to pay the whole of the proceeds to Client B. The single trustee was paid only on the strength of the evidence of the death of the joint owner and sight of an unproved will, which Client B said meant he was entitled to the whole of the proceeds of sale in any event. This, coupled with the apparent lack of any advice given to Person E about his responsibilities as trustee, suggests that she regarded the appointment as a device to side-step the bureaucracy of the land registry rather than as a substantive responsibility intended to protect the interests of beneficiaries.

43. Shortly after the events described above it came to light that, on 8 July 2010, Miss D had made a new will revoking all former wills, reappointing CCH as the executors of her estate, and leaving the whole of her estate to her son Mr ND. On 12 September 2011, Miss D made a codicil to the 2010 will leaving the whole of her estate instead to her other son Mr SD. It appears that Client B had brought proceedings challenging the validity of the latter will and codicil, which were still ongoing at the time he instructed the Respondent to sell Property B.

44. On 21 November 2016, solicitors acting for the sons of Miss D wrote to the Respondent expressing their surprise and seeking an explanation:

[5] Client B
[6] Person E

"*Somehow, [Client B] unilaterally removed [Miss D's] name from the title of the property on the 12th September 2016. The property was held as tenants in common and there was a restriction on the title.*"

45. On 25 November 2016, HHJ Saggerson made an injunction in proceedings by the children of Miss D against, amongst others, Client B.

46. The office copy entry shows that, on 31 July 2017, the Property was re-sold for £709,000. This was at a substantial profit (although a surveyor's report on the client file had noted that the property was in poor condition inside and out and that it had not been maintained for many years, and online records show that it had been renovated in the meantime[7]).

47. It appears that, following the sale of Property B, Client B absconded to Morocco with the proceeds of sale, and disengaged from the proceedings that he had brought. By Order dated 20 November 2017, Mr Recorder Cohen QC sitting at the County Court at Central London ordered that:

"1. The Last Will and Testament of [Miss D] dated 8 July 2010 and the Codicil of the same dated 12 September 2011 both be pronounced in solemn form of law.

2. It is declared that prior to 10 October 2011 [Property B] was held by [Miss D] and [Client B] as beneficial joint tenants.

3. It is declared that said joint tenancy was severed by the Notice of [Miss D] dated 10 October 2011 and thereafter held by [Client B] and [Miss D] as tenants in common in equal shares.

4. It is declared that the entire net proceeds of the sale of [Property B] are held on trust by [Client B] for himself and the Estate of [Miss D] and 50% of which [Miss D's] Estate was entitled to receive."

48. This order determined that Client B had sold Property B in circumstances where there was a third party interest in the Property, and where he misappropriated 50% of the proceeds of sale to which he was not entitled.

49. The Applicant has obtained the expert report of Mark Hedley Adcock, a real estate specialist. The report makes clear that the appointment of an additional trustee for the purpose of sidestepping a restriction on the register is not in itself illegitimate, and is on the contrary common practice. Like all solicitors work, however, the appropriateness of its

[7] House Price History (rightmove.co.uk)

use in any given case must be judged in light of the individual circumstances. In this case, Mr Adcock draws attention to what he describes as a number of "red lights", which he sets out in his report (they are summarised at paragraph 64 below).

50. For her part, the Respondent has explained as follows:

    a. On 8 August 2018, the Respondent told the SRA that (a) she understood that although Miss D had severed the joint tenancy, she was an alcoholic and because her half share was to go to Client B under the 2002 will, she assumed it was in order for funds to go to him; (b) she was provided only with the 2002 wills; (c) Client B told her that he had fallen out with CCH which is why he did not wish to instruct them again regarding the restriction and the sale; (d) the severance of the joint tenancy did not raise concerns because Client B supplied evidence of his continuing cohabitation with Miss D (e.g. utilities bills); and (e) probate was not required because Client B and Miss D had mirror wills leaving their estates to each other.

    b. On 16 November 2018, the Firm told its insurers amongst other things that:

> "*[Client B] came to the office with the original wills and gave me these. I printed an office copy and told [Client B] that there was a severance by his partner [Miss D] and we would need to deal with that. [Client B] informed us that [Miss D] was an alcoholic and in 2011, [Miss D] had left him after a fight but she returned after a few months and the restriction was not removed.*
>
> *[Client B] provided hospital letters and council tax bills and other documentation confirming that [Miss D] had returned to continue to live with [Client B] at the property after 2011."*

    c. The Firm also said to its insurers that a grant of probate was not required because "*a Grant of Probate would be required by the Land Registry to change the Register and Land Registry removed [Miss D's] name with the death certificate and copies of the mirror wills."*

51. There have been a number of published warnings on the subject of property fraud. These establish the correct attitude of a conveyancer when faced with an unusual transaction. For example, the Joint Law Society and HM Land Registry note (September 2017) provides in the introduction section:

"Fraud prevention and detection should not be approached on a "tick box" basis although a checklist might be appropriate. Fraud methods vary and evolve continually, and practitioners should diligently look out for anything which may be unusual or suspicious which may point to possible title fraud. Appropriate further investigation or queries should be raised in such circumstances.

Practitioners should look at each transaction as a whole. It will rarely be the case that one factor alone will betray a fraudulent transaction. In most cases it is a matter of looking at all aspects of the case together and taking an informed view on the likelihood of fraud and the appropriate measures to be deployed to guard against it."

52. Similarly, the Law Society's Practice Note on Property and Registration Fraud (June 2020) provides the same warning under the introduction at section 1.2. Under the Section 3.3 on Seller Fraud, the Note sets outs:

Most fraudulent activity falls into distinct categories:

- *intra-family/associate frauds which are perpetrated by family members, friends or business partners*

Client C/Property C

53. Client C1 purchased Property C on 27 October 2006 for £410,000. Property C was mortgaged to a lender known as Platform.

54. By order dated 2 February 2018, Client C1 was due to be evicted from Property C on 2 March 2018.

55. The Firm was instructed on 28 February 2018, and it sent a client care letter to Client C1. The Respondent was identified as solicitor with conduct of the case.

56. On 20 April 2018, the Firm sent Client C2, a lending company, a client care letter stating: "*We will be arranging for the proprietor of the above property to sign a Legal Charge over the above property to [Client C2] in return for you lending £341,000. We understand that you have agreed a fixed interest of £3,000. We also understand that the proprietor will be paying your fees in the matter*". The Respondent was identified as the solicitor with conduct of the case.

57. Clients C1 and C2 did not have a substantially common interest in relation to the matter but, even if they did, the Respondent did not explain the relevant issues and risks to the clients; the clients did not give their informed written consent in writing; it was unreasonable for the Respondent to act for both clients and not in their best interests; and the benefits of doing so did not outweigh the risks.

58. On 23 April 2018, Client C1 and Client C2 entered into an agreement by which the latter would loan the former £341,000 plus interest in exchange for a registered charge over Property C. If the loan was not repaid within seven days (i.e. by 30 April 2018), Client C2 had the right to take possession of Property C. The purpose of the charge was as bridging finance to allow Client C1 time to sell Property C and pay off her debts. The loan was effectively a non-standard mortgage in which the two parties had unequal bargaining power.

59. The Respondent did not consider whether Client C2 was carrying out a regulated activity that required authorisation by the FCA, for example the activity of entering into a regulated mortgage contract as a lender within the meaning of Article 61(1) of the Regulated Activities Order.

60. The Respondent did not check the source of the £341,000 loaned by Company C2. She has since explained that the proprietor of Company C2 was an established client who was a well-known property developer, and that she believed that the funds would have come from the legitimate business transactions of Company C2.

61. On 2 May 2018, Client C1 sold Property C to a company known as Property Investments and Acquisitions Limited for a purchase price of £400,000. She returned £341,000 to Company C2, plus £4,000 interest. Property Investments and Acquisitions Limited may be linked to Client C2.

Allegations

Allegation 1.1

62. The Respondent facilitated the sale of Property A in circumstances where she was on notice that the owner of Property A (Client A) might lack the relevant mental capacity to make decisions about the sale of Property A, without undertaking adequate enquiries as to Client A's capacity, and in so doing she thereby breached:

    a. *Principle 4:* There is a set process, under the Mental Capacity Act 2005 and attendant Code of Practice, for acting in the best interests of those who lack capacity to make decisions about their property and affairs. By acting outside of that process, in circumstances where the Court of Protection was already or was soon to be seized of the issue, the Respondent failed to ensure that she

was acting in the best interests of Client A. SBC reported that Client A was upset when she was later reminded about the sale of her Property.

b. *Principle 6*: The question marks over Client A's mental capacity potentially meant that Client A was vulnerable, unable to make decisions for herself, and that decisions would have to be taken in her best interests by a person duly authorised by the Court. Further, the question of Client A's mental capacity could have potentially vitiated the validity of the sale. The warning signs, as raised by SBC, were clear and obvious. The Respondent had time to make further enquiries but did not do so. Client A was subsequently described as being upset and confused about the fact that her Property had been sold. The public would be alarmed by a solicitor who facilitated a transaction in circumstances where she was on notice that the seller lacked the relevant capacity to effect the sale.

Allegation 1.2

63. The Respondent facilitated a transaction which bore warning signs of an attempt by Client B to wrongfully circumvent potential third party interests in Property B:

a. After having agreed mirror wills, Miss D had severed the joint tenancy on 10 October 2011. This was consistent with an intention that her share in Property B should pass under her will or under the rules of intestacy rather than automatically to Client B by operation of the law of joint tenancy.
b. At the same time, on 20 October 2011, Miss D had entered a restriction on the register preventing its sale by a sole proprietor except by trust corporation or order of the court. She had also sought to enter the unusual restriction that there be no disposition of the property without the written authorisation of the personal representatives of the deceased. Both suggested that there might be other beneficiaries and that Miss D did not trust Client B to protect their interests.
c. Miss D had two sons who had had at least a residual entitlement under the 2002 will.
d. A different firm of solicitors had been appointed under Miss D's will to act as the executors of her estate, but Client B had decided to instruct the Firm instead.
e. Client B had an unusually detailed knowledge of how to side-step the restriction, and was unusually directive with his instructed solicitor as to how to go about achieving the outcome he sought.

f. Client B was looking for a quick sale for unidentified "business reasons", and was willing to accept an approximately £135,000 (approximately 25%) discount on the value of Property B in order to achieve that.

g. Client B sought the Respondent's advice as to terms and conditions he wanted to agree with the estate agent. Moreover, as part of these terms and conditions, he did not wish the sale of Property B to attract any publicity. That is the opposite of what one would expect in terms of selling a property on the open market.

h. At the last minute, Client B wished to use his own "trustee" in order to achieve the sale, rather than the professional person (Mr Rana, the Firm's principal) that had originally been offered. A professional person of good standing was presumably a better candidate for trustee than an individual who could not even evidence that he was lawfully in the UK. There was no evidence that Client B or Person E were aware of Person E's responsibilities as trustee.

i. Client B sought the whole of the proceeds of sale to be paid to him rather than jointly to Person E. There is no evidence on the file that Person E authorised this or that he was even made aware that it was within the scope of his powers as trustee to do so.

j. The Respondent did not give Client B or his additional trustee adequate advice as to their lifelong fiduciary obligations in respect of the proceeds of sale.

k. The Respondent's principal had declined to take on the responsibility of acting as trustee.

l. Even the buyer's solicitor queried whether the Restriction was in place because of money owed to a third party.

64. By continuing to act notwithstanding the above circumstances, the Respondent:

a. *Was manifestly incompetent*[8]*.* The warning signs were clear, obvious, several, and extended over a period of several months. Client B was seeking a secret, snap, sale of inheritance property, at a heavy discount, in circumstances where there was a restriction on the title, there were other family members, there was a history of falling out between Client B and the co-owner, and Client B was not returning to previously instructed solicitors who were the executors of the estate. There were obvious lines of enquiry which she could have easily pursued (such as contacting the previous solicitors), but did not. Instead of scepticism, the Respondent went so far as to seek to assist the sale by finding a buyer. She was pliable and was easily persuaded by

[8] Manifest incompetence was pleaded separately as Allegation 2.1 in the Rule 12 Statement

Client B to side-step the restriction. Only a manifestly incompetent solicitor could have missed these warning signs, failed to take obvious lines of enquiry, and facilitated such a scheme.

b. *Breached Principle 6*: The public would be alarmed by a solicitor who failed to notice these red flags and who as a result facilitated a transaction which any competent solicitor would should have suspected was intended illegitimately to frustrate the purpose of a B3 restriction and thereby circumvent third party interests in a property.

c. *Failed to achieve Outcome 11.1 (you do not take unfair advantage of third parties in either your professional or personal capacity):* The misappropriated proceeds of sale were not client funds in the sense that the beneficiaries properly entitled to the funds were not clients of the Respondent. Nevertheless, the SRA expects solicitors to provide adequate protection for the funds of third parties. By blindly following the instructions of her client without pursuing the many red flags that there might be a third party interest at stake, she took unfair advantage of those third parties.

Allegation 1.3

65. The Respondent acted in circumstances where there was a client conflict or a significant risk of one. None of the exceptions in the SRA Code of Conduct applied.

66. As for Clients C1 and C2, this was a non-standard mortgage: it was from a private lender; the term was for only one week; there was a very high rate of interest; the terms of the loan were bespoke; the penalty for exceeding the term was that ownership of the Property would pass to the lender; the lender appears to have been linked to the purchaser; the purpose of the loan was to provide short-term bridging finance rather than to facilitate the purchase of a home. The Conveyancing Handbook warns that the risk of conflict increases for non-standard mortgages, because terms of mortgage may be prejudicial to one party or may involve negotiation: see Conveyancing Handbook (2021 edition) at paragraphs 10.3.3-10.3.6. There was unequal bargaining power: Client C1 was in a desperate situation with limited time and therefore less able to negotiate better terms or an alternative deal.

67. In so doing, the Respondent breached:

a. *Principle 3:* the Respondent could not act independently in respect of each client, because she also had to take account of the competing interests of the other client.

b. *Principle 4:* the Respondent could not act in the best interests of each client, because she had to balance these against the competing interests of the other client.

c. *Principle 6:* the public would be alarmed by a solicitor who acted for a client in desperate need of cash, and at the same time for a lender/purchaser offering to provide short-term finance to the borrower on punitive terms. There was a high risk of the lender taking advantage of the client's weak negotiating position. The Respondent could not adequately protect the client against this risk (indeed, she may have exacerbated it) by acting for both parties.

d. *Outcome 3.*5 *(you do not act if there is a client confit, or a significant risk of a client conflict):* the Respondent acted in circumstances where there was a significant risk of a client conflict as described above.

Non-agreed mitigation

[TBC]

Penalties proposed

68. It is therefore proposed that the Respondent pay a fine in the sum of £15,000.

69. It is also agreed that restrictions be imposed for an indefinite period upon the Respondent's practising certificate (with liberty to apply):
    a. The Respondent may not act as a manager or owner of an authorised body or authorised non-SRA firm.
    b. Subject to the condition above, the Respondent may act as a solicitor, only as an employee where the role has first been approved by the Solicitors Regulation Authority.
    c. The Respondent may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or head of legal practice (HOLP) or head of finance and administration (HOFA) for any authorised non-SRA firm.

70. With respect to costs, it is further agreed that the Respondent should pay the Applicant's costs of the matter in the agreed total sum of £23,650 (being £13,876 plus VAT towards

the costs of the Applicant's representation in these proceedings, and £7,000 towards the Applicant's costs of the investigation).

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

Seriousness

71. The misconduct involved three problematic conveyancing transactions.

72. The misconduct was not calculated or deliberate and there was no financial gain for the Respondent other than the ordinary fees that she would have earned on each of these three transactions.

73. However, there were similarities in the misconduct across all three transactions, which collectively demonstrate a pattern of systematically inadequate practise.

74. The Respondent is an experienced conveyancing solicitor. Indeed she was so senior that the principal of the Firm felt that he could leave her to conduct and be responsible for her own caseload, without any significant supervision. A solicitor with that level of experience, in a specialist area, ought to have known better.

75. Further, in the case of the sale of Property B, the red flags were so obvious and so numerous that only a manifestly incompetent solicitor would have missed them.

76. To an extent, the Respondent was the victim of the wrongdoing of her clients. On the other hand, the fact that the issue was repeated across three different transactions demonstrates a worrying, systematic, inability to decline instructions which a competent solicitor would recognise were problematic.

77. Substantial amounts of client funds were put at risk.

78. In respect of Properties A and B, the Respondent cooperated after the fact with those seeking to put the problems right.

79. The aggravating features are that:

    a. The misconduct was repeated across three separate transactions

b. The sale of Property B was manifestly incompetent
c. The Respondent was a senior and experienced conveyancing solicitor.

80. The mitigating features are that:
    a. The misconduct resulted in part from wrongdoing by her clients.
    b. In respect of the sale of Properties A and B, the Respondent cooperated with the efforts of those who, after the event were seeking to put the harm right.
    c. The Respondent has cooperated in full with the Applicant's investigation and these disciplinary proceedings, and made full and early admissions.

Purpose of the sanction

81. Sanctions are not intended to be punitive. Rather, they are intended to protect public confidence in the profession and to protect the public against the risk of further harm.

Sanction

82. Having regard to the seriousness of the misconduct and the purpose of sanction, a sanction of No Order or Reprimand would not adequately protect the reputation of the profession or the public from future harm.

83. Misconduct involving participation in potentially illegitimate transactions usually results in at least a Fine. In the instant case, there are features of the misconduct which are more serious and features which are less serious. The critical factors are that (a) the misconduct was unintentional and in part the result of clients' wrongdoing, but (b) by the same token, that demonstrates a fundamental weakness in the standard of the Respondent's practise, rising on one occasion to manifest incompetence. This is especially worrying given the Respondent's seniority and experience.

84. The Respondent has not filed a Statement of Means, but she is not currently practising as a solicitor. The Respondent has confirmed that she is able to discharge the sums referred in this Agreed Statement of Facts and Outcome.

85. In all the circumstances, the appropriate sanction is a mid-Level 3 fine, coupled with indefinite practising restrictions (with liberty to apply). The Applicant is satisfied that the practising restrictions will adequately manage ongoing risk. The risk that the Respondent continues to pose should be capable of being met.

86. Given the combination of a fine and practising restrictions, a Suspension is not necessary either to protect the reputation of the profession or to protect the public from the future risk of harm.

87. The parties consider that in light of the admissions set out above, the proposed outcome represents a proportionate resolution of the matter which is in the public interest. It is considered that the combination of a fine and indefinite restrictions properly and proportionately manage ongoing risk to the public and the reputation of the profession.

Signed:

Date:

Signed:

Date: