

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12352-2022

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ANTHONY GALE

Respondent

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Before:

Ms A Horne (in the chair)  
Mr G Sydenham  
Dr A Richards

Date of Consideration: 10 October 2022

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**Appearances**

Michael Collis, Counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

The Respondent represented himself.

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**JUDGMENT ON AN AGREED OUTCOME**

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## **Allegations**

### ***Allegations relating to Client A/Property B***

1. The allegations against Mr Anthony Gale made by the SRA were that while in practice as a solicitor at Ison Harrison Limited, SRA ID 484936 (“Firm 1”):
  - 1.1 Between 5<sup>th</sup> August and 7<sup>th</sup> November 2016, in acting for Client A in the transfer of 63 St Georges Road, Harrogate (“Property B”), he:
    - 1.1.1 failed to undertake proper enquiries in relation to the transaction;
    - 1.1.2 failed to ascertain whether the transfer of the property was in the interests of Client A;
    - 1.1.3 failed properly to advise Client A as to the risks and consequences of the transfer;
    - 1.1.4 failed to take steps to protect Client A’s interests including any right he had to continue residing in the property;

In doing so, Mr Gale breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

- 1.2 Between 5<sup>th</sup> August and 7<sup>th</sup> November 2016, Mr Gale acted on behalf of both Client A and Client C, the buyer and seller of Property B, in circumstances giving rise to an actual or significant risk of a conflict of interest. In doing so he breached any or all of Principles 2, 3, 4 and 6 of the SRA Principles 2011 and failed to achieve outcome 3.5 of the SRA Code of Conduct 2011.
2. Allegations 1.1 and 1.2 were advanced on the basis that Mr Gale’s conduct was reckless. Recklessness is alleged as an aggravating feature of Mr Gale’s misconduct but is not an essential ingredient in proving the allegations.

### ***Allegations relating to Mr E/ Property F***

3. The allegations against Mr Gale were that, while in practice as a solicitor at Lofthouse & Co, SRA ID 74867 (“Firm 2”):
  - 3.1 On or around 2 July 2020 he signed a sale contract in relation to 59 Wakehurst Drive, Crawley (‘Property F’), on behalf of Mr E when he was not instructed to do so. In doing so, he breached Paragraph 3.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs and both or either of Principles 2 and 5 of the SRA Principles 2019.

## **Documents**

4. The Tribunal had before it an electronic bundle of papers which included:
  - Rule 12 Statement dated 1 July 2022.
  - Respondent’s Answer to the Rule 12 Statement dated 3 August 2022.

- Statement of Agreed Facts and Proposed Outcome (“the AO”) dated 10 October 2022.

## **Background**

5. Mr Gale was admitted to the Roll of Solicitors in February 1990. From 1 September 2015 to 1 March 2017 he was employed as a solicitor by Ison Harrison Ltd (“Firm 1”). From 2017 to 30 July 2021 he was employed as a solicitor by Lofthouse & Co (“Firm 2”). As at the date of consideration, Mr Gale was employed as a solicitor by Pudsey Legal Services Ltd, and held a Practising Certificate subject to conditions.

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

6. 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.

## **Findings of Fact and Law**

7. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent’s admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (Tenth Edition: June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
10. With regard to culpability, the Tribunal determined that Mr Gale (a) appeared to have been motivated by expediency and demonstrable tardiness, (b) planned his actions, (c) acted in breach of trust in relation to Client A who was vulnerable, (d) had direct and sole responsibility for the circumstances upon which his misconduct was predicated and (e) Mr Gale held significant experience, namely 26 years post qualification experience with regard to Allegations 1.1, 1.2 and 2. He had 30 years post qualification experience with regard to Allegation 3. The Tribunal therefore found Mr Gale to be highly culpable.
11. With regard to harm, the Tribunal determined that the impact of Mr Gale’s misconduct on Client A was profound. He facilitated the transfer of Client A’s home to another for no payment, and absent any formal agreement entitling Client A to continue to reside in the property. Client A had limited intellectual skills, a low level of intelligence and an estimated mental age of 12 years and 4 months. The Tribunal noted the Respondent’s assertion that none of those impairments were apparent to him at the material time. The Tribunal further determined that, in relation to Allegation 1.3, the impact of Mr Gale’s misconduct was severe and led to increased legal fees for all concerned. The admitted

misconduct represented a grave departure the “complete integrity, probity and trustworthiness” expected of a solicitor. The harm Mr Gale caused to the solicitors’ profession was extensive. The harm caused both to those directly involved and to the profession was eminently foreseeable.

12. With regard to aggravating features, the Tribunal determined that Mr Gale’s misconduct (a) was deliberate, calculated and repeated, (b) facilitated Client A, who was vulnerable, being taken advantage of, and (c) was a material breach of his obligations to protect the public and the reputation of the profession, the potential for which harm he knew/ought reasonably to have known.
13. The Tribunal was extremely concerned at the previous findings recorded against Mr Gale. On 23 April 2018 he appeared before the Tribunal for related allegations about his conduct on five conveyancing matters, which involved concerns about him acting without instruction or consent; not carrying out due diligence, and failing to register lender's charges. The misconduct took place between 2005 and 2014. Mr Gale denied those allegations, the Tribunal found the majority of them proved. Mr Gale was ordered to pay a fine and costs as well as being made subject to indefinite conditions which included (i) not practising as a sole practitioner or sole manager or sole owner of an authorised or recognised body and (ii) not being a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration. Notwithstanding that previous finding and sanction imposed, Mr Gale’s repeated misconduct demonstrated his complete lack of insight into and understanding of his failings. The Tribunal held serious concerns as to the risk of repetition in the future given Mr Gale’s demonstrable propensity to ignore red flags in conveyancing transactions, and his inherent inability to identify and heed warning signs of fraud or exploitation.
14. The Tribunal did not find any mitigating features. The admissions made by Mr Gale in the Agreed Outcome were first conveyed to the Applicant in August 2022, shortly before the Tribunal hearing. Throughout the Applicant’s investigation and the Tribunal proceedings, Mr Gale had denied the allegations in their entirety.
15. Weighing all the factors set out above in the balance, the Tribunal assessed Mr Gale’s misconduct as so serious that neither No Order, a Reprimand nor a Fine was a sufficient sanction, or in all the circumstances appropriate. The need to protect both the public and the reputation of the legal profession from future harm required an Order which removed Mr Gale’s ability to practise for a period of time, coupled with an Order thereafter which restricted his ability to practise indefinitely.
16. It was plain to the Tribunal that Mr Gale had a complete blind spot with regard to the obligations to “know your client”, the risks of fraud in conveyancing transactions, management of conflicts of interest, and the obligations attendant upon accepting instructions from vulnerable clients. The previous sanction imposed in 2018 had not rectified Mr Gale’s ineptitude in those respects, and had not protected either the public or the reputation of the profession from repeated harm. The proposed sanction in the Agreed Outcome did address those risks by requiring Mr Gale to demonstrate that he had undertaken training in the aspects of his practice in which his knowledge was deficient before his future employment would be approved by the SRA, and the Tribunal therefore endorsed the same.

## Costs

17. Costs were agreed by the parties in the sum of £12,000.00, which sum the Tribunal determined was reasonable and proportionate in all the circumstances.

## 18. Statement of Full Order

1. The Tribunal Ordered that the Respondent, ANTHONY GALE, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 10<sup>th</sup> day of October 2022 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal for an indefinite period of time as follows:

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;

2.1.2 Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

2.1.3 Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;

2.1.4 Hold client money;

2.1.5 Be a signatory on any client account;

2.1.6 Work as a solicitor other than in employment approved by the Solicitors Regulation Authority Ltd, and such approval not to be given until the Respondent has demonstrated to the SRA satisfactory completion of courses or further training in the following areas:

2.1.6.1 Know your client.

2.1.6.2 Risks of fraud in conveyancing transactions.

2.1.6.3 Conflicts.

2.1.6.4 Accepting instructions from vulnerable clients.

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

Dated this 24<sup>th</sup> day of October 2022

On behalf of the Tribunal



A Horne  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**24 OCT 2022**

**Between:**

**SOLICITORS REGULATION AUTHORITY LIMITED**

**Applicant**

**and**

**ANTHONY GALE**

**Respondent**

**(SRA ID: 145183)**

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**STATEMENT OF AGREED FACTS AND OUTCOME**

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**Introduction**

1. By an Application and statement made by Lyndsey Jayne Farrell on behalf of the Applicant, the Solicitors Regulation Authority Limited ("SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 1 July 2022, the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made Standard Directions on 8 July 2022. There is a substantive hearing listed for 10 to 14 October 2022.

**Admissions**

2. The Respondent, Mr Anthony Gale, admits all of the Allegations and the facts set out in this statement and the parties have agreed a proposed outcome.
3. The Allegations against the Respondent are that (the numbering of the Allegations are retained from the Rule 12 Statement):

***Allegations relating to Client A/Property B***

**Allegation one:** Whilst practising as a solicitor at Ison Harrison Limited, SRA ID 484936 ("Firm 1"):

- 1.1. Between 5 August and 7 November 2016, in acting for Client A in the transfer of 63 St Georges Road, Harrogate ("Property B"), he:
  - 1.1.1. failed to undertake proper enquiries in relation to the transaction;
  - 1.1.2. failed to ascertain whether the transfer of the property was in the interests of Client A;
  - 1.1.3. failed properly to advise Client A as to the risks and consequences of the transfer;
  - 1.1.4. failed to take steps to protect Client A's interests including any right he had to continue residing in the property;

In doing so, the Respondent breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

- 1.2. Between 5 August and 7 November 2016, the Respondent acted on behalf of both Client A and Client C, the buyer and seller of Property B, in circumstances giving rise to an actual or significant risk of a conflict of interest. In doing so the Respondent breached Principles 2, 3, 4 and 6 of the SRA Principles 2011 and failed to achieve outcome 3.5 of the SRA Code of Conduct 2011.

**Allegation two:**

Allegations 1.1 and 1.2 are advanced on the basis that the Respondent's conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

***Allegations relating to Mr E/ Property F***

**Allegation three:** While in practice as a solicitor at Lofthouse & Co, SRA ID 74867 ("Firm 2"):

- 1.3. On or around 2 July 2020 the Respondent signed a sale contract in relation to 59 Wakehurst Drive, Crawley ('Property F'), on behalf of Mr E when he was not instructed to do so.

In doing so, he breached Paragraph 3.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs and Principles 2 and 5 of the SRA Principles 2019 .

4. There are no allegations of dishonesty made against the Respondent.
5. The following facts and matters, which are relied upon by the SRA in support of the Allegations set out in paragraph three above, are agreed by the SRA and the Respondent.

6. The Respondent, a solicitor, was admitted to the Roll of Solicitors on 15 February 1990. From 1 September 2015 to 1 March 2017 he was employed as a solicitor by Ison Harrison Ltd (SRA ID 484936) ("Firm 1"). From 2017 to 30 July 2021 he was employed as a solicitor by Lofthouse & Co (SRA ID 74867) ("Firm 2"). He is currently employed as a solicitor by Pudsey Legal Services Ltd (SRA ID 573274) and has a Practising Certificate subject to conditions.

### **The facts and matters relied upon in support of Allegation 1 and 2**

*Client A; Property B; Client C and Company D*

7. The matters which form the basis of Allegations 1 and 2 were brought to the attention of the SRA on or around July 2019.
8. In summary, the Respondent acted in the transfer of Property B from Client A, a vulnerable individual, to a company owned by Client C, a person with whom the Respondent had a longstanding professional relationship, in circumstances where Client A received no consideration for the transfer.
9. In August 2016, Client A and Client C attended a meeting with the Respondent. The Respondent's file contains what appears to be an undated attendance note of that meeting. The fee earner initials are 'AZG', the Respondent, and the client name is 'Singh'. It states the following:

*'Attending Mr Singh, the accountant. He brought in a transfer and says that he has basically bought the property for [Client A] who came in with him. I said I was completing the ID forms and signing the Transfer wasn't acting for anyone else involved, which he said was fine'.*

10. The Respondent's file contains an unsigned client care letter addressed to Client A dated 26 August 2016. This set out the nature of Client A's instructions to the Respondent in relation to the sale of Property B. The letter stated that Client A had sold Property B to Company D for the amount owing on the mortgage £119,260. It also stated:

*'We have not advised you on this in particular whether or not the transaction is sensible or reasonable, we have not ascertained if you have had the property professionally valued for example and Mr Singh has prepared the transfer and ID forms that we witnessed your signature to and we are simply giving effect to the transfer of the property in accordance with your instructions". [sic.]*



11. The Respondent's file also contains:
  - 11.1. An ID1 form dated 2 August 2016 and purportedly signed by Client A and certified by the Respondent.
  - 11.2. An ID1 form in relation to Client C of the same date.
  - 11.3. A Sale Questionnaire purportedly signed by Client A and dated 30 August 2016 which stated that the buyer of the property was Company D and that the sale price was £119,250. The words "Already paid to us" had been handwritten on the form beside the sale price.
  
12. Company D was incorporated on 29 July 2016 and is owned and controlled by Client C, a professional accountant whom the Respondent knew professionally.
  
13. A TR1 document for the transfer of Property B to Company D dated 15 September 2016, purportedly signed by Client A and Client C (on behalf of Company D) and witnessed by the Respondent was submitted by the Respondent to the Land Registry. The TR1 stated that the transferor, Client A, had received £119,260. However, it also stated that the transfer was not for money or anything that has a monetary value.
  
14. The transfer of the property to Company D was completed on 7 November 2016. The Land Registry entry dated 27 October 2016 confirms that there was and had been no mortgage registered against the property.
  
15. No consideration was received by Client A and there is no evidence of any mortgage on Property B having existed or having been redeemed, either by Client C or at all.
  
16. Apart from the meeting in August 2016 and the client care letter dated 26 August 2016, there was no other communication between the Respondent and Client A. Furthermore, Client A was not informed about the progress of the transaction nor was he provided with any advice in relation to the transfer of Property B.
  
17. However, the Respondent did correspond with Client C on various occasions as set out below:
  - 17.1. On 16 September 2016, he wrote to Client C enclosing a fee note and confirming:

*Can I just make it clear that I am only dealing with the Land Registry Application. I have not raised any enquiries nor submitted any searches against the property and I am simply dealing with the transfer of the property in accordance with [Client A's] instructions'.*

- 17.2. On 27 September 2016, the Respondent wrote to Client C confirming that he was dealing with the registration process and asking for a copy of the company tax reference in relation to Company D.
  - 17.3. On 4 October 2016, he wrote to Client C confirming that the cheque (for registration fees) had been "referred" and that he could not complete the transfer.
  - 17.4. On 7 October 2016, he confirmed to Client C that a debit card payment had cleared.
  - 17.5. On 23 November 2016, he sent Client C copies of the title documentation.
18. Client A is a vulnerable individual with limited intellectual skills and has been diagnosed with Autism Spectrum Disorder. He had a low level of intelligence and an estimated mental age of 12 years and 4 months. There are significant doubts about his capacity to manage his financial affairs and enter into financial contracts.
19. Client A's psychological condition is set out in an expert report prepared by Dr Harry Wood, a Consultant Clinical Psychologist, dated 31 October 2019. In particular, Dr Wood confirms a diagnosis of Autism Spectrum Disorder. This increased his vulnerability to abuse and financial exploitation. Further, his difficulties would also have been apparent at the time of the transfer of Property B in 2016.
20. The matter was reported to and investigated by the police following a complaint raised by social workers on Client A's behalf. Client A told the Police that he had first met Client C in 2002 and then again in 2007. Property B used to belong to Client A but it now belonged to Client C although he had not paid for it.
21. In the course of the Police investigation the Respondent was interviewed under caution on 28 January 2020. During that interview the police informed the Respondent that they suspected that Client C had committed fraud against Client A and that the Respondent may have been involved.
22. During the interview, the Respondent told the police, amongst other things:

- 22.1. The first time he met Client A was on 5 August 2016 when he came into his office with Client C. He had no concerns that he had any vulnerabilities or learning difficulties.
- 22.2. He had known Client C for most of his career. He had referred work to the Respondent. He knew Client C professionally but not socially.
- 22.3. Client A and Client C came to see him and told him that Client C had paid for the house. Initially they wanted him to fill in the ID1 forms and witness the transfer. They asked him to register it. The Respondent opened a file. Initially both Client A and Client C instructed the Respondent. However, when he thought about it he decided he could not act for both parties so he acted for Client A and sent him a client care letter.
- 22.4. He only saw Client A once and could not remember if he had spoken to him on the phone. He did not see Client C again but did send him a few letters which were on the file.
- 22.5. Client A had told him that Client C had paid off his mortgage and had helped him out over the years and he wanted to transfer the house to him. Client A had been in financial difficulty. The arrangement was that Client A was going to continue to stay at the house.
- 22.6. The Respondent had never spoken to Client A on his own about this. He did not know the value of Client A's house. No money was being paid. There was no written agreement. He did not see any bank statements or mortgage letters to show a mortgage had been paid off.
- 22.7. The Respondent considered this "mildly" strange and said "*it's not something you come across every day*".
- 22.8. He considered there was a potential conflict of interest so he couldn't act for buyer and seller. He only acted for Client A. He sent the registration application off as a favour to Client C. He did not open a file for Client C or his company and did not consider there was a conflict of interest.
- 22.9. Client C paid his fee which was about £300.00.
- 22.10. He had no concerns about Client A's signature on any forms. He would have seen Client A's passport and verified his identity.
- 22.11. He did not make any enquiries as to whether the consideration of £119,260 had been paid. He had been told it was and it was documented in the correspondence.
- 22.12. He did not ascertain what arrangements there were to be post-completion regarding Client A's continued occupation of the property as he did not consider

he had any obligation to. He did not consider it necessary to meet with Client A on his own to check his instructions.

- 22.13. Towards the end of the interview, the Respondent was referred to (amongst other matters) a file note dated 8<sup>th</sup> February 2008 and a letter from the Respondent to Client C dated 26 February 2008. The Respondent told police he did not remember meeting Client A in 2008 but agreed it looked as if he did.
23. No action was subsequently taken by the police against the Respondent. Criminal proceedings were, however, commenced against Client C. In May 2022, Client C was convicted of four counts of fraud and one count of money laundering in relation to exploiting Client A out of money and assets worth a total of £331,858. He was sentenced to five years six months' imprisonment. The underlying facts of the conviction included the transfer of Property B set out above.
24. Client A's vulnerability was present at the time of the transaction. Further, this was known to the Respondent. The Respondent had met with both Client A and Client C previously, briefly once in 2008 (eight and half years ago) at another law firm, and was concerned that client A was not able to make his own decisions at that time.
25. Further, paragraph 23.9 of Dr Wood's report states:  
*[Client A's] difficulties are pervasive in nature. There is evidence of lifelong intellectual limitations...It is my opinion that it is almost certainly the case that the difficulties that were noted on 16.10.19 were also apparent at the time of the alleged fraud, including when he was asked to sign contracts and grant a power of attorney.*
26. There were the following unusual or suspicious features of the transaction which were known to the Respondent:
- 26.1. The purported consideration for the transaction was the repayment of the mortgage balance of £119,260;
  - 26.2. The consideration was not being paid into Firm 1's client account as would usually be the case;
  - 26.3. There was and had been, in fact, no mortgage registered over the property;
  - 26.4. There was no evidence of any mortgage having been repaid;
  - 26.5. No payment had been made to client A;
  - 26.6. Client A was transferring title to his home and had no other residence;
  - 26.7. There was no valuation of the property;

- 26.8. Client A and Client C attended the Respondent's office together. Client A was effectively introduced by Client C;
- 26.9. Client C had, it appeared, prepared the Transfer himself.
27. The basic principle is that in the ordinary way a solicitor is not obliged to travel outside his or her instructions and make investigation which are not expressly or impliedly requested by the client: *Pickersgill v Riley* [2004] UKPC 14. A solicitor carrying out a transaction for an inexperienced client is not justified in expressing no opinion when it is plain that the client is rushing into an unwise, not to say disastrous, adventure: *Neushul v Mellish & Harkavy* (1967) 203 EG 27, per Danckwerts LJ. The risks identified above were precisely the types of hazards about which the Respondent ought to have advised his client, applying these basic principles.
28. The experience of the client is relevant: an inexperienced client will need and will be entitled to expect the solicitor to take a much broader view of the scope of his or her retainer and duties than will be the case with an experienced client – *Carradine Properties Ltd v DJ Freeman & Co* [1999] Lloyd's Rep PN 483 per Donaldson LJ at [483]. The same approach is required where a client is, or may be, vulnerable.
29. It follows from the above principles that where a transaction contains unusual features which the solicitor does not fully understand, or where the rationale and basis for the proposed transaction is unclear, the solicitor must make all necessary enquiries to appraise him or herself of the nature of the transaction and the unusual or hazardous features of the transaction, in order to give the advice that he or she is required to give the client.
30. The Respondent was aware of the following guidance issued by the Law Society:
- 30.1. Practice Note on Meeting the Needs of Vulnerable clients issued on 2 July 2015;
- 30.2. Practice Note on Financial Abuse issued on 13 June 2013.
31. In these circumstances, the Respondent was aware of the possibility that Client A was subject to undue influence and/or financial abuse. The Respondent did not properly advise Client A or make necessary enquires which he was obliged to make to satisfy himself as to the advice that needed to be given and the nature of the transaction in which he was acting. In particular, the Respondent failed to make necessary enquires and give necessary advice in the following specific ways:

- 31.1. made enquiries with Client A, promptly or at all, to ascertain whether he was aware that he could instruct solicitors of his choice, and failed to give any advice to that effect;
- 31.2. met with Client A on his own to ascertain if the transaction truly represented his wishes and whether client A was subject to undue influence and/or financial abuse;
- 31.3. advised him as to the consequences of the transaction;
- 31.4. advised him of the risks of transferring the property, in particular the risk of him being without a home;
- 31.5. if it was intended that, following the transfer, Client A was to be allowed to live in the property, advised on appropriate measures to ensure that right was documented and enforceable;
- 31.6. obtained confirmation from him that he wished to proceed;
- 31.7. obtained an explanation of the discrepancy arising from the fact that there was and had been no mortgage on the property.

## **Breach of Principles**

### **Allegation 1.1**

32. Principle 2 of the SRA Principles 2011 requires solicitors to act with integrity. In *Wingate v SRA [2018] EWCA Civ 366*, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson said:

*Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own member.*

33. A solicitor acting with integrity would not have acted in the transfer of Property B without first making enquiries to confirm whether consideration had been paid and whether a mortgage on the property had in fact been paid off by Client C. A solicitor acting with integrity would also have taken steps to ascertain whether the client was subject to undue influence or financial abuse as set out in paragraph 31 above. He would have considered whether the transfer was in the best interests of Client A and would have advised client A as to the risks and consequences of the transaction. Principle 2 was therefore breached.

34. Principle 4 of the SRA Principles 2011 states that solicitors must act in the best interests of each client. Client A's interests were not served by transferring Property B to Client C

for no consideration. Client A's interests were not served by transferring the property without making any legal arrangements for him to continue reside in it, if such was the arrangement. By failing to take steps to determine whether the transfer was in Client A's interests, to advise Client A as to the risks and consequences of the transaction, and to ensure that he received full consideration for any transfer or that his rights to remain in the property if he did sell to Client C were agreed and protected, Principle 4 was breached.

35. Principle 5 of the SRA Principles 2011 states that solicitors must provide a proper standard of service to their clients. A proper standard of service would have included making enquiries as to the payment of consideration and the paying off of the mortgage. It would also have included taking the steps outlined in paragraph 31 above, advising Client A on whether the transfer was in his best interests, advising Client A as to the risks and consequences of the transaction, ensuring that he received full consideration before any transfer took place and advising on and documenting his right to remain in the property to ensure this was legally enforceable. By failing to do this, Principle 5 was breached.

36. Principle 6 of the SRA Principles 2011 requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services. The public's trust is diminished by a solicitor who fails to make proper enquiries about a transaction, fails to take steps to consider whether a client may be vulnerable or subject to financial abuse, fails to advise a client as to the risks and consequences of transferring his property without receiving any consideration and fails to protect the client's rights to remain in the property. Principle 6 was therefore breached.

37. Principle 10 of the SRA Principles 2011 requires solicitors to protect client money and assets. Facilitating the transfer of Property B for no consideration in the circumstances set out above breached Principle 10.

### **Allegation 1.2 – Conflict of interest**

38. The Respondent acted for both Client A and Client C in relation to the transfer of Property B in circumstances where there was a significant risk of conflict in ensuring that the interests of both clients on either side of the transaction were protected.

39. Principle 2 of the SRA Principles 2011 is as stated above. A solicitor acting with integrity would not have acted for both Client A and Client C in this transaction.

40. Principle 3 of the SRA Principles 2011 states that solicitors must not allow their independence to be compromised. Acting for both seller and purchaser in a matter where the solicitor has a long standing professional relationship with the buyer and where the buyer has referred numerous clients to the solicitor compromises the independence of the solicitor.

41. Principle 4 of the SRA Principles 2011 is as set out above. A client is entitled to expect that a solicitor who is instructed on their behalf, is acting in their interests only and this is what Client A was entitled to understand to be the position. Instead in the instant case:

41.1. The Respondent failed to ascertain the amount of consideration being paid for Property B; the value of Property B and importantly whether Client A's interests would be protected once the transaction was completed;

41.2. He failed to provide any advice to Client A as to the risks and consequences of the transaction;

41.3. He failed to inform Client A as to the progress of the transaction notwithstanding that he kept Client C informed;

41.4. He did nothing by way of protecting Client A's occupation of the property after the transfer. Principle 4 was therefore breached.

42. The participation of a solicitor in a conflict of interest or risk of a conflict of interest directly undermines the trust the public can place both in that solicitor and in the provision of legal services more widely. Accordingly, the Respondent breached Principle 6 of the SRA Principles 2011.

43. Outcome 3.5 of the SRA Code of Conduct 2011 states that a solicitor should not act if there is a client conflict, or a significant risk of client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply. The circumstances set out in Outcomes 3.6 or 3.7 did not apply to the facts of this case. Indicative Behaviour 3.14, acting for a buyer and seller in a transaction relating to the transfer of land for value, is an example of circumstances which tend to show that a solicitor has not achieved the Outcomes and therefore not complied with the Principles. This is what happened in this case and therefore Outcome 3.5 was not achieved and the Principles set out above were not complied with.

#### *Recklessness*

44. In relation to both Allegations 1.1 and 1.2 the Respondent's conduct was reckless. He was aware that Client A was vulnerable with limited intellectual skills. There was a clear risk



that Client A could be taken advantage of by Client C, or subject to undue influence, and that his interests may not be served by proceeding with the sale of Property B. There was also a clear risk of a conflict of interest between Client A and Client C. The Respondent was aware of these risks. By proceeding to act in the transfer of the property, failing to undertake proper enquiries, failing to ascertain whether the transfer was in Client A's best interests, failing to advise Client A as to the risks and consequences of the transfer, failing to take steps to protect Client A's interests, and failing adequately to deal with the conflict of interest, the Respondent ignored those risks and acted recklessly.

### **The facts and matters relied upon in support of Allegation three**

#### ***Mr E and Property F***

45. The matters which form the basis of Allegation three were reported to the SRA by Denis Lofthouse, a principal of Firm 2, on 20 April 2021 and were investigated by a SRA Forensic Investigation Officer ("FIO").
46. Firm 2 was instructed by Client G in relation to the sale of Property F. The Respondent had conduct of the matter under the supervision of Mr Lofthouse. The Respondent took initial instructions from Client G's son, Mr H, and confirmed the instructions in a client care letter dated 31 March 2020 emailed to Client G.
47. However, Client G was not the registered owner of Property F. According to an Office Copy entry from the Land Registry obtained by Firm 2, the registered owner was Mr E. The Respondent was informed of this on or around 17 April 2020. At no stage was the Respondent instructed by Mr E.
48. On 30 June 2020, the Respondent wrote to Mr I, who he believed to be Mr E's son, stating:  
*'Morning ... I'm attaching copies of the deeds showing your father owns the property free of mortgage, I've also attached a copy of the sale contract... Obviously I need your father's signature and ID, if, as I understand may be the case, he would prefer to transfer the property to [Client G] and for him to sell it that's fine but we would need to have a think about any financial/taxation implications for him, its simple enough to transfer the property if that's his preference and perhaps you could let me know how he wished to proceed... I'm sorry this hasn't come to light sooner but my instructions have been rather unclear, Tony Gale [sic]'.*

49. An attendance note in Firm 2's file dated 1 July 2020 records that the Respondent spoke to Mr I who informed him that Mr E had effectively gifted Property F to Client G who had paid the mortgage off over the years and that, as far as Mr E was concerned, the property was Client G's. The Respondent told Mr I that Mr E would have to sign the transfer. Mr I confirmed that they could complete on the basis of obtaining an indemnity from Client G and that Mr E was happy to pass all the funds to Client G. The attendance note also records that the Respondent spoke to Mr I who confirmed he was happy with everything and that:

*'They agreed that they would get the sale through and [the Respondent] would hold the money until the paperwork was completed'.*

50. The Respondent at no stage contacted Mr E to obtain his instructions or to confirm that Mr I or anyone else could provide instructions on his behalf.

51. The Respondent then wrote to the purchaser's solicitors, on 1 July 2020 confirming that he could not complete the transaction that day as:

*'I've only just been made aware of a family issue that has to be resolved before we can complete, I'm hopeful it should be resolved this week...[sic].'* The SRA does not allege that the Respondent acted in breach of any undertaking.

52. The Respondent at no stage informed the purchaser's solicitors that Mr E was the registered owner of the property or that he had not obtained instructions from Mr E.

53. On 2 July 2020, the Respondent confirmed to the purchasers that he could complete that day but only on the basis of an undertaking to hold the funds to their order pending him producing an executed TR1. Also on 2 July 2020, the Respondent signed a contract for the sale of Property F in the name of Mr E as the seller. The Respondent did not obtain or confirm instructions from Mr E to sign the contract.

54. The purchaser's solicitors then transferred the purchase price of £327,600 to Firm 2's client account. However, the Respondent did not obtain an executed TR1 from Mr E to complete the sale.

55. On 8 July 2020, the Respondent wrote to Mr I confirming that the sale had completed. The email attached a draft agreement and the TR1. He stated that the TR1 needed Mr E's signature and that he needed Mr E's Identification document. Mr I replied on 12 August 2020 stating that he was no longer "representing" his father who "*had a few issues which I'm sure he will be happy to discuss with you...*".

56. On 13 August 2020, the Respondent sent an email to Mr E's email address [maz6612@gmail.com](mailto:maz6612@gmail.com) seeking instructions. Firm 2's file also contains an undated attendance note which stated:

*'AG speaking to . . . , they are having a bit of a dispute with [Client G] at the moment and they have seen a solicitor who will be writing to us to confirm the position, the main issue is that they are wanting to make sure they will be covered if any financial issues arise. AG said that was fine [sic.]'*

57. At this stage it was clear to the Respondent that he did not have Mr E's authority to sign the TR1 form on Mr E's behalf.

58. Mr E then wrote to the Respondent on 9 September 2020 stating that he needed assurance in the form of a contract that Client G would pay his legal fees. There had been a breakdown in relations between him and Client G and he needed this before he could instruct his solicitors.

59. On 15 September 2020, Firm 2 received a letter from Green Wright Chalton Ennis Solicitors ("GWCE") indicating that they acted for Mr E, the registered proprietor of Property F. Mr E would agree to the proposed sale provided, amongst other conditions, that he received £100,000. The balance of the proceeds could be paid to Client G. An email from Client G to Firm 2 dated 21 October 2020 stated that "they" were not willing to give "the other side" £100,000.

60. Correspondence on Firm 2's file shows that the Respondent continued to correspond with the purchaser's solicitors who asked on multiple occasions for the TR1. On 26 October 2020, they wrote to the Respondent indicating that he was in breach of his undertaking. On 14 December 2020, they indicated that the purchaser was threatening to report the matter to the SRA.

61. The Respondent contacted the purchaser's solicitors on 28 August 2020 stating:

*'...There has been an unanticipated difference of opinion between the parties involved, hence the delays...'*

62. On 26 October 2020 the Respondent wrote to the purchaser's solicitors stating:

*'... I gather the dispute has been resolved and am awaiting confirmation and TR1. I'm not in breach of any undertaking , the undertaking was to hold the monies pending production of the TR1 which, of course, I continue to do, if I'd known of the difficulties I*

*would not have suggested completion on that basis but hopefully things will resolve themselves shortly now [sic.]'*

63. The SRA does not know how or whether or when this dispute was resolved but there was no basis, at the time of this email, for the Respondent to believe that the dispute had been resolved or that the TR1, signed by Mr E, would be forthcoming.

64. In any event, correspondence between the Respondent and the purchaser's solicitors continued until at least 16 March 2021 when the purchaser's solicitors wrote to the Respondent stating:

*'Your client is the one that needs to sign the TR1. Please can you give me some more information...why is your client if they are the registered proprietor of the property not signing the TR1'.*

65. It can be inferred that the purchaser's solicitors were under the impression that the Respondent acted for the registered proprietor of the property. The SRA has not seen any response to that email.

66. During the same period, the Respondent was advising Client G and corresponding with GWCA on behalf of Client G in relation to the dispute with Mr E in which court proceedings were being threatened.

### **Breach of Principles – Allegation three**

67. Principle 2 of the SRA Principles 2019 requires solicitors to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. Public trust and confidence is undermined by a solicitor who signs contracts for the sale of a property without the instructions or authority of the registered proprietor. Principle 2 was breached.

68. A member of the public would not expect a solicitor to enter into legally binding agreements on their behalf without first obtaining their authority and / or instructions. At the time of signing the contract the Respondent knew:

68.1. that Mr E was not and had never been his client;

68.2. that Mr E had not instructed him to sell Property F;

68.3. that Mr E had not authorised Mr I or any other party to give instructions on his behalf; and

68.4. that Mr E had not authorised him to sign a contract for the sale of Property F on his behalf

69. Principle 5 of the SRA Principles requires solicitors to act with integrity. A solicitor acting with integrity would not have signed a contract for the sale of Property 2 without instructions or authority from the registered proprietor. Principle 5 was breached.

70. Paragraph 3.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs states:

*You only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your client's wishes, you do not act unless you have satisfied yourself that they do.*

71. By signing a contract for the sale of Property F without obtaining instructions or authority from Mr E, the Respondent failed to comply with Paragraph 3.1.

## **Mitigation**

72. The following points are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

72.1. In relation to Client A /Property B it is submitted in mitigation that it is an enormous standard to expect a solicitor to recall a client seen once briefly eight and a half years previously at a different firm however the Respondent accepts his failings in regard to this matter . The property remains in Client C's company's name and it is presumed Proceeds of Crime Act ("POCA") proceedings will, if necessary, be taken to transfer the property back to Client A, so he will have suffered no financial loss. At the time the Respondent had a substantial workload and did not give full and proper due diligence to the matter.

72.2. In relation to Mr E/ Property F, the Respondent accepts this was a poor file. He did not correctly identify who he was acting for and on what basis. He was being pressed by the buyers' solicitors. Having spoken to the registered proprietor's son (who was a lawyer) he took what at the time he would describe as an educated shortcut, in considering he had implied authority to exchange contracts from the registered proprietor. He accepts this was not correct and has breached the principles as alleged.

72.3. Litigation is ongoing and if it is accepted Mr E's rejection of Mr I's assertions that he simply held the property as a Trustee for him and the Power of Attorney Mr E

signed in favour of Mr I with confirmation the sale proceeds be paid to him also be disregarded and the Court rule in his favour then he will have suffered no financial loss.

72.4. This matter took place during the Covid lockdown, staff were often working from home, the Respondent was often in the office alone, his father had been diagnosed with Dementia and the Respondent thinks he probably had mild depression at this time.

### **Agreed Outcome**

73. The Respondent admits all of the above Allegations and agrees:

- 73.1. To be suspended from the Roll of Solicitors for 12 months;
- 73.2. Upon the expiry of the fixed term of suspension referred to above, be subject to an order restricting his ability to practice imposed indefinitely (subject to the parties' leave to apply to amend or rescind), as set out below at paragraph 75;
- 73.3. To pay costs to the SRA agreed in the sum of **£12,000**.

74. The costs set out above include a reduction for the case having concluded by way of Agreed Outcome.

75. The restrictions to be imposed are as follows:

The Respondent may not:

- a. Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body.
- b. Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body.
- c. Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration; or a Head of Legal Practice or Head of Finance and Administration.
- d. Hold client money.
- e. Be a signatory on any client account.
- f. Work as a solicitor other than in employment approved by the SRA Limited and such approval shall not be given until the Respondent demonstrates to the SRA satisfactory completion of courses or further training in the following areas:
  - i. Know Your Client;
  - ii. Risks of fraud in conveyancing transactions;
  - iii. Conflicts;

- iv. Accepting instructions from vulnerable clients/third parties.

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

76. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunals Guidance Note on Sanction (10<sup>th</sup> Edition).

77. It is agreed that:

- 77.1. The seriousness of the misconduct is such that neither a reprimand, fine, nor restrictions are sufficient for the protection of the public and the protection of the reputation of the profession;
- 77.2. Neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll;
- 77.3. Public confidence in the legal profession demands no lesser sanction; and
- 77.4. A fixed term of suspension for 12 months is proportionate to the seriousness of the misconduct;
- 77.5. A period of restricted practice will follow upon the termination of the suspension and the Respondent may apply to the Tribunal to vary or rescind the restrictions.

78. It is submitted that the following factors are relevant to the Respondent's level of culpability and the harm suffered;

- 78.1. The Respondent had been on the Roll for nearly 26 years at the time of these allegations. He was an experienced solicitor.
- 78.2. He was the fee earner with conduct of both matters.
- 78.3. In respect of Allegations 1.1 and 1.2, the Respondent knew of Client A's vulnerability at the time of the transaction. Further, he knew of the conflict of interest in acting for Client A and Client C. However, proceeded to act for both parties in the transaction and acted deliberately and recklessly.
- 78.4. In respect of Allegation 3, the Respondent knew he was not instructed by Mr E but nonetheless signed a contract for the sale of a property without Mr E's instructions or authority. He acted deliberately.
- 78.5. In relation to Allegation 1.1 and 1.2, Client A was a vulnerable adult and the Respondent ought to have taken steps to ensure that Client C did not take

advantage of Client A. The Respondent's misconduct resulted in Client A being defrauded by Client C.

78.6. In relation to Allegation 3, it is not known whether any party has suffered a financial loss. However, the Respondent's misconduct has directly or indirectly resulted in a legal dispute between Mr E and Client G. Further, the purchasers of the property, even if they did not suffer a loss, were inconvenienced and suffered a delay in their purchase.

79. In respect of mitigating features, the Respondent's mitigation is set out at paragraph 72 above.

80. In respect of previous regulatory history, on 23 April 2018 the Respondent was before the Tribunal for related allegations about his conduct on five conveyancing matters. They involved concerns about him acting without instruction or consent; not carrying out due diligence and failing to register lender's charges. The misconduct took place between 2005 and 2014. The Tribunal found the majority of the allegations proved and ordered the Respondent to:

80.1. pay a fine of £10,000;

80.2. be subject for an indefinite period to conditions including not practising as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

80.3. not be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

80.4. and pay the SRA's costs of £28,291.

81. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Signed:

Mr Anthony Gale

Date: 10.10.22

Signed:

On behalf of the Solicitors Regulation Authority Limited

Date: 10.10.22