SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12374-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

JOEL WOOLF Respondent

Before:

Mr A Ghosh (in the chair)
Mr G Sydenham
Mr A Lyon

Date of Hearing: 6 – 7 February 2023

Appearances

Andrew Bullock, barrister in the employ of the Solicitors Regulation Authority LTD of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Graeme McPherson KC of 4 New Square Chambers, Lincoln's Inn, London WC2A 3RJ instructed by Clare Hughes-Williams, solicitor, of DAC Beachcroft LLP, Portwall Place, Portwall Lane, Bristol BS1 9HS for Mr Woolf.

JUDGMENT

Allegations

1. The allegation made against the Respondent by the Solicitors Regulation Authority Limited ("SRA") was that while in practice as a solicitor at Wright Hassall LLP:

1.1 on 23 September 2020 he knowingly sent or caused to be sent two letters to the tenant, Mr. Graham Harries James (the "Tenant"), of his client, Pendine Sands Limited (the "Client"), which implied that the notices to quit enclosed with each were the same when in fact they were not and in doing so he breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the Principles") and Paragraph 1.2 of the Code of Conduct for Solicitors, ERLs and RFLs 2019 ("the Code for Solicitors");

2. in the alternative to the allegation that the Respondent's conduct breached Principle 4 of the Principles, it was alleged that his conduct had been reckless. Recklessness was alleged as an aggravating feature of the Respondent's misconduct but was not alleged to be an essential ingredient in proving the allegation.

Executive Summary

3. Mr Woolf admitted that he had caused to be sent to the Tenant two letters which, with hindsight, he accepted were capable of giving the impression that Notices To Quit enclosed with those letters were identical, when they were not. He admitted that, consequently, he had (i) failed to maintain trust in the profession in breach of Principle 2; (ii) failed to act with integrity in breach of Principle 5; and (iii) abused his position by taking unfair advantage of clients or others in breach of the Code for Solicitors. However, Mr Woolf denied that his conduct had been dishonest or that he had been reckless as alleged. The Tribunal found Mr Woolf's admissions to have been made properly and, accordingly found the admitted allegations proved. The Tribunal did not, however, find the allegations of dishonesty and recklessness to have been proved.

4. The Tribunal's findings can be found here:

- Findings

Sanction

5. Having found the matters proved, the Tribunal considered that the appropriate and proportionate sanction was to suspend Mr Woolf for a period of 12 months. The Tribunal's sanctions and its reasoning on sanction can be found here:

- Sanction

Documents

6. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit RN1 dated 7 September 2022
- Respondent's Answer and Exhibits dated 28 September 2022
- Applicant's Reply to the Answer dated 7 November 2022

- Applicant's Schedule of Costs dated 27 January 2023

Witnesses

7. Mr Woolf provided a written statement and gave oral evidence.

8. The written and oral evidence of Mr Woolf is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

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

Dishonesty

10. The test for dishonesty was that set out by Lord Hughes in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

11. When considering dishonesty, the Tribunal established firstly the actual state of Mr Woolf's knowledge or belief as to the facts, noting that there was no requirement for his belief to have been reasonable, merely that it had been genuinely held. It then considered whether his conduct had been honest or dishonest by the objective standards of ordinary decent people. When considering dishonesty, the Tribunal had regard to the references supplied on Mr Woolf's behalf.

Integrity

12. The test for integrity was set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, by Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

Recklessness

13. The test applied by the Tribunal was that set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:-

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, to take that risk."

14. **Allegation 1.1 - On 23 September 2020 Mr Woolf knowingly sent or caused to be sent two letters to the Tenant which implied that the Notices to Quit enclosed with each were the same when in fact they were not and in doing so he breached any or all of Principles 2, 4 and 5 of the Principles and Paragraph 1.2 of the Code for Solicitors.**

The Applicant's Case

14.1 Mr Woolf was instructed by the Client to obtain possession of demised agricultural land. He served three Notices To Quit on the Tenant - The Tenant would lose his right to challenge any Notice to Quit in respect of which he failed to serve a counter-notice within one month of its service on him and he would, in that event, lose his security of tenure under the Agricultural Holdings Act 1986 (the "Act"). Each Notice to Quit differed as to the ground on which possession was sought. All three Notices To Quit were despatched on the same day – 23 September 2020 - and delivered to the farm on 24 September 2020. Notices 1 and 2 were served, with a covering letter, by ordinary First-Class Post. Notices 2 and 3 were served, with a second covering letter, identical to the first save for the words "BY SPECIAL DELIVERY", by Special Delivery. Both covering letters stated, "Out of an abundance of caution we are affecting service by registered post and first class Royal Mail." In the mistaken belief that the three Notices to Quit were identical, the Tenant's Son, who received the two letters at the farm, sent only the Notices served by ordinary First Class Post – Notices 1 and 2 – to the Tenant's solicitors and the Notices served by Special Delivery – Notices 2 and 3 – to the Tenant. As the Tenant's solicitors were unaware of Notice 3 until after the expiry of the deadline for service of a counter notice, no counter notice was served in respect of Notice 3. The SRA alleged that Mr Woolf had been dishonest in seeking, deliberately, to deceive the Tenant. It was also alleged, in the alternative to the allegation of dishonesty, that Mr Woolf's misconduct was aggravated by his recklessness.

14.2 The Tenant was a farmer, aged 82 at the material time. He farmed in partnership with his wife and son.

14.3 By a written tenancy agreement dated 28 September 1971 the Secretary of State for Defence ("the Ministry of Defence") let Little Burrows Farm ("the Farm") to the Tenant. The tenancy became protected by the Act.

14.4 On 11 June 2020 the Landlord acquired from the Ministry of Defence the freehold title to approximately 46 acres of the Farm ("the Holding"). The Holding comprised a dilapidated farmhouse, farm buildings and approximately 43 acres of agricultural land.

14.5 The Landlord instructed Mr Woolf on or about 23 July 2020 to advise how possession of part of the Holding could be obtained.

14.6 Mr Woolf set out his advice in an email to the Landlord sent on 23 July 2020:

> "...the Agricultural Holdings Act 1986 gives very significant security of tenure to the tenant. It is very hard to get back occupation from a tenant unless they die or retire, but even then a qualifying relation can apply to succeed to the tenancy."
>
> …
>
> "There is no ability for a landlord to get back occupation of the whole just because the landlord wants to farm it. Any notice to quit which does not comply with either of ss26 or 27 of the 86 act is pretty much doomed to fail. Even where a landlord is able to bring themselves within the act sufficiently to serve a notice to quit the tenant can have the matter referred to arbitration or to the Agricultural Lands Tribunal (ALT) as appropriate. If that happens the action of the notice is suspended until such time as the arbitratior [sic] or tribunal consent to its operation".

14.7 On 22 September 2020 at Mr Woolf emailed the Landlord attaching a proposed letter to send to the Tenant together with three draft Notices To Quit. He advised:

> "I am still working out how best to try and disguise the fact of the bare notice to quit. It might be that I serve 2 notices in each letter in order to try and not make it obvious that one of the notices is a bare notice to quit. This is in order to try and spoof the tenant's advisers into just having the notices delivered by special delivery referred to arbitration and not notice that one of the notices is different.
>
> It must be recognised that this is, as I have said before, a high risk strategy but do not currently see any other strategy given the compressed time available.
>
> Given the current COVID situation, I should just warn you to watch out for any notice arriving informing you of the death of the tenant. The tenant is clearly quite old being at least in his 70s."

14.8 Mr Woolf and the Landlord discussed the matter on 23 September 2020. As recorded in a telephone attendance note, Mr Woolf advised the Landlord against serving a further notice to quit in respect of a further area of the Holding, as he considered that this:

> "…would also make the tenant look too deeply into the notices and scupper the plan to try and get the bare Notices to Quite [sic] past them."

14.9 On 23 September 2020 Mr Woolf sent two letters to the Tenant. The content of the letters was identical, save the words 'BY SPECIAL DELIVERY' were typed on one letter to reflect that it was to be posted by special delivery, whereas the other was sent by way of first-class post. Both letters stated:

> "We act for Pendine Sands Limited the freehold owner of the farmstead and approximately 46 acres of land or thereabouts at Little Burrows Farm Pendine which you hold on an Agricultural Holdings Act 1984 tenancy dated 28 September 1971 made between (1) The Secretary of State for Defence and (2) [The Tenant].
>
> We now enclose by way of service notice to quit in relation to the holding. For the avoidance of doubt each notice is served without prejudice to any other. Out of an abundance of caution we are affecting service by registered post and first class Royal Mail."

14.10 The three Notices To Quit stated the tenancy was to be determined on the following grounds, if any:

- the first notice specified no reason and was described by Mr Woolf as a 'bare' notice ("Notice 1")
- the second notice stated the Landlord wished to use the land for an abattoir ("Notice 2")
- the third notice stated that part of the Holding was desirable for the purposes of agricultural research, education, experiment or demonstration and/or the Landlord would suffer hardship unless the notice had effect ("Notice 3").

14.11 The letter sent by way of ordinary first-class post enclosed Notices 1 and 2. The letter sent by way of special delivery enclosed Notices 2 and 3.

14.12 Both letters were delivered on 24 September 2020. The Tenant's Son opened and read the letter sent by way of first-class post and Notice 1 and Notice 2 enclosed with it. He next opened the letter sent by way of special delivery but did not read both enclosed notices, believing that like the letters, the Notices were identical.

14.13 The Tenant's Son gave his father the letter sent which enclosed Notices 2 and 3. He scanned the letter enclosing Notices 1 and 2 to the Tenant's Solicitors, JCP.

14.14 Although three Notices had been served, the Tenant and the Tenant's Son each believed the other had received the same two notices.

14.15 On 16 October 2020 the Tenant's solicitors sent the Landlord counter-notices to Notices 1 and Notice 2 and without prejudice to the counter-notice, a demand for arbitration in respect of Notice 2. On the same day, JCP sent a copy of their letter and enclosures to Mr Woolf by way of first-class post and recorded delivery.

14.16 Having received the letter from JCP, on 19 October 2020 Mr Woolf emailed the Landlord advising:

> "Firstly, can you send me a copy of everything that you receive just so that I can make sure that they have not done the same trick I did to the tenant.
>
> …
>
> Having reviewed the copy correspondence they sent to us, they have only responded to the notices which were served by way of special delivery on the tenant. If you recall we served 3 notices on the tenant.
>
> ….
>
> As you know, from the outset I have not been optimistic about the ability to currently bring the tenancy to an end, and my assessment has not changed not withstanding [sic] the fact that the tenant may have fallen for our ruse.
>
> …
>
> At the moment, and from the copy letters I have seen, it appears that there has been no counter notice served by the tenant in respect of the bare notice to quit included in that letter. The copy letter sent to me by JCP Solicitors refer to 2 notices only. This is, I suspect, because the tenant only gave the special delivery letter to their solicitors. The tenant has until 25 October 2020 to realise the error and serve a further counter notice. I suggest that we wait therefore before responding formally and see if they notice the third notice. As I have said before the practice of serving the notices in this way is considered sharp…
>
> …
>
> They may also try and argue that they were actively misled which I disagree, but we will have to wait and see."

14.17 On 10 November 2020, after the deadline for the Tenant to serve a counter notice had passed, Mr Woolf called JCP. The telephone attendance note recorded that Mr Woolf asked to speak on a without prejudice basis:

> "JW then said that he had served 3 notices on the tenant and had been banking on the tenant only providing one copy of the letter to his solicitor. … JW agreed to send over copies of the letters actually served".

14.18 On 12 November 2020 Mr Woolf emailed JCP, attaching the two letters and the three Notices he had sent to the Tenant. Having compared the two letters and enclosed Notices this was the first time that the Tenant, the Tenant's Son and the Tenant's solicitors became aware of Notice 3, after the time permitted to serve a counter-notice had expired.

14.19 The Agriculture Land Tribunal for Wales ("ALTW") proceedings.

14.20 By letter dated 13 November 2020 Mr Woolf sent three applications to the Agriculture Land Tribunal for Wales ("ALTW"), seeking consent to the operation of the three Notices To Quit which it was stated had each been served on 23 September 2020. No

mention was made of the fact that the Tenant had only become aware of Notice 3 the day before.

14.21 On 15 December 2020 JCP served Mr Woolf with the Tenant's Reply to the Landlord's applications to the ALTW, alleging that service of Notice 3 had been "procured either by fraud or by misrepresentation" and as a result all of the Notices were a nullity.

14.22 The ALTW proceedings were stayed pending the outcome of the Tenant's claim brought in the High Court in Wales. The Claim Form and Particulars of Claim in those proceedings sought a declaration that the three Notices To Quit the Holding were invalid and of no effect because the Landlord "acted fraudulently in instructing its solicitors to serve the Notices in the manner in which they were served and because the manner of service rendered the Notices misleading and insufficiently clear and certain to have effect."

14.23 The Landlord failed to serve a Defence to the claim within the prescribed time. On 22 July 2022, having heard no evidence in respect of the substance of the claim and having made no findings of fact, the Court declared that Notice 3 was invalid and of no effect to terminate the Tenant's tenancy of the Holding. The Tenant's application for declaratory relief in respect of Notices 1 and 2 was adjourned generally to stand automatically struck out if no application to restore was filed by 31 August 2023. The Landlord was ordered to pay the Tenant's costs of the claim to be assessed on the standard basis in default of agreement.

14.24 Mr Bullock submitted that although Mr Woolf's "ruse" of serving different Notices under cover of identically worded letters succeeded to the extent that no counternotice was served to Notice 3, the Tenant was ultimately able to continue to occupy the Holding as a tenant. However, his actions still caused considerable stress and anxiety to both the Tenant and his son. It also impacted on their ability to run their farming business effectively. The need to deal with the ALTW and civil court proceedings imposed substantial extra demands on their time, the need to pay legal fees had an impact on cashflow and the uncertainty over their tenure of the Holding meant that they were unable to make long term decisions concerning its future.

The Firm's Internal Investigation

14.25 On 19 November 2020 JCP wrote to Mr Woolf setting out its concerns as to the manner in which the Notices To Quit had been served and asking for their letter to be passed to the Firm's COLP.

14.26 On 24 November 2020 the Firm's Risk and Compliance Director, sought an explanation from Mr Woolf. In his email in reply sent on the same day, Mr Woolf denied any wrongdoing and any breach of the Principles. He stated:

> "We served 3 notices. Tactically having review [sic] the matter when it first arrived it was clear to us that the client had very little chance of obtaining VP of the holding on the basis of what they wanted to do. We discussed with them the potential to take advantage of a likely characteristic of the tenant which was not to read things properly. That way we could get a notice served without drawing attention to it which would then give us the basis to go forward. The

> client was warned that at the least this would be seen as sharp practice by the tenant whether it worked or not.
>
> …
>
> The only issue I think that they can really have any prospect on is in relation to the manner in which the correspondence was sent.
>
> …
>
> I would accept that the wording of the letters was such to make the reader make an assumption, but everything we do as solicitors is designed to adjust and alter the way in which the other side, both the solicitor and their client, thinks about things and draws conclusions and make assumptions in order for us to get the best possible result for our client."

14.27 On 6 January 2021 the Firm informed JCP that having reviewed the Tenant's draft Particulars of Claim there was a potential for an own interest conflict. Accordingly, the Landlord was advised to seek independent legal advice and the Firm ceased acting.

14.28 Mr Bullock submitted that members of the public placed a large degree of trust in solicitors. The public reasonably expected solicitors to send correspondence that was not misleading. The public would be alarmed that Mr Woolf devised a plan to deliberately mislead an elderly Tenant, with the potential consequence for the Tenant being the loss of part of his family business that he had managed for over 50 years. The plan was executed, with the Tenant believing that the Notices To Quit enclosed with the two letters served were the same, when they were not. This was a reasonable conclusion for the Tenant to reach when the reason for Mr Woolf sending two letters was stated to be: "Out of an abundance of caution we are affecting service by registered post and first-class Royal Mail." The inference was that the same letter and enclosures had been sent but by way of different postal methods to ensure an important document with significant legal consequences for the Tenant, his business and his family, was served upon him.

14.29 Public trust and confidence in Mr Woolf, in solicitors and in the provision of legal services was likely to be undermined by such conduct. Mr Woolf therefore breached Principle 2 of the Principles.

14.30 In his representations to the SRA's Disciplinary Notice Mr Woolf admitted a breach of Principle 2:

> "Having considered the matter carefully and with the benefit of hindsight, Mr Woolf accepts that in acting as he did, he breached Principle 2. He accepts that, when considered objectively, his conduct would not be regarded as upholding public trust and confidence in the solicitors' profession and rather, his conduct would (he accepts, rightly) be regarded as being detrimental to that trust and confidence."

14.31 Mr Bullock submitted that by sending two identical letters but with different Notices To Quit enclosed, Mr Woolf failed to act with integrity. Acting with integrity required

him to take reasonable care to ensure that his correspondence was clear and accurate, particularly when taking into account the importance of the matter for the Tenant. Instead, the letters were deliberately drafted in order to "trick" the Tenant into believing that the Notices enclosed with the covering letters were identical so he would fail to serve a counter-notice; something which Mr Woolf himself described as "sharp practice". Mr Woolf therefore breached Principle 5 of the Principles.

14.32 In his representations, Mr Woolf said "… [he] now accepts, however, that by acting as he did, his conduct fell short of the higher standards that society expects, and is entitled to expect, from solicitors. He therefore admits that he acted without integrity by sending the Covering Letters as drafted with different Notices enclosed with each".

14.33 Paragraph 1.2 of the Code for Solicitors required: "You do not abuse your position by taking unfair advantage of clients or others". Mr Woolf was a specialist in agricultural law with over 15 years' experience as a qualified solicitor. He knew the Tenant was elderly and vulnerable during the height of the covid global pandemic.

14.34 Mr Woolf devised a plan which, if successful, would potentially lead to the Tenant losing possession of an area of the Holding. Against this backdrop, Mr Woolf chose to draft and send two letters to the Tenant enclosing different Notices To Quit. He planned for the Tenant to overlook one of the three Notices To Quit, believing that Mr Woolf's letters and the enclosures were the same, when they were not.

14.35 In acting in this manner Mr Woolf had abused his position as a solicitor, taking unfair advantage of the Tenant, on a matter which had significant, real and far-reaching consequences for the Tenant, his family and his business.

Dishonesty/Principle 4

14.36 Mr Bullock submitted that at the time that Mr Woolf had sent the letters, he knew that there was a disparity of knowledge between himself and the Tenant. Mr Woolf was an agricultural law specialist with 15 years post qualification experience as a solicitor and held the senior position of Partner at the Firm, which had a reputation as specialists in what is a relatively niche area of law. The Tenant was unrepresented, was elderly and vulnerable in terms of his health in the midst of a global pandemic. believed the Tenant to be someone who "would not read things properly". In his Answer, Mr Woolf highlighted that the Tenant had access to legal advice from an equally experienced specialist solicitor. Mr Bullock acknowledged that that once the Tenant had instructed solicitors, there was equality of arms. However, this did not assist Mr Woolf as the letters had been sent to the Tenant. The ruse had been directed at the Tenant and not at his lawyers.

14.37 The content of the letters he drafted and sent or caused to be sent to the Tenant were identical, save for the words 'BY SPECIAL DELIVERY' on one. The purported reason which Mr Woolf specified for serving the two letters upon the Tenant was "Out of an abundance of caution we are effecting service by registered post and first-class Royal Mail". Mr Woolf knew that the Tenant would take this to mean that the same letter had been sent by two different postal methods to ensure that they were delivered to the Tenant. He also knew this was misleading.

14.38 The language used in the contemporaneous documents evidenced that Mr Woolf understood the letters to be misleading and intended them to be understood by the Tenant as containing the same documents. He wanted to "disguise" one of the Notices and "spoof the tenant's advisers into just having the Notices delivered by special delivery referred to arbitration and not notice that one of the Notices is different" – in other words, it was submitted, to mislead the Tenant deliberately.

14.39 Mr Woolf described his plan as a "ruse" meaning an action or a plan to deceive the Tenant. The objective of that ruse was to enable his client to obtain vacant possession of part of the Holding in circumstances where it was otherwise unlikely to have been able to have done so. He also stated that his conduct might be viewed by the Tenant as amounting to "sharp practice", implying that the Tenant would consider it dishonest, barely honest or unscrupulous. Mr Woolf accepted that "the wording of the letters was such to make the reader make an assumption." He believed that the assumption the Tenant would make would be that there were only two notices, and he would overlook the third. He further anticipated that the Tenant would argue that he had been misled by Mr Woolf serving the Notices in the manner he did, demonstrating that he understood there were grounds to do so and that his conduct could be perceived in this way. Indeed, in his email dated 19 October 2020, Mr Woolf stated: "They may also try and argue that they were actively misled…".

14.40 One of the consequences of Mr Woolf's "sharp practice" was that the Tenant was prevented from availing himself of the protection that should have been open to him under the Act. The Tenant was forced to commence separate proceedings in the High Court and to deal with the stress and associated risks of protracted litigation.

14.41 By knowingly misleading the Tenant into believing that two Notices had been served rather than three, in order to procure vacant possession of part of the Holding for his client, Mr Woolf's conduct would be judged as dishonest according to the standards of ordinary and decent people.

14.42 In the representations to the Disciplinary Notice it is stated:

> "With the benefit of hindsight he [the Respondent] accepts that the Covering Letters had the capacity to give a misleading impression that each Covering Letter enclosed the same Notices when they did not."

14.43 Mr Woolf denied deliberately misleading or seeking to mislead, or taking any unfair advantage of the Tenant. He was engaging in what he said was common practice of creating a possibility that one or more of the multiple Notices might be overlooked and go 'uncountered', disentitling the Tenant from challenging the Notices and securing an advantage for his client which would not have arisen had he been transparent about what Notices the Landlord was serving.

14.44 Mr Bullock submitted that it was acknowledged that serving different Notices To Quit was a tactic employed by Landlords in attempting to obtain possession of agricultural tenancies. However, what was misleading was the fact that the covering letters dated 23 September 2020 were implied to be one and the same letter, enclosing one and the same set of Notices To Quit. That was not true and Mr Woolf knew it was not true as he had deliberately enclosed different Notices with each letter.

Recklessness

14.45 In his representations, Mr Woolf stated that he did not set out or intend, either recklessly or wilfully, to breach the Principles.

14.46 Mr Bullock submitted that there was a risk that the Tenant would overlook one of the three Notices to quit sent to him. If he did, the Tenant would be deprived of his rights under the Act and prevented from countering the notice. This would entitle Mr Woolf's client to achieve its objective of gaining possession of part of the Holding at the earliest opportunity. Mr Woolf was aware of this risk as there were contemporaneous emails and telephone attendance notes which record that he had such knowledge prior to serving the notices, as he relayed to his client by way of the email dated 22 September 2020. He himself described his plan a "high risk strategy" and "sharp practice" yet proceeded regardless.

14.47 The potential consequences of the identified risks were that the Tenant would lose the right to contest the overlooked notice and lose possession of part of the Holding, impacting the Tenant's family business and finances. This would inevitably create stressful circumstances for the Tenant, an elderly man. In addition, there was potential for litigation if the Tenant contested the matter, involving significant legal costs. On 23 July 2020 Mr Woolf estimated that if the Tenant did counter the Notices To Quit and the matter proceeded to the ALTW, "It could take 2 or more years and it could also cost £60,000 to £75,000 plus VAT and disbursements".

14.48 Having been aware of the risks, it was unreasonable in the circumstances for Mr Woolf to proceed with his planned course of conduct. Accordingly, in doing so, his conduct had been reckless.

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

14.49 Mr Woolf accepted the accuracy of the core underlying facts as set out by the Applicant. Mr Woolf admitted that his conduct had been in breach of Principles 2 and 5 and Paragraph 1.2 of the Code for Solicitors, as alleged. He denied, however, that his conduct had either been dishonest in breach of Principle 4 or reckless.

14.50 Mr Woolf submitted that he had merely followed a long-established practice in his field of agricultural law of serving multiple, different, Notices To Quit on tenants in the hope that one or more of such Notices might be overlooked and a counter-notice not served in respect of the overlooked Notice. Leading practitioners' textbooks on agricultural law and caselaw treated the practice as standard and commonplace and the Applicant itself accepted that this was, indeed, an established practice.

14.51 With the benefit of hindsight, he could now see that the serious risk of the Tenant being deceived could amount to sharp practice but, at the time that he had sent the Notices and the covering letters, he had not appreciated that. He had thought, at that time, that he was doing nothing more than was commonplace and following a widely accepted practice among agricultural law practitioners.

14.52 With regard to Mr Woolf's use of terms such as "disguise", "spoof", "trick", "ruse" and "sharp practice", highlighted by Mr Bullock, Mr McPherson KC submitted that

Mr Woolf had used those expressions to refer to the common practice among agricultural law practitioners of serving multiple different Notice to Quit. In his evidence Mr Woolf clarified that he considered "sharp practice" to mean "technically correct but not really cricket". It was only with the benefit of hindsight that Mr Woolf now perceived that what he had done lacked integrity.

14.53 With regard to recklessness, Mr McPherson KC submitted that far from being reckless, Mr Woolf, as he had stated in his Answer, had "agonised" over the wording of the covering letters to ensure that they were not misleading.

15.54 Mr McPherson KC pointed out that in his email to the Landlord of 23 July 2020, Mr Woolf had suggested obtaining an opinion from "relatively senior counsel" and that such an opinion should, ideally, be obtained prior to the service of any Notices. Dishonest or reckless people, it was submitted, would not have suggested obtaining such a second opinion.

15.55 Furthermore, he had provided all of the documents to JCP. When JCP complained to the Firm, he had provided the letter to the COLP, and had explained to the COLP and the Director of Risk Management what he had done and why. .

15.56 Mr McPherson KC submitted that Mr Woolf had built up a reputation as a recognised expert in agricultural law over many years. He had a long and unblemished professional record. It was inherently unlikely that he would deliberately jeopardise his livelihood and reputation by acting dishonestly or recklessly as alleged, and it was all the more unlikely that he would do so to benefit the Landlord, who was a new client. As per the comments of Sir Geoffrey Vos in Bank St Petersburg v Arkhangelsky [2020] EWCA Civ 408 at paragraph 117:

> "In general it is legitimate and conventional, and a fair starting point, that fraud and dishonesty are inherently improbable such that cogent evidence is required for their proof. But that is because, other things being equal, people do not usually act dishonestly…"

15.57 In Re D [2008] 1 WLR 1499, the House of Lords stated (having considered a number of authorities regarding the civil standard of proof):

> "It is recognised by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place (Lord Hoffmann's example of the animal seen in Regent's Park), the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making

it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues. They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established."

15.58 Mr McPherson KC referred the Tribunal to the guidance given by the Administrative Court in Fish v GMC [2012] EWHC 1269 Admin:

"67. What, however, seems to be a proposition of common sense and common fairness is this: an allegation of dishonesty should not be found to be established against anyone, particularly someone who has not been shown to have acted dishonestly previously. except on solid grounds. Given the consequences of such a finding for an otherwise responsible and competent medical practitioner, any Panel will almost certainly (without express reminder) approach such an allegation in that way.

68. An allegation of dishonesty against a professional person is one of the allegations that he or she fears most. It is often easily made, sometimes not easily defended and, if it sticks, can be career-threatening or even career-ending. Who would want to employ or otherwise deal with someone against whom a finding of dishonesty in a professional context has been made? I am, of course, dealing with the issue of dishonesty in a professional person simply because that is the issue before me. It is, however, a finding that no-one, whatever their walk in life, wishes to have recorded against his or her name.

69. I do not think that I state anything novel or controversial by saying that it is an allegation (a) that should not be made without good reason, (b) when it is made it should be clearly particularised so that the person against whom it is made knows how the allegation is put and (c) that when a hearing takes place at which the allegation is tested, the person against whom it is made should have the allegation fairly and squarely put to him so that he can seek to answer it. It is often uncomfortable for an advocate to suggest that someone has been deliberately dishonest, but it is not fair to shy away from it if the same advocate will be inviting the tribunal at the conclusion of the hearing to conclude that the person being cross-examined was dishonest. (I should say that Counsel presenting the case to the FTP did put the case advanced against him fairly to the Appellant. The problem, as I see it, for the reasons I will give below, is that what she put to him and what the Panel in due course concluded were arguably different or, at all events, the conclusion for which she contended did not have the compelling logic behind it that made its acceptance by the Panel valid.)

70. At the end of the day, no-one should be found to have been dishonest on a side wind or by some kind of default setting in the mechanism of the inquiry. It is an issue that must be articulated, addressed and adjudged head-on."

The Tribunal's Findings

15.59 Mr Woolf admitted that his conduct was in breach of Principles 2, 5 and Paragraph 1.2 of the Code. The Tribunal accepted those admissions and found those matters to have been proved.

Dishonesty/Principle 4

15.60 The Tribunal noted the words, highlighted below in this judgment, of the first limb of the test for dishonesty set out by Lord Hughes, "When dishonesty is in question the fact-finding Tribunal must first ascertain (**subjectively**) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but **it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held**." However unreasonable Mr Woolf's belief of the facts might seem, the Tribunal was of the view that he had genuinely believed at the time that he had served the covering letters and Notices To Quit, that he was merely acting in accordance with established custom and standard practice in his field of agricultural law. The Tribunal was of the view that, by the objective standards of ordinary decent people, a person holding Mr Woolf's belief as to the facts at the material time, would not be regarded as having acted dishonestly.

Recklessness

15.61 Having found that Mr Woolf's conduct was not dishonest, the Tribunal then considered the alternative allegation of recklessness. The Tribunal agreed with the submission of Mr McPherson KC that Mr Woolf, far from having been reckless, had agonised and taken great care to ensure that the letters were accurate and not, in themselves, misleading. Accordingly, the allegation that Mr Woolf's conduct had been reckless was dismissed.

15.62 The Tribunal found allegation 1.1 proved, save that it did not find a breach of Principle 4. The Tribunal found allegation 2 not proved.

Previous Disciplinary Matters

16. None.

Mitigation

17. In terms of his personal mitigation, it was submitted that in September 2020, Mr Woolf was at the top of his profession and had an impeccable career and unblemished record. The admitted and proven misconduct had been hugely significant for him. He had suffered harm to his reputation and his standing within the Firm. He had worked hard, achieved a lot and had been at risk of losing it all as a result of his error in judgement. The impact had far-reaching effects. His daughter had won a scholarship which Mr Woolf had decided not to accept for fear that he would have had to remove her from the school if his conduct had been adjudged dishonest. His health had suffered as a result of the investigation and proceedings.

18. Mr McPherson KC submitted that with regard to culpability, Mr Woolf had not been motivated to commit misconduct. On the contrary he had tried to comply with his regulatory obligations but had made a mistake that he bitterly regretted. His misconduct had thus been inadvertent. It was accepted that at the time that the letters were sent, Mr Woolf was in a position of advantage, however his conduct did not amount to a breach of trust. He was, and accepted that he was, wholly responsible for his conduct. Mr Woolf considered that he had made a mistake, albeit one that he should not have made.

19. Mr Woolf acknowledged that he had caused harm to the Tenant and his family. The stress suffered as a result of the uncountered Notice was greater than would otherwise had been the case. There had also been financial consequences, although they had been minimised due to there being an insurance policy in place which it was anticipated would cover the costs of the legal proceedings. There would have been a degree of disruption to the Tenant's business, but the business had continued to trade throughout.

20. The imbalance knowledge and experience of the law between Mr Woolf and the Tenant was an aggravating feature. However, that imbalance was not as severe as it might at first seem. The Tenant would have had some knowledge regarding Notices, and he very quickly instructed solicitors to act on his behalf. Mr McPherson KC submitted that the breaches of Principle 2 and Paragraph 1.2 were made more serious due to Mr Woolf's falling below the standards expected of him.

21. In mitigation, Mr Woolf had been open and frank. He had responded in full to the referral notice and had provided a full explanation in his Answer and witness statement in the proceedings. The matter had been reported to the SRA by his Firm, and was not the result of a complaint by the Tenant or his legal advisors. This was a single and brief episode in a long and unblemished career. Mr Woolf was a leader in his field and was publicly acknowledged for his expertise by his ranking in legal journals. He had shown genuine insight and remorse. He had undertaken training focused on ethical matters and subjected himself to supervision and file reviews.

22. Mr McPherson KC reminded the Tribunal that the purpose of sanction was to punish misconduct, act as a deterrent and to maintain public confidence in the reputation of the profession. It was submitted that a properly informed member of the public would consider that a fine was an appropriate sanction in all the circumstances. The level of seriousness was not such that Mr Woolf should be suspended from practice. There was no risk of further misconduct. He had continued to practice without objection or incident, and there was no suggestion that the public would be at risk if he were to continue in practice. The appropriate level was a fine that fell within the Tribunal's Indicative Fine Band Levels 3 or 4.

23. Should the Tribunal consider that a financial penalty was disproportionate to the misconduct, it was submitted that a suspended suspension with restrictions would be appropriate.

Sanction

24. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to

maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

25. Mr Woolf was a highly experienced solicitor who was an expert in his field of agricultural law. Whilst he had followed a practice which he had regarded as commonplace in his field, as he himself acknowledged with the benefit of hindsight, his actions amounted to a "spoof", "trick", "ruse" and "sharp practice" – an attempt to "disguise" the service of differing multiple Notices To Quit. He had thereby sought to take advantage of the Tenant, whom he knew to be elderly.

26. He had caused harm both to the reputation of the profession and to the Tenant and his family.

27. Whilst the Tenant did instruct solicitors (thus to some degree redressing the inequality of arms as between Mr Woolf and the Tenant), Mr Woolf had sent both letters to the Tenant, notwithstanding that he was aware that the Tenant had recently instructed JCP to assist with negotiations with the Landlord, those negotiations not having succeeded for the Landlord.

28. In Bolton v Law Society [1993] EWCA Civ 32 Sir Thomas Bingham MR (as he then was) stated:

> "If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the Tribunal be likely to regard as appropriate any order less severe than one of suspension."

29. The Tribunal found that Mr Woolf's misconduct was such that he had fallen far short of the standards of integrity, probity and trustworthiness expected of a solicitor . In the words of Sir Thomas Bingham MR, a solicitor must be capable of being "trusted to the ends of the earth".

30. The Tribunal determined that a suspension from the Roll for a period of 12 months reflected the gravity of Mr Woolf's misconduct.

31. Accordingly, the Tribunal ordered that Mr Woolf be suspended from practice for 12 months.

Costs

32. Mr Bullock applied for costs in the sum of £10,377.29. This amount took into account of the fact that the hearing time was shorter than had been anticipated and the original amount claimed for disbursements had been reduced.. Mr Bullock acknowledged that

the Tribunal might reduce the costs further to take account of the fact that the allegations of dishonesty or reckless had not been found to be proved.

33. Mr McPherson KC submitted that, had the Applicant not proceeded with the allegations that had been dismissed, the costs would have been significantly less that the amount claimed.

34. The Tribunal considered that it was appropriate to reduce the Applicant's costs to reflect the fact that the allegations of dishonesty or recklessness had not been substantiated. Mr Woolf. The Tribunal determined that costs in the sum of £9,000 were reasonable and proportionate in all the circumstances. Accordingly, the Tribunal ordered that Mr Woolf pay costs in the sum of £9,000. In arriving at that figure, the Tribunal took into account the Statement of Means provided by Mr Woolf.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, JOEL WOOLF , solicitor, be suspended from practice for the period of 12 months to commence on the 7th day of February 2023 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,000.00.

Dated this 6th day of March 2023
On behalf of the Tribunal

A Ghosh
Chair