

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12480-2023

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

KRYSTEL MARZAN

Respondent

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Before:

Mr P Lewis (in the Chair)

Ms C Rigby

Mrs L McMahan-Hathway

Date of Hearing:

23- 24 January 2024

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## **Appearances**

Victoria Sheppard-Jones, barrister of Capsticks, 1 St George's Road, Wimbledon, London SW19 4DR for the Respondent

Jonathan Goodwin, Solicitor Advocate of Jonathan Goodwin Solicitor Advocates for the Respondent.

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## **JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent, made by the SRA were that:
  - 1.1 On or around 14 July 2016, whilst a Solicitor and Director at Information Officers Limited, the Respondent submitted or caused to be submitted, two Lasting Powers of Attorney (“LPA”) to the Office of the Public Guardian (“OPG”), which she knew were misleading, in that they purported to show that the donor had signed and dated both Lasting Powers of Attorney on 4 August 2015 and that the Respondent had witnessed those signatures, when that was not the case.

In doing so she thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.

- 1.2 Between at least October 2019 and June 2020, whilst employed as a Consultant Solicitor at Richard Nelson LLP, the Respondent pre-signed conveyancing documents, including mortgage deeds and/or personal guarantees and/or occupiers’ consent forms, as a witness, in circumstances where she knowingly had not in fact witnessed the relevant signatures on the documents.

In doing so she thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011, so far as the conduct pre-dated 25 November 2019, and Principles 2, 4 and 5 of the SRA Principles and Paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs, so far as the conduct occurred on or after 25 November 2019.

## **Dishonesty**

2. In addition, allegation 1.1 and allegation 1.2, so far as the conduct predated 25 November 2019, were advanced on the basis that the Respondent’s conduct was dishonest.
  - 2.1 Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct, but it was not an essential ingredient in proving the allegations.

## **Executive Summary**

3. The Respondent denied the allegations in their entirety. Whilst she accepted that she made mistakes, these had been inadvertent, not lacking integrity and not dishonest.
4. In relation to Allegation 1.1 (“the LPA’s”), the Respondent said she did witness the signature of the donor in August 2015 on the LPAs submitted in July 2016. She may have asked the donor to sign several copies of LPAs in August 2015, so she had spares in case of any errors. She denied acting without integrity or dishonestly but accepted that she ought to have submitted entirely fresh LPAs.
5. In respect of the matters set out in Allegation 1.2, the Respondent said that she had held virtual meetings with clients and observed them signing their deeds. She would then request that they sent the document to her either by post or email. Upon receipt she would apply her witness details. She considered this to be in accordance with acceptable Law Society practice and denied acting without integrity or dishonestly.

6. The Tribunal found all matters proved on the balance of probabilities, save for dishonesty in relation to Allegation 1.2 which it did not find proved.
  - The [Facts](#) can be found here.
  - The Applicant's Case can be found [here](#)
  - The Tribunal's Findings can be found here – [1.1](#) and [1.2](#).
  - The Mitigation can be found [here](#)
  - The Tribunal's Decision on Sanction can be found [here](#).

### **Documents**

7. The Tribunal considered all the documents in the case which were contained in the electronic bundle. The Tribunal may refer to non-parties to these proceedings by their initials so as not to infringe Legal Professional Privilege where this applies.

### **Witnesses**

8. 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 and submissions. 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.
9. The Respondent gave evidence. No other live evidence was called.

### **Factual Background**

10. The Respondent, who was born January 1983, is a solicitor who was admitted to the Roll in 2014.
11. Between 19 March 2014 and 7 August 2018, the Respondent was a Director of a company called Information Officers Limited, which was incorporated at Companies House on 19 March 2014 and dissolved on 7 August 2018. Information Officers Limited was a non-SRA regulated legal practice.
12. On 21 August 2019, the Respondent was engaged as a Consultant for Richard Nelson Solicitors LLP, a recognised body. This employment was terminated on 2 July 2020, with immediate effect.

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

13. The Applicant was required by Rule 12 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for her private and family life under

Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

### The Applicant's Case

14. The conduct in relation to Allegation 1.1 came to the attention of the SRA on 17 June 2020, when the OPG made a report to the SRA in relation to applications LPAs which contained the Respondent's details as the witness to the donor's signature. The nature of the report was that the Respondent, in her capacity at Information Officers Limited, had been instructed in the preparation of LPAs for donor, STL, and that she had purported to witness the signatures of STL in circumstances where it appeared she cannot have witnessed the same.
15. The original LPAs (one for Health and Welfare and one for Property and Financial Affairs) were signed and dated 4 August 2015 by the donor. The Respondent's name and details were provided as the witness to the donor's signatures in section 9 of both LPAs. Section 9 sets out that the donor provides their permission to the attorney to make decisions relating to health and welfare, and property and finances in the case of an LPA dealing with health and welfare and property and finance respectively. It also appeared as though the Respondent's signature was applied as the witness to the donor's signature in section 5 of the LPA for Health and Welfare which deals with Life Sustaining Treatment and whether the attorney may give or refuse consent to life sustaining treatment on the donor's behalf. However, as no witness details were provided next to the signature, this was unclear.
16. The original LPAs were received by the OPG on 19 August 2015, and registered by the OPG in October (Property and Financial Affairs) and December 2015 (Health and Welfare). Further applications were made by the Respondent to the OPG in March 2016 and July 2016, seeking to appoint additional attorneys (persons who can exercise the powers of attorney). These applications were different to those submitted in 2015 to the extent that in addition to the attorney named in the 2015 LPAs other attorneys were now named.
17. The applications of March 2016 (the second set of LPAs) were returned as they contained photocopied documents from the original LPAs of August 2015. Amended versions of existing LPAs are not acceptable.
18. The applications of July 2016 (containing the third set of LPAs) were registered by the OPG but upon investigation into STL's affairs by the OPG, it transpired from correspondence provided by the original attorney, RR, that the decision to appoint additional attorneys was made in January 2016, which was after the date of the donor's signatures on the third set of LPAs.
19. The Respondent had purported to witness the signatures of the donor on the third set of LPAs in section 5 for the LPA for Health and Welfare and section 9 on both LPAs, on 4 August 2015. However, it appeared to the OPG that the Respondent could not have correctly witnessed the signatures on those dates, because the decision to appoint the additional attorneys was after the date of the donor's signatures.

20. Mrs Wendy Watts-Boothby of the OPG provided witness statements confirming the contents of her report to the SRA and exhibiting the three sets of LPAs. She confirmed that the third set of LPAs, received in July 2016 and registered in September 2016, had since been cancelled by the Court of Protection on 21 February 2021.
21. The conduct in relation to allegation 1.2 came to the attention of the SRA as detailed below.
22. On 24 June 2020, the SRA notified Richard Nelson LLP of the SRA's investigation into the Respondent in relation to the OPG's report. On 23 July 2020, the SRA provided an update on their investigation to Richard Nelson LLP and sought any relevant documentary evidence. On 30 July 2020, Richard Nelson LLP wrote to the SRA confirming the following:
- that the Respondent had commenced a consultancy post with Richard Nelson LLP from 21 August 2019;
  - that Richard Nelson LLP had discussed the LPA matter with the Respondent by telephone on 25 June 2020, in which the Respondent stated:

*“she could not recall all the circumstances of the matter. She stated that she had set up a company with a friend to deal with LPAs. She stated that this was not a regulated entity. She stated that she could recall being physically present and witnessing the signing of the first LPA in hospital with the client's doctor present. She could not recall this LPA being rejected. However, she did recall the client's son subsequently contacting her and telling her that the client wanted to add extra attorneys, but she stated that she could not remember the exact circumstances, or what steps she took to verify that this represented the client's instructions, or the circumstances surrounding the signing of the second LPA.”*
  - that they had a further conversation with the Respondent by telephone on 29 June 2020, in which the Respondent:

*“confirmed that she had looked at the emails in question and confirmed that they were from her. She stated that she recalled wanting to make the further LPA convenient for the client, but that she was sure that she would have verified the client's instructions, but she could not recall what had happened in any more detail. She stated that she had not had chance to check any paper file, as the paper file was stored at another location”;*
  - that the Respondent's consultancy was terminated on 2 July 2020 with immediate effect.
  - that Richard Nelson LLP was reviewing the Respondent's files which she had conducted during her time at the firm.
23. On 7 September 2020, Richard Nelson LLP provided the SRA with copies of emails between the Respondent and clients of the Firm which appeared to show that the Respondent, in her capacity as a solicitor at Richard Nelson LLP, had pre-signed

the clients' mortgage deeds and other conveyancing documents, as a witness without the clients having in fact signed the documents in her presence.

**24. Allegation 1.1 – submitting or causing to be submitted misleading documents to the OPG Legal framework**

The Applicant's Case

24.1 When seeking to register an LPA, the different sections of the LPA must be signed in the correct order, as follows:

1. The donor signs and dates: continuation sheets 1 and 2, if used. Also, section 5, if it is a health and welfare LPA and section 9, followed by their witness's signature.
2. The certificate provider signs and dates section 10.
3. The attorneys and any replacement attorneys sign and date section 11, followed by their witnesses.
4. The person applying to register the LPA (either the donor or attorney) signs and dates section 15.

24.2. The Gov.UK OPG Guidance states that:

*“Witnesses are impartial people who watch the donor, attorneys and any replacement attorneys sign the LPA. The witnesses must also sign the LPA to say they've seen the donor and attorneys sign.”*

24.3 Once registered by the OPG, an LPA cannot be amended. If a donor wishes to make any changes to an LPA after registration, they must create a new LPA.

24.4 In August 2015, Information Officers Limited was instructed by RR to complete LPAs for Health and Welfare and Property and Financial Affairs in respect of donor STL. The OPG received the two LPAs on 19 August 2015, Section 5 of the Health and Welfare LPA, “Life Sustaining Treatment”, was signed by the donor and dated 4 August 2015. The witness to that signature appeared to bear the name of the Respondent but neither the full name nor the address of the witness had been provided. Section 9 of both LPAs, the signature page for the donor, was signed and dated 4 August 2015 by STL. The witness section to the signature in section 9 contained the signature and details of the Respondent.

24.5 Those original LPAs were registered by the OPG in October and December 2015. In January 2016, RR further instructed Information Officers Limited to complete new LPAs for Health and Welfare and Property and Financial Affairs with additional attorneys. The client care letter signed by the Respondent and dated 26 January 2016, advised RR to:

*“obtain the necessary signatures and ensure where an independent witness is needed, that they sign and complete their section”.*

- 24.6 On 21 March 2016, two further LPAs (one for Health and Welfare and a second for Property and Financial Affairs) were received by the OPG in respect of donor STL. Section 4 of these LPAs included details of four additional attorneys, CR, CHR, COR and GR which were not part of the original LPAs.
- 24.7 Section 5 of the LPA for Health and Welfare, Life Sustaining Treatment, appeared to be a photocopy of Section 5 of the original LPA, bearing the signature of STL dated 4 August 2015, and appearing to bear the signature of the Respondent as the witness but with no details as to full name or address.
- 24.8 Sections 9 of both LPAs also appeared to be photocopies of the originals, such that they bore the signature of STL dated 4 August 2015 and the Respondent's details as the witness.
- 24.9 Both the LPAs received on 21 March 2016 were rejected by the OPG because they contained photocopies of the original.
- 24.10 On 14 July 2016, the Respondent's firm, wrote to the OPG and stated:
- “Further to your letter of 25 May and 28 June 2016, please find enclosed both original LPAs for property & finance and health & welfare. We look forward to receiving the registered LPAs.”*
- 24.11 The OPG received the above letter and attachments on 19 July 2016.
- 24.12 Section 5 of the Health and Welfare LPA, “Life Sustaining Treatment”, bore the signature of STL, and was dated 4 August 2015. The witness to that signature was recorded as the Respondent bearing a signature, her full name and address.
- 24.13 Ms Sheppard-Jones submitted that that page could not have been a photocopy of section 5 of the original LPA because the details of the Respondent were not included in section 5 of the original LPA. Furthermore, the signature of the donor was in form different to the original. This July 2016 LPA purported to show that section 5 was signed by the donor on 4 August 2015 and witnessed by the Respondent on that date.
- 24.14 Section 9 of both LPAs, the signature section for the donor, bore the signature of the donor and the date of 4 August 2015. The witness section bore the details of the Respondent. Those pages were not photocopies of the original LPAs because the signature of the donor was different in form to that which it was known he had signed on 4 August 2015.
- 24.15 The LPAs submitted in July 2016 purported to show that section 9 was also signed by STL on 4 August 2015 and witnessed by the Respondent on that date. The OPG registered both the July LPAs on 23 September 2016. However, following its investigations into the management of the donor's finances and the creation of LPAs, the LPAs were cancelled by the Court of Protection on 21 February 2021.
- 24.16 During the OPG's investigation, attorney RR provided it with email correspondence between himself and the Respondent, dated between 15 January and 26 February 2016. On 15 January 2016 at 15:52, RR emailed the Respondent and asked,

*“Can I pick your brains please and just enquiry (sic) that as I am the only LPA for my stepfather what would be the situation if something happens to me. Would it be possible to include my other 5 siblings in a lessor role or as a back-up somehow?”*

24.17 In Ms Sheppard-Jones’ submission this email shows that the decision to appoint additional attorneys was not considered until January 2016. The Respondent emailed RR back on the same day at 16:12, and advised that:

*“With the paperwork we already have, we can add the 5 siblings as replacement Attorneys without having to obtain your father’s and the doctor’s signature again. For our records, we would require something in writing to confirm that your father consents to having the replacement Attorneys.”*

24.18 That information was wrong. Amendments cannot be made to LPAs already signed and dated by the donor. New applications would need to be made afresh.

24.19 There was a further exchange on the 15 January 2016 concerning the powers of additional attorneys and the fees charged by the Respondent’s firm for the work of preparing the LPAs. RR instructed the Respondent to *“put that in place now as I have discussed this with my father already”*. To which the Respondent asked for the additional attorneys’ date of birth and addresses.

24.20 On 26 January 2016, the Respondent emailed RR attaching the firm’s customer care letter, letter of consent, invoice and LPA forms for signing. She stated that:

*“The forms have changed in that the donor (your stepfather) now needs to sign next to the Replacement Attorney section.”*

24.21 The Respondent then indicated in her email the relevant pages on the forms that the donor and the attorneys had to sign. She went on to state:

*“Please ensure everybody including you and your step father do not date their signatures to ensure they are not out of sync, otherwise the registration will be void”.*

24.22 RR replied on the same date and asked a series of questions, to which the Respondent replied on 27 January 2016 at 9:53, by adding her answers next to the questions. One of the queries was:

*“I’m not sure my stepfather is up to 6 signatures and all these forms? Whilst he is improving in a number of areas, you may recall that he cannot use his right hand.”* The Respondent’s response to that query was, *“Your stepfather can use his fingerprint. I shall amend the forms with the corrections and your stepfather will have to mark each relevant section with his fingerprint.”*

24.23 On 27 January 2016 at 10:56, the Respondent emailed RR again and attached two LPAs. She requested that STL sign:



*“Page 6 on health and welfare LPA, page 10 on both, continuation sheets x 3 (in between page 15 and 16)”*. She went on to say, *“Please remind everyone not to date their signature”*.

- 24.24 As seen on the forms prepared and attached to the Respondent’s email of 27 January 2016, page 6 on the LPA for Health and Welfare is section 5, Life Sustaining Treatment, which requires a witness to the signature of the donor. Page 10 is the donor signature page, which also requires a witness to the signature of the donor. The continuation sheets required the signature of the donor in relation to the additional attorneys on those sheets but did not require a witness to the donor signature.
- 24.25 Ms Sheppard-Jones said that the email exchanges between RR and the Respondent showed that the Respondent knew that the donor had to sign the new LPAs. Those exchanges took place in January 2016, at least five months after STL had signed the original LPAs. Therefore, when STL signed the original LPAs in August 2015, he cannot have done so for the purposes of the additional attorneys because they were only in consideration in January 2016. It followed therefore that sections 5 and 9 of the July LPAs could not have been signed by STL on 4 August 2015 for the purposes of applying for additional attorneys.
- 24.26 Furthermore, the fact that the Respondent emailed the forms to RR and asked for the donor to sign the relevant parts tended to show that she could not have been a witness to those signatures. The inference was that either the donor (or someone else, bearing in mind the concerns with the donor’s capacity to sign) signed sections 5 and 9 of the LPAs submitted in July 2016 sometime after the January 2016 correspondence between RR and the Respondent, and the date of 4 August 2015 was applied to those signatures. Such an approach would have been consistent with the Respondent’s advice not to date the forms.
- 24.27 Therefore, it was Ms Sheppard-Jones’ assertion that the Respondent cannot as a matter of fact have witnessed the donor applying his signatures on those sections of the July forms in August 2015 because it predated the correspondence in January 2016 during which the issue of further attorneys was discussed for the first time.
- 24.28 On 26 January 2023, the Respondent provided her representations to the Notice. In respect of the LPAs, she stated that she did witness the donor signatures on the LPAs submitted in July 2016. She stated that she *“may have asked the Donor to sign more than one LPA at the time of signing in case any errors occurred and to avoid another trip”* but that she had no evidence of this. She accepted that she should have insisted on fresh donor signatures to the LPAs that she emailed to RR on 27 January 2016. She stated that the reason she advised RR not to date the signatures on the LPAs was because the additional attorneys were returning LPAs to her with *“muddled dates”*.

### Breach of Principles

#### *Principle 2 of the SRA Principles 2011*

- 24.29 By submitting two LPAs to the OPG in July 2016, which the Respondent knew contained misleading information in relation to her purportedly witnessing the donor’s signatures in August 2015, the Respondent failed to act with integrity, i.e. with moral

soundness, rectitude and steady adherence to an ethical code. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ. 366, it was said that integrity connotes adherence to the ethical standards of one's own profession.

- 24.30 The powers exercisable pursuant to LPAs are significant. To protect potentially vulnerable donors, LPAs must be completed in accordance with the correct procedure. The Respondent was a solicitor, who had been specifically instructed by RR to complete LPAs. She knew or ought to have known the process for doing so. In her letter to RR dated 26 January 2016, the Respondent stated that when an independent witness was required to witness a signature on the LPAs they needed to sign and complete their section. The Respondent would have known that in order to witness a signature, the witness has to observe the signature and date being applied to the document. However, in relation to the LPAs submitted to the OPG in July 2016, the Respondent had purported to witness the donor's signatures dated 4 August 2015 in section 5 (Health and Welfare) and sections 9 (both), when the signatures on those forms cannot have been applied in August 2015 because the additional attorneys included in those forms had not been decided upon in August 2015.
- 24.31 The Respondent asserted that she may have obtained extra signed copies of blank LPAs when she obtained the August 2015 signatures from the donor, in case of any errors. However, the evidence did not support this assertion for the following reasons:
- In March 2016, the LPAs were submitted with photocopies of sections 5 and 9 from the originals, which shows that the donor's signatures had not been obtained for the purposes of those LPAs. It further showed that if the Respondent had spare copies, she could have utilised them in March 2016.
  - Sections 5 and 9 of the original LPAs were different to those submitted in July 2016. The signatures were different, and the Respondent's details did not appear in section 5 of the August versions. Whilst the Applicant did not draw conclusions as to who signed the respective documents it relied on the fact that the signatures were obviously different, making it unlikely that the forms were signed by the donor on the same occasion.
  - The Respondent made no reference to utilising pre-signed versions of LPAs in her correspondence with RR and she asked for further signed copies, and at one stage suggested that a fingerprint would be acceptable.
  - In any event, using a pre-signed version would not be acceptable practice, as the donor would not be signing the relevant form with all the applicable details, and the email correspondence with RR shows that the Respondent knew this to be so.
- 24.32 As a result of the way the forms submitted in July 2016 were completed, including the issues around the donor's signatures and the Respondent's purported witnessing of the same, both LPAs had to be referred to the Court of Protection to be cancelled.
- 24.33 It was said that a solicitor acting with integrity would not have signed an LPA as a witness to a donor's signature unless they had in fact witnessed the signature of the donor on the date recorded. The Respondent therefore breached Principle 2 of the SRA Principles 2011.

*Principle 6 of the SRA Principles 2011*

24.34 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors purporting to witness signatures on significant legal documents when in fact the signatures cannot have been witnessed as alleged. The Respondent therefore breached Principle 6 of the SRA Principles 2011.

*Dishonesty as an aggravating feature of allegation*

24.35 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

*“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 fact-finder 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.”*

24.36 The Respondent understood the requirements of witnessing the donor’s signature to the LPAs. She also knew that the donor could not have signed the July 2016 LPAs in August 2015 because the issue of additional attorneys had not been considered at that time.

24.37 Despite knowing that the July 2016 LPAs could not have been signed by the donor in August 2015, the Respondent purported to witness the signatures.

24.38 The Respondent submitted or caused to be submitted those LPAs knowing that she did not witness the donor’s signatures as suggested.

24.39 In the circumstances, the Respondent was dishonest by the standards of ordinary decent people.

Respondent’s Case re Allegation 1.1

24.40 The allegation was denied together with the aggravating feature of dishonesty.

24.41 In addition to giving evidence the Respondent relied on the representations to the SRA dated 26 January 2023 in which the Respondent said, amongst other things:

*“I confirm I did not submit misleading, documents to the OPG. I confirm I did witness the said Donor’s signature.*

*I confirm that I do not submit photocopies of documents to the OPG as I know they are not accepted. I accept where the OPG rejects documents, they return it to the applicant or their agent with an explanation. On this occasion they did not follow this process. The SRA and the OPG’s comment about the Donor’s signature appearing significantly different is subjective. A handwriting expert I believe can only determine this.*

*The date of the signature is not disputed, and I have not denied witnessing the Donor signing the IPA in front of me on that date. Unfortunately, I do not have correspondence to prove that the signed LPAs are originals. I may have asked the Donor to sign more than one LPA at the time of signing in case any errors occurred and to avoid another trip, but unfortunately, I do not have any evidence of this. I asked for the Donor’s consent in writing for the replacement Attorneys to be added but unfortunately, I am unable to locate it. I confirm that I only made this suggestion on this occasion and have not and will not be repeated. At the time I believed it was the appropriate procedure to add the replacement Attorneys to assist the Donor and Attorney as having replacement Attorneys is a safeguard in case the sole Attorney is unable to act.*

*I accept I should have insisted on the Attorney to arrange fresh signature on the LPAs, I emailed him to avoid any confusion. If I recall, the replacement Attorneys had the LPAs with different dates which suggests they were given them at different times to sign and not in page number order. The simplest way to avoid this, was suggesting leaving them undated and then, with their collective agreement, one of the Attorneys date them all on the same day. I believe I made this suggestion after a few incorrectly dated LPAs were created and posted to me. I confirm this is not my practice method however when an LPA keeps being returned with muddled dates my suggestion to sign on the same date was the appropriate solution at the time.*

*As mentioned above and stated in the Notice, the OPG reject incorrectly filled applications and return them to the applicant or agent with comments. On this occasion they registered the LPAs which meant they were correct. My understanding is that only senior officers can authorise registration after vigorous checks and balances to avoid errors in registering invalidated LPAs. I believe this is why the registration process takes so long, and for this reason I question the OPG’s statement that it was registered by accident in the OPG’s report.*

*The document should not have been registered by the OPG and the creation of the documents should have been questioned by the caseworker. I believe I am being accused and penalised for a mistake they made. I do not recall every step as there were a few occasions the signed LPA was returned to me by the Attorney and if they were not correct, the OPG should have put that to mine and/ or the Attorney’s attention. If that was done, I could have looked at the matter as a whole and asked the Attorney to start again and then there would not have been the need to make the application to the Court of Protection.*

*I do not accept that all the correspondence in the file indicate that I submitted every LPA. The Donor or Attorney could have done this as I sent him copies plus cover letter to the OPG first before submitting them to the OPG. I remember the Attorney insisting on copies of everything, Unfortunately, I do not have every copy of correspondence email and letters between me and the Attorney. I can confirm that I ensure I keep copies of every correspondence, email, letter or text message by clients especially when dealing with legal documents as such LPA”.*

24.42 The Respondent provided further explanation in relation to allegation 1.1 and said, amongst other things:

*“I do not believe that I submitted photocopies as I know the OPG will not accept them. The LPA was registered and therefore I have reason to believe that they were not photocopies. I accept that asking the Attorney for a letter of consent from the Donor to use the first original document was not appropriate and at that point I should have asked them to obtain new signatures from the Donor, certificate provided, witnesses and Attorney. This is not normal practice for me. I always ask for fresh signatures whenever there is a change no matter how large or small. Wherever my signature appears on the LPA I believe them to be my signature, but I cannot be certain without seeing the originals.*

*I am unable to comment on the Donor’s signatures differing significantly as I mentioned above at paragraphs 7 and 36, wherever my signature appears on the LPA I believe them to be mine but again I cannot be certain without seeing the originals. I deny backdating the LPA. If I had backdated the LPA, the OPG would not bare registered it.*

*I have not misled the OPG.*

*I fully explained to the client the correct OPG process evidenced in my client care letter.*

*I accept I should have insisted that the Donor and Attorney arrange signatures on the new LPAs I sent them adding the replacement Attorneys. I did ask the Donor’s consent to use the original documents and as far as I remember I believed I had it but could not find it. As mentioned above, I always ask for a fresh LPA to be signed whenever a change is made, small or large. This avoids any misunderstanding which appears to have happened on this occasion. I also keep records of all correspondence which I did not on this occasion. I would have been able to prove that throughout I had not breached any of the principles.*

*I have not misled the OPG or anyone. I simply on this occasion failed to ask for a freshly [signed] LPA but instead asked for the Donor’s consent (instructions) in writing and failed to keep all records of correspondence between me and the Attorney.*

*I suspect that the Attorney was not forthcoming with me and may have meddled with the paperwork as I always posted the documents to him for approval. He*

*asked me to return the LPA to him and I am unsure what happened after that. ...I sent the Attorney a fresh new LPA to arrange signatures on 27/01 / 2016. I may have decided to insist on new signatures but unfortunately, I have no copies of emails from that email account as I closed the company in 2018.*

*I have not been dishonest. I repeat my submissions as stated in prior paragraphs”.*

24.43 Mr Goodwin submitted that whilst the Respondent acknowledged that mistakes were made, the Respondent did not, on or around 14 July 2016, ‘submit or cause’, to be submitted LPAs which she knew to be misleading. To the extent the Respondent made mistakes in the way she dealt with the LPAs such was inadvertent, in error, and without any conscious impropriety.

24.44 The complaint form from Ms Watts-Boothby to the SRA dated 17 June 2020, stated, amongst other things:

*“The witness, Krystal Marzan gave incorrect information and advice to the donor’s family”.*

24.45 Mr Goodwin submitted that the Respondent genuinely, and honestly, believed she was entitled to proceed as she did, at the time, but with the benefit of hindsight and reflection, that asking the Attorney for a letter of consent from the Donor to use the first original documents was inappropriate and that the correct approach would have been to ask the Attorney to obtain new signatures from the Donor, certificate provider, witnesses, and Attorneys.

24.46 The Respondent recalled that she was provided with the Donor’s consent to use the original documents, but she now could not locate a copy of the consent given the lapse of time of approximately 7 years from the date of the application in July 2016, the subject of the allegation, and closure of her business in 2018.

24.47 Mr Goodwin noted that the first witness statement of Ms Watts-Boothby dated 6 June 2023 exhibited an email from the Attorney, RR to the Respondent who said, amongst other things:

*“can I pick your brains please and just enquiry (sic) that as I am the only LPA for my stepfather, what would be the situation if something happens to me. Would it be possible to include my other 5 siblings in a lessor role or as a back-up somehow?”*

24.48 The Respondent replied by email, the date of which appears to have been omitted, and said, amongst other things:

*“In response to your enquiry, Attorneys your father appoint can only manage his affairs. I’m afraid no Attorney can substitute their duties. With the paperwork we have already, we can add the 5 siblings as replacement Attorneys without having to obtain your father’s and the doctor’s signature again. For our records, we would require something in writing to confirm that your father*

*consents to having the replacement attorneys. Let me know what you want to do”.*

24.49 RR responded by email stating, amongst other things:

*“I have managed to complete the signatures as agreed, however, my brother Michael has declined to be appointed. In addition, I have to apologise but the documents have been jumbled up so I am sending everything back to you today and should be grateful if you could return them to order. Please let me know when you are in receipt of these and I will remit your invoice accordingly. I trust everything is now complete for you to submit the application on our behalf”.*

24.50 Mr Goodwin said no further correspondence was exhibited to the Statement, and the Respondent could not now recall the content of any subsequent communications between her and RR. The Rule 12 statement, sought also to rely upon an email from Marie Dancer of Richard Nelson LLP to the SRA dated 30 July 2020, and which refers to telephone conversations said to have taken place between Ms Dancer and the Respondent on 25 and 29 June 2020, confirming that the Respondent could not recall all the circumstances of the matter, but she was sure that she would have verified the clients instructions, but could not recall what had happened in any more detail.

24.51 The Respondent accepted that she acted in error in that she ought to have submitted fresh LPAs. However, Mr Goodwin submitted that this was not the basis of the Applicant’s case. The SRA sought to rely upon an email exchange in January 2016 between the Respondent and RR in which the Respondent requested that the documents were not dated. The Rule 12 Statement set out, amongst other things:

*“The inference is that either the donor (or someone else, bearing in mind the concerns with the donor’s capacity to sign), signed, sections 5 and 9 of the LPAs submitted in July 2016 sometime after the January 2016 correspondence between RR and the Respondent, and the date of 4 August 2015 was applied to these signatures”.*

24.52 Mr Goodwin submitted that there was no evidence that the Respondent had sent LPAs to the OPG which *‘she knew had been misleading’* and that if the Tribunal accepted the proposition that she had not known the LPAs to be misleading then the allegation, in its entirety fell away. Mr Goodwin said that inference, and speculation was no basis for asserting the Respondent acted dishonestly and that the Respondent had had a genuine, and honest, belief that she was entitled to act as she did.

24.53 A proper application of the test in Ivey, showed there was nothing dishonest about her conduct as alleged, or at all. It was of fundamental importance in considering the position, that it was the genuinely held knowledge or belief of the Respondent, at the time, of the events in question in relation to the allegation.i.e.,14 July 2016, when it was alleged, the Respondent submitted, or caused, to be submitted two LPAs which she knew to be misleading.

24.54 Mr Goodwin said the Respondent was a person of impeccable character with an unblemished disciplinary and regulatory history of some 9 years post qualification. As

such, he argued, her explanation should be given full credit and be accepted, and in his submission, there was nothing to challenge the Respondent's explanation regarding her knowledge and belief, genuinely held, as to the factual position, at the time, relevant to the facts giving rise to the particularised allegation.

- 24.55 Ordinary decent people, in full knowledge as to the facts and circumstances existing at the relevant time, together with the genuinely held belief of the Respondent, would not consider her actions to have been dishonest and as set out in paragraph 74 of the Ivey Judgement, consideration of an individual's belief may, in practice, be determinative.
- 24.56 Applying the relevant test in Ivey to the facts of this case and the Respondent's actual state of mind as to the facts, together with her genuinely held belief, showed that there was nothing dishonest about her actions as alleged, or at all.
- 24.57 Mr Goodwin said that the Tribunal would also be assisted by the Court of Appeal decision in Barton Booth v R [2020] EWCA Crim 575 in which the then Lord Chief Justice, The Rt Hon Lord Burnett of Maldon, commented upon the decision in Ivey and concluded that the test for dishonesty. In that case it was stated:

*“This approach, which was the approach of the Supreme Court in Ivey, makes clear that when Lord Hughes talked in [74] of the “actual state of mind as to knowledge or belief at to the facts” he was referring to all the circumstances known to the accused and not limiting consideration to past facts. All matters that lead an accused to act as he or she did will form part of the subjective mental state, thereby forming a part of the fact-finding exercise before applying the objective standard. That will include consideration, where relevant, of the experience and intelligence of an accused. In an example much used in debate on this issue, the visitor to London who fails to pay for a bus journey believing it to be free (as it is, for example, in Luxembourg) would be no more dishonest than (sic) the diner or shopper who genuinely forgets to pay before leaving a restaurant or shop. The Magistrates or jury in such cases would first establish the facts and then apply an objective standard of dishonesty to those facts, with these facts being judged by reference to the usual burden and standard of proof”.*

- 24.58 Mr Goodwin submitted that this observation was highly supportive of the position in the Respondent's case, in relation to the Respondent's knowledge and belief, at the relevant time.
- 24.59 Mr Goodwin said that the Respondent valued greatly her qualification as a solicitor and would not knowingly have done anything to jeopardise her qualification.
- 24.60 The allegations of dishonesty were without merit, misplaced, and unsupported by the evidence and there was nothing to challenge the explanation, and the genuine, and honest, belief of the Respondent, at the time, she acted as she did.

#### The Tribunal's Findings re allegation 1.1

- 24.61 The Tribunal reminded itself that with respect to all the allegations the Applicant must prove its case on the balance of probabilities.



24.62 The Tribunal established what factually had taken place and then having done so it next considered the aggravating feature of dishonesty, the most serious part of the allegation.

24.63 The important evidence in this regard was the e-mail of 26 January 2016, wherein the Respondent emailed RR attaching the firm's customer care letter, letter of consent, invoice and LPA forms for signing. She stated that:

*“The forms have changed in that the donor (your stepfather) now needs to sign next to the Replacement Attorney section.”*

24.64 The Respondent then indicated in her email the relevant pages on the forms that the donor and the attorneys had to sign. She went on to state:

*“Please ensure everybody including you and your stepfather do not date their signatures to ensure they are not out of sync, otherwise the registration will be void”.*

24.65 The Tribunal found that the reasonable inferences to be drawn from the e-mails were as follows:

- The Respondent had known the rules regarding the signing and witnessing of LPAs.
- The Respondent had known the requirement for her to witness the donor signing the new LPAs at the time he signed them.
- She knew she had not witnessed the donor's signatures, and these were not 'pre-signed spares' when she sent them to RR because she had reminded him specifically in the e-mail exchanges to have the donor sign the LPAs.
- Those exchanges took place in January 2016, at least five months after STL had signed the original LPAs. Therefore, when STL signed the original LPAs in August 2015, he could not have done so for the purposes of the additional attorneys because they were only in consideration in January 2016.
- It followed that sections 5 and 9 of the July LPAs could not have been signed by STL on 4 August 2015 for the purposes of applying for additional attorneys.
- The fact that the Respondent emailed the forms to RR and asked for the donor to sign the relevant parts showed that she cannot have been a witness to those signatures.
- Such an approach would have been consistent with the Respondent's advice not to date the forms.

24.66 The Tribunal found as a matter of fact that the Respondent could not have witnessed the donor applying his signatures on those sections of the July forms in August 2015. Given that the Respondent had presented herself as an expert in LPAs the Tribunal was satisfied to the requisite standard that she would have been aware that her advice to the attorneys represented a marked circumvention of the correct process.

24.67 Therefore, when the LPAs were submitted to the OPG there was an obvious risk that the OPG would be misled and that the validity of the LPAs would be thrown into jeopardy. This was all within her knowledge.

It was the Respondent's case that she had made mistakes but that there had been no conscious decision on her part to be dishonest. Whilst the Respondent was not required to prove anything, the account she had given was confusing and vague with respect to this particular allegation. This applied also to her oral evidence which was shrouded in an opaque mist of things which she said she 'may' or 'may not' have done. She could not recall key matters, but perhaps this was understandable given the lapse of time that occurred since the matters stated in the allegation.

The documentary evidence emanating from the Respondent herself in the form of e-mail correspondence was found by the Tribunal to be determinative of the Respondent's state of knowledge and firmly indicative of her intent at the time.

This was clear evidence of planning and strategy on the Respondent's part which was repeated in her e-mail on 27 January 2016 at 10:56, wherein the Respondent emailed RR again and attached two LPAs. She requested that the donor, STL sign:

*"Page 6 on health and welfare LPA, page 10 on both, continuation sheets x 3 (in between page 15 and 16)".* She went on to say, *"Please remind everyone not to date their signature"*.

24.68 When applying the test in Ivey the Tribunal found that ordinary, decent people, who were aware of the context and circumstances in this matter, would consider the Respondent to have been dishonest in sending LPAs to the OPG which she knew, contrary to the rules, she had not witnessed the donor signing and that they were at risk of being declared invalid, which indeed they later were.

24.69 Whilst recognising that dishonesty and lack of integrity are separate concepts within the realm of regulatory conduct, and that a finding of one does not necessarily mean a finding of the other, the Tribunal observed that they were kindred.

24.70 Therefore, the factual findings as to the Respondent's dishonesty applied equally in this case to the alleged breaches of Principles 2 and 6 of the SRA Principles 2011.

24.71 By submitting two LPAs to the OPG in July 2016, which the Respondent knew contained misleading information in relation to her purportedly witnessing the donor's signatures in August 2015, the Tribunal found that the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code.

24.72 If the Respondent had used a pre- signed version, as she had submitted, this too would not have been acceptable practice, as the donor would not be signing the relevant form with all the applicable details. In the event, as a matter of fact, the Tribunal did not find that the Respondent had used LPAs pre-signed by the donor and that she had sent unsigned LPAs to RR with very clear instructions on what to do with them.

24.73 A solicitor acting with integrity would not have signed an LPA as a witness to a donor's signature unless they had in fact witnessed the signature of the donor on the date recorded. The Respondent therefore breached Principle 2 of the SRA Principles 2011.

24.74 The Tribunal also found that the Respondent’s conduct amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors purporting to witness signatures on significant legal documents when in fact the signatures cannot have been witnessed as alleged. The Respondent therefore breached Principle 6 of the SRA Principles 2011.

24.75 The Tribunal found Allegation 1.1 proved in full, including the aggravating feature of dishonesty.

25. **Allegation 1.2 – pre-signed conveyancing documents as a witness in circumstances where the relevant documents had not been signed**

25.1 The legal framework is set out in the Law of Property (Miscellaneous Provisions) Act 1989 as follows:

*Section 1*

*(3)(a) of the Law of Property (Miscellaneous Provisions) Act 1989 states,  
“(3) An instrument is validly executed as a deed by an individual if, and only if—*

*(a) it is signed—*

*(i) by him in the presence of a witness who attests the signature; or*

*(ii) at his direction and in his presence and the presence of two witnesses who each attest the signature; and*

*(b) it is delivered as a deed”*

25.2 Ms Sheppard-Jones informed the Tribunal that The Law Society had developed practice notes on the execution of documents by virtual means and using electronic signatures. During the Covid-19 pandemic, The Law Society issued a further note on the use of virtual execution and e-signatures. Whilst these notes provide circumstances in which signatures can be applied to documents remotely and emailed to parties, there are no circumstances provided for, whereby a witness to a signature can do so remotely. The note issued during the pandemic explicitly addressed this regarding deeds, at paragraph 6:

*“Even if performed electronically, the current law is that the witness must be physically present when a deed is executed by or on behalf of the maker. It is possible to demonstrate physical presence while also maintaining social distancing with appropriate safeguards, although there are practical challenges. When operating on the extremities of what may reasonably be considered to constitute presence, you should collect clear evidence of presence, such as a video recording (subject to getting appropriate data protection rights consents).”*

25.3 Ms Sheppard-Jones submitted that this made it clear that even in the most challenging of situations physical presence is required to witness the execution of a deed and that if that physical presence might be open to challenge, attempts should be made to record the distance between the parties so as to show how the witnessing was achieved.

- 25.4 As to the substantive events, Ms Sheppard-Jones explained that on 7 September 2020, Richard Nelson LLP provided the SRA with a series of emails between 16 October 2019 and 12 June 2020, between the Respondent and clients of Richard Nelson LLP. The emails appeared to indicate that the Respondent had acted in conveyancing matters and had pre signed various legal documents, including mortgage deeds, associated with the transactions as a witness without the clients or other relevant persons having in fact signed the documents in her presence.
- 25.5 It was of note that the Respondent's practice of pre-signing legal documents as a witness predated the global pandemic by over six months and cannot have been a response to the challenges faced during the pandemic. In any event, as set out in the Law Society Guidance notes, even during the pandemic, such a practice was not permissible.
- 25.6 Of the documents that were mortgage deeds, each of the mortgage deeds made it clear in the text above the signature boxes that the borrower must sign the deed in the presence of the witness, with each signature to be separately witnessed. Similarly, the personal guarantees and occupiers consent forms state above the witness section, "*signed in the presence of.*"
- 25.7 In Ms Sheppard-Jones' submission it was clear from the wording in her emails to the clients that the Respondent had pre-signed the relevant legal documents and sent them to the client/other relevant person for them to sign and forward to the third party. In those circumstances, she could not have properly witnessed the signatures on the documents, but the ultimate recipient of the documents would not have been so aware.
- 25.8 There was an exchange in the bundle of emails between the Respondent and a client, CS, dated 2 June 2020, in which the client asked:
- "In terms of how best to do the appointment, do you recommend you sign the form first and send it in the post before the video call or can we do the video call with the copies we have and then send to you?"*
- ". The response of the Respondent was "You can sign the ones you have with you during the video call. However, to speed this up, after the call I shall send my pre signed versions to your home address and you can forward them to the lender/solicitor."*
- 25.9 The Respondent sent a further email on 12 June 2020, stating:
- "I have advised your parents and sister.... I will sign the three letters of postponement as a witness and post them to your family so they can sign and forward to your conveyancing solicitor."*
- 25.10 During an email exchange with client KR on 17 June 2020, the Respondent referred to arranging a suitable time for a video call. It appeared that on these occasions and possibly others, the Respondent held a video call with the client and other relevant persons, and that she sent pre-signed documents to them after the call purporting to witness their signatures on the documents to "*speed up the process*". It was clear from the email of 12 June 2020 that the Respondent instructed the client and respective

parties to sign the documents after the call and send on to the conveyancing solicitor. In those circumstances, Ms Sheppard-Jones said that the Respondent had neither witnessed the parties signing the documents in her presence nor over the video call, because she instructed them to sign the documents received from her that they later received in the post or via email.

25.11 In respect of some of the emails provided by Richard Nelson LLP, the intention of the Respondent to provide the client or associated party with a pre-signed document was evident on the face of her communications with the client but either the corresponding client documents provided by Richard Nelson LLP did not contain any signatures or the corresponding document had not been provided. However, it was clear from the pattern of conduct revealed on the other matters, that the Respondent's intention and practice was to send pre-signed documents.

25.12 In an email to the Investigation Officer of the SRA dated 24 September 2021, the Respondent stated that:

*“On a few occasions when time was of the essence and more so when the COVID19 pandemic was affecting the postal service, I would witness the client sign a document (as allowed for; <https://www.lawsociety.org.uk/topics/businessmanagement/execution-of-documents-by-virtual-means4> ) on video call. I then wait for the client to email me their signed version before I countersign and email it back to them. If the client required a hard copy with my wet signature (rare these days as electronic copies are widely accepted), we would exchange our documents in the post. Whoever received the other's first could then sign again and forward on to the third party (if required).”*

25.13 The Respondent denied acting dishonestly and advised that she no longer followed that practice. In her response to the Notice, the Respondent denied that she had not properly witnessed the various legal documents. She stated that she had meetings with client via video link:

*“where I witnessed clients sign documents in front of me through the camera.”* She further stated that *“I accept that I emailed pre-signed mortgage deeds, but this was after the video call or in person meeting. I confirm that the client always signed them first. My practice is not to hand over to clients completed signed documents without the letter of advice signed and payment is made. There have been occasions where clients take completed documents, disappear and do not pay. This is what I try to avoid.”*

25.14 Ms Sheppard-Jones said that the Respondent's alleged conduct in Allegation 1.2 represented the following breaches of the Principles 2011 and, where applicable the later 2019 Principles:

#### Breach of Principles

##### *Principle 4 and conduct prior to 25 November 2019 - Dishonesty*

25.15 The Applicant relied upon the test for dishonesty stated in Ivey as set out above. The Respondent pre-signed blank conveyancing documents as a purported witness, knowing that she had not witnessed the relevant signatures, which were to be applied at a later stage. In the circumstances, the Respondent was dishonest by the standards of ordinary decent people. Accordingly, the Respondent's conduct was dishonest and breached Principle 4 of the SRA Principles on or after 25 November 2019.

*Principles 2/5 of the 2011/2019 Principles– Integrity*

25.16 By repeatedly pre-signing legal documents purporting to have witnessed the documents having been signed, the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. As set out above, integrity connotes adherence to the ethical standards of one's own profession. The Respondent, in her position as the solicitor with conduct of numerous conveyancing matters, must have understood the importance of ensuring that the relevant documents were properly executed, including being witnessed, and might not be enforceable against the signatory if they were not.

25.17 Ms Sheppard- Jones said that it was wholly without credit that the Respondent believed it was acceptable to pre-sign documents and send them to the clients or other parties for signature. The carrying out of a video call with the client/relevant person, did not rectify this issue and the Respondent would have known that as she sent pre signed documents in the post after the video call that did not bear the signature of the clients and only bore her details. She had no way of checking in those circumstances whether the document received was then in fact signed by the correct person.

25.18 The Respondent would have known that to witness a signature required her to be present with the signatory and to observe the signature being applied before she applied her own as the witness. The use of pre signed documents completely undermines that process and as a solicitor of some five years qualification, the Respondent would have been aware of that.

25.19 As a result of the practice that the Respondent developed, the final recipients to the documents would have been led into believing that the documents had been appropriately witnessed by a legal professional. When in fact the documents had not been properly witnessed at all. By failing to act in accordance with the proper procedure, each of the transactions the Respondent acted in were vulnerable to abuse and challenge.

25.20 Accordingly, the Respondent acted without integrity and breached Principles 2 and 5 of the SRA Principles 2011 and 2019 respectively.

*Principle 6/2 of the 2011/2019 Principles – undermining public confidence*

25.21 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondents, in solicitors and in the provision of legal services is likely to be undermined by the Respondent's conduct in pre signing legal documents as a witness in circumstances where she cannot have in fact witnessed the signatures being applied to the documents. The public trusts and

expects solicitors to sign important legal documents in accordance with law and procedure. Such trust is undermined by the practice adopted by the Respondent, which risked each of the transactions being void or challenged due to the failure to properly witness the relevant signature.

- 25.22 The Respondent therefore breached Principles 6 and 2 of the SRA Principles 2011 and 2019 respectively.

*Code of Conduct for Solicitors, RELs and RFLs (“the Code”)*

- 25.23 The Respondent’s conduct also breached paragraph 1.4 of the Code, in that her actions may have misled her clients, third parties and ultimately the Courts, into believing that the relevant documents were properly executed, when in fact she had not witnessed the signature(s) of the relevant parties to the documents which may have exposed the documents and associated transactions to legal challenge and risk.

- 25.24 Accordingly, the Respondent had breached paragraph 1.4 of the Code.

The Respondent’s Case

- 25.25 The allegation, including dishonesty, was denied.
- 25.26 By email dated 24 September 2021 to the SRA, the Respondent replied to questions raised by the investigation officer as follows:

***“1. Do you factually accept you have signed as a witness prior to your client’s signature being obtained on documents whilst you were employed at Richard Nelson LLP?”***

The Respondent replied:

*“On a few occasions when time was of the essence and more so when the COVID-19 Pandemic was affecting the postal service, I would witness the client sign a document as allowed for on video call I then wait for the client to email me their signed version before I counter sign and email it back to them. If the client required a hard copy with my wet signature (rare these days as electronic copies are widely accepted), we would exchange our documents in the post. Whoever received the other’s first could then sign again and forward on to the third party (if required).”*

***“2. Do you accept in acting in the manner described at point 1 above you have acted dishonestly?”***

The Respondent replied:

*“I do not accept the manner described at point 1 and in my answer to point 1, as acting dishonestly”.*

***“3. Confirm if you have continued to act in the manner described at point 1 above since the termination of your contract at Richard Nelson LLP.***

The Respondent replied:

*“I have not continued to act in the manner described at point 1 since the termination of my contract with Richard Nelson LLP”.*

25.27 In the representations dated 26 January 2023 the Respondent said, amongst other things:

*“I deny not witnessing clients sign deeds/ documents. New enquiries about independent legal advice for mortgage conditions typically start with “I need a solicitor to witness me sign this deed/ personal guarantee”. Most clients do not even realise that they are required to receive the advice first. They are told by their conveyancer to seek a solicitor to witness then sign the document. Therefore, being accused of not doing the key thing in this type of transaction is astonishing.*

*Most of my meetings with clients are via video call where I witnessed clients sign documents in front of me through the camera. My role was fully remote; therefore I did not have meetings at the firm’s office.*

*I held a few in person meetings by hiring meeting rooms at venues either near my home, or in the City of London. In my emails I always start with “it was a pleasure meeting you” this is evidence that I met them and therefore witnessed them sign the document.*

*I mention signing during the video call. I accept that I emailed pre-signed mortgage deeds, but this was after the video call or in person meeting, I confirm that the client always signed them first. My practice is not to hand over to clients completed signed documents without the letter of advice signed and payment is made. There have been occasions where clients Fake completed documents, disappear and do not pay. This is what I try to avoid.*

*Any pre-signed document was sent after having seen the client sign the deed/ document either via video call or at an in person meeting. I have and continue to uphold the principles that I have alleged to have breached.*

*The areas of law I practice mainly private client have continued to be my evidence that I adhere to these principles. My clients are repeat clients that know I act with honesty, within the law and proper administration of justice. I would not send any signed paperwork or proceed to accepting payment unless I had completed every step, the most important one being witnessing them sign before I sign anything.*

*I remained within the rules of remote signing before the Coronavirus pandemic. I did submit the Law Society’s practice notes on creation of documents via virtual means.*

*I did witness clients sign documents by virtual means.*



*I am aware that lenders require signatures witnessed. I did witness signatures and witness signed them attesting the borrower's signature.*

*I have not shown disregard of the rules.*

*I adhere to the principles but have fallen short on evidencing in writing that I witnessed client's sign by virtual means.*

*Clients will not trust me if I just offhandedly signed documents without seeing them sign first. This would raise suspicion and I would have been reported by a client by now.*

*Nowhere in my practice have I undermined public trust and confidence in the solicitors profession.*

*Integrity is a quality I possess.*

*I have not provided a false statement. My error is not explicitly confirming that I have already witnessed the client sign the documents because this to me, is a given.*

*The Law of Property (Miscellaneous Provisions) Act 1989 have been satisfied as I witnessed clients sign their documents by virtual means. I have acted with honesty. There is no evidence of dishonesty, just lack of explicit correspondence stating that I witness the client sign the deed/ document and then I prepared the document with my signature.*

*I have not been dishonest. Richard Nelson is not a company that specialise in this work. I was the only solicitor advising and witnessing clients sign mortgage deeds and personal guarantees. At the time I joined the firm, they informed me they do not do any form of conveyancing and I recall there being few or no lawyers practising independent legal advice for mortgage conditions. If they did specialise in this work, they would know that the advice, signing and witness signing is done in the meeting whether in person or via video call. Some of the lender's certificate in fact explicitly state that the guarantor signed the document via video call. If Richard Nelson had asked me to provide evidence of the video call, I would have shown them the video call logs or contacted the clients and ask them to confirm or provided an attendance note.*

*I reaffirm that I witnessed the client sign the document before I sent anything with my signature”.*

25.28 Within the Representations dated 26 January 2023, the Respondent provided further explanation:

*“I accept that integrity is expected at the highest level for my profession as a solicitor. I have not done anything deliberate to undermine this. I was not explicit enough in my correspondence to the client that I witnessed them sign the deed! document. ... I upheld the professional standards of a solicitor. From the allegations, it is fair to say I lacked proper record keeping, and explicitly*

*repeating back to the client that I witnessed them sign the document before I sent them the document with my signature.”*

- 25.29 Mr Goodwin said that the Respondent had a genuine, and honest, belief that she was entitled to act as she did, and that for the purposes of The Law of Property (Miscellaneous Provisions) Act 1989 requiring that when an individual executes a Deed they must do so in the presence of a witness who attests the signature, and that included execution being dealt with remotely by video call, with the client(s) being in the ‘*presence*’ of the Respondent.
- 25.30 The Respondent genuinely, and honestly, interpreted ‘*physical presence*’ to include the execution of documents remotely. To the extent that her genuinely held knowledge and belief, at the time, was incorrect, the Respondent offers her sincere, and genuine, apology.
- 25.31 Mr Goodwin asserted that a proper application of the test in Ivey, showed there was nothing dishonest about her conduct as alleged, or at all.
- 25.32 The SRA sought to rely upon a series of emails provided by Richard Nelson LLP to the SRA from 16 October 2019 and 12 June 2020 between the Respondents and clients of the firm and he made the point that the Rule 12 Statement stated the emails, “*appeared*”, to indicate the Respondent had pre- signed various legal documents (paragraphs 20, 79 and 89 of the Rule 12 Statement). However, in Mr Goodwin’s submission this was no basis, or evidence, upon which to base an allegation of dishonesty.
- 25.33 Applying the matters that he had set out in paragraph 25.53 to 25.60 above Mr Goodwin re-iterated that it was of fundamental importance in considering the position, that it was the genuinely held knowledge or belief of the Respondent, at the time, of the events in question, which in the case of Allegation 1.2 was between October 2019 and June 2020 when it was alleged the Respondent pre-signed conveyancing documents, that was the relevant consideration.
- 25.34 In relation to Allegation 1.2, Mr Goodwin said the Respondent has endeavoured to contact the clients particularised and upon whom the SRA sought to rely. Enquiries by the Respondent revealed that SH no longer worked at the place his email belonged to. The Respondent did not have an email contact for PM. However, the Respondent had been in contact with 13 of the clients, all of whom confirmed they recalled a video call with the Respondent, and all but one recalled the detail, and the Respondent witnessing the client(s) signing the document on camera in her presence.
- 25.35 Mr Goodwin said that this evidence supported the Respondent’s explanation and her genuinely held belief, at the time that she was entitled to proceed as she did in the execution of the document(s). To the extent that it was determined her approach was incorrect, and contrary to the requirements of The Law of Property (Miscellaneous Provisions) Act 1989, such was inadvertent, a mistake, and in error, without more.

#### The Tribunal’s Findings re Allegation 1.2

- 25.36 The Tribunal found this allegation proved factually to the relevant standard.

- 25.37 As with Allegation 1.1 the Tribunal first made findings on the facts and then considered the issue of dishonesty, pleaded as a breach of Principle 4 of the Principles 2019. In this regard the Tribunal observed the matters set out within the Ivey test and other relevant case law to which it had been taken by the parties.
- 25.38 The Tribunal noted, that having found dishonesty in relation to Allegation 1.1 it would have been legitimate exercise to view Allegation 1.2 in the light of that finding and to draw inferences directly from it to inform its assessment of the Respondent's credibility and propensity for dishonesty. However, the Tribunal viewed Allegation 1.2 as a separate and distinct set of circumstances upon which the Respondent should have the benefit of being judged afresh.
- 25.39 With respect to Allegation 1.2 the Tribunal noted all that had been said by the Respondent and by Mr Goodwin on her behalf, however, it found her evidence in cross-examination to be determinative. During her evidence the Respondent appeared taken aback by the accusation of dishonesty as to the way in which she had overseen the signing of mortgage deeds. She told the Tribunal that having analysed the relevant guidance she did not consider she had done anything dishonest. Her evidence as to this allegation was, to the Tribunal's mind, more resolute than it had been with respect to Allegation 1.1.
- 25.40 It was apparent to the Tribunal that she had laboured under a fundamental misconception of what had been required. The Respondent believed that she had been present when her client had signed the document. When cross-examined about the risk of fraud, she said that she had never given any thought to such risk. The Tribunal accepted this evidence. The Respondent appeared to be genuinely nonplussed when the loopholes and risk of fraud which were an inherent danger in her remote signing procedure had been pointed out to her.
- 25.41 Conceptually, she had misunderstood the term '*pre-signed*' which gave the impression, wrongly to the investigator, that the client had already signed the document at an earlier stage when in fact what the Respondent meant was that she witnessed the client signing remotely via video call and she then signed another physical copy which was in her possession. Next, the client and she would exchange documents in the post and sign them again on receipt to complete the document. Whoever received and signed their document first would then send it on to the lender.
- 25.42 Even though this was not a *pre-signed* document in the sense set out earlier it was also not in accordance with the guidance advocating '*physical presence*' when witnessing a deed being signed.
- 25.43 The Tribunal found that whilst the Respondent's practice was one which opened the client and the lender to considerable risk, she was not acting dishonestly when viewed through the lens of the test in Ivey. Her adopted procedure had been incorrect, but it had been honestly applied by her to ensure that matters could be dealt with remotely and efficiently. Ordinary and decent people, who were aware of all the facts would have found her practice to be misguided but not dishonest. The Tribunal made no comment on the reasonableness of the Respondent's belief, just that it was genuinely held.

- 25.44 Accordingly, the Tribunal did not find that the Respondent had breached Principle 4 of the Principles 2019.
- 25.45 The Tribunal re-iterated its observations regarding the difference, but inter-relationship between dishonesty and lack of integrity.
- 25.46 Although the Tribunal did not find the Respondent to have been dishonest, by repeatedly signing legal documents purporting to have been witnessed by her the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. The Respondent, either ignored or did not follow or understand the guidance she had analysed, this may have been to speed the process up for her clients, however the result was that she permitted important documents to be submitted to the lender without those documents having been executed properly, making them of questionable validity.
- 25.47 Accordingly, the Tribunal found on the balance of probabilities that the Respondent acted without integrity and breached Principles 2 and 5 of the SRA Principles 2011 and 2019 respectively.
- 25.48 The Tribunal also found to the same standard that the Respondent's conduct also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondents, in solicitors and in the provision of legal services is likely to be undermined by the Respondent's conduct in signing legal documents as a witness in circumstances where she cannot have in fact witnessed the signatures being applied to the documents. The public trusts and expects solicitors to sign important legal documents in accordance with law and procedure. Such trust is undermined by the practice adopted by the Respondent, which risked each of the transactions being void or challenged due to the failure to properly witness the relevant signature.
- 25.49 It followed also that The Respondent's conduct breached paragraph 1.4 of the Code, in that her actions may have misled her clients, third parties and ultimately the Courts, into believing that the relevant documents were properly executed, when in fact she had not witnessed the signature(s) of the relevant parties to the documents which may have exposed the documents and associated transactions to legal challenge and risk.
- 25.50 The Tribunal therefore found Allegation 1.2 proved in part with Principle 4 of the Principles 2019 not proved on the balance of probabilities.
- The Tribunal found the following proved to the requisite standard:
  - Breaches of Principles 2 and 5 of the SRA Principles 2011 and 2019 respectively.
  - Breaches of Principles 6 and 2 of the SRA Principles 2011 and 2019 respectively.
  - A breach of paragraph 1.4 of the Code.

### **Previous Disciplinary Matters**

26. There were no previous findings.

## Mitigation

27. Mr Goodwin said that in the light of the Tribunal's findings, in particular its finding on dishonesty with respect to Allegation 1.1, his client was aware that the sanction would be one of strike off from the roll save in exceptional circumstances.
28. In Mr Goodwin's submission exceptional circumstances were present which would enable the Tribunal, in its discretion to avoid the use of the ultimate sanction in favour of a lesser one. In doing so the Tribunal would need to consider the nature, scope and extent of the dishonesty, e.g., whether it occurred over a protracted period or whether it was, as here, of relatively short duration.
29. The finding of dishonesty related to a discrete and isolated matter, occurring in 2016. Hitherto the Respondent had been of good character, with no adverse findings against her and an unblemished career. The Respondent had learned from her mistakes, and she had closed her company.
30. Although dishonesty had been found there had been no direct benefit to the Respondent, and as she had explained to the SRA, she had endeavoured merely to act in the best interests of all her clients to ensure matters were progressed expeditiously and it had not been her intention to mislead anyone. It did not follow therefore that strike off was inevitable given the circumstances of the case and Mr Goodwin urged the Tribunal to settle upon a sanction other than strike off.

## Sanction

31. The Tribunal considered the Guidance Note on Sanction (10<sup>th</sup> Edition, June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
32. The Tribunal found that the Respondent's motivation for her adjudged misconduct was, so far as this could be determined in respect to both allegations, to get the work done for her clients in the shortest time, for her and for them, and at the cheapest cost. Inevitably this resulted in corner cutting and the Respondent developing her own procedures which were seriously deficient and left her clients at risk of having an invalid deed or document.
33. The powers exercisable pursuant to LPAs are significant and with respect to health provides an attorney with life and death decisions over the donor. Therefore, to protect potentially vulnerable donors, LPAs must be completed in accordance with the correct procedures and with all the safeguards such procedures provide. The same could be said in some respects for mortgage deeds which was an essential mechanism for ensuring buyers had a home and roof over their heads: any defect in the process which put the validity of the document in question was a serious concern. Clients in these two areas of the law are vulnerable and trust their solicitors to provide them with a competent and rules compliant service.
34. In each allegation the Tribunal found the misconduct arose from a conscious decision on the Respondent's part to follow a certain course of action and therefore this was not spontaneous but a thought-out path. Although she had not acted in a way which was a

clear breach of trust she had let down clients who had trusted her. She had had direct control of or responsibility for the circumstances giving rise to the misconduct in each allegation.

35. Whilst the Respondent had not, at that time, had a great deal of experience she had set up a business in which she purported to be an expert in LPAs. In compromising the procedure and deliberately misleading the OPG she had fallen short of her clients' expectations.
36. The Tribunal did not find the Respondent had misled the Regulator.
37. In assessing culpability, the Tribunal found the Respondent to be fully culpable.
38. In assessing harm, the Tribunal noted that a solicitor must discharge their obligations to act honestly, with integrity and to uphold public trust in the profession in all areas of their work but particularly those areas which impacted directly upon crucial and pivotal times in the lives of their clients, namely health, finance and their home.
39. With respect to Allegation 1.1 the OPG had cancelled the LPAs and this had placed the donor and attorneys in potentially a serious position where the donor may not have had his wishes carried out and the attorneys unable to make important decisions on his behalf without further time consuming and costly legal procedures. In respect of Allegation 1.2 the Respondent's clients' homes were potentially at risk. The level of harm was very high, and this had been entirely foreseeable.
40. As to aggravating factors, the Tribunal noted that it had found dishonesty proved on Allegation 1.1. The dishonesty had been deliberate and calculated, occurring over many weeks.
41. Whilst the Respondent had been dealing with vulnerable people the Tribunal did not find she had taken advantage of them by reason of their vulnerabilities and to her credit she had not sought to place the blame on anyone else. She had not demonstrated hostility based upon a person's protected or personal characteristics, nor used bullying or coercive tactics nor abused her authority.
42. However, the Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.
43. As to mitigating factors the Tribunal noted the Respondent's hitherto unblemished record. Other than the dishonesty found there had been no overt deception. Regrettably, the Tribunal had seen no evidence of insight from the Respondent who had told the Tribunal in evidence that she would continue with the practices identified as deficient. The Tribunal was therefore very concerned that the Respondent had little or no appreciation of the risk in not following recommended procedures in areas of practice where her clients were at their most vulnerable and in need of help.
44. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from harm.

45. The Respondent was found to have been dishonest. The element of dishonesty was therefore an aggravating factor. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

*“there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.*

46. Also quoting from Sharma, the Sanction Guidance states:

*“A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances ... “confined to.” a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.*

47. For the reasons which had been set out within its analysis of the appropriate sanction the Tribunal did not consider there were exceptional circumstances present in the Respondent’s case such that a lesser sanction was warranted. This had not been dishonesty limited to a very short period nor had the Respondent acted in blind panic and then come to her senses to set matters right. The dishonesty had been woven into a thought-out process of corner cutting, with the Respondent calculating that the defectively witnessed documents would be accepted by the OPG at face value without any checking. The failure of the documents to be validly executed had, potentially, catastrophic ramifications. The protection of the public and public confidence in the profession and the reputation of the profession required no lesser sanction than that the Respondent be removed from the Roll.
48. The Tribunal found this case to be a troubling one on many levels.
49. The Tribunal entreats solicitors starting out in the profession and within all specific areas of practice to thoroughly learn their craft before espousing to the public expertise they do not yet possess. It is important to speak to and take advice from more experienced colleagues to obtain insight upon the risk from departing from correct and appropriate procedures. Failure to do so, will have adverse consequences upon the client and ultimately rebound upon the solicitor.

## **Costs**

50. Ms Sheppard-Jones invited the Tribunal to summarily assess the costs.
51. The quantum of costs claimed by the Applicant had initially been in the sum of £22,605.60 including VAT. However, Ms Sheppard-Jones said that this should be reduced to take account of the fact that the hearing had taken less than the 3 days. She also said that due to the new contract between Capsticks and the SRA an hourly rate of £142 per hour was now being charged by Capsticks for its work instead of the fixed fee arrangement which had been in place. As this case was commenced prior to the change it straddled the two regimes so that it was a mixture of fixed fee and hourly rate.

52. As to the principal costs Ms Sheppard-Jones said that the proceedings had been correctly brought by Applicant and it was right that it should recover its costs in doing so. The allegations contained matters of dishonesty and lack of integrity which had been found proved by the Tribunal, albeit one allegation of dishonesty had not been found proved.
53. The costs incurred were reasonable and proportionate in the circumstances of the case and that the Applicant was entitled to its costs save for a pro-rata reduction to mark that the case had not taken 3 days as previously anticipated but only 2 days.
54. The hourly rate claimed was not unreasonable.
55. Mr Goodwin explained that the Respondent had lodged her statement of means. She was not practising now and although she was a director of two companies each directorship was non-executive and unpaid providing her with no income. She was unemployed and effectively her sole income came from a rental property.
56. Given her very limited income and her liabilities (also set out in the statement of means) Mr Goodwin asked the Tribunal to consider the Respondent's ability to pay a costs order and that it should, in its discretion, not make an order as to costs if there was no realistic way in which she could pay off such an order.
57. Mr Goodwin noted from the Applicant's statement of costs that there had been four levels of fee earner used in the preparation of the case. Mr Goodwin questioned whether this use of resources was commensurate to the complexity of the case and noted the risk that there had been some duplication of work.
58. Finally, the Applicant had not succeeded on all aspects of its case and the allegation of dishonesty had not been found proved on Allegation 1.2.

#### The Tribunal's Decision on Costs

59. The Tribunal found that it was right for the Respondent to be subject to a costs order, the case had been properly brought by the Applicant as it had raised allegations of an intrinsically serious and concerning nature requiring the Tribunal's scrutiny. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.
60. On the face of it the costs claimed by the Applicant were neither unreasonable nor disproportionate and there was nothing within the way it had conducted its case to prevent an order being made.
61. As to the Respondent's means, no accompanying documents were submitted and the Statement of Means form was incomplete. It was noted that whilst Ms Marzan was not in current employment she was not without an income, and she had the benefit of owning a rental property from which that income was derived. The Tribunal was satisfied that the imposition of a costs order was not one which the Respondent could never pay or pay within a reasonable period.



62. The Tribunal found that £600.00 (not subject to VAT) claimed for investigation and supervision costs should remain undisturbed as should the costs claimed in Part B, case preparation on fixed fee, in the sum of £9,250.00.
63. The case preparation in Part C under the hourly rate should be subject to a reduction given that the hearing had taken 2 days instead of 3 and reductions made for duplication of work. The Tribunal reduced this figure to £6,461.00.
64. The Tribunal therefore ordered the Respondent to pay the Applicant's costs in the sum of £19,453.20 (inclusive of VAT).

**Statement of Full Order**

65. The Tribunal ORDERED that the Respondent, KRYSTEL MARZAN solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,453.20.

Dated this 16th day of February 2024  
On behalf of the Tribunal

*P Lewis*

P Lewis  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**16 FEB 2024**