SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12486-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

RICHARD GREGORY BARCA Respondent

Before:

Mr W Ellerton (in the chair)
Ms A Banks
Ms L Hawkins

Date of Hearing:15 – 17 April 2024

Appearances

Michael Collis, counsel in the employ of Capsticks LLP, 1 St Geroge's Street, Wimbledon, London SW19 4RN for the Applicant.

Geoffrey Williams KC, counsel of Farrar's Building, Temple, London EC4Y 7BD, instructed by Nigel West, solicitor of Weightmans LLP, The Hallmark, 105 Fenchurch St, London EC3M 5JG, for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Barca by the Solicitors Regulation Authority Limited ("SRA") were that whilst he was practising as a solicitor at Wilson Barca LLP ("the Firm"), he

1.1. On or about 8 to 9 January 2019, during a hearing before the Solicitors Disciplinary Tribunal, allowed misleading submissions to be made, in that it was submitted on his behalf (in relation to lending money to clients):

1.1.1. "…this was the first time that my client had ever done this or been asked to do so. He was not, and is not, in the business of lending money";

1.1.2. "Would he do it again? No, he wouldn't…He wouldn't again, and he'd have to protect himself and not go the extra mile to protect a client";

1.1.3. "The case of JWB goes back eight years…I'll come to the previous, but nothing of a similar nature has arisen in all those years, and so the Tribunal can properly conclude that there is no risk of repetition"; and

1.1.4. "….there is no risk to the public because had Mr Barca been inclined to repeat his failings, he would surely have done so by now"

and in doing so breached any or all of Outcomes 5.1 and 5.2 of the SRA Code of Conduct 2011 ("the Code") and Principles 1, 2 and 6 of the SRA Principles 2011 ("the Principles")

1.2. Between approximately October 2013 and June 2019, entered into financial arrangements with existing clients where there was an own interest conflict or a significant risk of an own interest conflict, and in doing so breached any or all of Outcome 3.4 of the Code and Principles 2 and 6 of the Principles.

2. In addition, Allegation 1.1 above was advanced on the basis thar Mr Barca's conduct was dishonest. Dishonesty is alleged as an aggravating feature of his conduct but was not an essential ingredient in proving the allegation.

3. In the alternative to the dishonesty allegation above, Allegation 1.1 was advanced on the basis that Mr Barca's conduct was reckless. Recklessness was alleged as an aggravating feature of his conduct but is not an essential ingredient in proving the allegation.

Executive Summary

4. At the commencement of the hearing, Mr Barca made limited admissions to the allegations. As regards allegation 1.1, he admitted that he had breached Principle 6 in relation to Client P only. All other matters were denied. The Tribunal found that in addition to breaching Principle 6 as regards Client P, he had also breached Principle 6 in regards of his dealings with Clients I and J. All other matters were dismissed including the allegation that Mr Barca's conduct had been dishonest or reckless in the alternative.

5. Mr Barca admitted that there had been a significant risk of an own client conflict in relation to Clients A, B and C, and that this amounted to a breach of Principle 6. He denied that Clients K and M (as described by the Applicant) were clients. Further, it was denied that his conduct lacked integrity in breach of Principle 2. The Tribunal found that Clients K and M were clients, and that there had been a significant risk of an own client conflict such that it amounted to a breach of Principle 6. The Tribunal did not find that Mr Barca's conduct lacked integrity as alleged. The Tribunal's reasoning can be accessed here:

- Allegation 1.1
- Allegation 1.2

Sanction

6. The Tribunal considered that a financial penalty in the sum of £30,000 was reasonable and proportionate taking into account the seriousness of the misconduct. The Tribunal's sanctions and its reasoning on sanction can be found here:

- Sanction

Documents

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

- Rule 12 Statement and Exhibit JTC1 dated 1 August 2023
- Respondent's Answer and Exhibits dated 27 September 2023
- Applicant's Reply to the Respondent's Answer dated 11 October 2023
- Applicant's Schedule of Costs dated 5 April 2024

Preliminary Matters

Anonymity

8. Mr Collis applied for the clients and any associated properties to be anonymised as per the Rule 12 Statement and following the decision in SRA v Williams [2023] EWHC 2151 (Admin). Additionally, Mr Barca referred to a relative of one of his former clients. In order to prevent jigsaw identification of that client, the relative should also be anonymised in the proceedings and the Tribunal's written Judgment.

9. Mr Williams KC did not oppose the application.

10. The Tribunal determined that in order to protect the confidentiality and legal professional privilege of Mr Barca's former clients, they should be anonymised in the proceedings and in the Tribunal's Judgment. The Tribunal further determined that for

the reasons detailed by Mr Collis, the relative of the former client should also be anonymised in the Judgment.

Application by both parties to adduce additional evidence out of time

11. Mr Collis applied to adduce additional evidence out of time. The documents impacted on assertions made by Mr Barca in his witness statement dated 18 March 2024. Those assertions had not previously been made by Mr Barca. As a result, the Applicant had not previously relied on the documents. The documents were now required to rebut the recent assertions made.

12. Mr Williams KC applied to adduce an article from the Telegraph in support of Mr Barca's assertions in relation to Person Q.

13. The parties did not object to the applications made.

14. The Tribunal determined that it was in the interests of justice to allow both applications. The Tribunal noted that neither party opposed their respective applications.

Factual Background

15. Mr Barca was admitted to the Roll in July 1986. At the time of these Allegations, he was registered with the SRA as a solicitor and manager at Wilson Barca LLP ("the Firm"). The Firm has been a recognised body since 1 November 2011.

16. At all material times, Mr Barca was registered with the SRA as both Compliance Officer for Finance and Administration ("COFA") and Money Laundering Compliance Officer ("MLCO") for the Firm. In addition, he was identified on the Firm's website as the individual to whom any complaints should be directed. Mr Barca held an unconditional Practising Certificate.

Witnesses

17. The following witnesses provided statements and gave oral evidence:

- Richard Barca – The Respondent
- Mr Keane – Client P
- Mr Mayers – Client K
- Mr Canning – Client I

18. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal 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

19. 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 Barca's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Dishonesty

20. The test for dishonesty was that set out 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."*

21. When considering dishonesty, the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people. When considering dishonesty, the Tribunal had regard to the references supplied on Mr Barca's behalf.

Integrity

22. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per 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

23. 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, unreasonable to take that risk."

23.1 This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

24. Allegation 1.1 - On or about 8 to 9 January 2019, during a hearing before the Solicitors Disciplinary Tribunal, allowed misleading submissions to be made, in that it was submitted on his behalf (in relation to lending money to clients): (1.1.1) "…this was the first time that my client had ever done this or been asked to do so. He was not, and is not, in the business of lending money"; (1.1.2) "Would he do it again? No, he wouldn't…He wouldn't again, and he'd have to protect himself and not go the extra mile to protect a client"; (1.1.3) "The case of JWB goes back eight years…I'll come to the previous, but nothing of a similar nature has arisen in all those years, and so the Tribunal can properly conclude that there is no risk of repetition"; and (1.1.4) "….there is no risk to the public because had Mr Barca been inclined to repeat his failings, he would surely have done so by now"; and in doing so breached any or all of Outcomes 5.1 and 5.2 of the Code and Principles 1, 2 and 6 of the Principles

The Applicant's Case

24.1 The allegations Mr Barca faced related to instances where he had lent money to clients or former clients, in situations where there was an own interest conflict or a significant risk of an own interest conflict. In January 2019, Mr Barca appeared before the Tribunal in relation to a similar allegation. In mitigating remarks, made on his behalf by Mr Williams KC, the impression was given that the incident before the Tribunal on that occasion was an isolated and one-off incident, which had not been repeated. The reality was that Mr Barca has been involved in lending money to clients or former clients on a relatively regular basis.

24.2 Mr Barca appeared before the Tribunal on 8 – 9 January 2019 ("the 2019 case") in relation to Allegations which included:

- Lending money to a client in circumstances giving rise to an own interest conflict or a significant risk of an own interest conflict (Allegation 1.1 from the 2019 case); and

- Serving a witness statement which made a misleading claim (Allegation 1.2 from the 2019 case)

24.3 In mitigation (in relation to the money lending allegation) Mr Williams KC stated (amongst other things):

"So, Mr Barca agreed to lend £27,000 on the basis of a short-term transaction. That would be sufficient to clear the mortgage arrears to Santander and a debt to a company called Red to Black.

> *Just pausing there, to avoid any doubt, this was the first time that my client had ever done this or been asked to do so. He was not, and is not, in the business of lending money"* (emphasis added).

Mr Williams KC continued in this vein, in the further comments that were made in the course of his mitigation submissions on behalf of Mr Barca:

> *"Would he do it again? No, he wouldn't. Next time, he would get tough. I'm not saying he's not a tough person – he's a very direct, straight individual – but we can all give in to pressure. He wouldn't again, and he'd have to protect himself and not go the extra mile to protect a client"*
>
> *"The case of JWB goes back eight years…I'll come to the previous, but nothing of a similar nature has arisen in all those years, and so the Tribunal can properly conclude that there is no risk of repetition"*
>
> *"…there is no risk to the public because had Mr Barca been inclined to repeat his failings, he would surely have done so by now"*

24.4 It was the Applicant's case that these comments made in mitigation were intended to convey the impression to the Tribunal that the loan to the client in that case was the first time that Mr Barca had lent money to a client, and that he had not repeated these actions.

24.5 This £27,000 loan given by Mr Barca to his then client occurred in January 2011. The 2019 case concluded with Mr Barca being fined £20,000 and being ordered to pay £26,000 of the Applicant's costs.

24.6 It was of note that Mr Barca was an active participant in the hearing on 8 January 2019; he did not sit there silently whilst Mr Williams KC addressed the Tribunal on his behalf. His involvement or participation in the hearing was evidenced in the transcript of the hearing, which showed that Mr Barca intervened in the mitigation to address the Tribunal directly on numerous occasions during Mr Williams KC's speech in mitigation.

24.7 Mr Collis submitted that the interventions and involvement by Mr Barca in the course of the hearing served to demonstrate that he was more than a simple passive observer during the mitigation that was being made by Mr Williams KC on his behalf; he was clearly involved in the process and prepared to become involved in order to clarify or provide further information to assist or in response to specific questions.

24.8 The Tribunal, in the course of its written judgment, referred to the comments made by Mr Williams KC in the course of his mitigation:

> *"Mr Williams stated that Mr Barca eventually agreed to lend Mrs JWB £27,000 to help her keep her home. This was the first time he had ever done this, and he had raised the money by increasing the mortgage on his own home"*
>
> *"Mr Williams reminded the Tribunal that these matters were historic and that nothing similar had arisen since that time".*

24.9 The reporting of Mr Barca's 2019 case also made a reference to the fact that this was the first incident of money-lending to a client, as can be seen in the 12 March 2019 article which featured in the Law Society's Gazette:

> *"He had never loaned money to a client before, and intended for it to last no more than three months…"*

June 2019 complaint and subsequent investigation

24.10 On 6 June 2019, the SRA received a further complaint in relation to Mr Barca from Person A, who was the son of Client A; a former client of Mr Barca's. The complaint related to Mr Barca's conduct towards Client A and her family after Mr Barca had purchased her property in or around 2013. This was done, apparently, on the basis that Mr Barca *"….would prevent it from getting repossessed and to prevent [Client A] son and wife and their 5 children from being made homeless"*. An agreement was reached that after purchasing the property for £320,000, Mr Barca would sell it back to Client A and her family for £325,000 within two years.

Transaction No.	**Name of client**	**Property**	**Nature of agreement**	**Date**
1	Client & Person A	Property A	Deed of Trust/Tenancy pending re-purchase	24.10.2013
2	Client B & Client C	Property D	Long lease and buy back agreement	14.06.2014
3	Client B & Client C	Property E	Long lease and buy back agreement	14.06.2014
4	Client B & Client C	Property F	Long lease and buy back agreement	14.06.2014
5	Client B & Client C	Property G	Long lease and buy back agreement	14.06.2014
6	Client B & Client C	Property H	Deed of Trust/Tenancy pending re-purchase	16.07.2014
7	Client I	N/A	Unsecured Loan	28.06.2016
8	Client J	N/A	Unsecured Loan	10.10.2018
9	Client K	N/A	Bill of Sale re Motor Car	02.11.2018
10	Client L	N/A	Unsecured Loan	10.04.2019

Transaction No.	Name of client	Property	Nature of agreement	Date
11	Clients M & K	Property N	Secured short term loan	29.04.2019
12	Client O	N/A	Unsecured Loan	03.07.2019

24.11 As a result of this complaint, the SRA issued Mr Barca with a Production Notice on 5 August 2019, requiring him to provide a schedule detailing the instances in which he or the Firm had entered into any personal financial arrangements with clients. Mr Barca replied to this request, producing a schedule which detailed twelve separate transactions, which fell within that description:

24.12 It was apparent that the first nine of the transactions identified above pre-dated the hearing at the Tribunal on 8 – 9 January 2019.

24.13 Subsequently, further enquiries by the SRA revealed that two further loans had been provided by Mr Barca to another client; Client P:

- A £52,000 unsecured loan, provided on 6 March 2013; and
- A loan for £100,000 in October 2012, referenced by Mr Barca in a signed witness statement from him, dated 31 July 2018

24.14 As part of its investigation, the SRA produced a document summarising the circumstances behind each apparent loan from Mr Barca to his clients or former clients. The circumstances of the loans to the following clients were relied upon by the Applicant in support of its case in relation to Allegation 1.2:

<u>Loan to Client A</u>

24.15 Client A instructed Mr Barca in July 2011 in order to assist her in repossession proceedings being brought by her mortgage provider in relation to Property A.

24.16 In 2013, Mr Barca offered to purchase Property A in order to prevent the mortgage provider repossessing the property. Mr Barca purchased the property for £320,000 and a statutory declaration (dated 15 October 2013) was drawn up for Client A, which referred to an agreement between Client A's daughter and Mr Barca to buy the property back within two years at a price of £325,000. This document referred to the fact (at the footer) that Client A had received advice from a solicitor at S J Law before entering into this agreement.

24.17 Mr Barca then rented Property A to Client A and her family, before they were evicted in May 2014.

24.18 On 5 May 2022, Mr Barca provided a witness statement to the SRA, responding to queries raised about the loans he had provided to clients or former clients, in which he made the following assertions about the arrangements with Client A and her family:

- That he remained in possession of Property A;

- That he had, *"…offered to sell it back for the purchase price plus the rent they owed on occupation of another property"*; and

- That Client A and her family, *"…were supposed to buy it back 3 years ago but have been unwilling or unable to do so… ….I understand because they could not get a mortgage. The market value of the property was at that time around £800,000"*.

Loan to Clients B and C – Properties D - G

24.19 In January 2013, Client B instructed Mr Barca to assist them with the purchase of the freehold for four properties; Properties D – G.

24.20 In April 2014, Client B received a letter from Fincorp, requesting repayment of the bridging loan he had received in order to purchase these properties. The amount requested was £582,505.16 and Client B was asked to make payment within seven days.

24.21 On 18 April 2014, Client B wrote to Mr Barca to inform him of this development. The letter was headed *"My plan for your purchase of [Property D,E,F and G]"* and contained the following passages:

> *"My long term plan is for my wife and children when old enough to buy back these properties but in the meantime I have requested that you buy them from me, and I will grant four new leases to enable you to get buy to let mortgages.*
>
> *You will have to move quickly if I am to avoid the flats being repossessed.*
>
> *You have told me when I called you that I should get legal advice about my plan from another unrelated solicitor – but I do not have the time or money to do this, and I trust you based upon our dealings in recent years and have also discussed this with my friend and accountant Mr [S]."*

24.22 The letter appeared to be signed by both Client B and his wife, Client C.

24.23 As per the suggestion in Client B's 18 April 2014 letter, Mr Barca was granted a lease for each of the four properties on 16 June 2014.

24.24 Following Mr Barca's purchase of these properties, a Declaration of Trust was drawn up (dated 17 June 2020), which was signed by Client C. The Trust confirmed that Mr Barca held the four properties on trust for the beneficiary (Client C), although Mr Barca was entitled to collect and retain rents for the properties, subject to the following conditions:

- That Client C reimburses Mr Barca on demand for the cost of the annual building insurance;

- That Client C reimburse Mr Barca on demand for any expenses associated with the purchase of the mortgage;

- That Client C indemnifies Mr Barca in respect of any period in which the properties were vacant;

- That Client C pays Mr Barca 6% interest per annum on any of the above sums that are not paid when due; and

- That Client C discharges all outgoings relating to the properties and will indemnify Mr Barca for the same and all costs, expenses or demands arising from or connected in any way to the properties.

24.25 Mr Collis submitted that these conditions placed relatively significant financial obligations upon Client C in order for her to be able to regain ownership of these properties by purchasing them back from Mr Barca.

24.26 The Declaration of Trust contained an assertion that Client C had obtained independent legal advice before the execution of the document. Given the date on the Declaration of Trust, it appeared that no formal agreement had been in place between Mr Barca and Client B and Client C for six years, from the point at which Mr Barca purchased the properties in June 2014.

24.27 In his 5 May 2022 witness statement, Mr Barca made the following assertions in relation to the arrangements with Client B and Client C, insofar as Properties D – G were concerned:

- That Client C currently owned the four properties in question; and

- That the properties had been transferred to Client C in October 2021.

<u>Loan to Client B and Client C – Property H</u>

24.28 On 28 January 2019, a further Declaration of Trust was drawn up between Mr Barca and Client C. This document referenced Mr Barca's purchase of Property H on 24 July 2014, and the fact that the property was held on trust for the benefit of Client C.

24.29 As with the trust arrangement in relation to Properties D – G, there were conditions attached to the trust relating to Property H, namely:

- That Client C reimburses Mr Barca on demand for the cost of the annual building insurance;

- That Client C reimburse Mr Barca on demand for any expenses associated with the purchase of the mortgage;

- That Client C indemnifies Mr Barca in respect of any period in which the properties were vacant;

- That Client C pays Mr Barca 6% interest per annum on any of the above sums that are not paid when due; and

- That Client C discharges all outgoings relating to the properties and will indemnify Mr Barca for the same and all costs, expenses or demands arising from or connected in any way to the properties.

24.30 Again, these conditions would appear to place relatively significant financial obligations upon Client C in order for her to be able to regain ownership of this property by purchasing it back from Mr Barca.

24.31 The Declaration of Trust contains an assertion that Client C had obtained independent legal advice before the execution of the document. Given the date on the Declaration of Trust, it appeared that no formal agreement had been in place between Mr Barca and Client B and Client C for four-and-a-half years, from the point at which Mr Barca purchased the property in July 2014.

24.32 In his 5 May 2022 witness statement, Mr Barca made the following comments about this arrangement:

- That he had purchased Property H from Client C because, *"…she was not able to get a mortgage. She now tells me she hopes to be able to buy the property in about 12 months' time"*;

- That he remained the owner of Property H, with Client C as the tenant, but that she had not paid any rent since moving into it; and

- That ownership of Property H would be transferred to Client C, *"as soon as she complies with the terms of the Trust Deed"*.

24.33 In a 4 August 2022 e-mail to the SRA, providing further information in relation to these matters, and in response to the request to provide a copy of the instructions that he had received from Clients B and C in relation to the matter in which he was acting for them around the time of the purchase of Property H, Mr Barca stated: *"They did not give me any written instructions"*.

<u>Loan to Clients K and M</u>

24.34 The loans provided to Clients K and M were conducted through Mr Barca's company, Crystal Palace Developments Ltd ("CPDL"). On 14 January 2008, Mr Barca was appointed as a director of this company. Mr Barca has been the sole director and shareholder of CPDL since 1 May 2014.

24.35 On 21 February 2019, Mr Barca was instructed by both Clients K and M to deal with the purchase of Property N. The Client Care letter sent to the Director of Client M on 21 February 2019 makes the point:

> *"You want to exchange contracts even though you do not have funds to complete, and you accept the risk of so doing.*
>
> *You have instructed us to accept the deposit be released to the Seller, against our express advice"*.

24.36 On three separate occasions, Mr Barca loaned money (through CPDL) to Clients K and M, as set out in the following promissory notes:

- £130,000 on 29 April 2019;
- £22,500 on 2 May 2019;
- £5,000 on 17 June 2019.

24.37 The 29 April 2019 and 2 May 2019 loans appear to have been secured against properties, with charges being registered in favour of CPDL on both 29 April 2019 and 2 May 2019.

24.38 In his 4 August 2022 e-mail to the SRA, Mr Barca stated of these loans to Clients K and M that, *"…the entire sum of each loan plus accrued interest remains outstanding"*.

24.39 On 3 January 2023, Mr Barca was sent a copy of the Notice recommending referral of his case to the Tribunal. The Notice referred to allegations relating both to entering into financial arrangements with clients in own interest conflict scenarios and also misleading the Tribunal at the 8 – 9 January 2019 hearing. Mr Barca's response to the notice did not deal with the allegations of misleading the Tribunal at the hearing.

24.40 At the hearing on 8 – 9 January 2019, mitigation was given on behalf of Mr Barca that was intended to give the impression that the money-lending incident in the 2019 case was a one-off or isolated incident, which had not been repeated. However, as was made clear by the information provided by Mr Barca in response to the 5 August 2019 Production Notice, and arising during the SRA's investigation, Mr Barca had been involved in a number of incidents in which he had either entered into financial arrangements with clients (such as acquiring properties to stave off repossession, with the intention that the clients would purchase the property back) or lent money to them between October 2012 and November 2018.

24.41 The following clients appeared to have benefitted from such arrangements with Mr Barca, over the following timeframe:

Number	**Date**	**Client**	**Nature of arrangement**
1	October 2012	Client P	£100,000 loan
2	06.03.2013	Client P	£52,000 loan
3	24.10.13	Client and Person A	Property purchased to prevent repossession, pending re-purchase by client
4	14.06.2014	Clients B and C	Lease acquired with buy back agreement

Number	Date	Client	Nature of arrangement
5	16.07.2014	Clients B and C	Lease acquired with buy back agreement
6	28.06.2016	Client I	£22,000 loan
7	10.10.2018	Client J	£20,000 loan
8	02.11.2018	Client K	Purchase of client's car for £6,000, with the client having a £3,500 buy-back option

24.42 It followed that at the hearing in January 2019, Mr Barca had provided financial assistance (be it a loan or some other financial arrangement) to clients on no fewer than eight other occasions, in addition to the one for which the Tribunal were dealing with him on that occasion.

24.43 Significantly, the most recent of those occurred on 2 November 2018 (matter number 8 in the table above), so only approximately two months before the hearing in January 2019. Furthermore, despite the mitigation that was made on Mr Barca's behalf, Mr Barca had signed a witness statement only five months prior to that hearing, which made express reference to the loans identified at matters 1 and 2 in the table above.

24.44 The volume of these incidents, the value of money involved, and the proximity of some of these incidents to the January 2019 hearing, must mean that Mr Barca knew that a misleading impression was being given during the submissions made on his behalf.

24.45 Whilst Mr Barca did not personally provide the mitigation submissions to the Tribunal, he was under a duty to ensure that the Tribunal was provided with correct and accurate information on his behalf. He must have known that what was being said about him by Mr Williams KC in mitigation did not reflect the true position, and yet he had made no effort to correct or intervene. This allowed the Tribunal to receive misleading information as to Mr Barca's level of involvement in lending money to clients, which was clearly accepted by the Tribunal given the comments that featured in its judgment.

24.46 Mr Collis submitted that bearing in mind that one of the allegations that was before the Tribunal in January 2019 related to Mr Barca serving a witness statement, which made a misleading claim, one might have expected Mr Barca to have been assiduous in ensuring that only correct and accurate submissions were made to the Tribunal on his behalf.

24.47 Furthermore, Mr Barca played an active role in the hearing during the course of the mitigation submissions made on his behalf by Mr Williams KC. It could not be said that Mr Barca was not listening or paying attention or did not realise that he was able to intervene to ensure that the Tribunal received correct information.

24.48 In addition, this was not a passing or throwaway remark from Mr Williams KC that may have been missed by Mr Barca; allegation 1.1 related to four separate comments from Mr Williams KC which all amounted to the same thing, namely that this was a one-off incident on the part of Mr Barca which had not and would not be repeated.

24.49 Outcomes 5.1 and 5.2 of the Code placed an obligation on solicitors not to attempt to deceive or knowingly or recklessly mislead the court and not to be complicit in another person deceiving or misleading the court. By failing to take steps to correct the information provided by Mr Williams KC, Mr Barca has failed to achieve Outcomes 5.1 and 5.2.

24.50 The public are entitled to expect and trust solicitors to ensure that correct information is provided on their behalf in relation to any legal proceedings they face. Mr Barca's role in the misleading submission being made to the Tribunal in January 2019 was precisely the type of conduct that would damage such trust. On that basis, a breach of Principles 6 of the Principles was alleged.

24.51 Mr Collis submitted that a solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence with an ethical code) would have ensured that the Tribunal received accurate information during mitigation submissions and taken steps to correct any errors that may have been made. Mr Barca's failure to take those steps and/or ensure that the Tribunal only received accurate information was demonstrative of an individual who was content for the Tribunal to be misled. On that basis, a breach of Principle 2 of the Principles was alleged.

Dishonesty

24.52 Mr Collis submitted that given the volume, value and proximity in time to the 2019 hearing of the occasions in which Mr Barca had previously lent money to clients or assisted them through other financial arrangements, he must have been aware that the comments made on his behalf by Mr Williams KC did not accurately describe the true picture. Despite this, Mr Barca took no action to correct this misleading impression.

24.53 Should the Tribunal conclude that the failure to correct this misleading impression was a deliberate omission on the part of Mr Barca, designed to leave the Tribunal with a false impression of his involvement in lending money to clients, this behaviour would be viewed as dishonest by the standards of ordinary decent people.

Recklessness

24.54 Mr Collis submitted that if the Tribunal was unable to determine that Mr Barca's conduct was dishonest, then it should consider whether Mr Barca acted recklessly.

24.55 If Mr Barca did not deliberately intend for the Tribunal to be left with a misleading impression of his level of involvement in money-lending to his clients, he must have been aware of the risk that the comments from Mr Williams KC could give rise to a misleading impression being formed. His failure to act to address that risk was conduct that could be considered reckless.

The Respondent's Case

24.56 Mr Barca denied allegation 1.1 save that (at the commencement of the substantive hearing) he admitted, in relation to Client P only, that his conduct amounted to a breach of Principle 6. This admission was made on the basis that the loan to Client P was sufficiently proximate to the loan to Client JWB (from the 2019 proceedings).

24.57 Mr Barca explained that he was present during the mitigation. Had he considered that Mr Williams KC had made any misleading statements, he would have intervened to correct him. He had, in fact, interjected during the mitigation submissions on a number of occasions when he thought that further information or clarification was needed.

24.58 Mr Barca did not accept that any of the submissions made were misleading. He was not "in the business of money lending". Further, the JWB matter was the first time that he had provided a short-term bridging loan to a client for whom he was acting without that client first receiving independent legal advice.

24.59 As to the other complained of statements, they related to the allegation that he had admitted, namely loaning money to a client who had not obtained independent legal advice. The matters relied upon by the Applicant did not amount to loans to clients who had not taken independent legal advice.

24.60 Mr Barca explained that his concentration during the hearing was affected for two reasons. Firstly, shortly after the hearing started, there was a disturbance as a man entered the Court room. Mr Barca did not initially know who the man was but quickly came to understand that he was Person Q, the brother of Client JWB. Person Q had been imprisoned in 1977 for murder. Following his release from prison he had been convicted and imprisoned again in 2003 for arson and attempted murder of his ex-wife and children. Person Q's solicitor had claimed that the secured loan Mr Barca had made to Client JWB was a sham designed to prevent Person Q from enforcing a judgment he had obtained against his sister. That claim was dismissed. Person Q's solicitor then made a complaint to the SRA. That complaint formed the basis of allegation 1.2 in the 2019 proceedings. That allegation was admitted in those proceedings.

24.61 Mr Barca did not realise until the Tribunal hearing that Person Q had been released from prison. He had two convictions relating to murder. Mr Barca was worried that Person Q might attack him. That inevitably affected his concentration. The SRA stated that Mr Barca had been involved in the process during the mitigation given his interventions. Mr Barca stated that this did not mean that he had been able to concentrate throughout those submissions, taking in everything which was said. Person Q's presence and what his intentions might have been were on Mr Barca's mind throughout.

24.62 Secondly, at the time of the proceedings, Mr Barca was hard of hearing. During the proceedings, he moved closer to the front of the courtroom in order to be better able to hear. At the time, he did not have hearing aids and was thus unable to utilise the hearing loop system in place at the Tribunal.

24.63 Mr Williams KC examined the complained of submissions. It was submitted that a consideration of the submission at allegations 1.1 required the Tribunal to determine what "this meant as regards allegation 1.1.1 ("This was the first time that my client had ever done this or been asked to do so"), and "it" as regards allegation 1.1.2 ("Would he do it again? No, he wouldn't…").

24.64 Given the nature of the allegations faced, the Tribunal should construe those allegations strictly; they could not be expanded in order to accommodate the submissions made by the Applicant. The reference to being in the business of lending money should be construed, it was submitted, to mean being in the business of a commercial money lender or a habitual lender of cash. That was not the position in this case. Accordingly, the submission that Mr Barca was not in the business of lending money was not misleading.

24.65 Mitigation, it was submitted, could only relate to matters that were found proved by the Tribunal. A consideration of whether the statements made were misleading required a consideration of the context in which those statements were made. Allegation 1.1 in the 2019 proceedings was that:

> *"The Respondent acted in an own interest conflict or where there was a significant risk of an own interest conflict in respect of his client, Mrs JWB, in circumstances where he loaned her £27,000 through his company Safechase Ltd, at an annual interest rate of 60%, the loan being secured by a legal charge over Mrs JWB's property. Mrs JWB defaulted on repayment of the loan which led to the Respondent obtaining possession of the property and selling it from which he received £76,564.30 from the proceeds of sale."*

24.66 The allegation was thus one of his lending money to a client. It transpired that Client JWB had not taken independent legal advice. The transcript of the hearing made the context of the submissions plain. Both Mr Bheroo (who prosecuted the matter) and Mr Davies (the chair of that Tribunal) highlighted that a relevant factor for consideration was that Client JWB had not taken independent legal advice.

> *"Mr Bheroo: The breaches are admitted - exactly. So, whether the client actually didn't mind it was 60% and she would've, come what may, have taken it. The issue was whether the respondent himself should've provided the loan in the terms he did and in the circumstances he did - i.e. when she wasn't independently legally advised. That's what we say gives rise to conflict situation."*

24.67 Mr Williams KC submitted that the transcript of the hearing made it abundantly clear that the matter admitted and to be mitigated upon as regards allegation 1.1 in those proceedings was the loan to a client who had not received independent legal advice. That being the case, Mr Williams KC began his mitigation. That this was the matter

upon which he was advancing mitigation was made clear by Mr Williams KC at the outset of the mitigation:

> Mr Williams KC: *"The first point to make here is that there is not, and has never been, a rule that you have to take independent legal advice in these circumstances. The rule is you mustn't act in a conflict situation - and the taking of independent advice is an indicative behaviour which demonstrates that you've not been in the conflict situation. So, the rule about independent legal advice is as much for the protection of the solicitor as it is for the client - and, in this case, Mr Barca's failing is that he didn't avail himself of that protection. The particular circumstances of the facts needs to be fully understood in order to appreciate why he didn't."* (emphasis added).

24.68 That the Tribunal had the same understanding was evident from the following exchange:

> "MR DAVIES: *I do not understand the measure of formality, because the same formality could exist - we understand what Mr Barca is accused of and what he has admitted, 10 namely not insisting, effectively ...*
>
> MR WILLIAMS KC: *Yes.*
>
> MR DAVIES: *... that Mrs JWB goes down the road and gets independent advice from Joe 13 Bloggs and Co ...*
>
> MR WILLIAMS KC: *Yes.*
>
> MR DAVIES: *... solicitor in relation to whatever.*
>
> MR WILLIAMS *: Yes.*
>
> MR DAVIES: *But I do not understand why the measure of formality, if the loan is being provided by Mr Barca, in reality, why the loan could not have been from the respondent to Mrs JWB ...*
>
> MR WILLIAMS KC: *Without the company, yes.*
>
> MR DAVIES: *... and still have the, and Mr Barca, because of the own conflict situation, protecting himself by insisting that she gets ... advice from down the road."*

24.69 Following this exchange, Mr Williams KC stated:

> *"So, we come to the mischief. You can lend to a client; you can borrow from a client; you can sell and buy with a client - but to avoid conflict of interest, you should ensure that the client has taken independent legal advice. If they have not done so, and will not do so, then you should not proceed with the transaction. That's the position of the conduct and that's the rationale behind*

> *my client's admissions for this particular allegation. That was his failing."* (emphasis added).
>
> …
>
> *She was certainly under no illusions at all and I think, from her statement, it's fair for me to say that had she gone down the road, as is the practice - send her to a local solicitor - and the local solicitor said, "Don't do it', would she have heeded that advice; or would she have done it? It's my submission that she would've done it, and my client would've been fully protected. It's his fault for not protecting himself."* (emphasis added).…
>
> *But, as the professional code stands, Mr Barca should not have advanced this lady the money - because she wouldn't take independent advice. He should've said no in those circumstances. The house would've been repossessed, and she would've lost her livelihood. That's what would've happened to this lady if my client had fully complied with his professional obligations. Somebody with a client in that situation is very much between the devil and the deep blue sea. My client was not able to harden his heart sufficiently to take that stand - and that's something that'll come out from the testimonials to which I will turn. What Mr Barca did, whilst placing himself in breach of certain obligations, was to preserve that home and livelihood of this lady*. (emphasis added).

24.70 The extent of the mitigation, it was submitted, was abundantly clear; it related to the loaning on monies in circumstances where the client had not taken independent legal advice. Accordingly, the matters complained of were not misleading as alleged.

24.71 The Applicant, it was submitted, had made the ambit of allegation 1.1 clear – it was alleged that Mr Barca had *"allowed misleading submissions to be made … in relation to lending money to clients"*. The only proper and lawful approach in the determination of the allegation was to hold the Applicant to the precise wording of its allegation. The use of the words "financial arrangements" did not feature in the 2019 case and was thus not a leap of reasoning which the Tribunal could endorse. Such references, it was submitted, were a device to make the Applicant's narrative fit the allegation.

24.72 Further, and in any event, an examination of the Tribunal's findings and its determination on sanction evidenced that the Tribunal had not relied on those submissions. Whilst some of the mitigation was quoted in the Tribunal's Judgment, the complained of matters were not. Mr Williams KC submitted that this demonstrated that the Tribunal was not in fact misled. It was accepted that the Tribunal did not need to be misled for the statements to be misleading. For the reasons stated, Mr Williams KC submitted that it was evident that the statements were not misleading in any event, and further, that the Tribunal was not misled.

24.73 Mr Williams KC then examined the client transactions relied upon by the Applicant.

- As regards Client P, whilst he was not formally a client at the time of the loan, he was a regular client. For those reasons, Mr Barca had made the limited admission to breaching Principle 6. Whilst there was no formal client retainer, Mr Barca accepted that due to the regularity with which he acted for Client P, he ought to

have mentioned that to Mr Williams KC or to the Tribunal during the course of the submissions in mitigation. Further, due to the material provided by Mr Barca to the SRA, the SRA was aware of this loan but chose not to do anything about it during the 2019 proceedings. The matter was not investigated, and no allegations were made against Mr Barca at that time. Mr Williams KC submitted that in the circumstances, Mr Barca was entitled to put this out of his mind. He regarded this matter as being "done and dusted". The loan had been repaid in full.

- Client P had given compelling evidence in the proceedings as to Mr Barca's character and the circumstances that had caused him to need a loan.

- The loan to Client A was not a loan, but a property purchase. It was not sufficient, in order for the Applicant to prove the allegation, for it to rely on other financial arrangements that were not strictly loans; the ambit of the allegation was clear. Further, and in any event, this was not similar to the Client JWB matter upon which the 2019 mitigation was advanced – it was not a loan and independent legal advice had been received.

- As regards Clients B & C, this suffered from the same defect as regards the Client A matter – no loan was given by Mr Barca.

- As regards Client I, there was no evidence that he was a client at the time. Further, he had taken independent legal advice which, as far as Mr Barca was concerned, meant that this was not similar to the Client JWB matter. Client I had given evidence on Mr Barca's behalf. He was astounded that Mr Barca appeared before the Tribunal accused of acting dishonestly or without integrity.

- As regards Client J, Mr Barca's evidence was that the client care letter had been sent to the company in error. Further, and in any event, independent legal advice had been taken such that it was not similar to the Client JWB matter.

- This Client K matter related to the purchasing of a car from a car dealership. Mr Williams KC submitted that the inclusion of this matter was incredible and did not fall within the ambit of the Applicant's allegation.

24.74 Accordingly, it was submitted that in circumstances where (i) the statements were not misleading and (ii) where the Applicant was not entitled to rely on the majority of matters that it had sought to rely upon, it was clear that Mr Barca's conduct had not been dishonest or reckless as alleged.

24.75 Further, Mr Barca's conduct, when considering the nature of the submissions and his personal circumstances during the course of those submissions, did not amount to a lack of integrity as alleged.

24.76 Accordingly, save for the limited admissions made, allegation 1.1 should be dismissed.

<u>The Tribunal's Findings</u>

24.77 The Tribunal examined the documents and transcript for the 2019 proceedings. It was clear that allegation 1.1 related to lending money to a client without that client first

receiving independent legal advice. That this was the mischief that the Tribunal was addressing (amongst others) was clear from the comments made by the Chair during the proceedings and as detailed in the Tribunal's findings detailed in its Judgment. The Tribunal thus found that the "this" and "it" in allegations 1.1.1 and 1.1.2 related specifically to loans to clients where independent legal advice had not been obtained, the mitigation having been advanced on that basis. The Tribunal accepted Mr Williams KC's submissions on these matters. Accordingly, it did not find that the statements complained of in allegations 1.1.1 and 1.1.2 were misleading as alleged. The Tribunal repeated those findings in relation to the submission detailed at allegation 1.1.4.

24.78 The Tribunal agreed with Mr Williams KC that for the matters that the Applicant relied on to be relevant, they would need to relate to loans made to clients. This was the case given the way that the Applicant had pleaded allegation 1.1 – it had specified in that allegation that the submissions were misleading "in relation to lending money to clients". The Tribunal determined that to widen this to include matters that were not loans was unfair and impermissible. The Tribunal thus examined the matters relied upon by the Applicant.

24.79 Mr Barca had made limited admissions in relation to Client P. Those admissions, it was found, had been properly made. Of the other matters relied upon by the Applicant, the only ones that were loans related to Clients I and J. The Tribunal did not accept that Clients I and J were not clients as submitted. Client I had given evidence. It was clear that he instructed Mr Barca on a regular basis. Whilst there might not have been a retainer in place at the time, similarly to Client P, the Tribunal considered that Client I was indeed a client at the time that the monies were loaned, and the concession made by Mr Barca in relation to Client P ought to have been made as regards Client I.

24.80 Client J had been sent a client care letter. Whilst Mr Barca's evidence was that this had been sent in error, the Tribunal noted that there was nothing to support that contention. Mr Barca had not produced any evidence showing that he had written to Client J stating that the client care letter was an error, and that Client J was not in fact a client. Accordingly, the Tribunal found that Client J was a client at the time that Mr Barca provided a loan to it.

24.81 The Tribunal then considered whether these matters were similar to the JWB matter, such that the submission made by Mr Williams KC at allegation 1.1.3 could be considered to be misleading. The Tribunal noted that these were loans made to clients. The only difference between these loans and that made to Client JWB was the obtaining of independent legal advice. The Tribunal did not consider that this distinction was such that it made these loans dissimilar to that of JWB. There were more features in common than not. Accordingly, the Tribunal found that the submission made that *"nothing of a similar nature has arisen in all those years"*, was misleading as alleged. For the avoidance of doubt, the Tribunal made no criticism of Mr Williams KC. The Tribunal did not find (and nor was it submitted) that Mr Williams KC knowingly misled the Tribunal. Rather, the Tribunal determined that it was for Mr Barca (as had been accepted) to have informed Mr Williams that the submission made was not wholly accurate given the loans that he had given to other clients.

24.82 For the reasons submitted by Mr Collis, the Tribunal found that in relation to Clients P, I and J, Mr Barca's conduct had failed to maintain the trust placed in him and in the provision of legal services in breach of Principle 6.

24.83 The Tribunal did not find that Mr Barca's conduct breached Outcomes 5.1 and 5.2 as alleged. The Tribunal considered the context in which Mr Barca had failed to correct the information provided by Mr Williams KC to the Tribunal. Firstly, he had not considered the information to be misleading at the time. Further, it was accepted that his concentration on those submissions was interfered with by the presence of Person Q at the Tribunal. Additionally, it was noted that this was a single submission amongst a significant plea in mitigation that could easily have been missed by Mr Barca in all the circumstances. There was insufficient evidence, the Tribunal found, to determine that Mr Barca had attempted (whether knowingly or recklessly) to mislead the Tribunal. Further, there was no evidence that he was complicit in Mr Williams KC deceiving or misleading the Tribunal. As detailed, the Tribunal did not in any way impugn the conduct of Mr Williams KC.

24.84 The Tribunal noted that whilst it had been alleged that there was a breach of Principle 1 of the Principles, this breach had not been particularised by the Applicant either in its Rule 12 Statement or during the course of its submissions. Mr Barca, it was determined, was entitled to know how the case against him was put as regards the breach of each and every principle or rule alleged. The Tribunal could not determine that the Applicant had proved the breach to the requisite standard in circumstances where the Applicant's case on the breach was unclear. Accordingly, the Tribunal dismissed the allegation that Mr Barca's conduct breached Principle 1 due to a lack of specificity.

24.85 The Tribunal considered the particular circumstances prevailing at the time of the submissions. As detailed above, the Tribunal found that Mr Barca was affected by the attendance of Person Q at the 2019 proceedings. Further, the misleading submission was a fleeting submission during the course of Mr Williams plea in mitigation. Mr Barca, Mr Williams KC and the Tribunal were all focussed on the allegation that he faced, namely that of loaning monies to a client when independent legal advice had not been obtained. There was no evidence, the Tribunal determined that Mr Barca had heard that submission. Even if he had, there was no evidence that he considered the submission to be wrong or misleading such that he should have taken steps to correct it. Accordingly, the Tribunal did not find that Mr Barca had acted without integrity in breach of Principle 2.

24.86 The Tribunal thus found allegation 1.1 proved on the basis that the complained of submission at paragraph 1.1.3 was misleading. Mr Barca's conduct had breached Principle 6 as regards Clients P, I and J. The remainder of the allegation was dismissed.

25. Allegation 1.2 - Between approximately October 2013 and June 2019, entered into financial arrangements with existing clients where there was an own interest conflict or a significant risk of an own interest conflict, and in doing so breached any or all of Outcome 3.4 of the Code and Principles 2 and 6 of the Principles.

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

25.1 Between October 2013 and June 2019, Mr Barca entered into financial arrangements with clients (whether loans or some other form of financial assistance) where there was an own interest conflict or a significant risk of such a conflict.

25.2 Mr Collis submitted that the Applicant acknowledged that not every scenario in which a solicitor lent money to a client would amount either to an own interest conflict or a significant risk of an own interest conflict.

25.3 The Solicitor's Handbook 2022 (9th Edition, Treverton-Jones QC (now KC), West, Heley & Forman) provided the following analysis:

> *"The prohibition on acting in an 'own interest conflict' is absolute. While it could be said that this has always been so, there has also always been an understanding that not every dealing between solicitor and client which has the potential for conflict, in fact involves a conflict or a significant risk of one. Examples are an unsecured interest-free loan from solicitor to client, as an act of humanity; or bridging finance on standard terms; or a modest gift to a solicitor by a client in a will, as distinct from a gift which is 'significant.'*
>
> *Guidance to the equivalent rule in the 2007 Code made it clear that solicitors could take security for their costs by a charge over the client's property, and that independent legal advice 'would not normally be essential unless the terms of the proposed charge are particularly onerous or would give you some unusual benefit or profit.' So, was that not a conflict, or was it a conflict that was exceptionally permitted? It would be difficult to argue that it was not, strictly speaking, a conflict of interests (what were the terms of the legal charge to be?).*
>
> *…Where, however, there is a genuine 'own interest conflict', the prohibition against a solicitor acting where his or her personal interests actually conflict with those of a client is absolute. Many solicitors continue to believe that merely informing a client that independent advice should be taken is sufficient to discharge their duties to the client. This is not so and normally, if the client does not in fact take independent legal advice, the solicitor must not proceed with the transaction (whether it be the purchase of an asset from the client, the drafting of a will containing a significant bequest in favour of the solicitor, etc.)"* (Section 4.88, pages 79 – 80)

25.4 A number of the loans made by Mr Barca appeared to have been unsecured and may therefore (without knowing more about the client's financial circumstances and the underlying legal matter for which they had instructed Mr Barca) not have created an own interest conflict or a significant risk of one. That was not to say, however, that the Applicant accepted that all but the three loans which were the subject matter of allegation 1.2 were permissible. In the circumstances of this case, the Applicant had chosen to focus solely (for the purposes of allegation 1.2) on the three loans for which, as set out above, there was clear evidence that would point to an own interest conflict or a significant risk of one.

25.5 The loans or financial arrangements which Mr Barca entered into with (i) Client A; (ii) Clients B and C; and (iii) Clients K and M, were clear examples of situations in which Mr Barca's clients were experiencing financial difficulties and the loans he provided, or the arrangements he entered into with them, created a direct financial benefit for him, be that the acquisition of properties or the securing of charges against them. The simple fact that these clients had obtained independent legal advice (Client A, Client C and Clients K and M) or been advised to obtain the same (Client B) did not change the nature of these arrangements; Mr Barca was profiting from the financial difficulties of his clients by acquiring their properties or charges against them.

25.6 In the Client A example, an actual conflict did in fact arise, with the client ultimately being evicted from the property by Mr Barca. The nature of the financial difficulties encountered by Clients B and C, and K and M, and known to Mr Barca, created a significant risk of such a conflict emerging with them.

25.7 Mr Collis submitted that Outcome 3.4 of the Code prohibited a solicitor from acting in circumstances where there was an own interest conflict or a significant risk of one. The particular circumstances surrounding the financial arrangements with (i) Client A; (ii) Clients B and C; and (iii) Clients K and M created an obvious and significant risk of such a conflict and did go on in fact to emerge with Client A. Mr Barca had therefore breached Outcome 3.4.

25.8 The public would expect a solicitor to be at pains to avoid acting in scenarios involving an own interest conflict or a significant risk of one, particularly in Mr Barca's case, where his arrangements with Clients K and M occurred only a matter of months after he appeared at the Tribunal in January 2019 for similar conduct. On that basis, a breach of Principle 6 of the Principles was alleged.

25.9 A solicitor acting with and adhering to the profession's moral code would not have sought to profit from their client's financial difficulties and obtained an interest in their clients' properties whilst assisting them with those problems. Again, in January 2019, Mr Barca appeared before the Tribunal in relation to taking advantage of a client in a similar manner, yet only months later was entering into similar arrangements with Clients K and M, and securing charges against properties owned by them. This deliberate flouting of the need to avoid an own interest conflict or a significant risk of one represents a departure from the ethical standards of the profession. For those reasons, a breach of Principle 2 was alleged.

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

25.10 Mr Barca denied allegation 1.2 save that (at the commencement of the substantive hearing) he admitted, in relation to Clients A, B and C, that there was a significant risk of an own client conflict in breach of Rule 3.4. That significant risk of a conflict gave rise to a breach of Principle 6.

25.11 Mr Barca explained that the delay in the execution of the Deeds of Trust regarding Clients B and C was a delay caused by the Clients who did not sign and return them for a significant period of time. That this was the position was clear from the dates that had been amended by manuscript on the Deeds.

25.12 As to his initial denial of allegation 1.2 with regards to Clients B and C, Mr Barca explained that he had not previously considered that they were clients at the time, but following the receipt of legal advice, he now accepted that they were clients, hence his admissions.

25.13 With regard to Client A, the position was similar. Following the receipt of legal advice, it was now accepted that Client A had been a client at the time of the relevant transaction. Mr Barca did not accept that the risk of a conflict had become an actual conflict as submitted. He had not evicted Client A from the property. Client A had agreed to move out of the property. She had now returned to the property where she still resided. She was paying rent to Mr Barca at 50% of the market value.

25.14 It was not accepted that Clients K and M were clients.

25.15 Mr Williams KC submitted that an own client conflict occurred where a solicitor found himself in circumstances where his interests as a solicitor clashed with the interests of his client.

25.16 It was noted that the Client A and the Clients B & C matters predated the 2019 Proceedings.

25.17 Client A sought assistance from Mr Barca in relation the imminent repossession of her property. Client A was too old to obtain commercial lending and her son, Person A, did not have a sufficiently good credit rating to obtain finance. It was Person A who proposed that Mr Barca purchase the property and grant Person A's spouse the ability to repurchase the property.

25.18 The family resided in the property but did not pay the rental amount agreed. At the time that they left the property, Mr Barca was owed approximately £13,500 in outstanding rent. The family was not evicted from the property but left by consent. Mr Williams KC submitted that this was relevant to a consideration of whether an actual conflict arose, as alleged by the Applicant. It was Mr Barca's case that in all the circumstances, no actual conflict arose, although it was accepted (as had been admitted) that there was a significant risk of a conflict.

25.19 As regards Clients B & C, the proposal came from Client B. Mr Barca accepted that Client B was a client as he had conducted work that he could only conduct as a solicitor. Mr Barca had not expected to profit from the transaction. In fact, he had suffered significant financial losses as a result of the transaction. Further, the fact that the transactions were not formalised for some time was not to Mr Barca's benefit.

25.20 Mr Williams KC submitted that ordinarily, where there was a conflict or significant risk of a conflict, it was the clients that lost out. The position was the opposite for these matters. Mr Barca was considerably out of pocket as regards the Clients B & C matters and had just about broken even on the Client A matter.

25.21 With regard to Clients K and M, the loan was not made to Client K but to Client M. Client M was not Mr Barca's client, it had its own company solicitors. Accordingly, the allegation should fail in its entirety as regards Clients K and M.

25.22 Mr Williams KC submitted that it was clear that Mr Barca was not seeking to profit from his clients' circumstances. On the contrary his actions, both at the time and currently, was to assist his clients. Clients P, K and I had all given evidence about the assistance that Mr Barca had provided to them in their times of need. Clients K and I still owed Mr Barca a significant amount of money that he had not sought to recoup. Mr Williams submitted that in all the circumstances, and particularly as there was no actual conflict between Mr Barca and his clients, the Applicant had failed to establish that the significant risk of conflict was serious enough to amount to a breach of Principle 2.

The Tribunal's Findings

25.23 The Tribunal noted that it was now accepted that Clients A, B and C were clients. The Tribunal thus considered the position as regards Clients K and M.

25.24 Client K had attended the Tribunal to give evidence on Mr Barca's behalf. His witness statement made it clear that both he (Client K) and the Company (Client M) were clients. Client K explained:

- Mr Barca had acted as the solicitor for his business on various matters for over 10 years;
- The company instructed Mr Barca to act for him (Client K) in the purchase of some land;
- Mr Barca had loaned the money to him (Client K)
- The company had not yet been able to repay the loans
- Mr Barca had advised Client K and the other director of the company to obtain independent legal advice.

25.25 The Tribunal noted that the monies had been loaned to Client K (according to his witness statement). Further, in circumstances where the company was represented by another firm, if the loan was to the company, then it would not have been necessary to advise the company or its directors to obtain independent legal advice. The Tribunal determined that in all the circumstances, it was clear that both Clients K and M were Mr Barca's clients as alleged.

25.26 For the reasons submitted by Mr Collis, the Tribunal found that there was a significant risk of an own client conflict in breach of Rule 3.4, and that such conflict breached Principle 6 as alleged.

25.27 The Tribunal did not find that an actual conflict had arisen on any of the transactions. However, it was clear on all that there was a significant risk of a conflict at the time that the transactions were entered into. The Tribunal did not accept the submission that the conflict/significant risk of conflict was in any way minimised because Mr Barca had not made any personal gain.

25.28 Whilst no actual conflict had arisen at this stage, it remained open to Mr Barca to pursue the monies that he was owed by all of the clients detailed. It was also not accepted that Mr Barca had been 'done down'. All of the properties had increased in value. Whilst he remained the owner of those properties, he stood to benefit significantly from the increased values.

25.29 The Tribunal did not find that Mr Barca's conduct had amounted to a lack of integrity as submitted. It was clear that prior to the 2019 proceedings, Mr Barca had considered that advising clients to obtain independent legal advice was sufficient. Post 2019, he considered that insisting that any client take independent legal advice would suffice. Whilst the Tribunal agreed that advising clients to take independent legal advice could not negate compliance with Rule 3.4, it was an indicator, in this case, of Mr Barca's attempt to comply with his regulatory obligations following the 2019 proceedings.

25.30 Accordingly, the Tribunal found allegation 1.2 proved save that it did not find that Mr Barca's conduct lacked integrity in breach of Principle 2.

Previous Disciplinary Matters

26. Mr Barca appeared before the Tribunal in January 2019 (Case No 11816-2018) (as detailed above). On that occasion he was ordered to pay a fine in the sum of £20,000 and costs of £26,000.

27. Mr Barca appeared before the Tribunal 0n 28 May 2015 (Case No 11313-2014). The allegation he faced was that:

> *"He breached Principle 6 of the SRA Principles 2011 by making comments concerning his opponent in litigation and that opponent's client in correspondence that were offensive and derogatory, and he therefore did not behave in a way that maintains the trust the public places in him and in the provision of legal services."*

28. Mr Barca was reprimanded in relation to this matter and ordered to pay £2,600 in costs.

Mitigation

29. Mr Willians submitted that Mr Barca retained the compliance roles described by the Applicant. He was the cornerstone of the Firm which employed 4 members of staff. There were a further 3 consultants attached to the Firm. This was Mr Barca's second appearance at the Tribunal where it had been alleged that his conduct was dishonest. In the 2019 proceedings, the allegation of dishonesty had been withdrawn. In these proceedings, whilst the allegation of dishonesty had been properly pursued by the Applicant, Mr Barca had successfully defended it.

30. The Tribunal had heard from 3 character witnesses and read the testimonials of a further 2 character witnesses. Significant note should be taken on that evidence. It was clear from the evidence of Mr Barca and his witnesses that his motivation had been to help his clients who were in difficult financial circumstances and could have lost their homes or businesses save for his assistance. Mr Barca had not profited from his misconduct.

31. In considering the appropriate penalty, the Tribunal should take account of the fact that a number of the matters that were relied upon by the Applicant in these proceedings were known about during the 2019 proceedings, but no action was taken by the Applicant.

32. Mr Williams KC submitted that in the circumstances, the appropriate penalty was a financial penalty.

Sanction

33. 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.

34. The Tribunal considered that Mr Barca was motivated by his desire to assist his clients. The Tribunal also found that Mr Barca was motivated by the possibility of personal gain. Whilst his actions were planned, he had not planned to commit misconduct. He had sole and direct control for the circumstances leading to the misconduct. He was a very experienced solicitor.

35. He had caused harm to the reputation of the profession. The Tribunal did not find that there was evidence of direct harm to his clients. Indeed, his clients had provided witness statements and given evidence stating that his conduct had assisted them during their times of need.

36. Mr Barca's actions were deliberate, calculated and repeated but not with the intention of committing misconduct. The Tribunal considered that Mr Barca ought to have known that his conduct was in breach of his obligation to protect the public and the reputation of the profession, particularly following his appearance at the Tribunal in 2019 for similar matters. In mitigation, the Tribunal noted Mr Barca's co-operation with the investigation and his limited and late insight.

37. The Tribunal considered that sanctions such as No Order and Reprimand did not adequately reflect the seriousness of his misconduct. The Tribunal determined that a financial penalty was appropriate and proportionate. Given his previous similar matter before the Tribunal and the number of and frequency of the transactions, the Tribunal assessed his conduct as falling within its indicative fine band 4, as it assessed his conduct as being very serious in all the circumstances, notwithstanding that it had not found a breach of Principle 2. The Tribunal determined that a fine in the sum of £30,000 adequately reflected the level of misconduct and thus ordered Mr Barca to pay a fine in that amount. The Tribunal considered whether it should impose any restrictions on Mr Barca's practice. It determined that this was not necessary in order to protect the public or the reputation of the profession from future harm by Mr Barca.

Costs

38. Mr Collis applied for the Applicant's costs in full in the sum of £23,550.00, notwithstanding that Mr Barca had successfully defended some elements of the

allegations brought. The matters had not been a shamble from start to finish and had been reasonably prosecuted by the Applicant. Further, the lateness of the limited admissions meant that the Applicant had prepared for a fully contested hearing.

39. Mr Williams submitted that there were no issues with the quantum claimed. There should be a reduction for the successful defence of elements of the allegations.

40. The Tribunal agreed that the costs claimed were reasonable. It noted the lateness of the admissions and the partially successful defence. The Tribunal determined that costs in the sum of £20,000 were reasonable and proportionate, taking into account the reduced hearing time, the partial success and the lateness of the partial admissions made.

Statement of Full Order

41. The Tribunal ORDERED that the Respondent, Richard Gregory Barca, solicitor, do pay a fine of £30,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

Dated this 26th day of April 2024
On behalf of the Tribunal

W Ellerton

JUDGMENT FILED WITH THE LAW SOCIETY
26 APRIL 2024

W Ellerton
Chair