

# **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12045-2020

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

NICHOLAS ST JOHN GETHING

Respondent

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Before:

Mr J P Davies (in the chair)

Ms A Horne

Ms E Chapman

Date of Hearing: 12 August 2020

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**Appearances**

Nimi Bruce, barrister, of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent appeared and was represented by Carolina Bracken, Counsel of 5 Paper Buildings, Temple, London, EC4Y 7HB.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that:
  - 1.1 On or about 4 November 2016 the Respondent prepared and submitted to the Registrar of Companies, falsified copies of Charges granted over Property A, in order to lead the Registrar to believe that they had been delivered within the period allowed for delivery of company Charges prescribed within Section 859(4) Companies Act 2006 (as amended), when they had not. He thereby breached any or all of:
    - 1.1.1 Principle 2 of the SRA Principles 2011;
    - 1.1.2 Principle 4 of the SRA Principles 2011;
    - 1.1.3 Principle 5 of the SRA Principles 2011; and
    - 1.1.4 Principle 6 of the SRA Principles 2011.

It was also alleged that the Respondent had acted dishonestly.

- 1.2 On or about 4 November 2016 the Respondent prepared and submitted to the Registrar of Companies, falsified copies of Charges granted over Property B, in order to lead the Registrar to believe that they had been delivered within the period allowed for delivery of company Charges prescribed within Section 859(4) Companies Act 2006 (as amended), when they had not. He thereby breached any or all of:
  - 1.2.1 Principle 2 of the SRA Principles 2011;
  - 1.2.2 Principle 4 of the SRA Principles 2011;
  - 1.2.3 Principle 5 of the SRA Principles 2011; and
  - 1.2.4 Principle 6 of the SRA Principles 2011.

It was also alleged that the Respondent had acted dishonestly.

2. The Respondent admitted the allegations, including the allegations of dishonesty.

## **Documents**

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 24 December 2019 together with attached Rule 12 Statement and all exhibits.
- The Applicant's Statements of Costs dated 8 January 2020 and 6 August 2020.

Respondent:

- The Respondent's undated Answer together with attached bundle of documents.
- Letter dated 12 October 2016 sent by fax from Howell Jones LLP to the Mortgage Lender.
- The Respondent's Statement of Means dated 11 August 2020.
- Bundle of Character References.

### **Factual Background**

4. The Respondent, born in 1963, was admitted to the Roll of Solicitors on 1 April 1999.
5. From 2 September 2014 until 4 November 2016 the Respondent was employed as an Assistant Solicitor by Howell Jones LLP, 75 Surbiton Road, Kingston-upon-Thames, Surrey, KT1 2AF ("the Firm"). He was based at the Firm's branch office at 10 Upper Mulgrave Road, Cheam, Sutton, Surrey, SM2 7BA ("the Cheam office") where he specialised in commercial property. He was the only residential property lawyer in the Cheam office.
6. The Respondent left the Firm on 4 November 2016 as he had obtained employment as a solicitor at a different firm.
7. On 25 November 2016 the Firm sent a "material breach report" to the SRA in relation to potential intentional re-dating of Fixed and Floating Charges which had been submitted to Companies House on two files ("the Report"). On 14 December 2016 the Firm provided copies of the correspondence referred to in their report, together with additional correspondence from Companies House.
8. Between 9 August 2016 (at the latest) and 4 November 2016 (at the earliest) the Respondent was instructed on two separate matters, in each of which residential properties were being purchased by a limited company (Transaction A and Transaction B). The matters were unrelated but had the following common features:
  - The Mortgage Lender, for whom the Firm also acted in relation to the granting of security for the loan, advanced purchase money.
  - The security granted in favour of the Mortgage Lender was by way of both a Fixed Charge by way of Legal Mortgage over the property being purchased, and a Floating Charge over all the present and future acquired property and assets of the purchaser.
  - Both the Fixed charge and the Floating charge were registerable with the Registrar of Companies under Section 859A(2) Companies Act 2006 (as amended) so that the firm should have delivered copies of those documents, together with a supporting application in form MR01 containing the correct prescribed information, to the Registrar within 21 days of the date of their creation.

- The Respondent submitted the applications for registration, together with copies of the Charges, within the time required but these were rejected by the Registrar because the accompanying form MR01 had been completed incorrectly.
  - By the time the Registrar of Companies returned the relevant application to the Respondent, the time limit for delivery to the Registrar had expired. In consequence, both Charges were void against any liquidator, administrator or creditor of the purchaser under Section 859H(4) Companies Act 2006 (as amended).
  - Following receipt of the returned applications, the Respondent submitted further copies of the Charges to the Registrar, which did not bear their original date, but which had instead been re-dated to make it appear that they were being delivered within the time limit.
  - The Mortgage Lender and the purchaser had not re-executed the Deed by which the Charge had been created, nor had either of them given their consent to the re-dating of the Charge.
9. The Respondent admitted re-dating each of the Charges in order to get the Registrar to register them without the need to apply to the Court for a retrospective extension of time for registration under Section 859F Companies Act 2006 (as amended).

#### Allegation 1.1

10. This allegation related to Transaction A and involved the purchase of Property A by Client A. That transaction completed on 22 September 2016. The time limit for the Respondent to register the transaction expired 21 days later, on 13 October 2016.
11. The Legal Mortgage being granted in relation to Transaction A was dated 22 September 2016 and the Respondent lodged a copy of it with the Registrar on 12 October 2016. The Registrar rejected the application for its registration on 20 October 2016.
12. The Respondent resubmitted a certified copy of that Legal Mortgage to the Registrar on 4 November 2016, which was dated 28 October 2016 and not 22 September 2016 (with the date having been altered with Tipp-Ex). This made it appear to the Registrar that the Respondent was lodging the application within 21 days of the date of granting, being 28 October 2016, not the actual date of 22 September 2016.
13. The Floating Charge being granted in relation to Transaction A was dated 23 September 2016. The time limit for the Respondent to register the transaction expired on 15 October 2016.
14. The Respondent lodged the Floating Charge at Companies House on 13 October 2016. The Registrar rejected the application for its registration on 24 October 2016.
15. The Respondent also resubmitted a certified copy of that Floating Charge to the Registrar on 4 November 2016, which was again dated 28 October 2016 (with the date again having been amended in Tipp-Ex). This made it appear to the Registrar

that the Respondent was lodging the application within 21 days of the date of granting, being 4 November 2016, not the actual date of 23 September 2016.

### Allegation 1.2

16. This allegation related to Transaction B and involved the purchase of Property B by Client B. That transaction completed on 9 August 2016.
17. The date of the Legal Mortgage being granted in relation to Transaction B was unknown. However the Respondent had first lodged a copy of it with the Registrar on 19 August 2016. The Registrar rejected the application for its registration on 31 August 2016.
18. The Respondent resubmitted a certified copy of that Legal Mortgage to the Registrar on 4 November 2016, which was dated 28 October 2016. The date of that document had been amended partly in Tipp-Ex (to show that the date as 28 October) and partly in manuscript (to show the month as October rather than August).
19. The Floating Charge being granted in relation to Transaction B was dated 9 August 2016, and a copy was lodged with the Registrar on 13 October 2016. The Registrar rejected the application for its registration on 24 October 2016.
20. The Respondent also resubmitted a certified copy of the Floating Charge in relation to Transaction B to the Registrar on 4 November 2016. The copy of the Floating Charge, as resubmitted, was also dated 28 October 2016.
21. On 10 March 2017, an Investigation Officer employed by the SRA (“the Investigation Officer”) sent an “Explanation with Warning” letter (“EWW”) to the Respondent asking for his response to the allegations against him to be provided by 26 May 2017 (“the First EWW”).
22. The Respondent acknowledged the First EWW on 15 May 2017 (“the Initial Response”) and dealt with the substance of the allegations made by the Investigation Officer on 25 May 2017 (“the First Response”).
23. In his Initial Response, the Respondent stated that the EWW had come “as a shock and disappointment” as he was not aware of any attempt by anyone at the Firm to contact him about this or any matter since he left the Firm on 4 November 2016. He also asked for access to:
 

“...the paper file, the electronic file in the case management system and my email account ... or that of my erstwhile secretary [JC] to determine the extent of my communications with [the Mortgage Lender].”
24. In his First Response, the Respondent stated that no response had been forthcoming to his request for access to the files, and so he had been “unable to interrogate the files for myself to determine what has happened”.

25. The Respondent also stated:

“It is my understanding that in circumstances where the initial application to Companies House has been submitted in time, if the application is rejected and returned out of time, it is common practice to advise the lender of the failure to register the charge within 21 days and to advise them of the intention to re-date the charge. Thus the conveyancer may then re-apply to Companies House to obtain a certificate of registration without having to incur the cost and further delay involved in making an application to the court. This is a practice that I would have employed in these circumstances, so that the lender was kept informed of the position and so that their charge would be properly registered in accordance with their instructions. I have rarely received a response to any such notification.

It is my recollection in both cases, after the initial application was rejected, that I did write to the Lender to advise them of the failure to complete the registration at Companies House and that I would be re-drafting the document accordingly. In these particular cases most correspondence with this Lender was by email and so there should be evidence of an email to them, either from my email account or from that of my secretary at the time [JC].

If no letter was actually sent, then this must be due to an error rather than an intention to mislead either the Lender or the client.

In both cases I believe I sought to act in the best interests of both the Lender and the Client and in the most cost-effective manner for the firm. There would be no benefit to me personally in either of these cases.”

26. The Investigation Officer wrote to the Respondent on 20 October 2017, confirming that the Firm had conducted a search of their systems and data to locate any correspondence/telephone notes to or from the Mortgage Lender and the Respondent or his secretary. This had not revealed any such communications with the Mortgage Lender in respect of these two matters.

27. The Respondent replied on 20 November 2017 stating:

“It is now over a year since I left the employ of Howell-Jones LLP and 13-14 months since I had any active conduct of the files in question.

In the absence of access to the files I am not able to add anything further to those comments that I made in my letter of 25 May or my email of 5 June.

If Howell-Jones LLP are not able to locate any correspondence, I am unable to account for it, nor can I check the accuracy of their statement.”

28. After further correspondence with the Firm, on 13 February 2019 the Investigation Officer sent a second EWW to the Respondent (“the Second EWW”). The Respondent provided his response to the Second EWW on 4 March 2019 (“the Second Response”). In his Second Response, the Respondent referred to it being common practice to advise the lender of the failure to register the Charge within the

21 day period, and of the intention to re-date the Charge. He stated this enabled the conveyancer to register the Charge more cost effectively, and quicker, and reduced the risk of any other Charge being registered in advance of it.

29. The Respondent repeated that this was the practise he would have employed in these circumstances:

“.... so that the lender was kept informed of the position and so that their charge would be properly registered in accordance with their instructions and I note that I have found evidence in the correspondence of the file for Breach 2 that this was done, I have had cause to use this practice extremely rarely and I do not recall ever having received any response from a lender to any such notification.”

30. The Respondent also stated that exchange of contracts in respect of Transaction B took place the day he left to go on holiday, and the file was dealt with by another member of staff in his absence. The Respondent stated:

“While he might not have thought it appropriate to submit the companies house registrations himself, I would have expected a file note to have been left advising of the urgency to submitting the application.....

.... I did in fact write to [the Mortgage Lender] by FAX on 12 October advising them of the initial rejection by Companies House and that I proposed to re-date the documents in order to resubmit them.”

31. In respect of Transaction A the Respondent accepted:

“I cannot see a letter to [the Mortgage Lender] in the paper file advising them of the rejection between this date and the date I left the firm, which is less than 2 weeks later. However, as noted above I cannot be sure that all electronic correspondence has been recorded. Unfortunately, as it has been 2½ years since I had conduct of the file I cannot recall exactly what happened in this instant.

If no letter was actually sent, then this must be due to an error rather than an intention to mislead either the lender or the client.”

32. The Respondent also stated that at the time he was effectively running two case management systems, one of which was being trialled for free, and which he had had problems with. He stated:

“..emails would not always upload to the database and copying and pasting into the system after the event was a regular occurrence. I therefore must raise the possibility of the file not necessarily being complete due to issues with the case management software.”

33. The Respondent also referred to positive feedback he had received from partners, and stated he believed he sought to act in the best interests of both the Lender and the Client, in the most cost-effective manner for the firm.

34. The Respondent denied he had breached any of Principles 2, 4, 5 and 6, and stated:

“I believe that I advised [the Mortgage Lender] of the failure to register their charges with Companies House and the process I would use to remedy the problem.....

.....In view of the fact that I used this practice, in previous cases with the knowledge of the partners of the firms involved and that I notified the Lender of the redating of the document and attracted no comment from the Lender in respect of this I cannot see how I have acted dishonestly.”

### Witnesses

35. The following witnesses gave evidence:

- The Respondent, Nicholas St John Gething

### Findings of Fact and Law

36. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

37. The Tribunal had also been referred to a number of character references and, pursuant to the case of Donkin v The Law Society [2007] EWHC 414 (Admin), the Tribunal took these into account, in view of the fact that dishonesty had been alleged.

38. **Allegation 1.1: On or about 4 November 2016 the Respondent prepared and submitted to the Registrar of Companies, falsified copies of Charges granted over Property A, in order to lead the Registrar to believe that they had been delivered within the period allowed for delivery of company Charges prescribed within Section 859(4) Companies Act 2006 (as amended), when they had not. He thereby breached any or all of:**

**1.1.1 Principle 2 of the SRA Principles 2011;**

**1.1.2 Principle 4 of the SRA Principles 2011;**

**1.1.3 Principle 5 of the SRA Principles 2011; and**

**1.1.4 Principle 6 of the SRA Principles 2011.**

**It was also alleged that the Respondent had acted dishonestly.**

**Allegation 1.2: On or about 4 November 2016 the Respondent prepared and submitted to the Registrar of Companies, falsified copies of Charges granted over Property B, in order to lead the Registrar to believe that they had been**

**delivered within the period allowed for delivery of company Charges prescribed within Section 859(4) Companies Act 2006 (as amended), when they had not. He thereby breached any or all of:**

**2.1.1 Principle 2 of the SRA Principles 2011;**

**2.1.2 Principle 4 of the SRA Principles 2011;**

**2.1.3 Principle 5 of the SRA Principles 2011; and**

**2.1.4 Principle 6 of the SRA Principles 2011.**

**It was also alleged that the Respondent had acted dishonestly.**

- 38.1 Ms Bracken, on behalf of the Respondent, confirmed that the Respondent admitted the allegations in full. She stated he intended to give evidence briefly to clarify a few matters.
- 38.2 The Tribunal heard evidence from the Respondent. He stated that he could not recall if the Charges on which he had amended the dates were the original documents or copies of the original Charges. He confirmed that certified copies of the Charges were submitted to Companies House rather than the originals.
- 38.3 The Respondent stated that when he had been working at his previous firm, before he moved to the Firm, there had been an occasion when Legal Charges had been filed out of time and an application to court had been required. He stated that he had spoken to a partner at his previous practice to explain that a court application was required, but he had been told by that partner not to make a court application but instead to write to the lender to tell them what had happened. The Respondent stated that the partner said to him “you will never get a reply”. The Respondent stated that the partner had told him that both the client and the Lender were to be advised of the change of date, and the date could then be amended. The Respondent stated that this was where he had picked up this method of dealing with registration of late Charges. He said he believed it to be “common and unobjectionable”.
- 38.4 The Respondent stated that on one occasion at the Firm, he had found a Charge that had not been registered, and he had suggested the same method to a partner at that time. The Respondent stated that this had not come as a surprise to that partner, and they continued in the same vein.
- 38.5 The Respondent stated that at the time he had not given this approach much thought, as two separate firms had accepted this way of dealing with the registration of late Charges, so he had assumed it was relatively common. Indeed, he stated that, after he had been made redundant in September 2019, he had attended one firm for interview and they were surprised when he had informed them of the reasons why he had been referred to the Solicitors Regulation Authority (SRA), as they also had a similar approach to such cases.

- 38.6 The Respondent stated that with hindsight he could not “square my actions with being someone who could be trusted to the ends of the earth”. He stated that he was embarrassed for having got himself into this position, and that he had thought what he had done was right at the time. It had been a “quick fix” but ultimately had not resolved the matter. The Respondent stated that he now realised his conduct had been wrong. He stated that software was now available which allowed a Charge to be lodged within 24 hours, whereas the old system of using the post caused much more delay.
- 38.7 The Respondent accepted that what he had done was not appropriate, and stated that he would never behave in that way again if he found himself in a similar position.
- 38.8 On cross-examination, the Respondent accepted that he had altered the dates on the Legal Charges and on a Floating Charge. He also accepted, on reflection, that this was deliberately misleading and dishonest. He stated that, at the time of his conduct, he had not sent Legal Charges for registration to Companies House for a while, and the accompanying application form had changed, so this had been the first time he had used this particular form. He stated he had not dealt with “a lot” of Legal Charges.
- 38.9 The Respondent referred to a letter he had sent by fax to the Mortgage Lender on 12 October 2016, which related to Transaction B. In that letter he had advised the Mortgage Lender that the registration of the Charge had been rejected by Companies House and he had therefore re-dated the Charge to a later date to resubmit the application. On further questioning from the Tribunal, the Respondent was not sure whether the letter did indeed relate to Transaction B and he accepted there was also another Charge to which this letter could have related.
- 38.10 The Respondent stated that his recollection was that he would also have informed the Mortgage Lender on Transaction A of similar circumstances but he was unable to find a copy of such letter to the Mortgage Lender on the file. He reminded the Tribunal that at that time he had been using two case management systems at the same time, and he could not say whether that had contributed to the issue. The Respondent also stated that he could not recall notifying the clients, and accepted there were no letters to confirm this.
- 38.11 On questioning from the Tribunal, the Respondent stated he was unable to recall whether the certification stamp had been applied to the documents when they were originally dated, or when the dates were subsequently amended.
- 38.12 The Tribunal found all the allegations proved both on the Respondent’s admissions and on the documents provided.
- 38.13 The Tribunal was satisfied that the Respondent had failed to act with integrity as he had re-dated copies of Legal Charges and then submitted these to the Registrar to arrange for registration of those Charges, which otherwise could not have been registered without a Court Order. The Respondent had failed to act with moral soundness, rectitude and a steady adherence to an ethical code. He had changed the dates on those Charges and then submitted them to Companies House in

circumstances in which he knew the dates were not true. He had therefore breached Principle 2 of the SRA Principles 2011.

- 38.14 The Respondent had also failed to act in the best interests of his clients, and failed to provide a proper standard of service to them. He had not perfected the Mortgage Lender's securities, as the Fixed and Floating Charges were re-submitted more than 21 days after they were granted. He did not draw this to the attention of his clients or the Lender. He had failed to make an application to the court for a retrospective extension of time, which would have allowed the security to have been registered. This conduct breached Principles 4 and 5 of the SRA Principles 2011.
- 38.15 The Tribunal also found that the Respondent had behaved in a way that did not maintain the trust the public placed in him or in the provision of legal services. Members of the public would not expect solicitors to alter dates on Legal Charges without obtaining the proper consent from the Lender and the client. Moreover, the public expected solicitors to be truthful in all their dealings with third parties. A failure to do so was a breach of Principle 6 of the SRA Principles 2011.
- 38.16 The Tribunal concluded the Respondent had breached Principles 2, 4, 5 and 6 of the SRA Principles 2011.
- 38.17 In relation to the issue of dishonesty, the Tribunal had been referred to the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. First, the Tribunal was required to ascertain the actual state of the Respondent's knowledge or belief as to the facts. Having done so, the Tribunal then had to consider whether the Respondent's conduct was dishonest by the standards of ordinary decent people.
- 38.18 The Tribunal concluded that the Respondent knew that the dates on the copies of the Charges he had submitted to Companies House were not the correct dates, yet he submitted those Charges with a certification stating that they were true copies of the original document. He knew this was not true, and he did not take any steps to ensure the Registrar of Companies House was informed of this. The Tribunal was satisfied that this conduct would be considered as dishonest by the standards of ordinary decent people.
- 38.19 The Tribunal found both allegations proved including the allegations of dishonesty.

### **Previous Disciplinary Matters**

39. None.

### **Mitigation**

40. Ms Bracken submitted this was a rare case where it was not necessary to remove the Respondent from the Roll. She referred the Tribunal to the case of Fuglers LLP, Berens, Fugler v SRA [2014] EWHC 179 (Admin) which suggested the approach that should be adopted. The first stage was to consider culpability and harm. Ms Bracken submitted the Respondent understood the obvious harm that had been caused to the reputation of the profession, but she reminded the Tribunal that there had been no harm to clients.

41. In relation to culpability, whilst Ms Bracken did not seek to undermine the seriousness of the Respondent's conduct, she asked the Tribunal to consider his state of mind at the time, and the context in which he had acted. She submitted that the Respondent honestly believed his conduct was common practise, and she referred the Tribunal to the letter dated 25 November 2016 from the Compliance Officer for Legal Practice (COLP) at the Firm to the SRA. Ms Bracken submitted that in this letter the COLP had stated it would have been acceptable to re-date the documents with the Mortgage Lender's consent. Ms Bracken accepted that this was plainly wrong, but submitted it gave some insight into the Respondent's own thinking at that time. She submitted this amounted to exceptional circumstances and the only reason the Respondent had accepted the allegations of dishonesty was because he had considered the second part of the test set out in Ivy v Genting Casinos (UK) Ltd t/a Crockfords.
42. Ms Bracken submitted that the Respondent had cooperated throughout these proceedings and, whilst he had not made immediate admissions in response to the EWW letters, this indicated his state of mind at that time. He had subsequently made wholly frank admissions.
43. Ms Bracken submitted the Respondent would not have knowingly become engaged in dishonest behaviour and had described himself as stupid and embarrassed. He had tried to assist the Tribunal as best he could and, she submitted, had provided a picture of someone who would not knowingly have acted dishonestly. She submitted he had learnt his lesson, albeit too late.
44. Ms Bracken submitted that the second stage for the Tribunal to consider was the purpose of sanction. She accepted that dishonesty must be treated robustly but submitted this case was exceptional. She reminded the Tribunal that the faxed letter dated 12 October 2016 was evidence that there was a practice of disclosing delayed registrations to Mortgage Lenders. There was no attempt to hide anything and she submitted, if the Respondent had been knowingly acting dishonestly, he would not have sent such a letter. She submitted it was very rare that someone would act dishonestly and tell their Lender client what they were doing.
45. Ms Bracken referred the Tribunal to the character references provided and asked the Tribunal to take these into account.

### **Sanction**

46. The Tribunal had considered carefully the Respondent's submissions and statement. It took into account the character references provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
47. The Tribunal firstly considered the Respondent's culpability. The motivation for the Respondent's conduct was to ensure the amended Legal Charges would be registered at Companies House, even though he knew he had resubmitted the Charges outside the applicable time limit. He had informed his Lender client in a letter dated 12 October 2016 that the initial application to register the Charge had been rejected and he had therefore re-dated the Charge and resubmitted the application. However, this was only in relation to one Legal Charge on Property B, not in relation to the

other Legal Charge on the same property. Moreover, there was no evidence that he had notified the Mortgage Lender of the problem in relation to Transaction A. Furthermore, his clients were not informed on either Transaction A or B, notwithstanding that they were also parties to the legal document which he was re-dating. The Tribunal noted that in relation to Transaction B, the Mortgage Lender had written to the Firm to request an update from the Respondent twice. This indicated the Mortgage Lender was clearly interested in the progress of the matter. The Tribunal concluded the Respondent had not been completely transparent with either the Mortgage Lender or the client, and that he had been solely responsible for his actions. His conduct had been entirely within his control.

48. The Tribunal also concluded that the Respondent's actions had been planned in that he knew what he was doing, having dealt with Companies House in the same way at his previous employment. He was aware that court applications were required to rectify the position where late Charges needed to be registered, but he had continued to amend the dates on the Legal Charges without notifying his clients or the Lender about what he was doing, and obtaining their consent. Whilst he may in the past have discussed the issue with other colleagues, he was an experienced solicitor, having been in practice for over 16 years at the time of the conduct, and he should therefore have known and adhered to the correct and proper way to deal with the situation he found himself in. Even if he believed his colleagues thought that this was an acceptable method of dealing with late registration of Legal Charges, as an experienced solicitor he should have carefully considered the implications for himself and given thought to the correct way to approach the issue. It was notable that on the Respondent's own evidence, one of the colleagues he said he had spoken to had made it clear to him that both the Lender and the client needed to be informed of the change of date before the date could be changed. He therefore knew full well that he needed their authority first. He had made no attempt to obtain it.
49. The Tribunal was satisfied that the Respondent had failed to inform both his client and the Lender that his applications to register their Charges had been rejected by the Companies House Registrar because he had made errors on the application forms for registration. He was seeking to hide his mistakes from them. He had also failed to explain to them the consequences of his errors, or the implications for the client or the Lender. He had simply re-dated the documents so that the Charges could be registered quickly. He had taken no steps to explain the position to the Registrar who would have been entitled to rely on the dates entered on the Legal Charges as being accurate. The Tribunal concluded that the Respondent's culpability was high.
50. The Tribunal then considered the harm caused by the Respondent's conduct. It did not appear that the Mortgage Lender or the client had suffered any harm due to the failure to register the Legal Charges in a timely fashion. However, harm had been caused to the reputation of the profession as the Respondent had misled the Registrar of Companies, as well as his client and the Mortgage Lender. This was not behaviour that was expected of a solicitor. The extent of the harm caused by the Respondent's conduct was entirely foreseeable, as members of the public did not expect solicitors to change the dates on Legal Charges without their clients' knowledge or consent, and then lodge those Charges with government organisations. He had effectively lodged false Charges at Companies House. The Tribunal assessed the level of harm as medium.

51. The Tribunal then considered the aggravating factors in this case and identified these as follows:
- The Respondent had acted dishonestly on two occasions, albeit within a relatively short period of time, being two weeks.
  - His conduct had been deliberate and had been repeated.
  - He had concealed his behaviour as he had failed to inform the Registrar of Companies, or his clients or the Mortgage Lender of what he had done, despite being expressly told by a former colleague that he would need to notify his client and the Lender before changing the date on a Legal Charge.
  - The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. He ought to have known that sending Legal Charges which were certified to be true copies of the original documents, when they were not, was not acceptable conduct from a solicitor.
52. The Tribunal then considered the mitigating factors and identified those as follows:
- The incidents had taken place over a short period of two weeks.
  - The Respondent had a previously unblemished record.
  - There were a number of good character references.
  - Whilst the Respondent had initially challenged the allegations, he had subsequently made frank admissions in the disciplinary proceedings.
  - He had cooperated with both his regulator and these proceedings.
53. The Tribunal, having heard evidence from the Respondent, was concerned that he did not seem to understand or appreciate the seriousness of what he had done. At the time of his conduct, he did not think there was anything wrong with submitting Legal Charges to Companies House which were certified to be true copies of the original documents, when they were not. Whilst he had shown some degree of insight during the hearing, he still did not appear to grasp the gravity of his actions. He did not seem to understand that it was inherently unacceptable to change the date on Legal Charges being filed on behalf of clients, and then present those Charges to third parties as authentic copies of the originals, when they were not. The matter was further exacerbated by the fact that the Mortgage Lender and the clients were unaware of what had been done.
54. The Tribunal then considered each of the sanctions in turn. As the Respondent had been found to have acted dishonestly on two occasions, the Tribunal concluded that to make no Order, or to order a Reprimand, a Fine or a Restriction Order would not be sufficient to mark the seriousness of the conduct in this case. The Respondent's culpability had been high, and it was difficult to formulate conditions that would address dishonest conduct.

55. The Tribunal then considered whether a Suspension was an appropriate sanction. The Respondent had allowed false Legal Charges to be submitted to Companies House as certified copies of the original documents. He had failed to fully appreciate his own responsibilities as a solicitor to ensure the Legal Charges were presented properly and that he did not mislead the Registrar. It may well have been the case that others had indicated this was one way of dealing with late applications for registration, but he knew that a court application should have been made, or at the very least his client and the Mortgage Lender should have been informed before dates on the Charges were changed. Simply referring to his colleagues' comments that had led him to believe this was a "common and unobjectionable practice" did not detract from the Respondent's own duties of honesty to his clients and third parties during the course of his work.
56. The Tribunal was satisfied that the risk of repetition was low, as it took the view that the Respondent was unlikely to act in this way again. However, the Respondent had acted dishonestly twice, and his conduct was so serious that the Tribunal concluded public confidence in the legal profession would not be adequately protected by a Suspension.
57. The Tribunal also took into account the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:
- “(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others.”
58. The Tribunal had been referred to the case of Fuglers LLP, Berens, Fugler v SRA by Ms Bracken. She had submitted this was not a case where the ultimate sanction needed to be imposed. For all the reasons given above, the Tribunal rejected Ms Bracken's submissions in relation to the Respondent's conduct amounting to exceptional circumstances. The Tribunal had found that the Respondent acted dishonestly on two occasions and, taking into account the guidance set out in SRA v Sharma, the Tribunal was satisfied that there were no exceptional circumstances in this case.
59. The Tribunal concluded that although the Respondent had had a previously long career with no concerns, as a very experienced solicitor, he should have known that this was not the way to deal with late applications for the registration of Legal Charges. It was absolutely sacrosanct that solicitors did not in any way mislead third parties, who relied on the veracity and integrity of documents submitted by solicitors. In the absence of any exceptional circumstances, the appropriate sanction in this case was to strike the Respondent off the Roll of Solicitors.

**Costs**

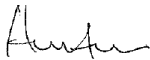
60. Ms Bruce, on behalf of the Applicant requested an Order for costs in the total sum of £5,731.50. She provided the Tribunal with a Statement of Costs which contained a breakdown of those costs and confirmed they had been agreed with the Respondent.
61. Ms Bracken confirmed, on the Respondent's behalf, that the costs had been agreed in this amount.
62. The Tribunal had considered carefully the matter of costs and noted the parties had agreed the Applicant's costs in the sum of £5,731.50. The Tribunal was satisfied that this amount was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £5,731.50.

**Statement of Full Order**

63. The Tribunal Ordered that the Respondent, NICHOLAS ST JOHN GETHING, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,731.50.

Dated this 19<sup>th</sup> day of October 2020

On behalf of the Tribunal



J P Davies  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**19 OCT 2020**