

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL****Case No:****IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)****AND IN THE MATTER OF:****SOLICITORS REGULATION AUTHORITY LIMITED**Applicant

and

**DANIEL JAMES SKINNER**Respondent

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**STATEMENT PURSUANT TO RULE 12(2) OF THE SOLICITORS (DISCIPLINARY PROCEEDINGS RULES) 2019**

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I, **DELME GRIFFITHS** am a Solicitor and Partner at Blake Morgan LLP of One Central Square, Cardiff, CF10 1FS.

I make this Statement on behalf of the Applicant, the Solicitors Regulation Authority Limited (“**the SRA**”).

**The Allegations**

1. The allegations against the Respondent, Daniel James Skinner, made by the SRA are that, while in practice as a Partner at Capsticks LLP (“**the Firm**”) and in the course of conducting housing proceedings on behalf of a client, Client A, between approximately November 2019 and May 2021:

1.1. The Respondent did not take appropriate action and/or notify Client A in relation to:

(a) His failure to serve Points of Dispute in time; and/or

(b) A Default Costs Certificate being issued against it.

In doing so, the Respondent thereby:

1.1.1. Insofar as such conduct took place after 6 October 2011 but before 25 November 2019, acted in breach of any or all of Principle 2 Principle 4, Principle 5 and Principle 6 of the SRA Principles 2011 (“**the 2011 Principles**”) and Outcome 1.2 and Outcome 1.16 of the SRA Code of Conduct 2011 (“**the 2011 Code**”).

1.1.2. Insofar as such conduct took place on or after 25 November 2019, breached any or all of Principle 2, Principle 5 and Principle 7 of the SRA Principles (“**the 2019 Principles**”) and Paragraph 7.11 of the Code of Conduct for Solicitors, RELs and RFLs (“**the 2019 Code**”).

The facts and matters relied upon in support of allegation 1.1 are set out in paragraphs 11 to 46 below.

1.2. From approximately April 2021, the Respondent failed to:

- (a) Take appropriate action or keep Client A appropriately updated in relation to steps being taken to seek recovery of costs and interest against it; and/or
- (b) Provide complete and accurate information to Client A in relation to its liability to pay costs and interest.

In doing so, the Respondent acted in breach of any or all of Principle 2, Principle 4, Principle 5 and Principle 7 of the 2019 Principles and Paragraphs 1.4 and 7.11 of the 2019 Code.

In the alternative to dishonesty, allegation 1.2 is advanced on the basis that the Respondent’s conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent’s misconduct but is not an essential ingredient in proving the allegations. Further particulars of recklessness are set out in paragraphs 109 to 112 below.

The facts and matters relied upon in support of allegation 1.2 are set out in paragraphs 47 to 112 below.

### **Appendices and Documents**

1. I attach to this Statement the following appendices:

Appendix 1: Relevant Rules and Regulations

Appendix 2: Anonymisation Schedule

2. I also attach to this statement a bundle of documents, marked "**Exhibit DG1**", to which I refer in this statement.
3. Unless otherwise stated, the page references in this statement relate to documents contained in that bundle, using the format **[DG1, pp]**.
4. The bundle is divided into the following sections:

Section A: Witness Evidence

Section B: Correspondence between the SRA, the Respondent and his representative.

**Professional Details**

5. The Respondent, who was born on 2 May 1968, is currently Director of Legal Services at Poplar Housing and Regeneration Community Association Limited, a housing and regeneration community association, having been admitted to the Roll on 15 October 1993. The Respondent has a current practising certificate free from conditions.
6. At the relevant time, for the purposes of these proceedings, he was a partner at the Firm, specialising in leasehold litigation and disrepair work and he was the head of a cross-office team **[DG1, 3]**. The Respondent left the Firm in or around November 2021.

**The facts and matters relied upon in support of the allegations****Background**

7. The conduct in this matter came to the attention of the SRA when the Compliance Officer for Legal Practice (COLP) of the Firm informed the SRA of the need to investigate whether a serious breach of the SRA's standards and principles had occurred **[DG1, 48]**.
8. The alleged conduct occurred between approximately November 2019 and May 2021.

9. Full details of the Firm's concerns are set out in its Report form dated 3 March 2022 [DG1, 43-49].
10. In summary, it is alleged that, in the course of acting for Client A in housing proceedings, the Respondent failed to file Points of Dispute within the required timeframe, in response to a Bill of Costs, resulting in a Default Costs Certificate being issued against Client A. Client A was not notified of this or subsequent developments in the matter and was not provided with complete and accurate information in relation to the true position.

### **Allegation 1.1**

**The Respondent did not take appropriate action and/or notify Client A in relation to:**

- (a) **His failure to serve Points of Dispute in time; and/or**
- (b) **A Default Costs Certificate being issued against it.**

11. Client A was a longstanding client of the Firm.
12. In or around April 2018, the Respondent was instructed by Client A in respect of a claim for possession and disrepair proceedings relating to Person B ("the Proceedings") in the County Court at Clerkenwell and Shoreditch ("the Court").
13. Person B occupied a property owned and managed by Client A.
14. Person B was the Defendant and Part 20 Claimant in the Proceedings. Person B was represented by Gough & Co Solicitors Limited ("GCS").
15. On 21 March 2019, the Court issued an order in the Proceedings whereby, inter alia [DG1, 111-113]:
  - 15.1. The trial was vacated.
  - 15.2. Client A's claim for possession was dismissed.
  - 15.3. Default judgment was entered in Person B's counterclaim.
  - 15.4. Client A was ordered to pay Person B damages.

- 15.5. Client A was ordered to pay Person B's costs of the Proceedings, to be subject to assessment if not agreed.
16. On or around 18 October 2019, a Notice of Commencement of assessment of Bill of Costs was filed on behalf of Person B [DG1, 118]. It specified a deadline, for receipt of Client A's Points of Dispute, of 12 November 2019.
17. On an unknown date, the Respondent instructed a costs lawyer to prepare Points of Dispute on behalf of Client A.
18. On 5 November 2019, draft Points of Dispute were sent by email to the Respondent [DG1, 119-120]. The email made reference to the deadline of 12 November 2019.
19. However, Points of Dispute were not filed or served on or before this date.
20. On 14 November 2019, after the deadline had passed, the Firm wrote to the Court and enclosed Points of Dispute on behalf of Client A. The letter records it was sent by DX and included the Respondent's name and contact details [DG1, 121-128]. The Points of Dispute were signed by the Respondent [DG1, 128]
21. That same date, the Points of Dispute were sent by email to GCS by a colleague of the Respondent, copied to him [DG1, 129-136].
22. On 15 November 2019, GCS replied, copied to the Respondent, and stated [DG1, 137]:
- “... as you will be aware, the Notice of Commencement gave until 12 November 2019 to receive Points of Dispute. As they were not received by that date and as no request for an extension of time was made, we applied for a Default Costs Certificate on 13 November 2019.”*
23. There is no evidence on file that the Respondent:
- 23.1. Took any action in response to this email or his subsequent receipt of a Default Costs Certificate (“**the Certificate**”) [DG1, 138], including, for example, seeking to set it aside<sup>1</sup>; or

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<sup>1</sup> Pursuant to CPR 47.12(1), the Court must set aside a Default Costs Certificate if the receiving party was not entitled to it. In any other case, pursuant to 47.12(2) the Court may set aside or vary a Default Costs Certificate if it appears to the court that there is some good reason why the detailed assessment proceedings should continue.

- 23.2. Notified Client A<sup>2</sup>.
24. The Firm's file does not evidence that any action was taken by the Respondent in relation to this matter in the period from November 2019 to April 2020.
  25. On 15 April 2020, the Certificate was saved onto the Firm's electronic file by the Respondent [DG1, 198].
  26. At this point, the Respondent, once again, did not notify Client A and nor did he take any action in the case, despite it being understood that he was in regular communication with Client A as a Partner of the Firm and conducting other matters on its behalf.
  27. At no stage, from November 2019 to May 2021, did the Respondent notify Client A of his failure to file Points of Dispute in time or the issuing of the Certificate.

**Breaches of the 2011 Principles, the 2011 Code, the 2019 Principles and the 2019 Code in relation to allegation 1.1**

Integrity - Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles

28. In *Wingate v SRA; SRA v Malins*<sup>3</sup>, it was said that integrity connotes adherence to the ethical standards of one's profession:
 

*"Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members".*
29. The Respondent was in a position of trust and responsibility as a solicitor. He had a duty to ensure Client A's interests were adequately met and protected in relation to the Proceedings, which he was conducting and in which his expertise was relied upon, and to be open and honest if things went wrong.
30. The Respondent's failure to file Points of Dispute, within the required timeframe, had obvious implications for Client A. As an experienced solicitor and a Partner in the Firm, this ought to have been known by the Respondent.

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<sup>2</sup> CPR 44.8 provides that, in such circumstances, a party's legal representative must notify their client no later than 7 days after the legal representative receives notice.

<sup>3</sup> [2018] EWCA Civ 366

31. Not least, by not filing Points of Dispute, Client A lost the opportunity to potentially challenge aspects of Person B's costs and to seek a reduction in the amount to be paid.
32. Further, from the point at which the Certificate was issued, interest would begin to accrue that would be payable by Client A.
33. At the very least, consideration ought to have been given to whether it would be appropriate to seek to apply to set the Certificate aside.
34. Even if it were not possible to set aside the Certificate, prompt payment of the costs due, in the sum of £22,888.20 payable within 14 days [DG1, 138], would have ensured that no further costs or interest were incurred and therefore protected Client A's interests.
35. A solicitor acting with integrity would have immediately notified their client of a failure to file a document leading to a Default Costs Certificate being issued, explained fully and promptly what had happened, the impact of the omission and, if appropriate, advise upon remedial action.
36. The Respondent did not take any such steps, despite having ample opportunity to do so. He did not inform Client A that the deadline for filing Points of Dispute had been missed or that the Certificate had been issued. No remedial action was advised or taken. In response to the email from GCS dated 15 November 2019, confirming that the Certificate had been sought [DG1, 137], there is no evidence that the Respondent took any action whatsoever.
37. As well as depriving Client A of the opportunity to seek to set aside the Certificate or otherwise mitigate its position, Client A was deprived of the opportunity to consider whether the circumstances could give rise to a claim against the Respondent.
38. The Respondent has, therefore, acted below the standard expected and breached Principle 2 of the 2011 Principles for the period up to 25 November 2019 and Principle 5 of the 2011 Principles for the period thereafter.

Not acting in or protecting Client A's interests or making an appropriate notification - Principle 4 and Principle 5 of the 2011 Principles, Outcome 1.2 and Outcome 1.16 of the 2011 Code, Principle 7 of the 2019 Principles and Paragraph 7.11 of the 2019 Code

39. Paragraphs 28 to 38 are repeated.

40. By not taking any action in response to the Certificate being issued, the Respondent did not act in Client A's best interests and failed to protect its interests. He took no action to seek to put matters right or advise Client A as to its options.
41. Upon becoming aware that Points of Dispute had not been filed on time and that an application had been made for the Certificate, the Respondent was required to notify Client A. Not least, his actions could give rise to a claim against him. He did not do so and was, therefore, not open with Client A. He did not explain what had happened and the impact of his actions or omissions.
42. The Respondent has, therefore, breached Principle 4 and 5 of the 2011 Principles and Outcomes 1.2 and 1.16 of the 2011 Code for the period up to 25 November 2019 and Principle 7 of the 2019 Principles and paragraph 7.11 of the 2019 Code for the period thereafter.

Public trust and confidence - Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles

43. Paragraphs 28 to 42 are repeated.
44. The Respondent's conduct amounted to a breach of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services.
45. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors acting in this manner. The Respondent was in a position of trust and responsibility in relation to Client A. It was incumbent upon him, upon being notified that his failure to file Points of Dispute in time had led to the Certificate being issued, to take immediate action to seek to remedy the position and to notify his client. A member of the public would expect a solicitor to ensure that his client's position was fully protected, and that it was fully updated about the progress of its case. The Respondent did not do so.
46. The Respondent therefore breached Principle 6 of the 2011 Principles for the period up to 25 November 2019 and Principle 2 of the 2019 Principles for the period thereafter.

**Allegation 1.2**

**From approximately April 2021, the Respondent failed to:**

- (a) **Take appropriate action or keep Client A appropriately updated in relation to steps being taken to seek recovery of costs and interest against it; and/or**
  - (b) **Provide complete and accurate information to Client A in relation to its liability to pay costs and interest.**
47. From April 2020, there was no communication in the Proceedings until April 2021, when GCS unsuccessfully attempted to contact the Respondent by telephone [DG1, 144].
48. By this time, regular, virtual monthly meetings were held between the Firm and Client A, starting from around March 2021 and principally led by the Respondent, in the format of a legal surgery/client catch-up for ad hoc queries [DG1, 197].
49. On 26 April 2021, having not received a response from the Respondent, GCS contacted Client A directly and attached a copy of the Certificate [DG1, 144].
50. The email from GCS was forwarded to the Respondent and a colleague that same day, by the Head of Property at Client A. They were asked to look into the matter [DG1, 143]. However, no response was received.
51. On 28 April 2021, Client A sent a further email seeking a response [DG1, 142].
52. On 30 April 2021, the Respondent replied, stating [DG1, 142]:

*“Sorry – been looking into this one. It’s an old file – I think from before your time*

*They succeeded in their claim and [Client A] had to pay their costs which were assessed by the court in the sum of £22,888.20.*

*So you should pay that. You can send it to me or I can ask for their bank account details if that is easier*

*I’m very surprised they have left it so long to chase us. They normally are all over it. I hope that makes sense.”*

53. This email was false and/or misleading in that:
- 53.1. Costs had not been assessed by the Court.
- 53.2. It omitted to mention that there had been a failure, by the Respondent, to serve Points of Dispute in time which had led to the Certificate being obtained, thereby depriving Client A of the opportunity to seek to challenge

Person B's costs and potentially given rise to a claim against the Respondent.

- 53.3. It implied that Person B's representatives were at fault for not seeking payment at an earlier point. In actual fact, the amount certified in a Default Costs Certificate must be paid within 14 days as specified on the Certificate itself<sup>4</sup>. Further and in addition, interest begins to run from the date of a Default Costs Certificate<sup>5</sup>, which are registrable in the Register of Judgment, Orders and Fines<sup>6</sup>.
54. On the same date, the Respondent exchanged emails with GCS [DG1, 140-141]. It was stated, on behalf of Person B, that if confirmation was not received by 3 May 2021 that Client A would pay the sums outstanding, enforcement action would be commenced without further reference.
55. There is no evidence that this email and/or the threat of enforcement action was notified to Client A.
56. The confirmation sought by GCS was not provided by 3 May 2021. However, on an unknown date between 14 May 2021 and 19 May 2021, Client A sent payment to GCS on behalf of its client [DG1, 145-146].
57. On 19 May 2021, GCS sent an email to the Respondent in which it was confirmed that payment had been received, in relation to Person B's costs, in the sum of £22,888.20 [DG1, 145].
58. However, the email went on to note that interest on that sum was payable, by Client A to Person B, for the period from 14 March 2019, calculated as being £3,957.77 as at 16 May 2021.
59. The Respondent did not respond to that email and there is no evidence on the file that he notified Client A of the claim for interest.
60. On 1 June 2021, GCS sent a further email to the Respondent [DG1, 150]. He did not respond.
61. On 8 June 2021, GCS sent a further email to the Respondent [DG1, 149]. Once again, he did not respond.

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<sup>4</sup> As per CPR 44.7

<sup>5</sup> CPR 47.20(6) provides that, unless the Court orders otherwise, interest on the costs of detailed assessment proceedings will begin to run from the date of the certificate, whether default, interim or final at judgment rate under the Judgment Debts (Rate of interest) Order 1993 (which is currently 8%)

<sup>6</sup> Pursuant to the Register of Judgments, Orders and Fines Regulations 2005

62. On 23 June 2021, GCS sent a further email, in the absence of hearing from the Respondent, stating [DG1, 149]:

*"I request confirmation that your client is refusing to pay the interest sum referred to in my email dated 19 May 2021. Should I not hear from you at all by 4 p.m. on 25 June 2021, I will write directly to your client. Prior to commencing enforcement action, I wish to be sure that my correspondence has been considered, rather than there having been an inadvertent failure to do so. This is because enforcement action will be time-consuming, as well as being costly for your client."*

63. The Respondent did not respond, which led GCS to contact Client A directly. On 28 June 2021, GCS wrote to Client A's customer services email address, stating [DG1, 190]:

*"... interest of £3957.77 remains outstanding. Mr Skinner of your solicitors, Capsticks, has failed to respond to my emails concerning this sum. I attach relevant correspondence. Therefore, prior to commencing enforcement proceedings which will inevitably result in [Client A] incurring additional costs, I am writing to yourselves directly to request confirmation that the outstanding sum will be paid. Should I not receive a response by 4 p.m. on 1 July 2021, enforcement action will be commenced to recover the outstanding amount."*

64. In response, a customer support advisor on behalf of Client A stated [DG1, 190]:

*"This has been referred to [the Respondent] who will respond to you directly."*

65. Despite this indication, the Respondent did not respond to GCS.

66. Accordingly, on 5 July 2021, GCS wrote to the Respondent once again, stating [DG1, 156]:

*"Your client advised via email on 28 June 2021 that you would be contacting us. As I have not heard further from you, I attach a partially-completed Application for a Charging Order. The same shall be finalised and filed at County Court Money Claims Centre should I not receive confirmation by 4 p.m. on 7 July 2021 that the outstanding interest will be paid."*

67. The Respondent, once again, did not reply. There is no evidence on the file that he notified Client A of this development in the Proceedings and the threat of an application for a Charging Order. Further, interest continued to accrue and Client A was at risk of incurring further, adverse costs.

68. On 30 July 2021, GCS sent a further email to the Respondent, stating [DG1, 155-156]:

*"I have applied for a Charging Order which should be made in due course.*

*Should your client wish to avoid the Order being made, please confirm by return that the outstanding interest will be paid immediately."*

69. There is no evidence on the file that the Respondent notified Client A of the application for a Charging Order.

70. However, the Respondent did reply to GCS that same day, stating [DG1, 155]:

*"We apologise for the delay in reverting to you.*

*We note you are seeking interest. We accept that the court does have a discretion to award interest and from when that should start.*

*You will recall though that the default certificate was granted after points of objection had been served. If you proceed with your application we anticipate that we will be instructed to set aside the costs certificate and seek an assessment. We accept that this would be late but as you are have (sic) received payment of all of your costs there is no prejudice to you.*

*You will have seen the extensive points of dispute about your fees, court fees and counsel's fees. If even some of them are found to be valid then you will likely have to repay a substantial sum of money to our client."*

71. There is no evidence that the Respondent sought or obtained Client A's instructions prior to sending this email. Insofar as this email alluded to the existence of the Certificate and his failure to file Points of Dispute, in contrast to his email dated 30 April 2021 referred to at paragraph 52, there is no evidence that the Respondent notified Client A of the actual, true position in relation to this matter.

72. GCS replied to the Respondent's email by return [DG1, 154-155], stating:

*"As stated, an application for a Charging Order has been made. You left us with little option, as no reply was received to our correspondence about the interest claim.*

*I cannot see how an application to set aside the Default Costs Certificate could succeed at this stage, given the time that has passed since the Certificate was*

*issued. It was open to your client to have made such an application upon service of the Certificate had they wished to challenge it. Payment by your client of the costs clearly indicates acceptance that the sums claimed were owed.*

*I consider that a Court would determine that any application to set aside the Default Costs Certificate was made far too late."*

73. The Respondent did not reply. There is no evidence that the exchange was notified to Client A or that it was otherwise updated in relation to the matter.
74. On 12 August 2021, an Interim Charging Order was made against Client A, specifying that the amount owed to Person B, including interest and costs, was £3,957.77 [DG1, 162-181]. A property owned by Client A stood charged in that amount [DG1, 164].
75. On 13 August 2021, the Interim Charging Order and supporting documents were sent to the Respondent [DG1, 182]. The covering email stated:

*"Should the parties be able to resolve this matter via negotiation, there will be no need to register the Interim Charging Order at the Land Registry; I would then simply apply to discharge the Order and bring the action to an end. With this in view, I shall take no further action on this matter before 4 p.m. 23 August 2021, in order to give you an opportunity to take instructions."*

76. On 28 August 2021, GCS sent an email to the Respondent, confirming that the Interim Charging Order and supporting documents had been sent by post, by way of service, adding that [DG1, 183]:

*"Should your client wish to resolve matters without further enforcement steps being taken, I will await hearing from you."*

77. On 15 October 2021, a Final Charging Order was made against Client A [DG1, 184].
78. On 29 October 2021, the Final Charging Order was sent to the Respondent by email [DG1, 186-187]. It was confirmed that, if payment of the sum of £3,957.77 was not received by 5 November 2021, further enforcement action would be taken against Client A.
79. On 30 October 2021, GCS notified the Respondent by email that, in addition to the charged sum of £3,957.77, costs in the amount of £290.00 were payable by Client A to Person B.
80. The Respondent did not:

- 80.1. Respond to any of the emails sent to him by GCS dated 13 August 2021, 28 August 2021, 29 October 2021 or 30 October 2021.
- 80.2. Notify Client A of the application for a Charging Order, the offer made on behalf of Person B to seek to resolve the matter via negotiation, formal service of the Interim Charging Order, the imposition of a Final Charging Order or the threat of further enforcement action.
81. On 10 November 2021, in the absence of hearing from the Respondent, GCS contacted Client A directly [DG1, 189].
82. On 19 November 2021, Client A forwarded GCS's correspondence to the Respondent [DG1, 192-193]. The Respondent did not reply.
83. On 23 November 2021, a further email was sent to the Respondent by Client A [DG1, 192].
84. On 26 November 2021, the Respondent replied to Client A, stating [DG1, 195]:
- "Sorry for the delay in this one.*
- This relates to the interest on the cost that I had warned he was claiming. Rather annoying as he did not seek to chase the costs for ages and then when you paid he demanded interest.*
- I had warned you about the interest owing but should perhaps have chased you to make payment earlier*
- He's also gone full aggressive and sought a charging order*
- So you need to pay the £4,247.77 and we can then arrange for the charge to be removed for you*
- I hope that makes sense*
- Sorry I took a while to get back to you"*
85. This email was false and misleading in that it:
- 85.1. Suggested the Respondent had notified Client A about the claim for interest, when there is no evidence on file that he did so.

- 85.2. Omitted to refer to the correspondence he had received and the steps taken on behalf of Person B to seek recovery of further interest and costs in the period from 19 May 2021, as addressed in paragraphs 57 to 79.
86. On 29 November 2021, Client A queried the basis for the outstanding payment and the matter was notified to the Firm's Director of Governance and Risk, who began to investigate matters [DG1, 195-199].
87. On or around 7 December 2021, Client A made a payment to GCS on behalf of Person B in the sum of £4,247.77, in relation to the outstanding interest and costs [DG1, 200].
88. Client A subsequently complained to the Firm in relation to the Respondent's conduct.
89. On 10 December 2021, the Firm's COLP wrote to the Respondent setting out the background to the matter and requesting a response from the Respondent [DG1, 201-203].
90. On 31 January, the Respondent replied [DG1, 205].
91. On 3 March 2022, the Firm reported the Respondent to the SRA [DG1, 43-49].

### **Breaches of the 2019 Principles and the 2019 Code in relation to allegation 1.2**

#### Dishonesty - Principle 4 of the 2019 Principles and paragraph 1.4 of the 2019 Code

92. The Applicant relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos*<sup>7</sup>, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

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

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<sup>7</sup> [2017] UKSC 67

93. As to the Respondent's knowledge and belief as to the facts, the Applicant relies upon the following matters in particular:
- 93.1. The Respondent was on notice of the Certificate as far back as November 2019. It was saved to the Firm's file, by him, on 15 April 2020.
- 93.2. On 26 April 2021, Client A forwarded to the Respondent an email from GCS, which also made explicit reference to the Certificate [DG1, 143-144].
- 93.3. Accordingly, when the Respondent replied to Client A [DG1, 142], confirming that he had looked into the matter before doing so, and stating the Court had assessed Person B's costs in the sum of £22,888.20, he knew that this was incorrect. He could not have quoted the precise sum payable by Client A in relation to Person B's costs without reference to the Certificate.
- 93.4. The Respondent therefore gave misleading information to Client A. By omitting to disclose full and accurate details, the chronology of events and his own actions and omissions, he also led Client A to believe that there was nothing to question about the request and that payment should be made.
- 93.5. The Respondent was aware that the Certificate had been issued following his failure to file Points of Dispute in time. By not disclosing this to Client A, he withheld information that he knew was relevant and material. As a result, he allowed Client A to believe that costs had been assessed when, in fact, he had missed a deadline leading to the Certificate being entered.
- 93.6. The Respondent, therefore, expressly told Client A to pay the sum of £22,888.20 without advising it as to the circumstances in which that payment fell due.
- 93.7. The Respondent implied that Person B's representatives were at fault for not seeking payment at an earlier point, when payment should have been made within 14 days of the Certificate and Client A should have been advised to that effect, which the Respondent would have known.
- 93.8. The Respondent led Client A to believe that the delay was the fault of Person B when it should have been advised that costs were payable immediately and that, in the absence of payment, interest would accrue at a rate of 8%.

- 93.9. The Respondent's email of 30 July 2021 [DG1, 155] records his awareness of the circumstances in which the Certificate was obtained and the ability to set it aside, in principle. Yet the Respondent took no steps to notify Client A, prior to, on or after this date as to the true position in relation to the matter.
- 93.10. The Respondent had ample opportunity to ensure that Client A was notified of the true position, both in the course of his communications in the Proceedings and in the course of his regular interactions with it, and did not do so.
- 93.11. On 26 November 2021, the Respondent had a further and final opportunity to be open and frank about precisely what occurred in his email of that date [DG1, 195], which he did not take. To the contrary, the Respondent provided information that was false and misleading for the reasons set out in paragraph 85.
94. The Respondent therefore misled Client A in relation to information he provided and information he omitted to provide and his actions, which took place over a significant period of time, were conscious and deliberate. The effect of his actions was to conceal his own failings in the course of the Proceedings.
95. In those circumstances, the Respondent was dishonest by the standards of ordinary decent people and he therefore breached Principle 4 of the 2019 Principles as well as paragraph 1.4 of the 2019 Code.
- Integrity - Principle 5 of the 2019 Principles
96. Paragraphs 92 to 95 are repeated. Paragraph 28 is also repeated as to the test for lack of integrity.
97. The Respondent failed to respond to the various steps taken on behalf of Person B to recover costs and interests from Client A, whether in a timely manner or at all. That failure occurred over a period of approximately seven months and resulted in further costs and interest being incurred to the detriment of Client A. The Respondent, therefore, failed to uphold the higher standards which both society and the profession expects from a solicitor.
98. The effect of his actions was that Client A was required to pay an additional sum of £4,247.77 in relation to interest and costs and to set aside a Final Charging Order, which was avoidable.

99. The Respondent also did not notify Client A of any of the steps taken on behalf of Person B to seek recovery of costs and interests, despite having ample opportunity to do so.
100. When corresponding with Client A and advising it to make payments to Person B in relation to costs and interests, the Respondent also omitted to disclose that it was his failure to serve Points of Dispute that had led to the Certificate being obtained. The Respondent also did not disclose that his actions had directly led to increased costs and interest being incurred, which could have given rise to a claim against him by Client A.
101. A solicitor acting with integrity would have been open and honest with their client and explained fully and promptly what had happened. A solicitor acting with integrity would not advise a client to make payments in relation to costs and interest that had been incurred or increased through their own failings.
102. The Respondent has, therefore, acted below the standard expected and breached Principle 5 of the 2011 Principles.

Not acting in or protecting Client A's interests or making an appropriate notification - Principle 7 of the 2019 Principles and Paragraph 7.11 of the 2019 Code

103. Paragraphs 92 to 102 are repeated.
104. By not taking appropriate action in response to the various requests for payment of Person B's costs and interest, the threats of enforcement action, the application for a Charging Order or the imposition of Interim and Final Charging Orders, the Respondent did not act in Client A's best interests and failed to protect its interests. If advised appropriately and in a timely manner, Client A would have had the opportunity to pay promptly and avoid further costs and interest being incurred. By his actions, he therefore failed to act in the best interests of his client, and therefore breached Principle 7 of the 2019 Principles.
105. The Respondent was not open and honest with Client A in relation to his failings and did not seek or offer to put matters right. He did not explain what had happened, the fact that interest was being sought, that enforcement action had been threatened and taken or the impact of those matters. That risked depriving Client A of the opportunity to consider and seek advice as to whether the Respondent's actions could give rise to a claim against him and the Firm in breach of Paragraph 7.11 of the 2019 Code.

Public trust and confidence - Principle 2 of the 2019 Principles

106. The conduct alleged amounted to a breach, by the Respondent, of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services.
107. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors acting in this manner over a protracted period. It was incumbent upon the Respondent to ensure that his client's interests were appropriately protected, to ensure that his client was fully aware of the progression of its matter, to notify it of enforcement action being taken against it and to make it aware of his own failings. He did not do so. A member of the public would also expect a solicitor to ensure that his client was not misled, at risk of being misled and / or provided with misleading information in relation to the true position in the matter.
108. By acting as described above, the Respondent breached Principle 2 of the 2019 Principles.

#### Recklessness

109. In the alternative to dishonesty, the SRA relies upon the test for recklessness which was set out in the case of *Brett v SRA*<sup>8</sup>:

*"I remind myself that the word 'recklessly', in criminal statutes, is now settled as being satisfied: 'with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk'. (See R v G [2004] 1AC 1034 Archbold para 11-51.)"*

110. The Applicant's primary position is that the Respondent's actions in relation to allegation 1.2 were dishonest.
111. Recklessness is alleged in the alternative whereby, if it were to be found that the Respondent did not positively mislead or attempt to mislead his client, at the very least he provided information to Client A, in relation to the Proceedings and Person B's claim for interest and costs, which was inaccurate and which could not have been based on a full and comprehensive review of the matter file.
112. Communicating with Client A and advising it to make payments in those circumstances would have presented a risk that Client A would be misled and make decisions without an informed understanding of the true position in the matter. It would be unreasonable for any solicitor to provide advice to a client

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<sup>8</sup> [2014] EWHC 1974

and to recommend it making payments in respect of interest and costs without having a full appreciation of the circumstances in which that liability arose.

### **The SRA's investigation**

113. On 12 May 2022, the Respondent was notified of the Firm's referral and that Capital Law had been instructed on behalf of the SRA to conduct an investigation [DG1, 210-211]<sup>9</sup>.
114. On 6 July 2022, Capital Law wrote to the Respondent to seek an explanation for his conduct [DG1, 212-217].
115. In the period from 7 July 2022 to 14 September 2022, the Respondent exchanged emails with Capital Law in relation to its investigation, which resulted in Capital Law seeking further information from the Firm [DG1, 212-217].
116. Upon receipt of further information, Capital Law wrote to the Respondent on 30 November 2022 [DG1, 228-229].
117. The Respondent replied by return [DG1, 231-233].
118. On 16 February 2023, the Respondent provided a further response in relation to the substantive allegations [DG1, 235-236].
119. On 24 January 2024, the SRA completed a Notice recommending referral of conduct to the Tribunal [DG1, 237-254].
120. On 23 February 2024, a response to the Notice was sent on behalf of the Respondent [DG1, 255-258].
121. On 27 March 2024, an authorised decision maker decided to refer the Respondent to the Tribunal [DG1, 259-261].

### **Statement of Truth**

I believe the contents of this statement are true.

Signed:




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<sup>9</sup> As the Firm is appointed to provide legal services to the SRA, it was considered necessary and appropriate for the investigation to be outsourced and therefore conducted independently

Delme Griffiths

Dated: 3 July 2024

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL**

Case No:

**IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)****AND IN THE MATTER OF:****SOLICITORS REGULATION AUTHORITY LIMITED**Applicant

and

**DANIEL JAMES SKINNER**Respondent

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**APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2) SOLICITORS  
(DISCIPLINARY PROCEEDINGS RULES) 2019**

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**Relevant Rules and Regulations**

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**SRA Principles 2011**

You must:

Principle 2 act with integrity

Principle 4 act in the best interests of each client

Principle 5 you must provide a proper standard of service to your clients

Principle 6 behave in a way that maintains the trust the public places in you and in the provision of legal services

**SRA Code of Conduct 2011**

Outcome 1.2 you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice

Outcome 1.16 you inform current clients if you discover any act or omission which could give rise to a claim by them against you

**SRA Principles 2019**

You act:

- Principle 2 in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorized persons
- Principle 4 with honesty
- Principle 5 with integrity
- Principle 7 in the best interests of each client

**Code of Conduct for Solicitors, RELs and RFLs**

- Para 1.4 you do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client).
- Para 7.11 you are honest and open with clients if things go wrong, and if a client suffers loss or harm as a result you put matters right (if possible) and explain fully and promptly what has happened and the likely impact. If requested to do so by the SRA you investigate whether anyone may have a claim against you, provide the SRA with a report on the outcome of your investigation, and notify relevant persons that they may have such a claim, accordingly.

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL**

**Case No:**

**IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)**

**AND IN THE MATTER OF:**

**SOLICITORS REGULATION AUTHORITY LIMITED**

Applicant

and

**DANIEL JAMES SKINNER**

Respondent

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**STATEMENT PURSUANT TO RULE 12(2) OF THE SOLICITORS (DISCIPLINARY PROCEEDINGS RULES) 2019**

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**EXHIBIT DG1**

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This is Exhibit “**DG1**” referred to in the Statement pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019

Signed:



Delme Griffiths

Dated: 3 July 2024