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

GAVIN CLARKE

Respondent

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

I, Jonathan White am a Solicitor of Blake Morgan LLP, 6 New Street Square, London, EC4A 3DJ. I make this Statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("SRA").

The allegations

1. The allegations against the Respondent, Gavin Clarke, made by the SRA are that:

1.1 Between 1 February 2022 and 31 August 2022, he misled Person A by agreeing to act as a solicitor for her partner, Person B, in conducting Person B's criminal appeal proceedings, and implying that he could undertake the work, in circumstances where he did not hold a practising certificate and was therefore not authorised to act as a solicitor, and thereby breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the Principles") and Paragraph 1.4 of the SRA Code of Conduct for Solicitors 2019 ("the Code").

The facts and matters relied upon in support of this allegation are set out in paragraphs 5 to 36 below.

1.2 Between 18 February 2022 and 11 April 2022, he obtained funds from Person A in the sum of £4,525 for him to act as a solicitor in relation to Person B's potential criminal appeal proceedings in circumstances where he did not hold a practising certificate and was therefore not authorised to act as a solicitor, and thereby breached any or all of Principles 2, 4 and 5 of the Principles and Paragraph 1.4 of the Code.

The facts and matters relied upon in support of this allegation are set out in paragraphs 5 to 36 below.

1.3 Between 18 February 2022 and 31 August 2022, having obtained funds from Person A in the sum of £4,525 for work to be undertaken in relation to Person B's potential criminal appeal proceedings, he failed to return the money to Person A and thereby breached any or all of Principles 2, 4 and 5 of the Principles.

The facts and matters relied upon in support of this allegation are set out in paragraphs 12 to 36 below.

1.4 Between 18 February 2022 and 31 August 2022, he personally held client monies when he was not permitted to do so, in breach of Rule 4.3 of the Code of Conduct for Solicitors 2019

The facts and matters relied upon in support of this allegation are set out in paragraphs 12 to 36 below.

Appendices and Documents

2. I attach to this Statement the following appendices:

Appendix 1: Relevant Rules and Regulations

Appendix 2: Anonymisation Schedule

3. I attach to this statement a bundle of documents, marked JW1 to which I refer in this statement. Unless otherwise stated, the page references ("JW1 p [ ]") in this statement relate to documents contained in that bundle.

4. The bundle is divided into the following sections:

Section A:	Investigation Documents
Section B:	Notice Recommending Referral to the Tribunal
Section C:	Correspondence following the Notice.
Section D:	Referral Decision
Section E:	Other documents

Professional Details

5. The Respondent was born on 27 August 1976 and was admitted to the Roll on 1 August 2003. At the material time, the Respondent did not hold a Practising Certificate ("PC") [**JW1, p94 and p100**]

6. The Respondent had held a PC during the practising year 2020-2021. The Respondent had conditions applied to his PC on 15 June 2021 [**JW1, p93**].

7. A practising year generally runs from 1 November until 31 October each year. The renewal window is open from 1 October until 31 October each year. The SRA issues multiple reminders to individuals during the renewal period. The final reminder in practising year 2021-2022 informed individuals that if they did not apply for a PC and pay the fee at point, then the SRA would revoke their PC on 31 January 2022. The SRA's usual process is to send two reminders to individuals prior to revoking their PC [**JW1, p91**].

8. The Respondent did not apply to renew his PC for the 2021-2022 practising year. As a result, he was held over on his 2020-2021 PC until 31 January 2022, when it was revoked. Mr Clarke did not respond to the reminders that had been sent to him [**JW1, p93**].

9. On 29 September 2022, the Respondent applied for a PC for the 2021-2022 practising year. However, as payment was not received, the application was marked as incomplete and updated to show a status of 'withdrawn' on 2 November 2022 [**JW1, p93**].

10. On 18 December 2023, the Respondent was issued with a PC for the 2023-2024 practising year, with conditions attached to it. This was revoked on 9 December 2024 as the Respondent did not apply for a PC for the 2024-2025 practising year [**JW1, p93**].

11. The Respondent therefore did not hold a PC between 1 February 2022 and 17 December 2023 inclusive, nor does he currently hold one [**JW1, p94**].

The facts and matters relied upon in support of the allegations

Background

12. Paragraphs 5 to 11 are repeated. Further, on 22 August 2022 Person A filed a report in respect of the Respondent [**JW1, p1**]. Person A alleged that the Respondent had agreed to assist her partner, Person B, in relation to an application for leave to appeal in respect of a criminal matter, had accepted payment for this work and had not carried out the work [**JW1, p3**].

13. The conduct occurred between February 2022 and August 2022. Full details of Person A's complaint are set out in Person A's witness statement dated 16 February 2023 [**JW1, p14**].

14. Person B was found guilty in relation to criminal matters in February 2022 and was sentenced on 1 April 2022 [**JW1, p14**].

15. Person A contacted the Respondent in February 2022. The Respondent told Person A that he was a solicitor who undertook work at Police stations. He told Person A that applications for leave to appeal were not his area of expertise, but that he had a group of barristers who were experienced in this area and so the Respondent could assist Person B [**JW1, p15**]. The Respondent later told Person A that a barrister by the name of Darren Zelazelason of Lincoln House Chambers in Manchester was dealing with the matter [**JW1, p3**]. Person A subsequently searched for this barrister on the internet and found no record of him [**JW1, p7**]. The Bar Council have also conducted a search and have no record of a barrister of this name [**JW1, p106**].

16. On 18 February 2022 Person A paid the Respondent £600 as an initial payment to commence the process [**JW1, p19**].

17. Person A made further payments to the Respondent in the sums of £1,000 on 8 March 2022 and £2,800 on 9 March 2022. The Respondent confirmed that the

latter had cleared the same day. The Respondent had informed Person A that £3,000 was for payment on account of the barrister's fees and £800 was the Respondent's fee [**JW1, p21**].

18. The payments were all made to the Respondent directly. In the text message exchanges between Person A and the Respondent, Person A refers to making payments into "your acc" on 9 March 2022 **[JW1, p25**]. On 21 July 2022 Person A refers to "Payments transferred into your account" and then lists the payments made in February and March 2022 [**JW1, p23**]. On 6 June 2022 the Respondent texted Person A and asked her to pay £190 as that would be "a massive help as it gets me back in credit" and "I only need £190 to stop me getting charged". As described below at paragraph 24, the Respondent did not make the payment of £190.

19. The Respondent did not meet Person A at any stage. A number of appointments were arranged, but the Respondent claimed he was unable to attend [**JW1, p15**].

20. Following Person B's sentencing hearing, the Respondent asked Person A for £125 to download the sentencing comments. Person A made this payment on 9 April 2022 [**JW1, p31**].

21. The Respondent informed Person A that if the application for leave to appeal was unsuccessful then £3,000 would be refunded to her [**JW1, p15**].

22. In or around May 2022, the Respondent sent Person A a photograph of two pages of a form of application for leave to appeal. The form was signed in the name of Gavin Clarke and dated 10 March 2022 [**JW1, p35**]. The form noted that Counsel was "TBC". The Respondent entered his details on the form under the section asking for the details of the solicitor. He wrote "Mr Gavin Clarke GC Legal" and gave an address of "Laburnum Court", "WA15 9EE [or 9EL]" and an email address of gclegal@icloudcjsm.net [**JW1, p32**]

23. Section H of the form had been marked to indicate that the signed grounds of appeal were included with the application, together with a Form W witness statement in respect of fresh evidence and a 'Gogana' affidavit. [**JW1, p32**].

24. On 6 June 2022 the Respondent told Person A that he was due to visit Person B in prison and asked for £190 towards his accommodation and ferry costs [**JW1, p36**]. Person A did not pay this as she and Person B were becoming suspicious [**JW1, p16**].

25. The Respondent subsequently asked Person A for a further £40 to pay for a videolink call, Person A having been told that the visit to Person B had not gone ahead [**JW1, p16**].

26. Person A contacted the Court of Appeal to request whether the application had been submitted. Person A was advised to obtain the reference number from the Respondent. Person A did so on numerous occasions, the Respondent did not provide it [**JW1, p16**].

27. Person A again contacted the Court of Appeal and was informed that there was no record of an application having been submitted [**JW1, p16**]. On 21 July 2022 Person A contacted the Respondent by text message informing him of this and asking him for a refund of the £4,525 she had paid [**JW1, p23 and p26**].

28. The Respondent replied by text message the same day and wrote [**JW1, p23**]:

    "*I'm a little shocked…I am away at the moment but back on Monday…I will bring the entire file and hand deliver it to you on Monday evening. If [Person B] does not wish me to continue then I will make sure you have the Barrister fee and other costs back but clearly the monies spent on certain items won't be able to come back. I have spent a lot of time on this. Speak to you Monday I haven't [*sic*] noticed any missed calls last few days but signal bad here in Scotland*"

29. On 26 July 2022, following further messages from Person A, the Respondent texted her and said he would be back on "*Monday*" and would deliver the full files around 6pm. On 2 August 2022 the Respondent told Person A that he had the files and would meet her at 1pm the following day. The Respondent did not meet Person A on those occasions, or at all [**JW1, p16**].

30. On 3 August 2022 Person A contacted the Respondent and again asked him to refund £4,525 to her account by the end of that week. Person A chased the Respondent on 9 August 2022 and 16 August 2022 without a response [**JW1, p23**].

31. On 6 September 2022 the Court of Appeal wrote to Person B and confirmed that no record could be found of an application to appeal in his case [**JW1, p38**].

32. On 22 August 2022 Person A reported the matter to the SRA [**JW1, p1**].

Authorisation and reserved legal activities

33. An "authorised person" is defined under section 18 of the Legal Services Act 2007 ("the LSA"):

"(1) For the purposes of this Act "authorised person", in relation to an activity ("the relevant activity") which is a reserved legal activity, means —
(a) a person who is authorised to carry on the relevant activity by a relevant approved regulator in relation to the relevant activity (other than by virtue of a licence under Part 5), or
(b) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity."

34. A "reserved legal activity" is defined under section 12 of the LSA as follows:

"(1) In this Act "reserved legal activity" means—

(a) the exercise of a right of audience;

(b) the conduct of litigation;

(c) reserved instrument activities;

(d) probate activities;

(e) notarial activities;

(f) the administration of oaths.

(2) Schedule 2 makes provision about what constitutes each of those activities".

35. Schedule 2(b) of the LSA defines "conduct of litigation" as;

"(a) the issuing of proceedings before any court in England and Wales,

(b) the commencement, prosecution and defence of such proceedings, and

(c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)."

36. As referred to in paragraph 11 above, the Respondent did not have a PC from 1 February 2022 until 18 December 2023. The Respondent was therefore not authorised to carry out reserved legal activities. This would include lodging an

application for leave to appeal with the Court of Appeal in respect of criminal matters.

Allegation 1.1 – providing misleading information to Person A – breaches of Principles and Code.

Principle 4 (dishonesty)

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

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

38. At the time that the Respondent was agreeing to act as a solicitor for Person B, the Respondent knew or believed the following matters:

38.1 He had not applied to renew his PC for the 2021-2022 practising year.

38.2 He would have had several reminders to renew his PC and would also have received notice of the SRA's intention to revoke his PC on 31 January 2022. He therefore knew by February 2022 that his PC had been revoked.

38.3 He knew that he was purporting to act as a solicitor as he signed a form to that effect on 10 March 2022 in which he had described himself as a solicitor.

38.4 The Respondent knew that he was not authorised to conduct reserved legal activities. The Respondent's knowledge can be inferred from the

fact that he did not actually lodge an application for leave to appeal with the Court of Appeal. Had the Respondent genuinely believed he was permitted to conduct reserved legal activities, he would have had no obvious reason not to lodge the application.

38.5 The Respondent provided the name of a barrister, Mr Zelazelason, of whom there is no record as a registered barrister. It can be inferred from this that the Respondent was knowingly creating a fictitious scenario that could not be easily verified or disputed.

38.6 The Respondent therefore knew that he was providing misleading information to Person A in all his interactions with her, which were founded on the premise that he was authorised to conduct Person B's criminal appeal proceedings.

38.7 The Respondent had multiple opportunities to tell Person A that he was not, in fact, authorised to act but did not do so. If he had been operating under a genuine mistaken belief at the start of February 2022, he would have corrected the matter shortly thereafter.

39. The Respondent knew he was not entitled to act as a solicitor, his PC having been revoked. Despite that, he held himself out to Person A as a solicitor who would be wiling to act for Person B in his criminal appeal. This would have involved conducting reserved legal activities. This conduct would be considered dishonest by the standards of ordinary decent people and the Respondent therefore breached Principle 4.

Principle 5 (integrity)

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

41. A solicitor acting with integrity would not provide misleading information to a potential client and/or the client's family such as to induce them to believe that he could act for them when he was not authorised to do so. The Respondent therefore breached Principle 5.

Principle 2 SRA Principles (maintaining trust)

42. The Respondent did not behave in a way which maintains the trust placed by the public in solicitors and in the provision of legal services. That trust is founded on the presumption that solicitors offering their services are authorised to do so. It

therefore follows that public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined in circumstances where a solicitor who is not authorised to act, provides misleading information to give the impression that they are. The Respondent therefore breached Principle 2.

Paragraph 1.4 of the Code

43. Paragraphs 5 to 36 are relied upon as evidence that the Respondent provided misleading information to Person A by agreeing to act for Person B, thereby breaching Paragraph 1.4 of the Code.

Allegation 1.2 – obtaining funds from Person A – breaches of Principles and Code.

Principle 4 (dishonesty)

44. The Applicant relies upon the *Ivey* test for dishonesty set out at paragraph 37 above. At the time that the Respondent was obtaining funds from Person A in respect of Person B's potential appeal, the Respondent knew or believed the following matters:

    44.1 The Respondent had knowledge of all the matters set out at paragraph 38 above.

    44.2 The Respondent knew that he was asking for funds in respect of a matter in which he was not authorised to act.

    44.3 The Respondent, as well as any bystander, would therefore have known that he was not entitled to ask for, or receive, the monies.

    44.4 The Respondent knew he had received those funds as they were paid into his bank account.

45. By knowingly accepting funds in respect of the conduct of reserved legal activities when he was not entitled to so, the Respondent's conduct was dishonest by the standards of ordinary decent people, thereby breaching Principle 4.

Principle 5 (integrity)

46. The SRA relies on the test for integrity set out in *Wingate* as referred to at paragraph 40 above.

47. A solicitor acting with integrity would not ask for monies to be paid to them in respect of work that they were not authorised to conduct or ask a client to pay them

directly rather than into an authorised client account. The Respondent therefore breached Principle 5.

Principle 2 SRA Principles (maintaining trust)

48. The Respondent did not behave in a way which maintains the trust placed by the public in solicitors and in the provision of legal services. That trust is founded on the presumption that when solicitors ask for monies for their services, that they are authorised to provide those services. It therefore follows that public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined in circumstances where a solicitor who is not authorised to act, asks for and receives money as if they were. The Respondent therefore breached Principle 2.

Paragraph 1.4 of the Code

49. Paragraphs 5 to 36 above are relied upon as evidence that the Respondent obtained funds from Person A in relation to Person B's potential criminal appeal when he was not authorised to conduct that work and in doing so, misled Person A, thereby breaching Paragraph 1.4 of the Code.

Allegation 1.3 failure to return funds to Person A – breaches of Principles and Code.

Principle 4 (dishonesty)

50. The Applicant relies upon the *Ivey* test for dishonesty set out at paragraph 37 above. At the time that the Respondent was in possession of the funds from Person A in respect of Person B's potential appeal was as follows, the Respondent knew or believed the following matters:

50.1 The Respondent had knowledge of all the matters set out at paragraphs 38 and 44.

50.2 The Respondent obtained the funds for the purpose of lodging an application for leave to appeal on behalf of Person B.

50.3 The Respondent knew he had not lodged an application for leave to appeal. The Respondent gave the impression to Person A that he had done so on 10 March 2022, when he had not.

50.4 The Respondent was not entitled to be in possession of the funds and that he should therefore have returned them.

50.5 Person A had asked for a refund of the monies from late July 2022 onwards and the Respondent agreed to provide a partial refund at that stage.

50.6 Even if he had come into the funds due to a genuine mistake, the Respondent knew he was not entitled to retain them once he had been asked to return them to Person A.

50.7 The Respondent had not returned the monies.

51. By failing to return the monies to Person A, particularly in the circumstances in which he had received them, the Respondent acted dishonestly by the standards of ordinary decent people, thereby breaching Principle 4.

Principle 5 (integrity)

52. The SRA relies on the test for integrity set out in *Wingate* as referred to at paragraph 40 above.

53. A solicitor acting with integrity would have returned the monies without delay and in any event, after being asked to do so by Person A. The Respondent did not return the monies even though he knew he should not have received them in the first place. He did not return them despite not filing the application for leave to appeal and he did not return them after Person A asked him to do so. The Respondent therefore breached Principle 5.

Principle 2 SRA Principles (maintaining trust)

54. The Respondent did not behave in a way which maintains the trust placed by the public in solicitors and in the provision of legal services. That trust is founded on the presumption that solicitors do not fail to return monies to which they have no entitlement. The Respondent therefore breached Principle 2.

Allegation 1.4

Rule 4.3 of the Code**.**

55. Rule 4.3 of the Code states:

"*You do not personally hold client money save as permitted under regulation 10.2(b)(vii) of the Authorisation of Individuals Regulations, unless you work in an*

authorised body, or in an organisation of a kind prescribed under this rule on any terms that may be prescribed accordingly."

56. Client money is defined in Rule 2.1 of the SRA Accounts Rules 2019 as

"*Client money" is money held or received by you:*
(a) relating to regulated services delivered by you to a client;
(b) on behalf of a third party in relation to regulated services delivered by you (such as money held as agent, stakeholder or held to the sender's order);
(c) as a trustee or as the holder of a specified office or appointment, such as donee of a power of attorney, Court of Protection deputy or trustee of an occupational pension scheme;
(d) in respect of your fees and any unpaid disbursements if held or received prior to delivery of a bill for the same."

57. The monies provided to the Respondent were in respect of regulated services that he had offered to provide on behalf Person B and so they fell within the definition of client monies. The monies were paid to the Respondent directly, in breach of Rule 4.3 of the Code.

The SRA's investigation

58. The SRA wrote to the Respondent on 3 October 2022 inviting his response to Person A's complaint and asking him for additional information [**JW1, p41**]. This email was re-sent on 9 March 2023, no reply having been received, with a deadline of 27 March 2023 provided [**JW1, p41**]. On 27 March 2023 the Respondent left a voicemail for the investigating officer ("the IO") asking him to call back [**JW1, p44**]. The IO spoke with the Respondent by telephone the same day and agreed to an extension for the time to reply until 10 April 2023 [**JW1, p45**]. The Respondent referred to personal difficulties and health issues that he was experiencing [**JW1, p45**].

59. The IO followed this up on 25 April 2023, noting there had not been a response and granting a further extension until 9 May 2023 **[JW1, p46**]. The Respondent did not provide a response.

60. On 16 September 2024 the Notice recommending referral of conduct to the Tribunal was sent to the Respondent [**JW1, p77 and p80**]. This was sent by post, albeit to an incorrect address, and by email to the last known email address that the SRA had on file. There was no response.

61. On 31 October 2024 an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Tribunal [**JW1, p86**].

I believe the contents of this statement are true.

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Dated this 30th day of January 2025

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

Relevant Rules and Regulations

SRA Principles 2019

Principle 2	You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
Principle 4	You act with honesty
Principle 5	You act with integrity

SRA Code of Conduct for Solicitors 2019

Paragraph 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).
Paragraph 4.3	You do not personally hold client money save as permitted under regulation 10.2(b)(vii) of the Authorisation of Individuals Regulations, unless you work in an authorised body, or in an

organisation of a kind prescribed under this rule on any terms that may be prescribed accordingly.