

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11496-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW CHRISTOPHER AITCHISON

Respondent

Before:

Mr A. G. Gibson (in the chair)

Mr I. R. Woolfe

Mrs N. Chavda

Date of Hearing: 9 August 2016

Appearances

Mr Inderjit Johal, counsel, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Andrew Christopher Aitchison, did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Andrew Christopher Aitchison, in a Rule 5 Statement dated 4 April 2016, were that, whilst working as an assistant solicitor he:
 - 1.1 Failed to issue proceedings in the matter of Mr L before the expiry of the statutory limitation period and then subsequently created a letter on 20 September 2013, and backdated it to 20 December 2012, in order to conceal the fact that he had missed the limitation date, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“the Principles”), and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011 (“the 2011 Code”);
 - 1.2 Failed to issue proceedings in the matter of Miss AC and Miss AC before what he believed to be the expiry of the limitation period, and then subsequently created a letter on 13 June 2012 and backdated it to 13 January 2012 in order to conceal the fact that he had missed what he believed to be the limitation date, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 1.2 and 1.5 of the 2011 Code;
 - 1.3 Failed to serve the Claim Form in the matter of Mrs VF by the statutory deadline to do so, and then subsequently created a letter on 14 November 2011 and backdated it to 14 September 2011 in order to conceal the fact that he had missed the deadline, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 1.2 and 1.5 of the 2011 Code;
 - 1.4 Created a letter in the matter of Mrs ETP on 2 July 2014 and backdated it to 27 December 2013, ahead of an upcoming Lexcel re-accreditation inspection, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles;
 - 1.5 Created a letter in the matter of Miss RM on 30 June 2014 and backdated it to 23 March 2014, ahead of an upcoming Lexcel re-accreditation inspection, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles;
 - 1.6 Failed to serve the Claim Form in the matter of Mrs EC by the statutory deadline to do so, and then subsequently created a letter on 2 July 2014 and backdated it to 21 January 2014 in order to conceal the fact that he had missed the deadline, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 1.2 and 1.5 of the 2011 Code.
2. Dishonesty was alleged against the Respondent in respect of allegations 1.1 to 1.6, but dishonesty was not an essential ingredient for proof of the allegations.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant: -

- Application dated 4 April 2016
- Rule 5 Statement, with exhibit “AHJW1”, dated 4 April 2016

- Witness statement of process server dated 2 June 2016
- Witness statement of Divinder Singh, with exhibits, dated 27 April 2016
- Schedule of costs dated 22 July 2016

Respondent: -

- Personal financial statement dated 2 August 2016

Preliminary Matter - Proceeding in the absence of the Respondent

4. The Tribunal noted that the Respondent was not present or represented and so as a preliminary issue considered whether it was appropriate to proceed with the hearing in his absence.
5. Mr Johal, for the Applicant, told the Tribunal that the Respondent had not engaged with the proceedings, save that he had sent to the Applicant a letter with an attached statement of means and supporting documents on 2 August 2016. The Applicant wished to proceed with the hearing in the absence of the Respondent, which was permitted by Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“the Rules”) if the Tribunal was satisfied that the Respondent had been served with notice of the hearing.
6. The Tribunal was told that the application, Rule 5 Statement and the Tribunal’s standard directions were sent to the Respondent on 11 April 2016, to an address in Birmingham B17. The standard directions included notice of this substantive hearing date. The papers were returned undelivered to the Tribunal on 24 May 2016. Standard directions were reissued on 25 May 2016. Again, notice of the hearing date was included within the documents sent to the Respondent. An enquiry agent was instructed to serve the papers on the Respondent personally. The statement of the process server, dated 2 June 2016, stated that the Respondent had been personally served with various documents, including the directions, on Saturday 28 May 2016. The statement also confirmed that the Respondent had admitted his identity and that the process server advised the Respondent of the nature of the papers and of the hearing date. It was submitted that in these circumstances, the Tribunal could be satisfied that the Respondent had been served with the proceedings and notice of hearing.
7. The Tribunal was referred to the authorities concerning the factors to be considered when considering whether to exercise its discretion to proceed in the absence of the Respondent. The Tribunal was referred to R v Hayward and others [2001] EWCA Crim 168 (“Hayward”), which at paragraph 22 set out 11 particular factors to be considered, and the House of Lords decision in R v Jones (Anthony) [2002] UKHL 5, [2003] 1 AC 1 (“Jones”), which approved that decision. The Tribunal was also referred to the case of Tait v RCVS [2003] UKPC 34 (“Tait”), which applied the criteria to professional disciplinary hearings. It was submitted that the Tribunal had to exercise its discretion cautiously, in a way which was fair to both the Respondent and the Applicant. In particular, the Tribunal would need to consider whether the Respondent had, by his behaviour, waived his right to attend the hearing and had deliberately chosen not to attend. It was submitted that the Respondent had chosen not to attend, in circumstances where he was aware of the hearing date and it was

unlikely to secure his attendance if the hearing was adjourned. The allegations in this case were serious, including allegations of dishonesty, and it was in the public interest that they should be heard as promptly as possible.

The Tribunal's Decision

8. The Tribunal was satisfied on the evidence that the Respondent had been served with the proceedings and with notice of this hearing date. The Respondent had written to the Applicant on 2 August 2016 with information about his financial position. This letter supported the evidence, which was already clear, that the Respondent had been served and was aware of the hearing date.
9. The Tribunal was aware that the discretion to proceed in the absence of a Respondent should be exercised with great care. It noted the factors to be considered as set out in Jones, not all of which applied in disciplinary proceedings. The Tribunal was also aware of the more recent case of GMC v Adeogba [2016] EWCA Civ 162 ("Adeogba"), in which the decision of the Court of Appeal was given on 18 March 2016. This case dealt, amongst other matters, with proceeding in the absence of a Respondent in disciplinary proceedings and included a review of the existing authorities, including Jones. In the Adeogba case it was noted that whereas a defendant in a criminal case could be arrested and brought before a court, there was no such remedy available to a professional regulator. There was a need to be fair to the prosecutor/regulator as well as to the regulated professional. The needs of regulation, in the public interest, meant that cases should proceed unless there was good reason not to do so. The Court of Appeal further stated that there was an obligation on professionals to engage with the regulator, which may include ensuring that the regulator had an effective address for the regulated person.
10. The Tribunal noted in particular that there was no reason to think that the Respondent would attend if the hearing were adjourned and/or that he would arrange legal representation for a later hearing. The Respondent had had the opportunity during the investigation by his Firm and subsequently, during these proceedings, to give his account of events but had not done so. The Respondent was aware of the hearing and had voluntarily chosen to absent himself. It was in the public interest for the hearing to proceed, to resolve the serious allegations which had been made. In these circumstances, it was appropriate and in the interests of the public and the profession to proceed with the case.

Factual Background

11. The Respondent was born in 1967 and was admitted to the Roll of Solicitors in 1999. The Respondent held a Practising Certificate, free of conditions, at the date of the hearing.
12. At all material times the Respondent practised as an assistant solicitor in the personal injury ("PI") department of Sydney Mitchell Solicitors of Chattock House, 346 Stratford Road, Shirley, Solihull, West Midlands B90 3DN ("the Firm").

Background

13. On 9 December 2014, Mr Divinder Singh (“Mr Singh”), the Senior Partner and Compliance Officer for Legal Practice (“COLP”) at the Firm, sent a report to the Applicant on behalf of the Firm. The report, a copy of which was provided to the Tribunal, detailed a number of serious allegations in relation to the Respondent’s professional conduct.
14. Mr Singh reported that the Respondent was employed at the Firm as an assistant solicitor in the Firm’s PI department from 10 January 2010 to 24 September 2014, when the Respondent tendered his resignation. In a response to the Respondent’s letter of resignation, the Firm indicated that some further matters of concern had come to light which it proposed to investigate. The report indicated that the Respondent had resigned from his position following an investigation, conducted by the Firm, into a number of PI files of which the Respondent had conduct. The concerns related to the Respondent missing statutory limitation dates and deadlines, then attempting to conceal this by creating backdated documents.

Allegation 1.1 – Re Mr L

15. The Respondent acted for Mr L in a claim for damages arising from a repetitive strain injury sustained at work over a period of time.
16. The report by Mr Singh to the Applicant recorded that whilst the Respondent was absent from the office on leave during September 2014, the Firm was contacted by Mrs L, on behalf of her husband. Mrs L told the Firm that she and her husband had heard nothing from the Respondent for some time. The file was passed to Mr Mike Sutton (“Mr Sutton”), the acting Head of the PI department.
17. Mr Sutton noted that there was a discrepancy between what Mrs L said, about the lack of contact, and a letter on the file dated 20 December 2012 which suggested that the file had been closed some time before, due to an adverse merits assessment. Mr Singh’s report stated, amongst other matters,

“Mr L ... has however confirmed through his wife that he did not receive the letter dated 20 December 2012, referred to in my report and he was unaware that the case was not being pursued.”

18. The letter dated 20 December 2012 indicated that the reason Mr L’s file was being closed was due to a lack of reasonable prospects of success; in particular, there was a difference between his account and that of a witness concerning the number of units he would have had to action during a shift. It was also indicated that the medical evidence obtained was not clear, and that there was a “difficulty in relation to RSI type claims in general.”
19. Mr Singh annexed to his report a copy of a screen capture from the Firm’s case management system. This showed that the letter was created at 15.22 on 20 September 2013, but backdated to 20 December 2012. The statutory limitation period in the claim had expired in March 2013. Information provided by the Firm

showed that the Respondent was in the office on 20 September 2013; he logged onto his computer at 8.31am and logged off at 5.29pm.

20. Following the Respondent's return from leave on 23 September 2014, Mr Singh met with the Respondent to discuss Mr L's file. Mr Singh brought to the Respondent's attention the fact that the Firm had had contact with Mr L in the Respondent's absence and that there was a discrepancy between the date on the letter and the date on which the letter was created, as illustrated by the case management system ("CMS"). When asked by Mr Singh if he could explain the discrepancy, the Respondent replied that he could not and there was nothing he could say. When asked by Mr Singh if there were any problems on his other files, the Respondent replied that he did not think so.
21. The concerns about Mr L's file prompted Mr Singh to look into other matters of which the Respondent had conduct. Mr Singh discovered five other matters which gave cause for concern, as set out in relation to other allegations.

Allegation 1.2 – Re Miss AC and Miss AC

22. The Respondent acted for Miss AC and Miss AC in a claim for damages arising from a road traffic accident ("RTA") which took place on 14 April 2009.
23. Mr Singh's report indicated that the Firm was instructed on 21 April 2009, and that the files were transferred to the Respondent on or around 2 February 2010.
24. It was understood that the driver of the other vehicle involved in the RTA was a foreign national. The Respondent had been in contact with the Motor Insurers Bureau ("MIB") in an attempt to obtain contact details of insurers. Subsequently, the MIB had failed to accept responsibility for dealing with the claim.
25. The file of Miss AC and Miss AC included a letter from the Respondent to Mrs C, the mother and litigation friend of the clients, bearing the date 13 January 2012. The letter set out an adverse merits assessment, and indicated that the file was being closed. The letter included incorrect advice about the statutory limitation period; the letter advised that Court proceedings must be started within three years of the date of the accident, but this was not so due to the age of one of the potential claimants.
26. Mr Singh reported to the Applicant,

"We have spoken with Mrs C... on the telephone, who has confirmed that she did not receive the letter dated 13 January 2012, referred to in my report. She did, however, confirm that she was aware that the matter was not being pursued due to difficulties in tracing the foreign driver."
27. A screenshot from the Firm's CMS showed that the letter was created on 13 June 2012 at 3.16pm, but was backdated to 13 January 2012. Information from the Firm showed that the Respondent was in the office on 13 June 2012. He logged on to his computer at 8.27am and logged off at 5.28pm.

28. It appeared from the letter dated 13 January 2012 that the Respondent believed that the statutory time limit for bringing the claim expired in April 2012, that being three years from the date of the accident.

Allegation 1.3 – Re Mrs VF

29. On 18 August 2009 the Firm was instructed to act for Mrs VF in a claim for damages arising out of a tripping incident on her own property on 22 June 2008.
30. Mr Singh reported to the Applicant that the file was transferred to the Respondent on 10 March 2010, and that the Respondent then had conduct of the matter throughout, but Mr Singh had been unable to locate a physical file for this matter.
31. Proceedings were issued in Mrs VF's claim on 21 June 2011 but the Claim Form was not served within the period allowed (4 months). The Firm's CMS contained a letter from the Respondent to Mrs VF bearing the date 14 September 2011. That letter informed the client that her prospects of success with the claim were, at that time, less than 50% as the other party may successfully defend the claim. The letter stated that Mrs VF's file was therefore to be closed and, that if she wished to instruct other solicitors, she should write to the Respondent and he would forward the papers to the other solicitors.
32. A screenshot from the Firm's CMS showed that the letter was created on 14 November 2011 at 8.30am, but was backdated to 14 September 2011. Mr Singh reported that the letter was created on a date which was approximately three weeks after the last date the Claim Form could be served. Information provided by the Firm suggested that the Respondent arrived at the office at approximately 8am on 14 November 2011, logged on to the computer at 8.08am, and logged off at 10.06am. The Respondent subsequently took the day as a holiday.

Allegation 1.4 – Re Mrs ETP

33. On 13 December 2012 the Firm was instructed to act for Mrs ETP, through her son and litigation friend, in a claim for damages arising out of a fall in her care home on 14 August 2012. According to Mr Singh's report, the Respondent had conduct of the matter throughout.
34. The file contained a letter bearing the date 27 December 2013 from the Respondent to Mrs ETP (through her litigation friend). In the letter, the Respondent advised that he had reviewed Mrs ETP's medical records and had "concerns as to whether any claim on [Mrs ETP's] behalf would be successful due to her long standing history of falls as evidenced in her GP records and that it would be difficult to prove that Mrs ETP had been given the wrong medication, given her "propensity to fall anyway". The letter stated that the Respondent was closing his file of papers but Mrs ETP could seek alternative legal advice if she wished.
35. A screenshot from the Firm's CMS showed that the letter was created on 2 July 2014 at 10.08am, but backdated to 27 December 2013. Information provided by the Firm showed that the Respondent was in the office on 2 July 2014; he logged on to his computer at 8.16am and logged off at 5.30pm.

36. Mr Singh reported that, “The creation date was the day before [the Respondent] was due to have a random selection of his files reviewed, as part of the Firm’s Lexcel re-accreditation audit.”

Allegation 1.5 – Re Miss RM

37. On 20 February 2011, the Firm was instructed to act for Miss RM, through her mother and litigation friend, in a claim for damages arising out of a road traffic accident on 10 December 2010. The Respondent had conduct of the matter throughout.
38. A letter bearing the date 23 March 2014 was prepared by the Respondent to Miss RM’s litigation friend, to say that he was unable to continue with the claim and the medical report obtained indicated that Miss RM had recovered from the injuries she sustained in the accident within a maximum of 3 days. The Respondent went on to say that this meant the monetary value of the claim would be less than £1,000 and, as such, the Firm would not be able to recover its costs for pursuing the matter. The letter further stated that this did not mean that Miss RM could not pursue her claim any further, and that she could seek alternative legal advice if she so wishes.
39. A screenshot from the Firm’s CMS showed that the document was created on 30 June 2014 at 12.03pm, but backdated to 23 March 2014. Information provided by the Firm showed that the Respondent had a half day holiday on 30 June 2014, and that he logged onto his computer at 8.12am and logged off at 1.07pm.
40. Mr Singh reported that, “The creation date was three days before [the Respondent] was due to have a random selection of his files reviewed, as part of the Firm’s Lexcel re-accreditation audit. As indicated above, [the Respondent] was aware of the impending review and its date.”

Allegation 1.6 – Re Mrs EC

41. On 29 October 2013, the Firm was instructed to act for Mrs EC in a clinical negligence claim arising from an eye operation she had undergone. The Respondent had conduct of the matter throughout. The Firm was instructed one week before the statutory limitation deadline was due to expire.
42. Mr Singh reported, “We lodged proceedings with the Court on 4 November (2013) and a Claim Form was issued on 8 November 2013. Unfortunately, it appears that the Claim Form has not been served.” Claim Forms should be served within 4 months of issue.
43. A letter from the Respondent to Mrs EC, bearing the dated 21 January 2014, was on the client file. The letter set out an adverse assessment of the merits of the case and stated, “Unfortunately, I cannot see anything in the records which indicates to me that [the Defendant] was negligent in the treatment that he provided to you... in light of the contents of the medical records I cannot justify obtaining a report from an independent ophthalmologist... I have no option but to cease acting for you and to close my file of papers.” The letter went on to say, “I would urge you to seek alternative legal advice urgently should you wish to pursue the claim further.”

44. A screenshot of the Firm's CMS indicated that this letter was created on 2 July 2014 at 4.52pm. Information provided by the Firm showed that the Respondent was in the office on 2 July 2014; he logged on to his computer at 8.16am and logged off at 5.30pm.
45. Mr Singh reported that, "The creation date was approximately six months after the last date the Claim Form could be served and the day before [the Respondent] was due to have a random selection of files reviewed, as part of the Firm's Lexcel re-accreditation audit." Mr Singh further reported, "[Mrs EC] ... confirmed that she had not received the letter dated 21 January 2014 referred to in my report and she was unaware that her case was not being pursued."

Allegation 2 – Dishonesty

46. The factual background to this allegation is set out above, in relation to each of allegations 1.1 to 1.6.

SRA Investigation

47. On 13 May 2015, a Supervisor in the employment of the Applicant's Supervision Department wrote to the Respondent, seeking an explanation for a number of breaches of the 2011 Code which the Supervisor had identified. The letter was sent to the last known address of the Respondent, in Birmingham B32; this was the address at which the Firm had been corresponding with the Respondent.
48. The Respondent did not reply to the letter of 13 May 2015. On 8 June 2015 the Supervisor wrote to the Respondent at a further address noted on the Applicant's records, being an address in Birmingham B17. The Respondent did not reply.
49. The Supervisor undertook further enquiries and commissioned a search which revealed that the electoral roll noted the Respondent was registered at the Birmingham B32 address. On 22 July 2015 the Supervisor sent a further copy of the letter to the Respondent at the Birmingham B32 address by recorded delivery. The letter was returned to the Applicant by the Royal Mail on 12 August 2015 with the reason for non-delivery being "not called for."
50. The letter was sent to the further address, in Birmingham B17, having been given information which indicated he was residing at that address. The Respondent did not reply to the Applicant's correspondence or provide an explanation for the alleged misconduct prior to the issue of proceedings. It was at the address in Birmingham B17 that the Respondent was served with the proceedings.
51. On 17 December 2015 the Applicant decided to refer the Respondent's conduct to the Tribunal.

Witnesses*Mr Divinder Singh*

52. Mr Singh, the senior partner and COLP of the Firm, confirmed that (subject to two amendments with regard to dates) the contents of his witness statement dated 27 April 2016 were true to the best of his knowledge, information and belief.
53. Mr Singh confirmed the truth of the factual background, as set out above at paragraphs 13 to 45. Mr Singh told the Tribunal that when he spoke to the Respondent about the matter of Mr L, in September 2014, he pointed out the discrepancy between what was said by the client and the letter which appeared to be dated 20 December 2012 but which the CMS showed had been created on 20 September 2013. The Respondent had replied that there was nothing he could say; Mr Singh had taken this to be an acceptance that the letter had been backdated. Mr Singh went on to tell the Tribunal that he had told the Respondent that he had behaved in a stupid way; had he made a mistake, it could have been dealt with by the Firm but such an error was not a career-threatening matter. Mr Singh told the Tribunal that he did not know why the Respondent had acted as he did, but presumed it was to cover up his mistakes.
54. Mr Singh told the Tribunal that he had written to the Respondent, after he had left the Firm, pointing out that there were questions arising from files other than that of Mr L and inviting his explanation. There had been no response from the Respondent either to letters of 30 September or 27 October 2014. The report had therefore been made to the Applicant on 6 November 2014. That report had attached the various sign-in sheets and records of attendance. The former were signed by staff members when they arrived at or left the office, and the latter was completed by a receptionist. Mr Singh told the Tribunal that each fee-earner had a unique log-in to the CMS, which they were instructed not to share with anyone else. The log-in generated the fee-earner's reference, which appeared on any letters written by the person who had logged in.
55. Mr Singh told the Tribunal that he understood that when he employed the Respondent, he had over 10 years' experience of PI work. There had been no difficulties with the Respondent's files or conduct until these matters came to light. Mr Singh told the Tribunal that the Firm had Lexcel accreditation and carried out regular file reviews. The system had now been changed, so that files were not simply selected from a fee-earner's filing cabinet, but from the matter listings. Mr Singh told the Tribunal that it appeared that the Respondent's files may not all have been within his filing cabinets. From the reviews which had been carried out during the Respondent's employment, his files appeared to be in order, but it had later transpired that the dates on the paper copies of letters (in the matters set out above) had not been accurate; this would not have been known to someone reviewing a file.

Findings of Fact and Law

56. The Applicant was required to prove the allegations beyond reasonable doubt. 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.
57. With regard to allegations 1.1, 1.2, 1.3 and 1.6, it was submitted for the Applicant that the Respondent had failed either to issue proceedings within the limitation period, or what he believed to be the limitation period, or failed to serve the proceedings within the time allowed. He had tried to conceal these errors by backdating letters which purported to inform the clients that their cases could not be pursued after a review of the merits. The letters were placed on files which could then be closed, but were not sent to the clients. Such actions were not in the best interests of the clients, failed to provide the clients with a proper standard of service, failed to protect the interest of the clients or provide a competent level of service. It was further submitted that the Respondent's conduct lacked integrity and would diminish the trust the public would place in him.
58. With regard to allegations 1.4 and 1.5, the submissions were similar save that those matters related to the creation of backdated letters shortly before a Lexcel re-accreditation, in the course of which a number of the Respondent's files may have been selected for audit, to justify the closure of the files before they were inspected.
59. The Tribunal had carefully reviewed the papers in this case. It was impressed with the evidence of Mr Singh, which it accepted in full. There could be no doubt that the facts underlying the allegations had been proved. The Respondent had clearly backdated letters on 6 known occasions, in circumstances where he had missed a deadline, believed he had missed a deadline or was aware that his files may be inspected. The conduct in question had first occurred in November 2011 (re Mrs VF), with one instance in 2012, one in 2013 and three in 2014. This was a significant period of time, and the conduct had been repeated. The Tribunal was satisfied that the purpose of backdating was to conceal errors in the conduct of the files. The errors themselves were not individually career-threatening; each could have been dealt with by appropriate referrals to insurers. Indeed, it may be that the advice given with respect to there being little prospect of success with the claims may have been correct; the Tribunal was not in a position to judge this. The letters which set out the lack of prospect of success were appropriately written, for example in telling clients they could seek alternative legal advice if they wished to do so. However, the letters had not been sent to clients and had been back-dated. It was a serious matter for a solicitor to falsify documents in this way.
60. The Respondent had given no explanation for his conduct. In all of the circumstances, the Tribunal was satisfied that all of the allegations were proved to the higher standard, as noted below.
61. **Allegation 1.1 - Failed to issue proceedings in the matter of Mr L before the expiry of the statutory limitation period and then subsequently created a letter on 20 September 2013, and backdated it to 20 December 2012, in order to conceal the fact that he had missed the limitation date, in breach of all or**

alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“the Principles”), and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011 (“the 2011 Code”)

- 61.1 The Tribunal was satisfied on the facts and evidence that this allegation had been proved to the required standard, in all its aspects.
62. **Allegation 1.2 - Failed to issue proceedings in the matter of Miss AC and Miss AC before what he believed to be the expiry of the limitation period, and then subsequently created a letter on 13 June 2012 and backdated it to 13 January 2012 in order to conceal the fact that he had missed what he believed to be the limitation date, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 1.2 and 1.5 of the 2011 Code**
- 62.1 The Tribunal was satisfied on the facts and evidence that this allegation had been proved to the required standard, in all its aspects.
63. **Allegation 1.3 - Failed to serve the Claim Form in the matter of Mrs VF by the statutory deadline to do so, and then subsequently created a letter on 14 November 2011 and backdated it to 14 September 2011 in order to conceal the fact that he had missed the deadline, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 1.2 and 1.5 of the 2011 Code**
- 63.1 The Tribunal was satisfied on the facts and evidence that this allegation had been proved to the required standard, in all its aspects.
64. **Allegation 1.4 - Created a letter in the matter of Mrs ETP on 2 July 2014 and backdated it to 27 December 2013, ahead of an upcoming Lexcel re-accreditation inspection, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles;**
- 64.1 The Tribunal was satisfied on the facts and evidence that this allegation had been proved to the required standard, in all its aspects.
65. **Allegation 1.5 - Created a letter in the matter of Miss RM on 30 June 2014 and backdated it to 23 March 2014, ahead of an upcoming Lexcel re-accreditation inspection, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles;**
- 65.1 The Tribunal was satisfied on the facts and evidence that this allegation had been proved to the required standard, in all its aspects.
66. **Allegation 1.6 - Failed to serve the Claim Form in the matter of Mrs EC by the statutory deadline to do so, and then subsequently created a letter on 2 July 2014 and backdated it to 21 January 2014 in order to conceal the fact that he had missed the deadline, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcomes 1.2 and 1.5 of the 2011 Code.**

- 66.1 The Tribunal was satisfied on the facts and evidence that this allegation had been proved to the required standard, in all its aspects.
67. **Allegation 2 - Dishonesty was alleged against the Respondent in respect of allegations 1.1 to 1.6, but dishonesty was not an essential ingredient for proof of the allegations.**
- 67.1 It was submitted for the Applicant that the Respondent's actions were dishonest according to the test laid down in Bultitude v The Law Society [2004] EWCA Civ 1853 ("Bultitude"), applying the test for dishonesty as formulated by the House of Lords in the case of Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra"). It was submitted that the Respondent acted dishonestly according to the ordinary standards of reasonable and honest people ("the objective test") and that he realised that by those standards his conduct was dishonest ("the subjective test").
- 67.2 The Applicant submitted that the particulars of dishonesty, and the reasons the Respondent was aware that his conduct would be considered dishonest by reasonable and honest people, were:
- 67.2.1 There were six separate occasions of dishonesty (namely the backdating of letters);
- 67.2.2 On the matters of Mr L, Mrs VF and Mrs EC, the Respondent failed to meet deadlines for his clients. On the matter of Mr L, he missed the statutory limitation date, and on the matters of Mrs VF and Mrs EC he failed to serve the Claim Form in time. In each case, he sought to misrepresent the true position by creating backdated letters to suggest that the reason the proceedings had not been issued or served in time was because he had carried out an assessment of the merits of each case which suggested low prospects of success;
- 67.2.3 On the matter of Miss AC and Miss AC, whilst the limitation date was not missed, the Respondent backdated a letter, in the belief that he had missed the limitation date, and represented that the reason the file was being closed was because he had carried out an adverse merits assessment;
- 67.2.4 On the matters of Mrs ETP and Miss RM, the Respondent closed his files before an expected Lexcel re-accreditation inspection. In each case, he backdated a letter to give the impression that the file was being closed because the client had a less than reasonable prospect of success;
- 67.2.5 The Respondent had over 10 years' post-qualification experience at the relevant times. He would have known that the appropriate action to take if a limitation deadline or other important date was missed was to report the matter to his line manager, so that appropriate action (including reporting to insurers) could be taken;
- 67.2.6 The Respondent knew that he should not backdate documents or change details on the Firm's case management system in order to misrepresent the true position on each file;

- 67.2.7 The Respondent's dishonest conduct was repeated, planned and systematic;
- 67.2.8 The Respondent remained silent about his dishonest acts until a complaint was made on behalf of a client whilst he was away from the office on leave.
- 67.3 As noted above, the Tribunal found that the Respondent had backdated letters on six occasions in a three-year period in order to conceal errors he had made. The Respondent had not given any explanation of what had gone wrong. He had not asserted, for example, that he had been over-worked or ill at the relevant times. The Tribunal noted that within the hearing bundle there were a number of records of attendance and notes of the times the Respondent had been logged into the CMS. These did not indicate that he was working excessive hours.
- 67.4 The Tribunal was satisfied that the Respondent knew what he was doing and chose to backdate letters to conceal problems on his files. Creating a letter with a false date, which would appear on the file, would mislead anyone reviewing the Respondent's files. The Respondent had let down his clients to a significant degree, whatever the actual merits of their cases.
- 67.5 The Tribunal found, so that it was sure, that backdating letters in order to conceal a problem on each file was dishonest by the ordinary standards of reasonable and honest people. Further, the Tribunal was satisfied so that it was sure that the Respondent knew, on each occasion, that his actions were dishonest by those same standards. A solicitor knew that it was dishonest to falsify a document in any circumstances and the Respondent was particularly aware that it was dishonest to falsify a document to conceal professional errors.
- 67.6 The Tribunal found so that it was sure that the Respondent had been dishonest with regard to the six matters considered. This allegation was proved.
- 67.7 The Tribunal wished to record in the Judgment that it was not only impressed with the way in which Mr Singh had given evidence, but also with his conduct and the actions he had taken on discovering concerns about the Respondent. He had caused a proper investigation, including a review of the Firm's computer records, the CMS, attendance records and time-sheets. He had, entirely reasonably, sought an explanation from the Respondent and when no explanation was forthcoming had reported the matter to the Applicant. That report set out fully, and with appropriate documentation, all of the matters on which this case was based. Further, Mr Singh and his Firm had acted entirely properly in contacting the affected clients and seeking to resolve with them, and with insurers where relevant, any claims the clients may have had against the Firm. The behaviour of Mr Singh and his Firm was exemplary, and he should be commended for that.

Previous Disciplinary Matters

68. There were no previous matters in which findings had been made against the Respondent.

Mitigation

69. The Respondent had not put forward any mitigation or explanation for his actions.

Sanction

70. The Tribunal had regard to its Guidance Note on Sanction (December 2015) and to all of the facts of the case.
71. The Respondent's misconduct had been repeated over a three-year period. It had caused harm to his clients and to the reputation of the profession. The Respondent had been an experienced solicitor in the field of PI and was aware that he should not falsify documents or mislead his clients. Any matter in which dishonesty was proved was at the highest level of seriousness. Here, there was not simply one instance, but there was conscious impropriety over an extended period of time.
72. The Tribunal noted that the Respondent did not seem to have made any financial gain from his dishonest conduct, save that he had been able to continue working without any threat of dismissal or other impact on his career. His conduct reflected badly on the reputation of the profession.
73. The case law was clear that where dishonesty was found the normal and appropriate sanction was to strike the Respondent off the Roll. The Respondent had not submitted that there were any exceptional circumstances and the Tribunal did not find that there were any exceptional circumstances. In this instance, striking off was the only appropriate sanction and the Respondent would be struck off.

Costs

74. The Applicant made an application for costs in line with an amended schedule of costs dated 4 August 2016 in the total sum of £6,684.58, including supervision costs of £600, enquiry agent's fees of £342.58 and legal costs charged at £130 per hour for the solicitor and counsel engaged in the case.
75. It was submitted that the amount of the claim should be reduced, as the hearing had not lasted for as long as estimated.
76. In response to a comment from the Tribunal, Mr Johal told the Tribunal that he understood the supervision costs were calculated at an hourly rate and they covered all of the steps up until referral to the legal team, including sending the explanation with warning ("EWW") letter.
77. The Tribunal noted the statement of means submitted by the Respondent. The Applicant was not in a position to challenge what was said. It appeared that the Respondent was in receipt of state benefits, from which a significant sum was being paid in rent.
78. The Tribunal considered carefully the amount which could be considered to be the reasonable and proportionate costs of the case. It was clearly the case that the time claimed should be reduced as the hearing would last about 2 hours, rather than the 5

hours which had been estimate. Further, the Tribunal considered that the time spent on documents and in preparation was higher than reasonable, given that much of the work in preparing the case had been done by Mr Singh. In addition, it appeared that the Applicant had claimed for both a hotel and a significant train fare; if the advocate were to travel the day before the hearing and stay in a hotel in London, it would be expected that an off-peak, standard class rail fare would be incurred rather than a train fare of over £170 and a hotel at £190.

79. After reviewing the schedule and the nature of the case, the Tribunal determined that the reasonable and proportionate costs of the case should be assessed at £5,500.
80. The Tribunal then considered the Respondent's means. He was currently unemployed and, of course, would not be able to work as a solicitor. There was no indication that the Respondent had any assets, and his income was limited. In these circumstances, the Tribunal determined that the costs order to be made against the Respondent should not be enforced without the permission of the Tribunal; at the moment, the Respondent appeared completely unable to pay the costs.

Statement of Full Order

81. The Tribunal Ordered that the Respondent, ANDREW CHRISTOPHER AITCHISON, 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 £5,500.00, such costs not to be enforced without permission of the Tribunal.

Dated this 30th day of August 2016
On behalf of the Tribunal

A. G. Gibson
Chairman