SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11550-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MARK SAUNDERS Respondent

Before:

Mr R. Nicholas (in the chair)
Mrs C Evans
Mr R. Slack

Date of Hearing: 18 January 2017

Appearances

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

Mr Robert Smith QC, counsel, of New Park Court Chambers, 16 Park Place, Leeds LS1 2SJ, for the Respondent, who was present.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mark Saunders, made by the SRA in a Rule 5 Statement dated 2 September 2016, were that:

1.1 Between January 2013 and January 2015 he knowingly prepared and signed costs claim forms (Forms LF1 and/or AF1) bearing incorrect dates, for submission to the Legal Services Commission or Legal Aid Agency. He thereby breached both or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

1.2 Between November 2011 and January 2015 he created and sent correspondence which provided untrue information to the Legal Services Commission or Legal Aid Agency, to support claims for payment submitted outside the timeframe permitted by the Firm's Legal Aid Standard Crime Contract. He thereby breached both or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

2. Dishonesty was alleged with respect to the allegations 1.1 and 1.2 but dishonesty was said not to be an essential ingredient to prove the allegation.

Documents

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

Applicant: -

- Application dated 2 September 2016
- Rule 5 Statement, with exhibit "JRL1", dated 2 September 2016
- Applicant's statement of costs as at date of issue (2 September 2016)
- Witness statement of Janet Land dated 19 August 2016
- Witness statement of Neil Connell dated 6 December 2016, with exhibits
- Civil Evidence Act Notice dated 12 December 2016
- Statement of costs dated 10 January 2017
- Copy SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma")
- Copy SRA v Imran [2015] EWHC 2572 (Admin) ("Imran")

Respondent: -

- Respondent's Answer dated 7 October 2016
- Respondent's personal financial statement dated 11 December 2016
- Hearing timetable
- Letter from the Respondent to the Tribunal dated 23 December 2016
- Witness statement of the Respondent (undated)
- Witness statement of Mrs KER Saunders (undated)
- Bundle of 14 testimonials
- Submissions on behalf of the Respondent dated 15 January 2017

Other: -

- Tribunal's standard directions

Preliminary Matter – Terminology

4. The Legal Aid Agency ("LAA") replaced the Legal Services Commission ("LSC") with effect from 1 April 2013. For consistency of terminology within the body of this Judgment the term LAA is used throughout to refer to both the LAA and, where appropriate due to the relevant dates of events, the LSC.

Factual Background

5. The Respondent was born in 1970 and was admitted to the Roll of Solicitors in 1994. As at the date of the Rule 5 Statement, the Respondent remained on the Roll of Solicitors and held a practising certificate free from conditions.

6. At all material times the Respondent was practising as a partner of Singleton Winn Saunders ("the Firm"). SRA records indicated that the Respondent left the Firm on 29 July 2016 and the Firm has recently changed its name as registered with the SRA.

Background to matter and the SRA Investigation

7. At all relevant times the Firm undertook criminal defence work. Under the Firm's Legal Aid Standard Crime Contract, claims for payment on cases had to be submitted to the LAA within three months of the matter or case ending and the claim had to be true and accurate.

8. In April 2015, the Firm dismissed its long serving office manager ("DC") for gross misconduct. In the course of the Firm's investigation into DC, he made allegations against the Respondent.

9. On 29 April 2015, the Firm, through its Compliance Officer for Legal Practice ("COLP"), submitted a report to the SRA of allegations of professional misconduct against the Respondent, regarding late claims for payment from the LAA.

10. The Firm's report attached the allegations that DC made against the Respondent. The Firm sought comment from the Respondent on the allegations raised by DC of backdated claims being submitted with false explanations to the LAA. Other allegations raised by DC were redacted from the Tribunal's papers as they were not relevant to the allegations. The Respondent prepared a spreadsheet in response setting out the relevant late claims and the explanations he had provided at the time to the LAA ("the Spreadsheet").

11. On 30 April 2015, the Respondent himself reported matters to the Applicant, setting out a narrative explanation of events. Within his report he confirmed that he had taken sole responsibility for the billing of criminal cases for all fee earners and admitted that the explanations given to the LAA for late payment claims were incorrect.

12. On 12 January 2016, a formal letter raising allegations was sent to the Respondent by the Applicant.

13. The Respondent responded on 13 January 2016. His response adopted his earlier report to the Applicant of 30 April 2015. Within his response, the Respondent stated that on 29 September 2015 a meeting was held with the LAA when he provided an explanation of the late claims in issue.

14. The LAA provided a copy of an internal file note that was prepared of the meeting on 29 September 2015 ("the LAA meeting note"). The LAA meeting note was not claimed to be a verbatim record or transcript of the whole meeting (which was not recorded), but it recorded explanations given by the Respondent of the correspondence he sent to the LAA; these were consistent with his admissions to the SRA.

15. The Applicant requested further documentation including copy claim applications and IT metadata from the Firm, in accordance with its powers under s.44B of the Solicitors Act 1974 ("the Notices") and further documents were provided by the Firm in response to the Notices.

Allegations 1.1 and 1.2

16. The Respondent identified 19 late claims across 15 files on the Spreadsheet and in his report to the Applicant. These show matters with the following basic information:

Date of issue arising	**No. of files (and claims)**	**Total value**
November 2011	7 files (7 claims)	£7,436.24
January 2013	1 file (2 claims)	£4,466.26
August 2013	2 files (4 claims)	£2,525.93
January 2014	3 files (4 claims)	£3,956.08
January 2015	2 files (2 claims)	£1,455.79

A total amount of £19,840.30 was therefore identified as having been claimed on the relevant files. The matters are set out below in chronological order.

November 2011

17. The Spreadsheet identified that on 28 November 2011 representations were made to the LAA in a letter in relation to claims on seven matters, for a total payment of £7,436.24. In the letter of 28 November 2011 the Respondent stated that:

17.1 "A former member of staff who has now left post has not prepared the claims and submitted them in a timely fashion."

17.2 He was "unaware of the failure"…[which]…"came to light on a recent review of outstanding cases."

17.3 He had "taken personal charge of production of all future claims to ensure no repetition of this kind of delay" and asked the LAA to exercise their discretion to allow payment on the basis that "omission by a former member of staff amounts to exceptional circumstances".

18. The Respondent subsequently admitted in correspondence to the Applicant that he had provided the inaccurate explanation on 28 November 2011 to justify a late submission, stating that this was done "out of panic when I realised that the combined value of the claims was just under £7,500" and that "it would have been more accurate to say that dealing with the aftermath of [problems with a former employee] and my own personal difficulties had caused me to miss the billing deadline".

19. The LAA meeting note records that the Respondent confirmed at the meeting that there was no former member of staff as referred to in his letter, with that being an inaccurate explanation.

January and February 2013

20. The Spreadsheet identified that on 21 January 2013, 20 February 2013 and 27 February 2013 representations were made to the LAA in relation to the file of AM, in relation to a total claim of £4,466.26.

21. The case of AM concluded on 2 April 2012. This was noted in the Spreadsheet and shown in the letter from the Firm to the client of 10 April 2012, confirming the client's sentencing on 2 April 2012.

22. The Firm's file for this matter showed the Form LF1, created in support of the claim for Litigator Fees, was dated 1 May 2012, but signed by the Respondent (on a "re-signed" and "re-dated" basis) on 21 January 2013.

23. The IT metadata provided by the Firm indicated that the Form LF1 was created on 21 January 2013. This accorded with the Respondent's subsequent explanation but not the date entered on the form.

24. The claim forms were submitted on 21 January 2013 under cover of a letter from DC, in which it was claimed that the forms had been previously submitted on 1 May 2012. The LAA replied on 18 February 2013, denying any record of receiving the claim in May 2012 and requesting further evidence.

25. The Respondent subsequently wrote to the LAA specifically on this matter on 20 and 27 February 2013. Amongst other points, the Respondent stated that:

25.1 "[He] personally undertook the preparation of this LF1 claim and… the date of generation of the claim is the date printed on the LF1 form, namely 1 May 2012".

25.2 "It is our practice to submit the claim forms without a covering letter. Our accounts system generates the claim form and automatically populates the date of the claim. Claims are submitted on the date of generation".

25.3 "The evidence of submission is: (i) the writer's confirmation of that fact and (ii) the date of the claim being the date of submission".

25.4 "We are unable to provide you with evidence above the writer's assurance that the claim was submitted that day [i.e. 1 May 2012]".

26. Despite these statements, the evidence available indicated that the LF1 form was created on 21 January 2013 and not 1 May 2012.

27. The Respondent subsequently admitted in correspondence to the Applicant that:

27.1 In January 2013 he discovered a case which had concluded in April 2012 had not been billed;

27.2 When he realised that the claims had not been prepared he "set about preparing the claims on 21 January 2013 and they were submitted with a letter prepared by [DC] in which it was stated that the claims had originally been submitted on 1 May 2013."

28. The LAA meeting note recorded that the Respondent also admitted to the LAA that in relation to the case of AM:

28.1 by the time he "got to grips" with the case it was 7 months out of time;

28.2 he replied to the LAA [when the claim came back], "confirming when it was sent and compounded what DC said in his letter."

August 2013

29. The Spreadsheet identified that on 2 August 2013 representations were made to the LAA in relation to the cases of Mr GF and Mr AD, with total claims of £2,525.93.

30. The cases of Mr GF and Mr AD concluded on 19 April 2013 and 10 April 2013 respectively. This was noted in the Spreadsheet and confirmed in the post sentencing letter to Mr GF of 19 April 2013 and the handwritten attendance note of the Respondent from the file of Mr AD dated 10 April 2013.

31. Both files had potential claims for Litigator and Advocate fees. The relevant forms to claim payment (LF1 and AF1) were all signed by the Respondent and dated 7 June 2013 i.e. within the three-month period. However, the Respondent admitted that he actually produced the claims on 2 August 2013 (when they were outside the three-month period), before then submitting them to the LAA.

32. The claims were sent to the LAA under cover of letters dated 2 August 2013. Both letters enclosed a copy of a letter the Firm received from HM Land Registry dated 10 June 2013 as purported evidence of the forms being prepared earlier but mis-delivered to HM Land Registry. Dating the claim forms 7 June 2013 allowed the claim that they had been misdirected to HM Land Registry to appear more credible.

33. The Respondent subsequently admitted in correspondence to the Applicant that:

- In June 2013 a number of claims sent to the LAA had been misdirected in the DX to HM Land Registry in Nottingham. The claims were returned with a letter from HM Land Registry dated 10 June 2013. At around that time there were two cases (Mr GF and Mr AD) where the three-month period had been exceeded by 15 and 23 days respectively. The Respondent produced the relevant claims on 2 August 2013 and they were submitted to the LAA with a copy of the letter received from HM Land Registry, which "created the impression" that those claims had been returned by HM Land Registry.

- The Respondent stated in correspondence, "On 2 August 2013 four claims relating to two files were submitted using a letter genuinely received from HM Land Registry when other claims had been misdirected and returned to my office. The letter was used to suggest that the present claims had been similarly misdirected and returned. The claims were 14 and 23 days late respectively."

34. The LAA meeting note also recorded that in relation to these matters the Respondent admitted to the LAA that:

- The Mr GF and Mr AD files were out of time but he had used the HM Land Registry letter as an explanation for why the bills on Mr GF and Mr AD were late, but they were not amongst the files that had been mis-delivered to the Land Registry; and

- The letter from HM Land Registry did not specify file names and he used it and copied it to submit the files to the LAA, but those files had not been mis-delivered.

35. The Respondent admitted that although he dated the claims 7 June 2013, he knew that they had not been prepared until 2 August 2013 and they had not been mis-delivered to HM Land Registry, as was purported by his letters to the LAA dated 2 August 2013.

January 2014

36. The Spreadsheet identified that on 27 January 2014 representations were made to the LAA in relation to the cases of Messrs JT, BS and SR, with total claims of £3,956.08.

37. These cases concluded on 9 October 2013, 14 October 2013 and 22 October 2013 respectively. These dates were noted on the Spreadsheet and confirmed by the:

- attendance note of the Respondent dated 9 October 2013 from the file of Mr JT;

- Crown Court attendance sheet of Final Hearing on 14 October 2013 from the file of Mr BS;

- handwritten attendance note of the Respondent from the Final Hearing regarding Mr SR on 22 October 2013.

38. All three files contained claims for payment signed by the Respondent and dated 2 January 2013, i.e. within the three-month claim period. However, the Respondent admitted that the claims were in fact prepared on 27 January 2014, i.e. outside the three-month claim period. The date of 27 January 2014 was also indicated by the IT metadata the Firm provided as the creation date of these claim forms.

39. The claims were submitted on 27 January 2014 under cover of letter from the Respondent. The explanation provided in all the letters by the Respondent for the late submission of the claims was that:

- The claim had been prepared on 2 January 2014 in order that it would be submitted within the three month time limit;
- The claim was handed to a member of staff to submit in the DX but the member of staff went on extended sick leave and the Respondent was unaware that the claim had not in fact been submitted;
- The issue came to light that morning when the member of staff returned to work to explain the situation.

40. The Respondent subsequently admitted in correspondence to the Applicant that:

- The claims were prepared by him on 27 January 2014 and it would have been "more accurate to say that the deadline was missed because of the Christmas period";
- On 27 January 2014 four claims on three files were submitted with a covering letter providing an "inaccurate explanation justifying late submission".

41. In response to the Notices, the Firm's COLP confirmed he was unable to find any information confirming any member of staff was on long term sick leave in January 2014.

42. The LAA meeting note recorded that in relation to these matters the Respondent admitted to the LAA that:

- He prepared the claims on 27 January 2014 and by that stage they were late. The bills were dated earlier to show they were prepared on 2 January 2014 and an explanation was given for late submission that was incorrect;
- His explanation was that he had missed the deadline after the Christmas holiday.

January 2015

43. The Spreadsheet identified that on 12 January 2015 representations were made to the LAA in relation to the cases of Mr WB and Mr FA, with total claims of £1,455.79.

44. These cases concluded on 19 September 2014 and 26 September 2014 respectively. These dates were noted on the Spreadsheet and confirmed by Crown Court Advocacy Records from each file.

45. Both files contained claims for payment (Form AF1) dated 15 December 2014, i.e. within the three-month claim period. However, the Respondent admitted to the Applicant in correspondence that the claims were prepared after the Christmas holiday period (in January 2015). This was then outside the three month claim period.

46. Both claims were submitted by the Respondent on 12 January 2015, but it was claimed in the covering letter that they had been previously submitted on 15 December 2014.

47. The LAA refused the claims on the basis there was no record of receiving the claim on 15 December 2014. The Respondent sent further letters to the LAA on 29 January 2015 claiming the forms had been previously submitted.

48. The Respondent subsequently admitted and confirmed in correspondence to the Applicant that:

- He discovered the error after the Christmas holiday period and prepared both claims which were by then 25 and 18 days overdue. The claims were dated within three months of the conclusion of the case and submitted;

- He subsequently provided confirmation in writing [on 29 January 2015] that the claims had been submitted on the earlier date but "it would have been more accurate to say that these claims had been missed because of the Christmas period";
- The assertion made on 12 January 2015 that the claims had been previously submitted was "inaccurate".

49. The LAA meeting note also recorded that in relation to these matters the Respondent admitted to the LAA that the bill had been "generated and given a date in Dec[ember] when in fact it was Jan[uary]".

Referral to the Tribunal

50. On 17 May 2016 an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

51. As the Respondent admitted all of the allegations, which (as noted below), the Tribunal found proved, no evidence was heard prior to the announcement of the Tribunal's findings. The Tribunal then heard from the Respondent and others in relation to mitigation and the circumstances in which the breaches occurred. As the testimonials were not relied on by the Respondent in relation to the allegation of dishonesty, they were not read by the Tribunal until its findings on the allegations were announced although, with the agreement of the Applicant's advocate, the Tribunal read the witness statements of the Respondent and Mrs Saunders before the hearing began.

The Respondent

52. The Respondent confirmed that the contents of his (undated) witness statement were true to the best of his knowledge, information and belief.

53. The Respondent's evidence included an account of his work history, including his role as a solicitor advocate, with particular experience in Crown Court advocacy and his role as an Assistant Coroner from mid-2013. The Respondent told the Tribunal that he left the Firm on 31 July 2016 and now worked for Crowe Humble Wesencraft, a specialist criminal defence practice, as an assistant solicitor with no management or bill preparation responsibilities.

54. The Respondent told the Tribunal about the circumstances in which Mr DC, the Firm's practice manager, had been suspended in March 2015 when unauthorised withdrawals from office account had been discovered and Mr DC had admitted that he had taken money from the Firm. Mr DC's disciplinary hearing at the Firm had taken place on 8 April 2015. Before that date, the Respondent contacted Mr DC to ask for the return of a back-up hard drive for the Firm's computer system and in the course of that discussion Mr DC had referred to having something to say to the other partners; the Respondent told the Tribunal that he suspected that Mr DC wanted to raise with them the issue of the late Crown Court billing, about which Mr DC was aware.

55. The Respondent told the Tribunal that on 17 April 2015 the Firm had made a report to the Applicant about Mr DC, possibly after taking advice. The Respondent told the Tribunal that he had also taken legal advice. On 29 April 2015 the Firm had made a report to the Applicant about the Respondent and after taking advice the Respondent made his own report to the Applicant on 30 April 2015. The Spreadsheet, setting out the claims involved and the explanations which had been given, had been prepared by about 22 April 2015. The preparation of that document had taken some time, as the Respondent had had to identify the files and claims involved in the period after the suspension of Mr DC on 24 March 2015. The Respondent told the Tribunal that it had taken several days for him to prepare the Spreadsheet around other work commitments.

56. The Respondent confirmed that in his letter to the Applicant of 13 January 2016, which replied to the allegations put to him in a letter of 12 January 2016, he accepted that he had provided misleading information to the LAA and had not informed his partners about the late submissions of claims. The Respondent had denied a further matter put to him by the Applicant, which had not been pursued in these proceedings, concerning the alleged alteration of a document.

57. The Respondent told the Tribunal about the circumstances which led to his misconduct. The Respondent told the Tribunal that his role in the Firm incrementally developed, such that he was dealing with a lot of administration as well as a busy caseload. The Respondent told the Tribunal that he accepted he had not been dealing with the administration properly, but he had not recognised his own limitations. The Respondent told the Tribunal that he was clearly not thinking about what he was doing and the consequences. The Respondent told the Tribunal that he was worried about the Firm. He was responsible for billing and for the Firm's relationship with the LAA, and it would reflect badly on the Firm if claims were late.

58. The Respondent confirmed that he accepted the allegation of dishonesty. When he had submitted the claims for payment with incorrect dates he knew that what he was doing was dishonest by the ordinary standards of reasonable and honest people. The Respondent told the Tribunal that he could not reconcile this conduct with his general conduct as a solicitor. The Respondent told the Tribunal that in his current employment he just carried out casework. The Respondent told the Tribunal that he realised he had made some very bad decisions; he had had too much to do and had not asked for help. Due to his workload in the Crown Court and Magistrates' Courts billing had been carried out in the evenings and at weekends. The Respondent told the Tribunal that certain personal difficulties involving family members had also had an impact on his work. The Respondent told the Tribunal that many claims for payment were submitted every month, and the claims dealt with in these proceedings were the only ones with which there had been any problems.

59. The Respondent told the Tribunal about the investigation carried out by the LAA, which was described in the witness statement of Janet Land of the LAA, and confirmed that no other problems with billing had been found. The LAA had decided to claw back the money paid in relation to the relevant claims from the Firm. The Respondent told the Tribunal that he had reimbursed the Firm for the sums recouped.

60. The Respondent told the Tribunal that there had been no deliberate action by him to secure a financial gain. Rather, the motivation was to obtain revenue which would otherwise be lost to the Firm and the partners.

61. The Respondent told the Tribunal that he had stayed with the Firm until the end of July 2016 but had voluntarily removed himself from the billing process and his other management responsibilities. The Respondent told the Tribunal that his wife, Mrs Saunders, who was also a partner in the Firm carrying out family law work, had found the Respondent's misconduct very embarrassing for her as everyone in the legal community knew what had happened. The Respondent told the Tribunal that when his misconduct came to light he told the Resident Judge at Newcastle of the difficulties he was facing, as he felt he should, and he had not sought to conceal what he had done from the profession. The Respondent told the Tribunal that he was thoroughly ashamed, but it was important to be honest with the people with whom he worked. The Respondent told the Tribunal he had given full disclosure to his present employers of what he had done. He was not involved in practice management in any way. The Respondent told the Tribunal that he had resigned his position as an Assistant Coroner when his misconduct came to light. One of the testimonials provided was from the Senior Coroner for Newcastle, who had known the Respondent for over 20 years.

62. The Respondent told the Tribunal that he recognised that his misconduct was such as would undermine the confidence of the public in him and in the profession.

63. In cross examination, in relation to whether there was any financial benefit to his actions, the Respondent told the Tribunal that he was one of the four partners of the Firm. He had not acted for personal benefit but the Firm needed an income to pay overheads; he was not the only person who would benefit.

64. In response to a question from the Tribunal, the Respondent told the Tribunal that on the date he suspended Mr DC he told his partners about the suspension. Thereafter, when he spoke to Mr DC about returning a back-up drive to the Firm, Mr DC said that he wanted the Respondent and Mrs Saunders to be excluded from the disciplinary process. From what Mr DC said the Respondent concluded that he wanted to tell the other partners about the late bills; this conversation would have been after 24 March and before 8 April 2015. The Respondent told the Tribunal that he wanted the partners to be aware of the issue before Mr DC's disciplinary meeting on 8 April.

65. In response to a further question from the Tribunal, the Respondent told the Tribunal that he had been the Firm's Compliance Officer for Financial Administration ("COFA") and had carried out most of the administration in the Firm. As COFA, he had reviewed the Firm's accounts. He also liaised with the LAA and had input into contract applications e.g. for family work. The Respondent could not say what proportion of his billing to the LAA was late, but he estimated it was a small proportion of the Firm's income. For example, the value of the claims in 2011 was about 25% of the Firm's income for that month. The Respondent confirmed that the four partners of the Firm held equal equity.

(Kathryn Elizabeth) Ruth Saunders

66. Mrs Ruth Saunders, the Respondent's wife, told the Tribunal that she had been a solicitor since 1995 and practised in family law. Mrs Saunders confirmed that the contents of her undated witness statement were true. In that statement, she gave information about her work with the Firm and the Respondent's workload and the impact of his work on family life.

67. Mrs Saunders told the Tribunal that the Respondent had been open and honest with her and with his partners, peers and the LAA. The Respondent was extremely remorseful and had done his utmost to assist the investigations. Mrs Saunders told the Tribunal that the Respondent had not tried to shy away from what he had done. Professionally, the Respondent was now in a better place as he was able to get on with the job he loved; Mrs Saunders told the Tribunal that the Respondent was a great advocate.

68. Mrs Saunders told the Tribunal that from the outset the Respondent had accepted that what he had done was as serious as it gets; he knew what he was facing, and had worked openly and honestly with all involved. Mrs Saunders told the Tribunal that the Respondent was aware that he may not be able to work as a solicitor. Mrs Saunders told the Tribunal that at the time of the relevant events there had been no personal financial pressure on the Respondent, save to make sure that there was an income from the business in order to pay staff and overheads. Mrs Saunders told the Tribunal that she and the Respondent had taken over the Firm in 2005 after it had been through a difficult time but there were no financial pressures on them at the relevant times.

69. There was no cross examination and no questions from the Tribunal.

John Douglas Wesencraft

70. Mr Wesencraft told the Tribunal that he is the senior partner of Crowe Humble Wesencraft ("CHW"), solicitors, who had employed the Respondent since 5 September 2016. Mr Wesencraft told the Tribunal that he had not prepared a witness statement, but there was a statement from his partner Mr Crowe (dated 14 December 2016) which dealt with CHW's decision to employ the Respondent.

71. Mr Wesencraft told the Tribunal that he and his partners were aware of the Respondent's position, as the Respondent had told them and shown them relevant documents. Mr Wesencraft told the Tribunal that CHW employed the Respondent as he was a superb advocate whose work had been impressive since he joined. Mr Wesencraft told the Tribunal that as the Respondent was facing misconduct allegations when he was employed it had not been possible to "build around" the Respondent, as there was a day of reckoning. CHW had put the Respondent in a position where his misconduct could not happen again. The Respondent's role was confined to advocacy and running files, with neither administration nor management duties. Mr Wesencraft told the Tribunal about his firm's procedure for preparing and signing bills, all of which had to be signed by a partner. It was not possible for the Respondent to sanction a final bill on any matter.

72. Mr Wesencraft told the Tribunal that if the Respondent were allowed to continue to practise, with restrictions, CHW would continue to employ him. The firm had taken on the Respondent with its eyes open.

73. Mr Wesencraft told the Tribunal that he found the Respondent to be a man of the utmost integrity, who was willing to take on any work asked; although his primary role was in Crown Court advocacy, he would attend the Magistrates' Courts or police stations as required. Mr Wesencraft told the Tribunal that he could not speak highly enough of the Respondent; he had first come across the Respondent in the mid or late 1990s and had admired the way he had conducted a high profile case. When the opportunity to employ the Respondent came along, Mr Wesencraft was happy to take it, despite the situation with the disciplinary proceedings.

74. There was no cross examination and no questions from the Tribunal.

Brian Hegarty

75. Mr Hegarty told the Tribunal that was a partner at David Gray solicitors in Newcastle, a firm which undertook publicly funded work in crime, mental health and immigration. Mr Hegarty told the Tribunal that the contents of his witness statement concerning the Respondent were true to the best of his knowledge, information and belief.

76. Mr Hegarty told the Tribunal that he had known the Respondent for almost 20 years, after first meeting in the Magistrates' Court. The Respondent had led the way in Newcastle for solicitors appearing in the Crown Court. Mr Hegarty told the Tribunal that all of the legal profession in the Newcastle, Teeside and Tyneside areas knew about the Respondent's misconduct, as the Respondent had been candid about it; nothing heard in the course of the hearing had been a surprise to Mr Hegarty.

77. Mr Hegarty told the Tribunal that he had been aware that the Respondent had undertaken the lions' share of the administration within his Firm. Since these matters came to light, the Respondent had looked crestfallen. Sometimes one might have reservations about a solicitor, but Mr Hegarty had never had any inkling that the Respondent could be involved in misconduct as he was very particular in the way he did things.

78. There was no cross examination and there were no questions from the Tribunal.

Robert Andrew Philip Woodcock QC

79. Mr Woodcock confirmed his professional position, as a QC and a member of the same chambers as Mr Robert Smith QC, and that the contents of his witness statement were true.

80. Mr Woodcock told the Tribunal that he had known the Respondent for about 20 years, having received instructions from him and having prosecuted serious cases in which the Respondent had acted for the defence. Mr Woodcock told the Tribunal that on one occasion he had led the Respondent (who appeared as junior counsel) in the defence of a man accused of murder.

81. Mr Woodcock told the Tribunal that in his opinion, based on many years of observing colleagues, the Respondent's integrity stood him out as remarkable. Whilst not decrying others in the Respondent's profession, integrity was the hallmark of the Respondent. Mr Woodcock told the Tribunal of a particular circumstance in which the Respondent had displayed integrity by refusing to allow that same client to present to Mr Woodcock a version of events which differed from his initial instructions; the Respondent would not let the client take advantage of a dishonest point. Mr Woodcock wondered how many other solicitors would have done the same.

82. Mr Woodcock told the Tribunal that he had seen the Respondent on many occasions in Court and in the robing room at Newcastle. The Respondent's admitted misconduct had an impact on the Respondent; he never pretended that there was not a cloud hanging over him. The Respondent was deeply ashamed of what he had done, and of the ignominy brought onto his wife; the signs of this shame were worn visibly.

83. There was no cross examination, and no questions from the Tribunal.

Other Testimonials

84. The Tribunal also had available and read the written testimonials of three members of the judiciary in the Newcastle area, five barristers, three solicitors and one other involved in legal services (in addition to those who gave oral evidence to the Tribunal).

Findings of Fact and Law

85. 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.

86. The Respondent had made full admissions to the allegations, and did not dispute any of the factual matters relied on by the Applicant.

87. **Allegation 1.1 - Between January 2013 and January 2015 he knowingly prepared and signed costs claim forms (Forms LF1 and/or AF1) bearing incorrect dates, for submission to the Legal Services Commission or Legal Aid Agency. He thereby breached both or alternatively any of Principles 2 and 6 of the SRA Principles 2011.**

Allegation 1.2 - Between November 2011 and January 2015 he created and sent correspondence which provided untrue information to the Legal Services Commission or Legal Aid Agency, to support claims for payment submitted outside the timeframe permitted by the Firm's Legal Aid Standard Crime Contract. He thereby breached both or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

87.1 The factual background to both of these allegations is set out above, in particular at paragraphs 16 to 49.

Applicant's Submissions

87.2 The Respondent accepted and admitted that in relation to 15 Crown Court files, giving rise to 19 claims, he provided inaccurate explanations to the LAA when submitting claims for payment outside the required three month billing period. As set out above, in relation to eight of these files the claims were submitted with claim forms prepared and signed by the Respondent bearing incorrect dates. Although the claim forms were prepared outside the contractual three month billing period, the Respondent dated them so that they appeared to have been prepared within the required three months.

87.3 If faced with a situation where a Legal Aid file had not been billed within the contractual three month period, a solicitor acting with integrity would complete the forms accurately and bearing the correct date. Such a solicitor would then submit the claims with a true and accurate explanation and request that the LAA exercise its discretion to allow payment. The LAA is a government agency paying out taxpayer funds and in those circumstances it would then have true and accurate information on which to base its decisions. Under no circumstances would such a solicitor send correspondence providing untrue explanations for submitting claims late, or date formal claim forms incorrectly so that they appeared to have been prepared and signed at an earlier time.

87.4 The public (including the LAA) are entitled to expect that the paperwork and explanations provided by a solicitor are accurate and true. The Respondent's conduct in providing untrue explanations and preparing and signing forms with incorrect dates, in support of claims for payment, would be regarded as wholly improper by ordinary people and would therefore necessarily tend to undermine the confidence the

public placed in both the solicitor responsible and in the provision of legal services more generally.

Respondent's Submissions on the Allegations

87.5 As set out above, the Respondent responded on 13 January 2016 to the Applicant's formal letter raising allegations. His response of 13 January 2016 adopted his report to the Applicant of 30 April 2015 and confirmed that the earlier report was true to the best of his knowledge. In brief, the Respondent admitted and accepted the factual background to the allegations and that he provided "inaccurate explanations to the LAA". However, he also stated that:

- The matter had been reported to the LAA and on 29 September 2015 he provided them with an explanation of the late claims at a meeting. He stated that the LAA had been satisfied that no other late claims had been found and resolved to recover the value of the claims, but did not terminate the contract.

- He had repaid the money representing the value of the claims to the Firm.

- He had difficult personal and professional circumstances, stress and pressures at the time. These were set out in detail in his letters.

- He accepted that his personal circumstances and pressures did not excuse his conduct but stated that he hoped they underlined his view that his actions were motivated by a desire to ensure that the Firm was paid fees to which it was entitled and was not penalised as a result of his shortcomings.

- He accepted full responsibility but found it impossible to rationalise what he did. Looking back, he did not believe he was in his right mind and was misguidedly trying to look after the Firm's interests.

- He was very ashamed of the way he behaved but at the time his main motivation was to ensure that the Firm was paid for work which had been legitimately carried out, and to which the firm was entitled. On that basis, he did not consider at the time that he was doing anything wrong or acting dishonestly.

- He accepted that his conduct fell short of the standards expected of a solicitor and that he did not behave in a way that maintained the trust the public places in the provision of legal services. He did, however, state that he considered himself to be "an honest solicitor and a person of the utmost integrity".

The Tribunal's Findings

87.6 There was no doubt on the facts and the evidence that the Respondent had knowingly prepared and signed costs claims forms which bore incorrect dates, on occasions in January/February 2013, August 2013, January 2014 and January 2015. Further, on occasions in November 2011, January/February 2013, August 2013, January 2014 and January 2015 the Respondent had created and sent correspondence to the LAA to support claims for payments which provided untrue information. Such actions clearly lacked integrity and would undermine the confidence of the public in the provision of

legal services. Communications from solicitors should be true and accurate, and documents should not be given incorrect dates.

87.7 On the facts, and on the admissions, these allegations were proved to the required standard.

88. **Dishonesty was alleged with respect to the allegations 1.1 and 1.2 but dishonesty was said not to be an essential ingredient to prove the allegation.**

88.1 This allegation, the factual background to which is set out at paragraphs 16 to 49 above, was admitted by the Respondent.

Applicant's Submissions

88.2 The Applicant submitted that the Respondent knew, in November 2011, that the explanation he submitted to the LAA at that time was untrue. Further, when the Respondent prepared the claim on 21 January 2013 he knew that the matter had not been billed. He therefore knew that the claim had not been submitted to the LAA on 1 May 2012 when he completed and signed the LF1 form and when he wrote to the LAA on 20 and 27 February 2013. When the Respondent prepared claims which he dated 7 June 2013, he knew they had not been prepared on that date and that they had not been mis-delivered to HM Land Registry, as purported by his letters to the LAA dated 2 August 2013. The Respondent created and prepared claim forms on 27 January 2014, but knowingly dated them 2 January 2014 and wrote on 27 January 2014 to the LAA claiming they had been prepared on 2 January 2014. The Respondent prepared claim forms on 12 January 2015, but knowingly dated them 15 December 2014. In a covering letter to the LAA supporting the claim, the Respondent also asserted that the claims had been prepared on 15 December 2014, knowing that this was untrue.

88.3 The Applicant submitted that the Respondent's actions were dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude") as applying in the context of solicitors disciplinary proceedings the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 ("Twinsectra") : the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.

88.4 In preparing and signing claim forms (LF1 and/or AF1) bearing incorrect dates so that they appeared to have been created within the 3 month claim period, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

88.5 In providing untrue explanations to the LAA for the late submission of payment claims, in support of claims for payment, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

88.6 Not only was his conduct in preparing incorrectly dated claim forms and providing untrue explanations dishonest by the ordinary standards of reasonable and honest people, he must also have been aware that it was dishonest by those standards for reasons including the following:-

- At all relevant times he was an experienced solicitor, having been a partner in the Firm since July 2005;

- He was engaged in formal correspondence and certifying claim forms designed to procure payment of taxpayers' monies, in the context of a formal contract with the LAA;

- He must have understood the need to be accurate and truthful in his correspondence and signed declarations;

- There were multiple claims at five distinct periods of time;

- The actions must have been deliberate as they involved preparing detailed claim forms bearing incorrect dates and providing untrue explanations (on the same day or shortly afterwards) for why the claims had not been submitted and/or received by the LAA previously.

Respondent's Submissions

88.7 The Respondent explicitly accepted and admitted that his conduct had been dishonest in accordance with the combined test in Bultitude and Twinsectra.

The Tribunal's Findings

88.8 The Tribunal was satisfied to the required standard, on the facts and on the admissions, that this allegation had been proved, for the reasons advanced by the Applicant.

Previous Disciplinary Matters

89. There were no previous disciplinary matters recorded against the Respondent.

Mitigation

90. Mr Smith presented mitigation on behalf of the Respondent, including referring to the bundle of testimonials and the oral evidence heard from character witnesses, as noted above. Mr Smith also referred to his written submissions with regard to sanction.

91. Mr Smith acknowledged that the authorities of Sharma and Imran indicated that the normal and necessary penalty where there was a finding of dishonesty was striking off, but that there was a small residual category of cases in which that sanction would be disproportionate. It was submitted that in considering whether a case fell into the category of exceptional cases, the Tribunal had to consider the facts of the particular case, including the degree of culpability and the extent of the dishonesty; this would enable the Tribunal to assess the seriousness of the misconduct.

92. Mr Smith acknowledged that the Respondent's misconduct occurred on five separate occasions in a period of just over three years. It was submitted that on one view, this could be seen as an aggravating feature, in contrast to a situation in which there was an isolated event. The Applicant had conceded that this was not a case in which there

was a "course of conduct". It was submitted that the Respondent's misconduct was not planned, nor was it spontaneous; the Respondent had not planned to deceive the LAA.

93. In November 2011 the Respondent had submitted 7 claims for payment out of time, with correspondence which was capable of misleading the LAA. There was no decision by the Respondent that he would repeat that misconduct on a later occasion. However, there were four later occasions on which the Respondent realised the claims for payment were out of time and he resorted to the same misconduct.

94. Mr Smith submitted that the issue for the Tribunal to consider was not whether there had been some financial benefit to the Respondent, but what his motivation for the misconduct had been. The Tribunal had heard from the Respondent and it was submitted that from that evidence, the Tribunal could find that the Respondent was motivated by the following:

94.1 He recognised that he had let down the Firm by failing to process the claims for payment promptly;

94.2 He wanted the Firm to be paid for the work it had done;

94.3 He did not want the LAA to conclude that the Firm was "in a mess", as that might damage the relationship between the Firm and the LAA; and

94.4 He was trying to preserve his professional reputation under an extreme professional workload and factors in his personal life, including the illness and death of a close family member.

95. Mr Smith submitted that on one view, any solicitor acting as the Respondent did would be guilty of serious misconduct. However, the Tribunal could consider the other types of dishonesty in other cases it heard, involving misuse of client money, misappropriation and misrepresentations to obtain unearned financial benefits. This case, it was submitted, could be distinguished.

96. Mr Smith submitted that the Respondent was a thoroughly decent, hard-working solicitor, with integrity, who had the support of colleagues and the judiciary. Whilst public confidence in the profession was affected, the Tribunal should consider whether the Respondent's misconduct was so serious as to justify striking him off the roll, when he had so much to offer.

97. Mr Smith confirmed that the Respondent had a previously unblemished career. He had made full and frank admissions to his partners immediately and there had been no cover up. The Tribunal may want to consider that the Respondent knew that Mr DC knew about the backdated claims, but this did not deter him from suspending Mr DC immediately. As the Firm's email to the Applicant of 29 April 2015 made clear, Mr DC tried to dissuade the Firm from reporting him to the police by threatening to disclose the Respondent's billing activities.

98. Mr Smith referred to the investigation carried out by the LAA. This thorough investigation, including a meeting on 29 September 2015, included an examination of files. There was positive evidence from the LAA that the Respondent's admitted misconduct was the full extent of the misconduct. The LAA had issued the Firm with a contract notice, permitting the Firm's contract to continue on the condition there was no repetition. The LAA had thanked the Respondent for his candour. All of the monies which had been paid by the LAA in respect of the late claims had been repaid to the LAA by the Firm, and the Respondent had reimbursed the Firm.

99. The Tribunal was referred to the Firm's confirmation, in its report to the Applicant, that the Respondent had had sole responsibility for billing publicly funded matters. It was submitted that the Respondent had been working 7 days per week, including working late, and this had affected his judgement. Lawyers often worked long hours, because of the pressure of work.

100. Mr Smith submitted that, as acknowledged by Mr Bullock in opening the case, the Respondent had been entirely co-operative with the Applicant in the investigation and in these proceedings. The testimonials from judges – including the Resident Judge at Newcastle - and legal professionals, in full knowledge of what the Respondent had done, spoke highly of the Respondent. It was submitted that the Respondent had considerable insight into his wrongdoing, and was prepared to take the consequences. The Respondent was ashamed of his conduct.

101. Mr Smith told the Tribunal that the Respondent had left the Firm 15 months after he had self-reported to the Applicant. No restrictions had been placed on his Practising Certificate, and the Respondent had voluntarily confined himself to carrying out advocacy. Although Mr Wesencraft had given evidence that there was no risk of any repetition the public perception required that the Respondent should not be involved in billing.

102. Mr Smith submitted that the Respondent had been waiting for resolution of this matter for two years. In that period, no-one could have expected a higher standard of response than that shown by the Respondent. The Respondent had continued to work hard and had impressed his colleagues. He had attended the Tribunal and had given evidence. Mr Smith submitted that there was no risk of repetition of the misconduct. The Respondent had shown insight, including by placing voluntary limitations on his work, so that he was under less pressure.

103. Mr Smith submitted that the Tribunal should consider whether the seriousness of the Respondent's conduct was such that he should be struck off the Roll. The Tribunal was invited to find as a fact that this was one of the residual category of cases in which there were exceptional circumstances, and that there were powerful mitigating factors. Mr Smith submitted that it was in the public interest that there should be solicitors of the diligence and skill of the Respondent.

104. Mr Smith invited the Tribunal to make a restriction order against the Respondent so as to confine him indefinitely to working as a criminal advocate, with no responsibility for billing or practice management. If appropriate, the Respondent could in due course apply to lift the conditions. This would enable the Tribunal to control the circumstances in which the Respondent could work in the legal profession, in

circumstances where there was no risk of repetition. Mr Smith acknowledged that he was inviting the Tribunal to adopt an exceptional course but that in this case alternative sanctions were appropriate.

Sanction

105. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the submissions of the parties.

106. This was a case in which allegations of dishonesty had been admitted and found proved. The Tribunal noted that in the Sharma case, it was stated (at paragraph 13) by Coulson J, that the following points of principle could be identified from the authorities:

> "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll… That is the normal and necessary penalty in cases of dishonesty…
>
> (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances...
>
> (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time…; whether it was a benefit to the solicitor… and whether it had an adverse effect on others."

107. Coulson J went on to state, in relation to whether a distinction should be drawn between cases involving the appropriate of clients' money and other cases,

> "It does not seem to me that this distinction is borne out in the authorities to which I had referred. It seems to me that it is the nature, scope and extent of the dishonesty itself that matters. Questions as to financial loss may however be relevant in considering whether a particular case falls within or outside the exceptional category to which the authorities refer."

108. Further, in Imran, Dove J stated,

> "… the question of exceptional circumstances is in truth the other side of the coin of there being a small residual category of those cases which involve a finding of dishonesty but where striking off is not the appropriate remedy. In other words, that small residual category will be those where there are exceptional circumstances…"

At paragraph 24 of the judgment, Dove J went on to state,

> "Clearly, at the heart of any assessment of exceptional circumstances, and the factor which is bound to carry the most significant weight in that assessment, is an understanding of the degree of culpability and the extent of the dishonesty which occurred. That is not only because it is of interest in and of

> itself in relation to sanction but also because it will have a very important bearing upon the assessment of the impact on the reputation of the profession which Sir Thomas Bingham MR (as he then was) in Bolton identified as being the bedrock of the tribunal's jurisdiction…"

109. As noted in the Tribunal's Guidance Note on Sanction, the case of Bolton v The Law Society [1994] 1 WLR 512, set out the fundamental principles and purpose of sanctions by the Tribunal, as follows:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal."
>
> "… a penalty may be visited on a solicitor… in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way…"
>
> "… to be sure that the offender does not have the opportunity to repeat the offence; and…"
>
> "… the fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth… a member of the public… is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole professional, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires".

Further, it was stated,

> "…It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again… All these matters are relevant and should be considered. But none of them touches the essential issue, which is to the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness… The reputation of the profession is more important than the fortunes of any individual member…"

110. It was against this background of case law and the Tribunal's own Guidance Note that the Tribunal considered the question of sanction in this matter, having heard the submissions of the parties, which the Tribunal had found helpful. In short, unless the Tribunal found that there were exceptional circumstances, the normal penalty would be a striking off order. Dishonesty was so serious that neither a reprimand nor fine could be considered appropriate sanctions, but the other options were considered by

the Tribunal, including the proposal made by Mr Smith with regard to a restriction order.

111. In addition to the oral submissions, noted above at paragraphs 90 to 104, the Tribunal read and considered the Respondent's written submissions in which the following points were submitted:

111.1 The Respondent had a previously unblemished career;

111.2 The Respondent had made full and frank admissions of his misconduct immediately;

111.3 The LAA investigation concluded that there had been no further misconduct, other than the matters recounted in these proceedings;

111.4 The monies in question were all repaid to the LAA;

111.5 The circumstances in which the misconduct occurred involved considerable personal stress and a very substantial professional workload;

111.6 The Respondent had been entirely and completely co-operative with the LAA and the Applicant.

112. The Tribunal appreciated the input of the character witnesses who had given evidence on behalf of the Respondent, both in person and in writing. The Tribunal was struck in particular by the description by Mr Woodcock QC of the Respondent as someone whose integrity stood out as remarkable. The quality of the references was extremely high, and spoke well of the Respondent's ability and integrity.

113. The factors noted above were considered carefully by the Tribunal in determining whether or not there were any exceptional circumstances in this case, such that the usual penalty should not be imposed. In assessing the seriousness of the misconduct, the Tribunal considered the Respondent's level of culpability for the misconduct, the harm caused, the existence of any aggravating and any mitigating factors and then whether the Respondent's personal mitigation had a bearing on the severity of the sanction.

114. The Tribunal noted the explanation given by the Respondent for backdating claims and submitting inaccurate correspondence in support of the claims. The Tribunal found that whilst not wholly driven by a desire for personal financial benefit, the monies claimed after the deadlines were not insignificant. Although the total sums over the three year period (£19,840.30) were a small proportion of the Firm's income, and there were no particular financial pressures on the Firm, nevertheless the sums obtained were needed by the Firm to pay overheads and provide an income for the partners. As matters transpired, Mr DC had been taking money from the Firm, which meant it was in a worse position than it should have been. The Tribunal found that the Respondent and his wife owned 50% of the equity in the Firm between them, so the Respondent and his family initially benefitted from the payments received from the LAA. The Tribunal found that the Respondent was motivated by a desire to obtain payment for work which had been properly carried out by the Firm; this was not an attempt to obtain monies which had not been earned.

115. The Respondent's actions on the five occasions were neither planned nor spontaneous. The Tribunal found that the Respondent did not set about creating a scheme to obtain payments improperly, but the incidents were not isolated. Crucially, there was time to reflect between each incident. The Respondent could have chosen to "write off" the value of the work done, where claims were late, or submit the claims with a proper and true explanation, with an invitation to the LAA to exercise discretion to approve payments. The Respondent did not suggest in his evidence that on other occasions he had taken either of these courses of action; rather, the submission of claims on an improper basis appeared to be the modus operandi which he adopted on the five occasions in question which, so far as the Tribunal was aware, were the only five occasions on which claims had been late.

116. The Respondent was trusted by his partners and the LAA to make accurate and proper claims, in accordance with the contract between the Firm and the LAA. On the five separate occasions relevant to this case, the Respondent had breached that trust. Further, the Respondent had direct control of and responsibility over the circumstances in which the misconduct had occurred. He had caused the bills to be prepared and the claims made, even if others (such as Mr DC) had had some involvement. The Tribunal noted with concern that in relation to the claims made in January 2013, the Respondent not only suggested the claims had previously been made in May 2012 (in a letter which was in the name of Mr DC) but then wrote in his own name, on two occasions (20 February and 27 February 2013), reiterating that he had personally prepared the claims on 1 May 2012; this was not true, and the Respondent knew when he wrote both letters that it was untrue. The Respondent's persistence in pursuing payment compounded the initial deception of the LAA

117. At the time of each incident of misconduct, the Respondent was an experienced solicitor, having been admitted in 1994 and having been a partner in the Firm since about 2005. When the misconduct came to light, in April 2015, the Respondent was extremely candid and open with his regulator and his partners; there was no attempt to mislead anyone about what had happened.

118. In assessing the harm caused, the Tribunal noted that members of the legal profession in the north east, including judges, did not appear to be particularly troubled by what the Respondent had done. It was clear that the Respondent remained highly-regarded; indeed, he appeared to be someone whom other solicitors regarded as a credit to the profession. The Tribunal also noted and took into account the fact that the Respondent was submitting claims for work which had actually and properly been done, and for which the LAA would have budgeted. There had been no loss to the public purse as, initially, the Firm had been paid for work it had carried out – albeit by means of improper submission of the claims – and the Firm had repaid the monies to the LAA (and, in turn, had been reimbursed by the Respondent).

119. The main harm caused was to the reputation of the profession. The LAA had rules in place concerning when and how costs claims should be submitted. It was of fundamental importance that costs claims should not only properly reflect the work done – as was the case here – but should be submitted either within the relevant time limit or with a true explanation of why the claim was late, so that the LAA could assess whether or not to make a discretionary payment. Solicitors acting honestly may well have missed out on payments under the LAA scheme; it was unfair on the

profession generally that the Respondent and his Firm should receive payments because of his dishonesty when honest solicitors may not have done so. The Respondent had put himself in a better position than others whose claims may have been late due to work or personal pressures.

120. The Tribunal concluded that the Respondent had not intended any harm, either financial or to the reputation of the profession, but he could have reasonably foreseen that there would be harm to the profession in submitting untrue explanations for late claims.

121. Aggravating factors clearly included the dishonesty involved. On each of the five occasions, the Respondent's actions were deliberate rather than accidental; he created documents and letters which were misleading. The misconduct continued in the period November 2011 to January 2015, a period of about three years two months. The misconduct was concealed throughout that period. The Respondent knew that his conduct was in material breach of his obligation to protect the reputation of the legal profession. The Respondent had no previous disciplinary history, and the direct impact on the public or public funds was minimal.

122. Relevant mitigating factors included the fact that the Respondent had made good the loss. The deception by Mr DC, which had weakened the Firm's financial position, was a background factor but of course was not known about until March 2015. The Respondent had voluntarily notified the Applicant of what he had done, and provided full information (including in the form of the Spreadsheet), when matters came to light.

123. The Tribunal noted and found that the Respondent had shown genuine insight into his misconduct, having heard his evidence. He had made open and frank admissions at an early stage and had shown a high degree of co-operation with the Applicant and with the LAA. The Respondent had shown recognition of the likely outcome of his misconduct. However, the Tribunal noted that the Respondent had not spontaneously informed his wife and his partners about his misconduct but had done so when he realised that Mr DC was about to accuse him of misconduct. From that point on he had been completely candid with the Applicant, the LAA and colleagues.

124. The Tribunal noted the impressive testimonials provided for the Respondent, from which it was clear that striking off the Respondent would result in a loss of capacity in the profession in the north east criminal defence community. There was no doubt that the Respondent had an impressive track record in advocacy. Of course, not all solicitors worked in high profile fields and could command such respect from other lawyers. Whilst the testimonials had to be taken into account in determining the proportionate sanction, they could not be determinative.

125. The Tribunal considered whether the restriction order proposed by Mr Smith might be appropriate but determined it could only be the right sanction if there were exceptional circumstances in the case. It had been impressed by Mr Smith's submissions. However, none of the factors noted at paragraph 111 above were exceptional, either individually or collectively. Most solicitors had an unblemished professional history. Many solicitors, sadly, worked under conditions of professional and personal stress; there was nothing exceptional in the circumstances outlined by

the Respondent. Whilst his co-operation with the Applicant was at the highest level, he had made full admissions and made good any financial loss, the Respondent had not confessed to his misconduct until he realised it was about to be revealed by Mr DC. There was nothing exceptional in the circumstances of the dishonesty itself, which had occurred on five occasions, where there had been the opportunity to reflect on the misconduct and resolve not to do it again.

126. The Tribunal was bound by the case law referred to above. It had considered with great care whether there were exceptional circumstances in this case but could not find anything so exceptional (in accordance with the said case law) that would justify any lesser sanction than striking off the Roll. The Tribunal noted in particular that whilst the effect of striking off might be sad for the Respondent, the fortunes of an individual member of the profession were less important than the reputation of the profession as a whole; it was vital that the solicitors' profession should be one whose members could be trusted to the ends of the earth.

127. In all of the circumstances of this case, the most appropriate and proportionate sanction was to order the Respondent to be struck off the Roll.

Costs

128. The Tribunal was informed that the parties had agreed costs in the sum claimed by the Applicant on the schedule of costs dated 10 January 2017.

129. The Tribunal noted that the total of costs claimed was £7,342.30 inclusive of disbursements (travel and accommodation). The Tribunal noted that the charging rate at which costs were claimed (£130 per hour) was reasonable for work of this type, and the time spent was reasonable. The Respondent's co-operative approach to the proceedings had enabled costs to be kept within very reasonable bounds, and the Tribunal was content to order costs in the agreed sum.

Statement of Full Order

130. The Tribunal Ordered that the Respondent, Mark Saunders, 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 £7,342.30.

Dated this 2nd day of February 2017
On behalf of the Tribunal

R. Nicholas
Chairman