SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11567-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SYED TAUSEEF RIZVI Respondent

Before:

Mr A. Ghosh (in the chair)
Mr H. Sharkett
Mrs S. Gordon

Date of Hearing: 25 April 2017

Appearances

Mr Shaun Moran, solicitor advocate, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Syed Tauseef Rizvi, appeared and represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Syed Tauseef Rizvi, made in a Rule 5 Statement dated 20 October 2016, and as amended with the permission of the Tribunal, were that the Respondent:

1.1 provided the Court and his opponent in litigation with four pieces of correspondence and a witness statement signed by him with a statement of truth dated 4 March 2014, stating that he had served his client's Defence on the matter of *W v MOJ* on 13 November 2013 when this was untrue, in breach of all or alternatively any of Principles 1, 2, 4 and 6 of the SRA Principles 2011 ("the 2011 Principles");

1.2 on dates not known to the Applicant, but reasonably believed to be between 9 December 2013 and 4 March 2014, he created and backdated one letter to the Court and one letter to his opponent in litigation, purportedly dated 13 November 2013, and thereby breached all or alternatively any of Principles 2, 4 and 6 of the 2011 Principles;

1.3 in or around December 2013 and February 2014, asked his client representative to backdate a Defence, to be filed at Court and served upon his opponent in litigation, to conceal the fact that he had not filed and served his client's Defence in time, and in order to resist the Claimant's request to the Court for Judgment in Default, in breach of all or alternatively any of Principles 1, 2, 4, 5 and 6 of the 2011 Principles;

1.4 failed to file and serve a Defence on behalf of his client, the Ministry of Justice ("MOJ"), by 20 November 2013 and failed to report the fact that he had missed the deadline to the Treasury Solicitor's Department ("TSol") in breach of all or alternatively any of Principles 4 and 5 of the 2011 Principles.

2. In relation to the allegations 1.1 to 1.3, it was further alleged that the Respondent's conduct was dishonest. However, dishonesty was not an essential ingredient of the allegations against him.

Documents

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

Applicant: -

- Application dated 20 October 2016
- Rule 5 Statement, with exhibit "AHJW1", dated 20 October 2016
- Witness statement of Sarah Goom, with exhibit, dated 10 March 2017
- Witness statement of Elizabeth Ferrier, with exhibit, dated 8 March 2017
- Witness statement of Anna Milton, dated 9 March 2017
- Witness statement of Margaret McNally, dated 2 March 2017
- Witness statement of Colin Thomann, with exhibit, dated 8 March 2017
- Witness statement of Steven Winfield, with exhibit, dated 2 March 2017
- Schedule of costs dated 12 April 2017

Respondent: -

- Answer to the Rule 5 Statement (undated, but received at the Tribunal on 24 November 2016)
- Respondent's witness statement, with two exhibits, dated 25 March 2017
- Financial statement and covering letter
- Testimonial (in addition to those exhibited to the witness statement)
- Copy email Slater and Gordon to Applicant, dated 10 October 2016

Other: -

- Tribunal's standard directions dated 25 October 2016
- Memorandum of Case Management Hearing 2 December 2016
- Variation to directions order dated 14 March 2017

Preliminary Matter (1) – Application to amend an allegation

4. Mr Moran made an application to amend the Rule 5 Statement, by removing references to breaches of Principles 2 and 6 in allegation 1.4. Mr Moran submitted that at the date the Rule 5 Statement was made, it was not clear what the Respondent would say in relation to that allegation and, in particular, whether his actions were deliberate or not. In his Answer, the Respondent had partly admitted the allegation, but had denied he had breached Principles 2 and/or 6 as he had made a genuine mistake in missing the relevant deadline. The Respondent's position – which was now accepted by the Applicant – was that whilst he had failed to act in the best interests of his clients and provide a proper standard of service in missing the deadline, he had not acted without integrity or in a way which would undermine trust in the profession. Mr Moran submitted that as the Respondent had admitted all of the other allegations, it was proportionate to allow the amendment, along with the withdrawal of the allegation of dishonesty which had been made in connection with allegation 1.4.

5. The Respondent confirmed that he agreed to the amendment and had admitted all of the other allegations. The basis of the Respondent's admissions was discussed – for which, see below.

6. The Tribunal determined that in the circumstances of the case, and in the light of the Respondent's admissions to other matters, it was appropriate and proportionate to allow the amendment requested.

Preliminary Matter (2) – Basis of Respondent's Admissions

7. The Tribunal noted that in his written Answer, the Respondent had admitted all of the allegations (save for those withdrawn, as set out above). The Tribunal noted that the Respondent was not represented in these proceedings and wanted to be certain that the Respondent's admissions were unequivocal, and made with a full understanding of the allegations, the law and the consequences of those admissions.

8. In response to questions from the Tribunal, the Respondent confirmed that he understood the test in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra"). However, he told the Tribunal that he was not familiar with the case of SRA v Sharma [2010] EWHC 2022 (Admin) ("Sharma").

9. The Tribunal noted that in his Answer, the Respondent had stated, "I am aware from case law that the Tribunal may consider imposing a removal from the Roll for those who have accepted dishonesty." The Chair drew to the Respondent's attention paragraph 13 of Sharma, in which it is stated 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."

The Tribunal expressed concern that in his witness statement the Respondent had made a comment about sanction which indicated that he may not have understood fully the implications of his admission of dishonesty, namely that unless exceptional circumstances were established, the sanction in cases of proven dishonesty was that the solicitor would be struck off the Roll.

10. The Respondent told the Tribunal that he had received legal advice from Richard Nelson LLP, a firm which deals with regulatory matters, before he made his admissions.

11. The Respondent also stated that he understood that his actions would be viewed as dishonest by the ordinary standards of reasonable and honest people and that he realised at the time that his actions would be regarded as dishonest by those same standards. The Respondent confirmed that he was aware there was a distinction between admitting facts and admitting allegations; save for one minor point in the Applicant's evidence, concerning a telephone call, he admitted all of the facts and the allegations as now framed. With regard to the unadmitted fact, the Respondent told the Tribunal that he could not recall a telephone conversation, so he could neither admit nor deny that it had taken place as described in one of the Applicant's witness statements.

12. The Tribunal considered these submissions in determining the allegations.

Factual Background

13. The Respondent was born in 1981 and was admitted to the Roll of Solicitors in 2008. He held a current practising certificate at the date of the Rule 5 Statement. At the date of the hearing, the Respondent's practising certificate was subject to conditions, including that he could not work as a solicitor other than in employment approved in advance by the Applicant, could not act as a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA"), and could not be the owner or manager of a legal practice.

14. At the time of the alleged misconduct, the Respondent practised as a solicitor on a temporary contract in the Private Law Division at TSol, the Treasury Solicitor's Department. TSol has since changed its name to the Government Legal Department ("GLD"). The Respondent had been recruited to work at TSol as a solicitor on a temporary contract through Capita.

15. The Respondent worked at TSol from January 2013 to 28 March 2014. In his capacity as a solicitor, he was regulated by the Applicant.

Background

16. On 3 April 2013, Ms Sarah Goom ("Ms Goom"), Head of the Private Law Division at TSol, sent a report to the Applicant regarding the Respondent's conduct in relation to a MOJ claim of which he had had conduct, *W v MOJ.*

17. In her report, Ms Goom stated that it appeared to her that the Respondent had "falsified statements of truth in documents served on the court," and had "knowingly made untrue statements in a witness statement." It also stated that he had "persuaded his client, an employee of the National Offender Management Service, to sign a statement of truth backdated several months."

18. Ms Goom stated that she had carried out a preliminary investigation, which had involved her talking to the client and to Counsel.

19. A number of issues were noted during the Applicant's review of the documents, which are set out below.

W v MOJ

20. In his position as a solicitor on a temporary contract in the Private Law Division at TSol, the Respondent had conduct of the matter of *W v MOJ.* The matter concerned a claim by an individual who, at the time of the incident in respect of which the claim was brought against the MOJ, was a serving prisoner. It was understood that this case was one of the 80 cases making up the Respondent's total caseload.

21. The Claim Form and Particulars of Claim were served on 9 October 2013.

22. The Defence was due to be served by 6 November 2013. According to Ms Goom's report, the Respondent requested a 14-day extension for the filing and serving of the

Defence and the Claimant agreed that the Defence could be filed and served by 20 November 2013.

23. By 9 December 2013, neither the Court nor the Claimant's solicitor had received the Defence and on the same date the Claimant's solicitor filed a Request for Judgment in Default. The Request for Judgment in Default was served on the Respondent on 9 December 2013.

24. The Respondent sent an email to the Bristol County Court entitled, "3YM02828 - Further copy of Defence attached - URGENT" which attached a letter dated 10 December 2013, and enclosed a letter dated the 13 November 2013 and a Defence.

25. The letter of 10 December 2013 stated,

> "I have just received a letter from the Claimant Solicitor's stating that you have not received our Defence. We are surprised by this given that the Defence was served on the 13 November 2013. We attach a copy of the Defence and letter for the Court's consideration.
> A copy of this has been served on the Claimant's solicitor.
> Yours faithfully
> Syed Rizvi."

26. The date of the Statement of Truth on the Defence document appeared to have been redacted.

27. On 16 December 2013 the Bristol County Court ordered judgment for the Claimant. The parties to the action were notified of the Default Judgement on 13 January 2014. The Respondent filed an application to set aside the Default Judgment. According to Ms Goom's report, "the application was accompanied by a further copy of the Defence and the Statement of Truth, which again appeared to have the date redacted."

28. The Respondent sent a letter dated 25 February 2014 (sic) to the Claimant's solicitors enclosing a copy of a letter to the Court dated 26 February 2014.

29. In the letter to the Court, the Respondent stated,

> "We can confirm that the date below the statement of truth was not redacted. We find this accusation unmeritorious and deeply concerning. The court has listed the matter for a hearing on 6 March 2014 for judgement to be set aside. We do not propose to enter into lengthy correspondence on this matter."

30. The letter went on to say,

> "The Defendant maintains that the Defence was dated 13 November 2013 and filed at Court on even date by document exchange. A further copy of the Defence was filed and served. The Defendant even enclosed a copy of the letter that the Defendant had used by way of a covering letter to confirm that the Defence was served on 13 November."

31. In his letter to the Court, the Respondent suggested that one of the reasons as to why the Claimant had taken issue with the date on which the Defence was filed and served was to "raise superfluous points repeatedly" and the Respondent suggested that it was "a desperate attempt to obtain judgement without addressing the substantive issue..."

32. Ms Goom's report indicated that, on the 27 February 2014, the Claimant's solicitor made a statement to Court "setting out the above chronology and inviting the Court to reach a decision as to whether the defendant's Statement of Truth had been redacted."

33. The Respondent produced a witness statement in response. The witness statement contained a statement of truth, was signed by the Respondent and dated 4 March 2014. In his statement, the Respondent said, "The Defendant did in fact serve the defence on 13 November 2013, and thus well before the expiry of the period for doing so on 20 November." He went on to say, "I can confirm...that I served the defence on the Defendant by post on 13 November 2013" and "I reiterated...that there had been no attempt on the Defendant's part to redact the date of the statement of truth on the Defence."

34. Attached to the Respondent's witness statement were copies of two letters which the Respondent had sent to the Claimant's solicitors referring to the Defence having already been served.

35. In his letter to the Claimant's solicitors dated 18 December 2013, the Respondent said, "Please note that the Defence was served by DX on 13 November 2013. A copy of the letter is attached."

36. As an exhibit to the Respondent's witness statement, there appeared a letter to the Claimant's solicitors, at the following address: Stephensons Solicitors, 10-14 Library Street, Wigan, WN1 1NN. The body of the letter said,

> "Please find attached a copy of the Defence.
> The same was served on Court on even date.
> Yours faithfully
> Syed Rizvi
> For the Treasury Solicitor."

37. At a hearing before Deputy District Judge W Brown sitting at Bristol County Court on 6 March 2014, the judgment was set aside. The Judge made an order for the Defendant's solicitor to file and serve a further witness statement to cover the difference in the three versions of the statement of truth, the redacted version, the version dated the 13 November 2013 and the version dated the 10 December 2013, by the 3 April 2014.

38. Further to the Order of the Court, Ms Elizabeth Jane Ferrier ("Ms Ferrier"), who was the Respondent's Line Manager at the time of the alleged misconduct, filed and served a witness statement with a statement of truth dated the 16 April 2014 attaching three exhibits.

39. In her statement, Ms Ferrier stated that, since 31 March 2014, she had: looked at the electronic and paper file in relation to the case, searched the office case management system known as "CMS," and carried out a search of the office shared G drive and the Respondent's email inbox and had, "been unable to establish in that search that a letter of 13 November 2013 was created and sent to either the Court or the Claimant's solicitors on that date."

40. Ms Ferrier further stated that she had contacted the Respondent by telephone on Tuesday 1 April 2014 in order to ask him whether there were, in existence, any copies of the letters of 13 November 2013 in either his G drive or his F drive folders. Ms Ferrier stated that the Respondent told her that there were no such copies and that the reason for that was because the case management system had not allowed him to save the letters when he had generated them on 13 November 2013, and so he had retyped them, using file copies as templates.

41. Ms Ferrier also stated that she had contacted Mr Winfield, the person who had been authorised to sign the Defence on behalf of the MOJ, on 2 and 4 April 2014, to find out what had occurred.

42. Ms Ferrier's notes from her telephone conversations with Mr Winfield were exhibited to her witness statement and she set out in her statement a summary of the information she obtained from him.

43. It was recorded that Mr Winfield told Ms Ferrier that, "he was not asked to sign nor did he sign the Defence in November 2013" but was asked by the Respondent to sign the Defence by email dated 10 December 2013, timed at 12:03.

44. Ms Ferrier discovered that, once he had signed and dated the Defence on 10 December 2013, Mr Winfield returned it to the Respondent attached to an email timed at 15:27. In his e-mail to the Respondent, Mr Winfield remarked, "I don't believe I had seen or sent this previously so no need to worry over the misplacement."

45. Ms Ferrier further discovered that, on 10 December 2013, at 17:17, Mr Winfield received an email from the Respondent in which the Respondent said, "Could you possible (sic) provide the date when the document was sent to you. I think it was sent to you on 13 November. Mr Winfield told Ms Ferrier that he did not reply to that email.

46. Mr Winfield told Ms Ferrier that he had had a telephone conversation with the Respondent on or about the 17 February 2014 during the course of which the Respondent invited Mr Winfield to sign the Defence again and date it 13 November. The reason the Respondent gave Mr Winfield for wanting the Defence signed and dated again was because, "the original had been misplaced and that it would "make his file easier." Mr Winfield signed the Defence again and dated it 13 November 2013 and emailed it to the Respondent at 10:16 on 17 February 2014.

47. In her witness statement, Ms Ferrier also provided an explanation as to why there were three versions of the Defence. Her explanation and comments were:

47.1 The Defence filed on 10 December 2013 appeared to be the Defence signed by Mr Winfield on 10 December 2013, but with the date of 10 December 2013 redacted;

47.2 The Defence attached to the Respondent's witness statement dated 4 March 2014 appeared to be the Defence emailed from Mr Winfield to the Respondent on 17 February 2014 at 10.16am;

47.3 The further Defence, dated 13 November 2013, was served by the Respondent on the Claimant's solicitors by fax on 26 February 2014 at 10.35am. This document appeared to be the same as the copy Defence referred to at 47.1, but with the date of 13 November 2013 pasted into that document (probably from the document at 47.2).

The Applicant's Investigation

48. The Supervisor at the Applicant with conduct of this matter wrote to the Respondent on 4 February 2016, asking him for an explanation in respect of a number of breaches of the 2011 Code which the Supervisor had identified.

49. The Respondent provided a reply on 4 March 2016 through his solicitor, Mr Steve Roberts of Richard Nelson LLP. In that letter it was stated,

> "[The Respondent] accepts that he did not serve a defence upon Bristol County Court and attributes this to the high levels of pressure he was under at the time both professionally and personally. He accepts that his subsequent actions misled the Court…
>
> … [The Respondent] wishes to make it clear at the outset that his subsequent actions reflected a gross error of judgement. His actions were with no thought of financial or other personal gain but in order to protect the position of his client ([the MOJ])."

50. A decision to refer the Respondent's conduct to the Tribunal was made on 29 June 2016.

Witnesses

51. No witness evidence was heard, as the allegations were all admitted. The Tribunal had read and considered the witness statements noted at paragraph 3 above, including that of the Respondent.

Findings of Fact and Law

52. 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.

53. **Allegation 1.1 - Provided the Court and his opponent in litigation with four pieces of correspondence and a witness statement signed by him with a statement of truth dated 4 March 2014, stating that he had served his client's Defence on**

the matter of *W v MOJ* on 13 November 2013 when this was untrue, in breach of all or alternatively any of Principles 1, 2, 4 and 6 of the SRA Principles 2011 ("the 2011 Principles").

Allegation 1.2 - On dates not known to the Applicant, but reasonably believed to be between 9 December 2013 and 4 March 2014, he created and backdated one letter to the Court and one letter to his opponent in litigation, purportedly dated 13 November 2013, and thereby breached all or alternatively any of Principles 2, 4 and 6 of the 2011 Principles.

Allegation 1.3 - In or around December 2013 and February 2014, asked his client representative to backdate a Defence, to be filed at Court and served upon his opponent in litigation, to conceal the fact that he had not filed and served his client's Defence in time, and in order to resist the Claimant's request to the Court for Judgement in Default, in breach of all or alternatively any of Principles 1, 2, 4, 5 and 6 of the 2011 Principles.

Allegation 1.4 - Failed to file and serve a Defence on behalf of his client, the Ministry of Justice ("MOJ"), by 20 November 2013 and failed to report the fact that he had missed the deadline to the Treasury Solicitor's Department ("TSol") in breach of all or alternatively any of Principles 4 and 5 of the 2011 Principles.
Allegation 2 - In relation to the allegations 1.1 to 1.3, it was further alleged that the Respondent's conduct was dishonest. However, dishonesty was not an essential ingredient of the allegations against him.

53.1 The Respondent admitted all of the allegations, together with the factual background to those allegations, as set out at paragraphs 13 to 47 above.

53.2 The Tribunal took care to ensure that the Respondent fully understood the allegations made against him and the likely consequences of his admissions. The Tribunal was satisfied that the Respondent understood the case against him, the evidence and the nature of the allegations. The admissions which had been made were proper admissions in the circumstances of the case.

53.3 The Tribunal also considered the written evidence in the case. The facts presented were clear and not disputed by the Respondent.

53.4 The Tribunal was satisfied to the required standard on the facts and on the admissions that the allegations had been proved.

Previous Disciplinary Matters

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

Mitigation

55. The Respondent referred to testimonials and other documents which had been submitted on his behalf and made submissions concerning the circumstances in which the misconduct had occurred.

56. The Respondent's GP, Dr Choudhry, had written a letter date 24 March 2017 which supported the Respondent's submissions, set out below, concerning the effect a family bereavement had had on the Respondent from January 2013. A letter from the Respondent's sister, a dentist, stated that the Respondent's misconduct was completely out of character, and that the Respondent had always been a person of good standing and the highest integrity. The Respondent's sister also set out the effects the family bereavement, the investigation and these proceedings had had on the Respondent. A further testimonial, from a solicitor/magistrate dated 29 March 2017 supported the Respondent's submissions about the family illness and bereavement in 2013 and suggested that the Respondent's actions and judgement were affected by the bereavement. It stated that the writer believed the actions giving rise to the allegations were completely out of character, and occurred under extraordinary stress.

57. The Respondent also referred to an email dated 10 October 2016 from Ms Morrison, general counsel at Slater Gordon Legal Solutions ("SGLS"), which firm had employed the Respondent from late September 2014. That email was sent to the Applicant in connection with the Applicant's consideration of the imposition of conditions onto the Respondent's practising certificate. The Respondent drew to the Tribunal's attention that the email was based on a briefing given to Ms Morrison by the Respondent's immediate supervisor. The email recorded that the Respondent had been employed by SGLS as a team leader, supervising mainstream road traffic accident file handlers. It further recorded that the Respondent had discussed the disciplinary issues with his supervisor in February 2016. SGLS had assessed the position as being that the Respondent accepted he had made a gross error of judgement, that it was a one-off aberration and there were mitigating circumstances of a personal and professional nature which contributed to the conduct. The email noted the supervision and control measures in place at SGLS. It recorded, "SGLS has not seen any cause for concern in relation to [the Respondent's] honesty and integrity during his 2-year period of employment."

58. The Respondent submitted that the misconduct in question was a one-off aberration in an otherwise unblemished career. The Respondent expressed his apologies to his client, the Court and the Tribunal for his misconduct. He told the Tribunal that he was deeply remorseful. He had not had any bad intentions and had admitted the allegations at the first opportunity, in his solicitor's response to a letter from the Applicant in March 2016.

59. The Respondent described to the Tribunal a series of circumstances which, he submitted, had impaired his mental and emotional functioning, such that his judgement was affected. The Respondent submitted that, using a colloquial expression, he was not "there" mentally during the relevant period. The Respondent submitted that the testimonials and GP letter, referred to above, showed that the Respondent had been going through an exceptionally stressful time in 2013/14 and his actions were out of character. The stress he had suffered, due to several issues arising at the same time, had led to a situation where he was not able to focus properly, and one needed to be focussed to work as a litigation solicitor.

60. The Respondent told the Tribunal that he had been his mother's primary carer, as Dr Choudhry had stated. She had died in January 2013, after a period of illness. The Respondent told the Tribunal that there had been a long grieving process. For cultural reasons, as he was the eldest son, it was expected that he would deal with all of the matters arising from his mother's death, such as dealing with relatives and the estate. Due to the various activities and duties he needed to perform, there was a constant reminder in 2013/14 of the loss of his mother, to whom he had been very close. The sense of loss had been exacerbated around the time of his mother's birthday, in December, and as the first anniversary of her death approached.

61. The Respondent also told the Tribunal that in addition he had been pressurised by his family into an Islamic marriage; that union lasted less than a year. The Respondent told the Tribunal that his bride also did not wish to marry, but she also felt pressurised into marrying. Before the marriage, the Respondent had been living in a small student flat in London. He had a duty to provide a better home for himself and his then wife. However, he was not in a strong financial position.

62. Further, the Respondent stated that he had undertaken a Masters' programme with BPP Law School in Financial Regulation and Compliance which began in September 2013. The programme was full-time, and he undertook it at the same time as working for TSol. An assignment was due on the course in December 2013, with exams in January 2014. The Respondent told the Tribunal that at the time he thought he would be able to deal with the workload.

63. The Respondent told the Tribunal that when he joined TSol, he had understood he would have a 12-month contract. In fact, the first contract was for 5 months which, the Respondent said, was unusually short. The contract was extended on two further occasions, such that he expected to finish at TSol in January 2014 but the further extension meant he worked for TSol until the end of March 2014. The Respondent told the Tribunal that as he expected his job to end in January 2014, he tried to look for another job during December 2013, but there was little recruitment activity over the Christmas/New Year period.

64. The Respondent told the Tribunal that whilst working at TSol he had a very difficult and time consuming caseload. He said that due to the confidentiality agreements he had signed with TSol, he could not go into any detail about his caseload; whilst there had been a waiver of the confidentiality requirements in respect of *W v MOJ*, there was no wider waiver. The Respondent told the Tribunal that one of the difficulties in working for TSol was that one was the servant of many masters, with different government departments or parts of departments involved in cases. With some cases, he may have a liaison person at the MOJ who would be responsible for contacting witnesses and the like. However, in the *W v MOJ* matter, the relevant prison had passed from public management to being a privately-run prison. There was therefore no liaison officer, and the Respondent had had to try to get information directly from the prison officers who could be witnesses. The Respondent told the Tribunal that counsel in this case, Mr Thomann, had had to prepare a holding defence as insufficient information had been provided by the witnesses. The Respondent told the Tribunal that he had been trying to get the case settled, without any admission of liability by the MOJ.

65. The Respondent told the Tribunal that the nature of the cases with which he dealt, including *W v MOJ*, often attracted media attention and were important to the MOJ because of the possible adverse publicity and reputational damage if prison officers were accused of misconduct. The matters involved how public money was spent and how prisoners were treated, and therefore had a particularly sensitive nature. The *W v MOJ* case, for example, involved restraint techniques; the reputation of the prison service could be affected by the outcome of the case.

66. The Respondent told the Tribunal that that case was just one of the 120 or so cases in his caseload. The Respondent submitted that with the workload he had, combined with the personal circumstances noted above, he was in an exceptional situation of stress, in which his judgement was impaired and he was not able to focus.

67. The Respondent submitted that the misconduct in question was a one-off aberration at a time of life altering stress. He submitted that this view of events was supported by the email from Ms Morrison, referred to at paragraph 57 above. This indicated that SGLS had had no concerns about his integrity and, it was submitted, showed that the misconduct was out of character. The Respondent had first seen the email from Ms Morrison to the Applicant when it was provided by the Applicant with other documents and he had had no part in what that email said. The Respondent invited the Tribunal to note that there was a contrast between the position he was in in 2013/14 and where he was now in his life. Whilst at SGLS, the Respondent had managed a team of 10 people, including one solicitor. As a supervisor, he had made sure that all deadlines were met and that case progress was properly diarised and organised. The Respondent reiterated that the events in issue were a one-off aberration.

68. The Respondent told the Tribunal that he now had conditions on his practising certificate and that he was currently unemployed. The restrictions on his practising certificate had meant that potential employers had been reluctant to take him on, particularly where allegations of dishonesty had been made against him. The Respondent submitted that these conditions had already punished him for the misconduct. He had had to resign as a team leader at SGLS, where he had been for over two years; whilst his position had not required him to be a solicitor, and SGLS had had no problems with his work, there had been a discussion when the conditions were imposed and he had been given the opportunity to resign.

69. The Respondent submitted that he only ever wanted to be a lawyer, and a good one at that. He had worked tirelessly for clients and his various employers, largely in road traffic accident and personal injury claims. The Respondent told the Tribunal that he had always operated with the highest level of integrity, the importance of which had been drilled into him during his career. The allegations against him were a matter of great concern. The Respondent told the Tribunal that he had obtained two Masters degrees in Law, in order to become a better lawyer and because of his passion for the law. The Respondent told the Tribunal that he was alive to the possibility he would be removed from the Roll, but he would try to dissuade the Tribunal from this course of action. The Respondent told the Tribunal that he had hoped to develop a career in compliance and financial regulation; he had undertaken a Masters course in that field in 2013/14 with that in mind. However, compliance and regulatory organisations would probably require applicants to be of good character and without adverse

disciplinary findings against them. The Respondent told the Tribunal that if he could, he would give an undertaking that nothing like the misconduct in this case would ever happen again.

70. The Respondent submitted that the law was his passion, as well as his livelihood. The Tribunal was invited to consider options other than striking off the Roll, due to what the Respondent submitted were exceptional circumstances. The Tribunal was reminded that the circumstances at the time included: the pain of bereavement, which was prolonged and exacerbated by the approach of what would have been the Respondent's mother's birthday, and the anniversary of her death; the pressures caused by the arranged marriage and its subsequent breakdown; the pressures of work; the pressure of working for a Masters' degree; and financial concerns. All had occurred at about the same time and had a cumulative effect.

71. The Respondent submitted that he had admitted the allegations at the earliest opportunity and had minimised the inconvenience to the Applicant as he had not required witnesses to attend. The Respondent had made a clean breast of matters. He had received no financial benefit from his misconduct. The Respondent submitted that it had been a pleasure to be a member of the profession and reminded the Tribunal of his primary submission, which was that the matters in question were a one-off aberration in an otherwise unblemished career.

72. In response to a question from the Tribunal about when the earliest opportunity to admit misconduct had been, the Respondent referred to a letter from his solicitor dated 4 March 2016, which was the response to the Explanation with Warning ("EWW") letter from the Applicant dated 4 February 2016. This did not include an admission of dishonesty, but this was admitted in the Answer to the Rule 5 Statement.

73. The Tribunal asked the Respondent about his submission that the misconduct was a one-off event, noting that the Applicant's position was that it was repeated. The Respondent told the Tribunal that he accepted that on the *W v MOJ* case, there had been repeated conduct. However, there had been no similar instances on any other cases. The Respondent told the Tribunal that there had been a number of steps taken on this file; rather than admitting his error in missing the deadline for the Defence to TSol, the Respondent had kept up the pretence. The Respondent told the Tribunal that he had had very little supervision at TSol, at a time when the department had more locum solicitors than permanent staff; the Tribunal could take notice of the general freeze on public recruitment which had been in force at the time.

74. The Respondent expressed his regret and apologies for his misconduct. He submitted that whilst backdating documents was serious, it was not equivalent to dishonesty involving misuse of client money.

Sanction

75. 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, in particular the Respondent's mitigation and the testimonials and supporting documents he submitted.

76. The Respondent had been articulate in his submissions, which the Tribunal understood clearly.

77. However, the Tribunal was conscious that this case involved admitted and proved dishonesty. As per Coulson J in Sharma (in a judgment with which Laws LJ agreed):

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

78. The Tribunal also noted and took into account the judgment of Bingham LJ in the case of Bolton v The Law Society [1994] 1 WLR 512 ("Bolton"), which 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 most 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 profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires".

79. The Tribunal considered with great care, in the light of the Respondent's plea in mitigation, whether there might be such exceptional circumstances that the case might fall within the "small residual category" referred to by Coulson J in Sharma. In making that determination the Tribunal had regard to the factors set out by Coulson J and its own Guidance Note on Sanctions.

80. The Tribunal found that the Respondent had a high degree of culpability for his misconduct, including dishonesty. Whilst noting the various pressures to which he had been subject at the relevant time, the Respondent had been the author of his own

misfortunes. Whilst the Respondent had suggested that his motivation in backdating the Defence and engaging in correspondence asserting that the Defence had been filed and served on 13 November 2013, when it had not, had been to protect his client's position the Tribunal could not accept this. His actions had led to considerably more difficulty for his client, the MOJ, in that TSol lawyers had had to review what had happened and give a full and frank explanation to the Court. Given that the Respondent's client was the Crown, which constitutionally is the font of law and justice, his duties of acting with the utmost integrity could not have been clearer. The Tribunal considered it likely that the Respondent had done what he did out of personal embarrassment, rather than admitting he had missed a deadline.

81. The original action – writing to the Court to say, falsely, that the Defence had been filed – was spontaneous. However, his actions thereafter were planned. Indeed, there had been considerable care in planning the deception, even to the extent of drawing others in, as Mr Winfield had been induced to sign a Defence with an untrue date. There was particular deliberation in preparing the witness statement to the Court, in which the Respondent had stated, amongst other matters:

> "I can confirm, however, that I served the defence on the Defendant by post on 13 November 2013…
> I further wish to respond to the suggestion that the date of the statement of truth supporting the Defence has been redacted. I am surprised by this allegation… It will be observed that the date of signature of the Statement of Truth has not been redacted and is in fact correctly stated as 13 November 2013. I refute any such suggestion."

The evidence in the witness statement of Ms Ferrier set out not only the steps the Respondent had taken to create the three versions of the Defence, and create a copy which appeared to be dated 13 November 2013, but also set out the explanation he had given her – after he left TSol – about being unable to save documents onto a computer system and hence "he had retyped them, using the file copies as templates." This explanation was not credible and indicated that even after leaving TSol, the Respondent had not been prepared to admit to what he had done.

82. The Respondent had breached the trust placed in him by TSol and its client, a government department. The Respondent had had direct control of and responsibility for the circumstances in which the misconduct occurred. At the time of the misconduct, the Respondent had been qualified as a solicitor for over five years, and he was 32 years old; he could not be said to be inexperienced or naïve. The Respondent had co-operated with the Applicant.

83. The Respondent's misconduct had harmed the reputation of the profession. The public and the profession would not find it acceptable that a solicitor had tried to mislead a Court, a professional opponent and colleagues. On a practical note, the Respondent's actions had caused public money to be spent on putting right the Respondent's misleading statement of 4 March 2014. As noted in Bolton, the greater the Respondent's departure from the "complete integrity, probity and trustworthiness" expected of a solicitor, the greater the harm to the reputation of the legal profession.

84. The most notable aggravating feature of the case, of course, was that there had been dishonesty; all matters of dishonesty were serious. There was no conviction for any criminal offence, although misleading a Court in a witness statement signed with a statement of truth could, in some circumstances, amount to perjury. The misconduct had continued throughout a period from mid-December 2013 to late March 2014. Whilst there was no suggestion of misconduct in relation to any other files handled by the Respondent, the Tribunal could not accept that the matters in this case were a "one-off aberration". Actions were taken on 10 December 2013 (writing to the Court with a Defence with a redacted date), 25 February 2014 (writing to the Court and Claimant's solicitors refuting the suggestion of redaction and stating the Defence had been dated and filed on 13 November 2013) and producing a witness statement to the Court on 4 March 2014. By the time he left TSol in late March 2014, the Respondent had not informed his line manager of the true position, which only came to light after counsel phoned TSol. There had to that extent been concealment of his wrongdoing. There had been opportunities for the Respondent to admit what he had done to his line manager or others; he had not taken them, even in his handover notes as he was leaving TSol. As at 28 March 2014, during telephone conversations with counsel about the drafting of the witness statement to deal with how three versions of the Defence had come into existence, the Respondent still did not admit the Defence had not been signed and filed in November 2013. The Respondent knew that creating documents to mislead the Court and his opponent were a serious breach of his professional obligations.

85. The Respondent had not been deceived by any third party. The TSol department had been able to correct the misleading impression given to the Court in early April 2014 and had subsequently settled the case of *W v MOJ* on terms satisfactory to both parties. The Respondent's career was otherwise unblemished and the misconduct related to the conduct of just one matter. The Respondent had made admissions to the Applicant when the allegations were put to him, and had been co-operative with the investigation and the Tribunal's procedure. The Respondent had shown insight into his misconduct and had offered his apologies to the Tribunal and the profession.

86. The Tribunal noted the Respondent's submissions about his workload and lack of supervision or support at TSol. According to evidence submitted on behalf of TSol, the Respondent had had a caseload of about 80 cases rather than the 120 he had mentioned. Whatever the size of the caseload, the Tribunal accepted that the Respondent had been undergoing a period of professional and personal stress, albeit this had not caused him to behave in a chaotic manner in relation to his other cases. The Tribunal accepted that the loss of his mother, the pressure to enter into an arranged marriage, financial concerns, job insecurity and trying to obtain a further qualification had had a cumulative effect on the Respondent. The Tribunal noted the Respondent's submission that the burden on him of his mother's death was particularly significant since, as the eldest son, there were cultural expectations that he would act as the head of the family and that he had been close to his mother and so felt her loss deeply. However, there was no medical evidence that the Respondent had been suffering with any illness which affected his judgement or perception of right and wrong.

87. The Tribunal took all of those factors into account in considering whether this case was one of those which the dishonesty could be characterised as being a "one off moment of madness", or trivial or in some other way exceptional. The Tribunal noted that in considering whether there were exceptional circumstances, the nature, scope and extent of the dishonesty itself was to be considered. In this matter, the Respondent's misconduct had occurred over a period of time and had been deliberate, in that he had planned what to write in correspondence and had procured the production of documents to support his falsehood. He had put pressure on Mr Winfield in order to obtain a document which appeared to be dated 13 November 2013. It was particularly of note that the Respondent had drafted and signed a witness statement, for use in connection with an application to the Court to set aside judgment in default; this was a deliberate and carefully executed act. The Respondent's misconduct could not be described as a "one off" or as occurring in a moment of madness. It was far from trivial misconduct.

88. In all of these circumstances, the Tribunal determined that there were no exceptional circumstances which could justify a lesser sanction than striking off. There was nothing which brought this case within the small residual category of cases for which striking off was not appropriate.

Costs

89. The Tribunal noted that at the date of issue of the proceedings, the Applicant's costs were calculated at £1,845, including case work costs of £675. The schedule of costs dated 12 April 2017 set out total costs, including estimated costs of the hearing, of £5,578 (including travel and accommodation costs).

90. Mr Moran told the Tribunal that the Respondent had agreed to pay the Applicant's costs of the proceedings in the total sum of £4,000. The Respondent confirmed that this had been agreed. As he was of limited means, he would need to seek an agreement with the Applicant about payment of costs.

91. The Tribunal reviewed the schedule of costs and considered the work reasonably and necessarily done in preparing this case. The Tribunal was content that the sum of £4,000 agreed by the parties was a reasonable sum and that the Respondent should be ordered to pay those costs. The Tribunal would expect the Applicant to proceed in a proportionate way in seeking to recover the costs, given the Respondent's financial position and the fact that he had been struck off the Roll.

Statement of Full Order

92. The Tribunal Ordered that the Respondent, SYED TAUSEEF RIZVI, 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 agreed sum of £4,000.00.

Dated this 18th day of May 2017
On behalf of the Tribunal

A. Ghosh
Chairman