SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11597-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

SAFINA BIBI SHAH — First Respondent

SHAMILLA HANIF — Second Respondent

Before:

Ms N. Lucking (in the chair)
Mr M. N. Millin
Mrs N. Chavda

Date of Hearing: 13-15 March 2018

Appearances

James Dunn, solicitor of Devonshires Solicitors, 30 Finsbury Circus, London, EC2M 7DT, for the Applicant.

Chris Kirk-Blythe, consultant and exempt person under Schedule 3 of the Legal Services Act 2007, of Dylan Nair Solicitors, 55 Garstang Rd, Preston, Lancashire, PR1 1LB for the First Respondent, who did not attend.

The Second Respondent did not attend and was not represented.

JUDGMENT

Allegations

The First Respondent faced Allegations numbered 1-11A, contained within the Rule 5 Statement dated 10 January 2017, as amended on 22 June 2017 ("R1 Rule 5") and Allegations numbered 10 and 11 in the Rule 7 Statement dated 22 June 2017 ("R1 Rule 7"). The R1 Rule 7 did not contain any allegations numbered 1-9.

R1 Rule 5 Allegations

The Allegations against the First Respondent, by the Applicant were that, whilst a partner in Isaac Abrahams Solicitors (the "Firm"):

1. Between February 2012 and 24 August 2016 she failed properly to supervise and/or manage overall the conduct of 37 Noise Induced Hearing Loss ("NIHL") claims resulting in those claims being struck out, and thereby she:

    1.1 failed to act in the best interests of her clients, contrary to Principle 4 of the SRA Principles 2011; and/or

    1.2 failed to provide a proper standard of service to her clients, contrary to Principle 5 of the SRA Principles 2011.

2. Within a witness statement dated 7 July 2016, served upon DAC Beachcroft Claims Ltd ("DAC") in the course of litigation involving her client, Mr P, she made a misleading statement that a document had not previously been served upon her Firm when it had been so served on 24 May 2016, and thereby acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

3. She failed properly to supervise and/or manage overall the conduct of her client, Mr N's, claim resulting in that claim being struck out, and thereby she:

    3.1 failed to act in the best interests of her client, contrary to Principle 4 of the SRA Principles 2011; and/or

    3.2 failed to provide a proper standard of service to her client, contrary to Principle 5 of the SRA Principles 2011.

4. Within an Application Notice dated 9 March 2015 served upon the Court and solicitors acting for her opponent in litigation involving her client, Mr N, she made a number of false and/or misleading statements in that application, and thereby:

    4.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

    4.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

5. In a letter to the Court dated 13 May 2015 regarding her client, Mr N, she made a misleading statement by stating that "due to the experts (sic) delay in providing the report we were unable to serve the report in time" whilst not stating that she had not

provided the expert with substantial material upon which his report was meant to be based, which meant that the statement was not correct and/or misleading, and thereby:

5.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

5.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

6. In a Particulars of Claim served and filed with the Court and her opponent on 22 March 2016 she made a misleading statement, verified with a statement of truth, that her client believed the facts stated in the Particulars of Claim were true, when this had not been confirmed by her client, Mr T, and thereby:

6.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

6.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

7. In a Particulars of Claim served and filed with the Court and her opponent on 22 March 2016 she made a misleading statement, verified with a statement of truth, that she was authorised by her client, Mr T, to sign the statement of truth, when this was not correct, and thereby:

7.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

7.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

8. On 16 December 2015 she filed a signed witness statement containing a number of false and/or misleading statements in support of an application on behalf of her client, Mr G, for an extension of time for the service of particulars of claim and thereby:

8.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

8.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

9. Between 2013 and August 2016 she failed to ensure that effective systems of management and supervision were in place to ensure that client matters that she supervised were properly conducted and/or that each client, whose matters she supervised, was provided with accurate information regarding the progress of their case and thereby failed to run the Firm and/or carry out her role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8 of the SRA Principles 2011.

10. Dishonesty was alleged with respect to Allegations 2 and 4 to 8 (the "Dishonesty Allegations") but dishonesty was not an essential ingredient to prove those Allegations.

11. In so far as the First Respondent was not dishonest with respect to the Dishonesty Allegations, it was alleged that the First Respondent showed a reckless disregard of her obligations, but such recklessness was not an essential ingredient to prove those Allegations.

11A. In so far as the First Respondent was not dishonest or reckless with respect to the Dishonesty Allegations, it was alleged that the First Respondent was manifestly incompetent as to her obligations, but such manifest incompetence is not an essential ingredient to prove those Allegations.

R1 Rule 7 Allegations

10. Between 18 August 2014 and 15 August 2016, in supervising and managing overall the matter of Mr C, the First Respondent failed to ensure that effective systems of management and supervision were in place to prevent the Second Respondent, from:

10.1 Serving a witness statement dated 23 November 2015 asserting that "The claimant can confirm that a copy of the Claimant's witness statement was placed in the post to the defendants on 5 October 2015". Such statement was false and misleading because the Second Respondent did not post Mr C's witness statement to Keoghs either on this date or near to this date;

10.2 Failing to comply with directions in the Court order dated 24 July 2015, which led to the Court making an order on 25 November 2015 that Mr C's claim was struck out pursuant to CPR 3.4 (2)(c) and that Mr C shall pay the Defendant's costs;

10.3 Failing to inform Mr C that his claim had been struck out due to the Firm's failure to comply with the directions and that he had been ordered to pay the Defendant's costs; and/or

10.4 Failing fully to advise Mr C that the circumstances would not be covered by his After the Event Insurance, and that the matter could be dealt with by the Firm's indemnity insurance.

And thereby:

10.5 failed to act in the best interests of her client, Mr C, contrary to Principle 4 of the SRA Principles 2011;

10.6 failed to provide a proper standard of service to her client, Mr C, contrary to Principle 5 of the SRA Principles 2011;

10.7 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011; and/or

10.8 failed to run the Firm and/or carry out her role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8 of the SRA Principles 2011.

11. Between 15 July 2014 and 15 August 2016, in supervising and managing overall the matter of Mrs KG, she failed to ensure that effective systems of management and supervision were in place to prevent the Second Respondent from:

    11.1 On or around 21 May 2015, signing a statement of truth on, and serving, responses to a Part 18 request on behalf of Mrs KG that contradicted her client's factual instructions in material respects;

    11.2 On or before 10 August 2016, obtaining from her client, Mrs KG, and serving on her opponent in litigation a materially misleading witness statement signed by Mrs KG to address issues that had been raised by her opponent

    And thereby:

    11.3 failed to act in the best interests of her client, Mrs KG, contrary to Principle 4 of the SRA Principles 2011;

    11.4 failed to provide a proper standard of service to her client, Mrs KG, contrary to Principle 5 of the SRA Principles 2011;

    11.5 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011; and/or

    11.6 failed to run the Firm and / or carry out her role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8 of the SRA Principles 2011.

The Second Respondent faced Allegations numbered 1-10, contained within the Rule 5 Statement dated 22 June 2017 ("R2 Rule 5") and Allegations numbered 7-12 in the Rule 7 Statement dated 20 July 2017 ("R2 Rule 7"). The R2 Rule 7 did not contain any allegations numbered 1-6.

R2 Rule 5 Allegations

The Allegations against the Second Respondent, were that, whilst an employee the Firm:

1. On or around 21 May 2015, the Second Respondent sought to mislead her opponent in litigation where she was acting for Mrs KG by signing a statement of truth on, and serving, responses to a Part 18 request on behalf of Mrs KG that she knew contradicted her client's factual instructions in material respects, and thereby:

    1.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

    1.2 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011.

2. [Withdrawn]

3. On or before 10 August 2016, the Second Respondent misled her client, Mrs KG, and/or sought to mislead her opponent in litigation by procuring and then serving a materially misleading witness statement signed by Mrs KG to address issues that had been raised by her opponent, and thereby:

   3.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

   3.2 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011.

4. [Withdrawn]

5. On or around 15 July 2015, the Second Respondent was complicit in the First Respondent seeking to mislead the Court by avoiding the answering of a direct question put by the Court, whilst answering other questions, in the knowledge that to do so would demonstrate that the First Respondent had previously sought to misled the Court, and thereby:

   5.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

   5.2 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011.

6. [Withdrawn]

7. [No Allegation made]

8. Dishonesty was alleged with respect to Allegations 1, 3 and 5 (the "Dishonesty Allegations"), but dishonesty was not an essential ingredient to prove those Allegations.

9. [Withdrawn]

10. [Withdrawn]

R2 Rule 7 Allegations

The Further Allegations against the Second Respondent by the Applicant were that, whilst an employee of the Firm and:

7. whilst acting for Mr C, she:

   7.1 served a witness statement dated 23 November 2015 asserting that "The claimant can confirm that a copy of the Claimant's witness statement was placed in the post to the defendants on 5 October 2015". Such a statement was false and misleading because the Second Respondent did not post the claimant's witness statement to Keoghs either on that date or near to that date

   And thereby:

7.2 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011;

7.3 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011;

7.4 failed to act in the best interests of her client, Mr C, contrary to Principle 4 of the SRA Principles 2011; and/or

7.5 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011.

8. Whilst acting for Mr C, she:

8.1 failed to comply with directions in the Court order dated 24 July 2015, which led to the Court making an order on 25 November 2015 that Mr C's claim was struck out pursuant to CPR 3.4 (2)(c) and that Mr C shall pay the Defendant's costs;

8.2 failed to inform Mr C that his claim had been struck out due to the Firm's failure to comply with the directions and that he had been ordered to pay the Defendant's costs; and/or

8.3 failed fully to advise Mr C that the circumstances would not be covered by his After the Event Insurance, and that the matter could be dealt with by the firm's indemnity insurance

And thereby:

8.4 failed to act in the best interests of her client, Mr C, contrary to Principle 4 of the SRA Principles 2011;

8.5 failed to provide a proper standard of service to her client, Mr C, contrary to Principle 5 of the SRA Principles 2011; and/or

8.6 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011.

9. Dishonesty was alleged with respect to Allegation 7 but dishonesty was not an essential ingredient to prove that Allegation.

10. [Withdrawn].

11. [Withdrawn].

12. [Withdrawn].

Documents

1. The Tribunal read all the documents submitted by all parties including:

   - Applicant's hearing bundle
   - First Respondent's Response to Rule 5 Statement dated 13 February 2017
   - First Respondent's Amended Response to Rule 5 Statement dated 18 August 2017 ("Answer")
   - First Respondent's Response to Rule 7 Statement dated 18 August 2017
   - Witness Statement of First Respondent dated 11 March 2018
   - Statement of Agreed Facts and Admissions between Applicant and Second Respondent

Preliminary Matters

Application to proceed in Respondents' absence

2. Neither Respondent attended the hearing. The First Respondent was represented by Mr Kirk-Blythe and the Second Respondent was not represented. Mr Dunn applied to proceed in the absence of both Respondents.

3. The First Respondent had notice of the hearing date, evidenced by Mr Kirk-Blythe's presence on her behalf. The First Respondent had recently given birth and the Applicant had indicated in correspondence that it would not object to an application for an adjournment in the circumstances. The First Respondent's position was that she did not seek an adjournment and wished the matter to proceed. Mr Dunn submitted that there was a public interest in the matter proceeding in circumstances where the First Respondent had waived her right to attend by choosing not to seek an adjournment.

4. Mr Kirk-Blythe confirmed that it was his client's "unequivocal wish that the proceedings continue" and this had been confirmed in a text message to him on the morning of the hearing. The case had been going on for approximately 20 months and she wanted the proceedings to be resolved. She was aware that she had good grounds for applying for an adjournment and was also aware of the adverse inferences that could be drawn from her non-attendance and her failure to give evidence. In response to a question from the Tribunal, Mr Kirk-Blythe told the Tribunal that even if the matter were adjourned she would probably not attend any future hearing and would "close her eyes to the proceedings".

5. In respect of the Second Respondent, Mr Dunn told the Tribunal that she had made admissions to the allegations which were set out in the statement of agreed facts and admissions and had confirmed that this was her reason for not attending the hearing.

The Tribunal's Decision

6. The Tribunal considered the representations made by the First Respondent and by the Applicant. The First and Second Respondents were both aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments

(4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …;
>
> (iii) the likely length of such an adjournment;
>
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
>
> (v) …;
>
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
>
> (vii) …;
>
> (viii) …;
>
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
>
> (x) the effect of delay on the memories of witnesses;
>
> (xi) …;"

7. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

8. Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

9. The First Respondent had invited the Tribunal to proceed in her absence, having indicated that she was unable to attend due to having recently given birth. The Applicant had made clear to her in advance of the hearing that any application for an adjournment would not be opposed in those circumstances. The First Respondent had nevertheless declined to apply for an adjournment; something that Mr Kirk-Blythe had confirmed remained her position. The Tribunal was satisfied that she had voluntarily absented herself from the proceedings to the extent that even if the Tribunal decided not to proceed in her absence and adjourn the matter, she would still not attend. She was represented by Mr Kirk-Blythe and a fair hearing could take place. The First Respondent faced serious allegations and it was in the public interest that they be heard. In the absence of any realistic prospect of her attendance at the Tribunal it was in the interests of justice for the matter to proceed. The application to proceed in her absence was granted.

10. The Second Respondent had stated in an email to the Tribunal dated 9 March 2018:

> "I do not intend any discourtesy or disrespect to the Tribunal, however in light of the admissions and statements made, I will not be in attendance at the hearing."

11. The Tribunal was satisfied that the Second Respondent had also voluntarily absented herself and that again there was no realistic prospect of her attending any future hearing. She had made admissions to the Allegations and the Tribunal would in due course consider whether those admissions were properly made. She was therefore not prejudiced by the Tribunal proceeding in her absence, as indeed she had invited it to do. The Tribunal was satisfied that it was in the interests of justice to proceed in the absence of the Second Respondent and granted Mr Dunn's application.

Application to adduce witness statement of the First Respondent

12. Mr Kirk-Blythe applied for leave to adduce the witness statement of the First Respondent dated 11 March 2018. He told the Tribunal that the First Respondent had recently given birth and that she had instructed him late in the proceedings. As late as 20 February 2018 it had been the First Respondent's intention to attend the hearing and to give evidence, indeed she had been anxious to do so. Although she had approached Mr Kirk-Blythe on a limited basis prior to that, her instructions were only confirmed when a bundle of papers had been delivered to Mr Kirk-Blythe's office on 8 March 2018. The First Respondent had been a litigant in person until that date. Mr Kirk-Blythe had drafted a witness statement based on what she had told him on 20 February and he invited the Tribunal to adopt a sympathetic approach to the First Respondent's late service of the witness statement. In response to a request for clarification from the Tribunal, Mr Kirk-Blythe explained that the First Respondent had not appreciated that even if she attended she would still have had to serve a witness statement if she wished to give evidence.

13. Mr Dunn did not object to the witness statement of the First Respondent being admitted into evidence as it was in the interests of justice that the Tribunal was aware of the position. However he would have submissions on the weight that should be attached to that witness statement and he would also invite the Tribunal to draw an adverse inference. He referred the Tribunal to Iqbal v SRA [2012] EWHC 3251 (Admin) and to the Tribunal's Practice Direction No 5 (4 February 2013) which confirmed that the Tribunal was entitled to take into account the fact that a Respondent chooses not to give evidence or submit themselves to cross-examination. Mr Dunn set out the history of the case including the various directions that had been issued by the Tribunal. The First Respondent had not complied with these in respect of her witness statement. Mr Dunn told the Tribunal that if it was unhappy about drawing an adverse inference on the basis of the First Respondent's medical condition then he would have to apply for an adjournment. The Chairman pointed out to Mr Dunn that the stage at which consideration would be given as to whether to draw an adverse inference had not yet been reached. This could only be considered having heard all the evidence. Mr Dunn emphasised that this issue only arose if the reason for not drawing the inference related to the First Respondent's medical position. The Chairman reiterated that it would not be proper for the Tribunal to give such an indication at this stage. Mr Dunn would have to make his own decision as to whether or not to apply for an adjournment.

The Tribunal's Decision

14. The Tribunal took in to account that the witness statement of the First Respondent had been served the day before the hearing which was clearly unsatisfactory and in breach of the Tribunal directions. Mr Dunn had not opposed the admission of the witness statement into evidence and the Tribunal was satisfied that it was in the interests of justice to be as fully informed as to the First Respondent's position as possible. Mr Kirk-Blythe's application was therefore granted.

15. The question as to how much, if any, weight should be attached to the witness statement was a matter to be considered once the Tribunal had heard all of the evidence and submissions. Similarly the Tribunal was not prepared to give any sort of indication as to whether or not it would draw an adverse inference or its reasons for doing so/not doing so at this stage. That was not a matter that could be determined until the conclusion of the evidence and submissions, indeed to do so at this stage would be potentially unfair to the First Respondent and/or the Applicant.

16. Mr Dunn confirmed that he was not seeking an adjournment and was content to proceed.

Factual Background

17. The First Respondent was born on 8 March 1974 and admitted to the Roll of Solicitors on 1 September 2005. At the material time the First Respondent was based at the Firm's head office at Lester House, 21 Broad St, Bury BL9 0DA, and was the senior partner and Compliance Officer for Legal Practice ("COLP") of the Firm. At the time of the hearing she remained upon the Roll of Solicitors.

18. The Second Respondent was born on 16 December 1982 and admitted to the Roll of Solicitors on 15 November 2011. At all material times from approximately 2 March 2015 to approximately 15 August 2016, the Second Respondent was employed by the First Respondent as a solicitor, based at the Firm's head office. She was not a partner. At the time of the hearing the Second Respondent remained upon the Roll of Solicitors.

19. In 2011 and 2012 the First Respondent had attended a number of hearing loss clinics. The purpose of the clinics was to identify individuals who may have suffered Noise Induced Hearing Loss ("NIHL") as a result of the negligence of former employers. A number of these people then instructed the Firm.

R1 – Rule 5 Allegations

Allegation 1

20. In 2015, 65 NIHL claims upon which the Firm had been instructed to act for claimants were transferred to Bolton County Court to be case managed by District Judge Swindley ("DJ Swindley") (the "NIHL Claims"). The NIHL Claims were transferred in two tranches of 27 claims and 38 claims respectively.

21. The NIHL Claims were transferred because a number of procedural issues had arisen in respect of those claims. In each case the Firm had made an application to extend the time for service of the Particulars of Claim, medical evidence and schedules of special damages.

22. Subsequent to the Applications being issued, many of the solicitors acting for the Defendants to the NIHL Claims issued their own applications to strike out the NIHL Claims and/or to oppose the Applications.

23. DJ Swindley considered the Applications on 23 March 2016. In his Judgment, handed down on 5 May 2016, DJ Swindley stated:

> "In relation to the cases issued in March, [the Firm] did not allow themselves…any leeway. Their contention is that [the claims] were posted on the last business day (Friday 3rd July) before the last day for service (Sunday 5th July). I reject that contention. I am sure that they were all, in fact, posted after 5th July. Any other conclusion is not sustainable. It follows that I find that all the claims issued on 5th March 2015 on which applications relating to service have been made were put in the post after 5th July. It follows inevitably that the claims must be struck out. Any retrospective applications pursuant to CPR7.6 must be doomed to failure since to succeed a claimant has to satisfy the Court that 'the Claimant has taken all reasonable steps to comply with rule 7.5 but has been unable to do so' (CPR 7.6(3)(b)). Given that all the Defendants are limited companies there can never have been any difficulty in effecting service"
>
> "I appreciate that in coming to this decision I will be depriving some of the Claimants of the opportunity of pursuing a valid claim arising from their former employers' breach of duty. I regret that consequence but it is

unavoidable although they will, of course, be able to look to [the Firm] for compensation for any loss they have suffered."

24. In making his findings DJ Swindley stated:

> "It is clear that the fee earners were not being supervised and monitored"

He also noted:

> "On 28th February [the Firm] opened 35 [NIHL] claims in which they had three years later still not obtained medical evidence. They then issued those claims asserting that their clients had suffered hearing loss as a result of the breach of duty of the Defendants at a time when they did not have any evidential basis for that contention. Having issued the claim forms they then, in each and every case, still had not got the medical evidence after another four months when they had to serve the claim form. The practices of [the Firm] in relation to the claims were entirely unacceptable. [The First Respondent] holds herself out to be an experienced practitioner but was allowing this all to carry on 'on her watch'."

25. Further, in his judgment DJ Swindley made the following comments concerning the conduct of the NIHL Claims:

> "What I am certain of is that fee earners were not being adequately trained or supervised. The documentation prepared by them has, on occasion, been nonsensical and it has frequently demonstrated a significant level of ignorance of the rules".
>
> "The conduct of the files generally was lamentable. They were habitually operating on the cusp of the time limits whether of limitation or of service of claim forms/applications to extend time for service".
>
> "It is apparent that there was no effective management of the conduct of the cases...By [the First Respondent]'s own admission, at least one of [the Firm's fee earners]…was guilty of conduct which justified his summary dismissal albeit some months later".

26. The Applicant's case was that The First Respondent had overall management and supervision within the Firm of all NIHL claims dealt with by the Firm.

Allegation 2 – Mr P

27. The First Respondent acted for Mr P who was the Claimant in proceedings in relation to an NIHL claim against a former employer

28. By Order dated 23 March 2016 the Court ordered that the parties file and serve any further evidence at least 7 days before a hearing listed on 2 June 2016, the purpose of which was to determine the Claimant's application to extend the time for service of the particulars of claim.

29. In accordance with that Order, on 23 May 2016 DAC Beachcroft Claims Ltd ("DAC") (acting for the Defendant) served on the Firm the witness statement of CAW of the same date. The letter dated 23 May 2016 from DAC was date stamped as having been received by the Firm on 24 May 2016.

30. Further to an Order made following the hearing on 2 June 2016, by letter dated 22 June 2016 DAC served on the Firm the witness statement of LJ of the same date. The letter dated 22 June 2016 from DAC was date stamped as having been received by the Firm on 23 June 2016. The preamble of the witness statement of LJ referred to the earlier statement of CAW dated 23 May 2016.

31. By letter dated 7 July 2016 the First Respondent served a witness statement of the same date (the "Statement").

32. Paragraph 1 of the Statement confirmed that it was made in response to the witness statement of LJ. At paragraph 7 of the Statement the First Respondent stated:

> "The witness statement attached of [CAW] dated 23 May 2016 has not previously been served upon the Claimant's Solicitors..."

33. The Applicant's case was that this sentence was misleading as the witness statement of CAW had been served by DAC on the Firm on 23 May 2016.

Allegations 3-5 – Mr N

34. The Applicant's case was that the First Respondent acted for Mr N, who was the Claimant in proceedings in relation to an NIHL claim.

35. On 16 September 2014, MS of the Firm sent instructions to Mr NK to provide a medical report.

36. On 17 September 2014, SA of the Firm sent further instructions to Mr NK to provide a medical report and on 28 October 2014 MS sent another email to Mr NK. The heading of the email was "**NEW MEDICAL INSTRUCTION**".

37. Mr NK completed his medico-legal report on 15 April 2015 and it was sent to the Firm the same day. By letter dated 9 March 2015 the First Respondent served the Defendant's solicitors with, amongst other things, a Claim Form and an Application Notice (the "N-Application").

38. Within box 10 of the N-Application the First Respondent stated:

> "1. The Claimant's Solicitors sent a letter of medical instruction to the medical agency on the 01st September 2014.
>
> 2. [Mr N] was medically examined on 27 September 2014.
>
> 3. Due to long term sick leave the medical expert was unable to review [Mr N]'s medical records and provide a completed report within the agreed four to six weeks agreed timescale.

> 4. In light of this, the Claimant's Solicitors require an extension of time in order to obtain medical evidence and obtain the Claimant's approval prior to effecting service …"

39. On 13 March the First Respondent had considered the "GP records prior to dispatching them to the medical agency/expert …". The only medical agency/expert instructed at this point in relation to this matter was Mr NK. On the same day, she had imported the medical reports into the soft copy system. At some point on or after 13 March 2015, the medical records were provided to Mr NK.

40. In a subsequent letter dated 13 May 2015 the Applicant's case was that the First Respondent had advised the Court:

> "[Mr N] was due to be medically examined on 27 September 2014 however due to unforeseen circumstances he was not able to attend. Our client was then subsequently examined on 27 November 2014 and due to the experts (sic) delay in providing the report we were unable to serve the report in time. The medical report, particulars of claim and SSD were disclosed to the Defendants (sic) Solicitors on 13 May 2015."

Allegations 6 and 7 – Mr T

41. The Applicant's case was that the First Respondent acted for Mr T, a Claimant in relation to a NIHL claim

42. The First Respondent drafted the Particulars of Claim ("POC") on 22 March 2016. It was created at 13.03 and last modified it at 15.01/15.02 on that date. The POC contained a statement of truth signed by the First Respondent which stated:

> "[Mr T] believes that the facts stated in this Particulars of Claim are true. [The First Respondent is] duly authorised by [Mr T] to sign the Statement of Truth."

43. By letter also dated 22 March 2016, drafted at 15.04, the First Respondent sent to Mr T an unsigned copy of the POC. The letter stated:

> "We enclose the Particulars of Claim which formally set out the basis of your claim against the above mentioned company. These documents (sic) will be lodged at Court and served upon the Solicitors acting for [the Defendant]. Please read the Particulars of Claim in order to ensure the contents are correct and sign the Statement of Truth on the last page. We are required to serve the Particulars of Claim along with medical evidence as soon as possible and therefore we request that you return the signed Particulars of Claim to our offices immediately.
>
> **We are duty bound to advise you that it will be treated as contempt of court to present any document or fact to the third party and/or the Court that is untrue, misleading or that exaggerates any aspect of a claim and the court may impose a fine or even a custodial sentence. Please therefore do not sign any of the documents or instruct us to**

> **include any claim or present to the Court or the third party any fact that is anything other than true.**
>
> Please contact us if there is anything you do not agree with or does not comply with the above advice within the enclosed document. Once we receive the same back from you we will then prepare to formally serve the proceedings upon the Solicitors acting for [the Defendant]…
> We enclose herewith pre-paid envelope for your convenience and look forward to hearing from you as soon as possible." [her emphasis]

44. By letters dated 22 March 2016, drafted at 15.07 and 15.09 respectively, the First Respondent served the POC dated 22 March 2016 on the Defendant's solicitors and filed the same at court. Mr T signed the enclosed POC and dated it 23 March 2016.

Allegation 8 – Mr G

45. The Applicant's case was that the First Respondent acted for Mr G who was the Claimant in proceedings in relation to an NIHL claim. By letter dated 29 July 2014, SU of the Firm wrote to Mr G about the need to obtain medical evidence to support his claim.

46. On 6 August 2014 TS of the Firm wrote to Mr G to inform him of a medical appointment on 16 August 2014 at 11am at the Best Western Hotel in Hartlepool. On 8 August 2014 Mr G contacted TS and informed him that he could not attend that medical appointment, but was available for a home visit. TS wrote to Mr G to confirm that the appointment would take place on 16 August 2014, at his home. Subsequently Mr VS examined Mr G and provided a copy of his report to the Firm. The report was dated 16 August 2014. The report concluded that Mr G had not suffered any hearing loss as a result of his exposure to industrial noise.

47. By letter dated 30 January 2015 the First Respondent sent a claim form to the Northampton County Court for issuing. Mr G's claim was subsequently transferred to Bolton County Court and was listed to be determined at a hearing on 17 December 2015.

48. On 3 November 2015 the Court, of its own initiative, made an Order requiring the Firm to provide information about the service of various documents. The First Respondent signed a witness statement dated 16 December 2015 in which she stated:

> "9. I can clarify that a medical appointment was arranged for the client to see Mr [VS] on 16th August 2014 in Hartlepool, a copy of the letter advising of the appointment is attached as exhibit SS2. [Mr G] then contacted our offices on 8th August 2014, after receiving the appointment details, advising that he would be unable to attend and that he would require a home visit from the expert, a copy of the telephone attendance note is attached as exhibit SS3".
>
> 10. Medical instructions were re-sent to Mr [VS] in November 2014, however due to ill health the expert was unable to proceed with arranging a medical appointment."

49. Following the hearing, DJ Swindley refused Mr G's application for an extension of the time for service of the particulars of claim, medical evidence and the schedule of special damages, and dismissed Mr G's claim.

Allegation 9

50. The Applicant's case was that the facts outlined in relation to Allegations 1-8 demonstrated that the First Respondent had breached Principle 8.

R1 – Rule 7 Allegations

Allegation 10

51. The Firm acted for Mr C, who was a Claimant in proceedings in relation to an NIHL claim. The Defendants were represented by Keoghs.

52. On or before 11 March 2015, the Second Respondent started acting for Mr C. On 13 May 2015, Keoghs served a Part 18 Request on the Firm. On 24 July 2015, District Judge Keating made a number of directions, including that Witness Statements to be exchanged by 4pm on 30 September 2015.

53. Keoghs subsequently confirmed their agreement to a 7 day extension of that deadline. The matter log contained an entry on 30 September 2015 for "client's witness statement". The Second Respondent was named as the handler. On 1 October 2015, there was an entry of "compelting witness statement" [sic]. The Second Respondent was again named as the handler. On 1 October 2015, the Second Respondent wrote to Mr C with a draft witness statement.

54. The file contained a letter to Keoghs purportedly dated 5 October 2015, serving Mr C's witness statement. The log indicated that this letter was posted to proclaim on 23 November 2015, with details of "Serving witness statement – 05/10/15". The handler was the Second Respondent. The metadata for this letter showed that it was created on 23 November 2015 and last modified on the same date by the Second Respondent.

55. On 27 October 2015, the administrator for the engineering expert emailed the Second Respondent and Keoghs to ask when the expert could expect to receive the outstanding witness evidence and disclosure. The email also stated that any delay in receipt of this document would impact on the provision of the report, which was due by 13 November 2015. Keoghs replied on the same day to advise that their client had no witness evidence and attaching a copy of their disclosure list. Keoghs also advised that they had not yet been served with Mr C's witness evidence. The administrator responded, copied to the Second Respondent, to say that the expert would need Mr C's evidence by the end of the week to enable him to meet the deadline of 13 November 2015.

56. On 23 November 2015, the Second Respondent filed an application for relief from sanctions with the court, to be heard at the same time as the strike out application on 25 November 2015. The Second Respondent provided the witness statement in support of the application.

57. The Second Respondent's witness statement, signed by her on 23 November 2015, stated, amongst other things:

> "9. In terms of witness evidence, it was clear that the Claimant would not be able to comply with the Court's deadline of 30th September 2015 and so a 7 day extension was agreed with the Defendant. Witness statements were due to be exchanged on 7th October 2015.
>
> 10. The Claimant can confirm that a copy of the Claimant's witness statement was placed in the post to the Defendants on 5th October 2015. It was unknown prior to the Defendant's application being received that the witness statement had not been received. The Claimant will seek relief from sanctions but it was unknown that the witness statement had not been received. The witness statement was not emailed to the Defendants due to technical issues with our computer systems. It was therefore deemed appropriate to send the witness statement in the post …"

58. On 24 November 2015, Keoghs emailed the Second Respondent with a witness statement from their fee earner in response to the Second Respondent's statement. This witness statement made it clear that other e-mails had been received from the Second Respondent in the relevant period, and that she had made no submissions regarding the failure to respond to the various e-mails from the engineer seeking Mr C's evidence.

59. On the same date, the Second Respondent wrote to the Court to advise that they did not agree with the Defendant's supplemental witness statement and they had not been afforded a reasonable amount of time to consider it. On 25 November 2015, the Court struck out Mr C's claim, refused his application for relief from sanctions and ordered that he pay the Defendant's costs, to include the costs of both applications heard on 25 November 2015. Costs were ordered to be payable on the standard basis, to be subject to detailed assessment if not agreed.

60. On 22 September 2016, Keoghs wrote directly to Mr C in respect of the Default Costs Certificate, pressing him for payment of these costs. On 14 October 2016, Mr C's new solicitors received a letter from Leeward Insurance Company Limited, who provided the ATE insurance purchased by the Firm on behalf of Mr C at the outset of his matter. Leeward confirmed that they were exercising their right to treat the insurance policy as cancelled because there had been a clear breach of the terms of the ATE insurance, namely the requirement that the claimant and/or his solicitor complied with orders of the Court. There was no evidence on the file that anyone at the Firm had specifically advised Mr C that the ATE Insurance would not cover the above circumstances or that he may be able to make a claim against the Firm.

Allegation 11 – Mrs KG

61. The Firm acted for Mrs KG, who was a Claimant in proceedings in relation to an NIHL claim. On or before 12 March 2015, the Second Respondent started acting for Mrs KG. Berrymans Lace Mawer LPP ("BLM") represented the Defendant in the proceedings. BLM served a Defence and Part 18 requests for further information

dated 30 January 2015. BLM asked for responses to be provided to the Part 18 requests by 4pm on 27 February 2015. The Firm wrote to Mrs KG on 25 March 2015 enclosing a copy of the Part 18 requests received from BLM and asked her to provide her responses. The Firm advised that they were required to file the responses with the Court by 8 April 2015. The First Respondent's name was at the bottom of the letter, however the Case Management System recorded the handler responsible for this letter as being FP.

62. On 16 April 2015, the Second Respondent received handwritten responses to the Part 18 requests from Mrs KG. On 27 April 2015 the Second Respondent imported those handwritten responses into the soft copy file. On 21 May 2015, the Second Respondent signed a statement of truth on Mrs KG's Part 18 responses ("Mrs KG's Part 18 Responses") and served them on BLM. The information in the handwritten responses formed part of the Mrs KG's Part 18 Responses. However, the following parts of Mrs KG's Part 18 Responses did not reflect Mrs KG's handwritten responses:

- In answer to question 3 "Please confirm whether the claimant was exposed to noise during this employment [Mrs KG's employment with the Defendant]?" Mrs KG's handwritten response was "[Defendant] noise from presses". Mrs KG's Part 18 Responses stated "The Claimant was not exposed to noise during this period of employment".

- In answer to question 8 "Was the Claimant provided with hearing protection during the course of her employment with the Defendant?" Mrs KG's handwritten response was "yes but during employment could not wear them as needed to hear other machine operators in order to do job correctly". Mrs KG's Part 18 Responses stated "The Claimant cannot recall being provided with hearing protection".

- In answer to question 9 "If so, when was it first provided and in what form(s)?" Mrs KG's handwritten response was "at begining (sic) of employment with ear plugs". Mrs KG's Part 18 Responses stated "See response to question 8".

- In answer to question 10 "Was the Claimant provided with hearing protection by any other of her employers, and if so which employers and when?" Mrs KG's handwritten response was "yes [Defendant]". Mrs KG's Part 18 Responses stated "The Claimant cannot recall being provided with hearing protection".

- In answer to question 11 "When did the Claimant first notice symptoms of tinnitus? Please state as accurately as is possible" Mrs KG's handwritten response was "about 20 years ago now and then. Then got more intence (sic) over the years". Mrs KG's Part 18 Responses stated "The Claimant noticed the tinnitus gradually, with it becoming more noticeable in the last few years".

- In answer to question 12 "When did the Claimant first notice symptoms of deafness? Please state as accurately as is possible" Mrs KG's handwritten response was "about the same time". Mrs KG's Part 18 Responses stated "The Claimant noticed her hearing loss gradually, with it becoming more noticeable in the last few years".

- In answer to question 13 "What form did they take when she first noticed them" Mrs KG's handwritten response was "unable to hear when more than one person present". Mrs KG's Part 18 Responses stated "The Claimant noticed that she was having difficulty participating in conversations where there was a lot of background noise and a crowded atmosphere. The Claimant also had difficulty in group conversations".

- In answer to question 14 "When did the Claimant's symptoms of deafness reach their present level of severity?" Mrs KG's handwritten response was "about 12 years ago need to face people when conversing". Mrs KG's Part 18 Responses stated "In the last few years".

63. The Second Respondent created the document at 14.38 and saved it at 15.08 on 21 May 2015. She then signed it and imported it into the soft copy file at 15.22 and served it at 15.24.

64. There was no record on the file to indicate that Mrs KG saw and approved the Part 18 Responses before they were signed off and sent to BLM. On 12 November 2015 BLM raised concerns regarding the inconsistency between Mrs KG's Part 18 Responses signed by the Second Respondent, and Mrs KG's witness statement. On 10 February 2016, in an e-mail to the Second Respondent BLM required a detailed witness statement from Mrs KG. On 3 May 2016 the Second Respondent wrote to Mrs KG stating:

> "The Defendant Solicitors have advised that in order to consider your claim further they require an additional witness statement from you which clarifies whether or not you were provided with hearing protection during your employment. As such I would be grateful if you could answer the questions set out below either by responding to this e-mail or calling our offices …"

65. Subsequently a witness statement was prepared, which was signed by Mrs KG and served on BLM on 10 August 2016. It stated, amongst other things:

> "4. I can advise that at the outset of the claim when initial instructions were provided I was unable to recall whether hearing protection had been provided, as it has been sometime since I was employed with the Defendant.
>
> 5. I can confirm that I advised my Solicitors that I was not provided with hearing protection.
>
> 6. I can confirm that it was only once I started to think more about it that I realised that hearing protection had been introduced during the last few years of my employment with the Defendant. I will now provide details in respect of hearing protection."

66. There was no mention by Mrs KG or by the Second Respondent when serving this witness statement that Mrs KG had provided this information to the Second Respondent in her handwritten responses prior to the Second Respondent signing and serving Mrs KG's Part 18 Responses.

R2 – Rule 5 Allegations

Allegations 1 and 3 – Mrs KG

67. The factual background to these Allegations is set out above in respect of the R1 Rule 7 Allegation 11.

Allegation 5 – Mr N

68. The factual background to this Allegation up until 13 May 2015 is set out above in respect of R1 Rule 5 Allegation 5. Following the letter sent by the First Respondent on 13 May 2015, by order of 10 June 2015 the Court ordered, amongst other things, that the Firm was required within 7 days of receipt of the order to serve and file a witness statement setting out:

- What steps had been taken to secure medical evidence and the timetable for filing such evidence;
- Details of the Firm's correspondence on this subject with the defendants; and
- Whether the Claim Form had been served or time extended

69. In response to the Order dated 10 June 2015, the Firm filed and served the witness statement of the Second Respondent dated 15 July 2015 and the day after the witness statement had been received from Keoghs which had set out Mr NK's replies to their direct enquiries of him. In those replies Mr NK had stated that he received the medical reports on 14 March 2015 and that the delay between Mr N being examined and the report being completed was the non-availability of medical records. The Second Respondent saved her witness statement onto the soft copy system at 14.12.32 and 14.12.42 respectively. The only paragraphs of the Second Respondent's statement that appeared to address the question "What steps had been taken to secure medical evidence and the timetable for filing such evidence" state:

> "1. I make this statement following the Order of District Judge Scott dated 17th June 2015, and apologise for the delay in filing the same …
>
> …
>
> 4. I can confirm that we received a copy of the Claimant's medical report on 15th April 2015. This was then sent to the Claimant for confirmation that all details contained in the report were correct.
>
> 5. The Claimant confirmed that the details of the medical report were correct on 7th May 2015. As such proceedings which included the Particulars of Claim, medical report and schedule of special damages were served on upon all Defendants."

R2 – Rule 7 Allegations

Allegations 7 and 8 – Mr C

70. The factual background to these Allegations is set out above in respect of R1 Rule 7 Allegation 10.

Witnesses

71. Mr C confirmed that the contents of his witness statement were true to the best of his knowledge and belief. He was not cross-examined.

Findings of Fact and Law

72. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The submissions of the parties are summarised below. The Tribunal considered all the evidence before it including the oral and written submissions of the parties.

First Respondent

R1 – Rule 5 Allegations

Applicant's General Submissions

73. Mr Dunn made a number of submissions in respect of all the Allegations faced by the First Respondent. They are set out here to avoid repetition.

74. The First Respondent had not made herself available for cross-examination and had served a witness statement very late. This had deprived Mr Dunn of the opportunity to question her on matters which she had raised in that witness statement for the first time. Many of the submissions that Mr Dunn had made in respect of the adverse inference that he wished the Tribunal to draw were reiterated for the purpose of considering whether the allegations were proved or not. Mr Dunn invited the Tribunal to draw such an inference, again having regard to Iqbal and to Practice Direction 5.

75. Mr Dunn confirmed that the correct test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The Applicant did not suggest that the First Respondent had been dishonest from the outset but that her managerial and supervisory failings had led to problems which she had dishonestly sought to cover up.

76. Mr Dunn told the Tribunal that he did not seek to rely on the admissions of the Second Respondent to prove the case against the First Respondent.

77. The First Respondent had referred to the SRA Practice Framework Rules 2011, specifically Rule 19.2 which stated that:

"A solicitor, REL or RFL who is a member or shareowner of an authorised body which is a company must not cause, instigate or connive at any breach of the requirements imposed under the SRA's regulatory arrangements by the authorised body or any of its managers or employees".

78. Mr Dunn did not accept that her responsibilities were limited to actively not causing the misconduct by her staff.

First Respondent's General Submissions

79. Mr Kirk-Blythe also made a number of submissions in respect of all the Allegations faced by the First Respondent. They are also set out here to avoid repetition.

80. Mr Kirk-Blythe told the Tribunal that for the majority of time leading up to the substantive hearing, the First Respondent had been a litigant in person. She had served answers to the Rule 5 and Rule 7 statements and she had believed that she had discharged her duties in that regard. She had not appreciated that she may not be permitted to give evidence without serving a witness statement which was part of the reason it had been served late. Mr Kirk-Blythe referred again to the health problems being suffered by the First Respondent and submitted that taken together with her status as a litigant in person, no adverse inference should be drawn. There was no evidence that she had sought to evade answering questions throughout the proceedings. Section 35 of the Criminal Justice and Public Order Act 1994 referred to a defendant not answering questions "without good cause". Mr Kirk-Blythe reminded the Tribunal that an adverse inference was not automatic and that the First Respondent had a good cause for not attending. She was not well enough to be present and whilst he acknowledged that she had been offered an adjournment the basis of the good cause or not attending was the length of time the proceedings had taken already and the toll that had taken on her health. Mr Kirk-Blythe invited the Tribunal to understand the First Respondent's position and show some sympathy such that no adverse inference should be drawn. Mr Kirk-Blythe also told the Tribunal that the First Respondent was in possession of a practising certificate with conditions and it could be inferred from this that the SRA had concluded that she could remain in practice at this time. Mr Dunn did not take issue with that point.

81. **Allegation 1 - Between February 2012 and 24 August 2016 she failed properly to supervise and/or manage overall the conduct of 37 Noise Induced Hearing Loss ("NIHL") claims resulting in those claims being struck out, and thereby she:**

1.1 failed to act in the best interests of her clients, contrary to Principle 4 of the SRA Principles 2011; and/or

1.2 failed to provide a proper standard of service to her clients, contrary to Principle 5 of the SRA Principles 2011.

Applicant's Submissions

81.1 Mr Dunn submitted that all solicitors properly supervising and/or managing overall the conduct of civil litigation should ensure that there were systems and controls in place to ensure adherence and compliance with the Civil Procedure Rules ("CPR").

The First Respondent's failure resulted in claim forms being served after the expiry of the deadline for service with the result that DJ Swindley struck out those claims. It was not in the best interests of the first Respondent's clients to have their claims struck out and it did not amount to the provision of a proper standard of service.

81.2 The clients were taken on in 2012 and the problems culminated in the matters contained within the allegations. The Applicant's case was that this was reflective of a systemic failure right from the start. Mr Dunn referred the Tribunal to the observations of DJ Swindley set out above.

81.3 Mr Dunn submitted that the First Respondent had been a supervisor and could therefore be in breach of Principles 4 and 5 if the Tribunal was satisfied that her failure to supervise had resulted in the Firm not acting the best interests of its clients or providing a proper standard of service to them.

First Respondent's Submissions

81.4 The First Respondent had submitted an answer to the Rule 5 allegations, as amended, as well as her witness statement. The First Respondent submitted that the difficulties relating to the 37 matters referred to by the Applicant took place over a period of just over one year, between March 2015 and March 2016. Despite this the Allegation had been framed in terms of February 2012 to August 2016. She told the Tribunal that the reference in her witness statements submitted to the County Court to her having overall supervision of the NIHL cases "should not be misunderstood". Each client matter had a named person dealing with that matter and another named person responsible for its overall supervision. Her description of her role in her witness statements had been meant in the sense that she was "the partner with overall responsibility for the NIHL department, not in the sense that she was personally supervising the care and conduct of those matters". The First Respondent was not the named supervisor in respect of the 37 cases placed in the tranche by DJ Swindley. The First Respondent stated in her answer that she was not attempting to evade responsibility for her managerial shortcomings. She accepted that the District Judge had said that she had failed to supervise the Firm's junior employees and that a number of clients had suffered loss of opportunity as a result of the administrative failures at the Firm. There was no strict liability rule in professional conduct whereby partners were directly responsible for the compliance breaches of their employees. The First Respondent described the Allegation, as drafted, as "flawed" and "unfair". The Respondent stated that she had never denied that the system of supervision in the department broke down for a number of reasons for a limited period of time.

81.5 In her witness statement the First Respondent stated that she would have admitted this Allegation but for the fact that she believed it had been made in an unfair way. She stated that she had never denied that she had failed in her role as a manager and as a partner. She deeply regretted her failings and apologised for them unreservedly. She told the Tribunal that she had tried to be a good manager and an effective and competent person but had failed. She went on to state "I also understand that there was a direct and a causal link between my failings and the harm that was caused to the Firm's clients". She reiterated her belief that the Applicant had overstated the case. The First Respondent admitted a breach of Principle 8 but stated that she could not understand why the Applicant insisted on making an allegation that she had breached

Principles 4 and 5. She was not acting for clients and was not providing a service to any clients. She was overseeing the supervisors who were overseeing the fee earners who were undertaking the work for the clients. She did help out from time to time if there was an urgent task that needed to be done. She accepted responsibility for everything that happened in the Department but having read the SRA principles and reflected upon their application to her conduct she did not believe the Principles 4 or 5 applied to high-level managerial failings. They were intended to govern the conduct of fee earners who were acting for clients or those who were directly supervising them.

81.6 Mr Kirk-Blythe submitted that the Applicant had "brought the wrong case" and had not understood the structure and the hierarchy of the Firm. From April 2014 onwards the First Respondent's role was managerial rather than supervisory. Mr Kirk-Blythe referred the Tribunal to the office manual for the Firm, in particular the section entitled "governance structure - roles and responsibilities". There was no reference to client work on the part of the First Respondent. She was neither an active fee earner nor an active supervisor of client files. In March 2015 she had employed the Second Respondent. It was around this time that she had suffered serious health problems which left her vulnerable and ineffective. The majority of the problems took place within this period, namely March to May 2015. The Applicant had brought the case as though she had day to day conduct of each file and while this may have been the case in 2011 to 2012, from 2014 onwards this had changed. The failings did not give rise to a breach of Principles 4 or 5 but would be reflected in the seriousness of the breach of Principle 8, which the First Respondent had admitted in relation to Allegation 9. The alternative was that any breach of Principle 8 could lead to multiple breaches by multiple personnel within a Firm. It was the authorised body that had clients not the First Respondent. Mr Kirk-Blythe told the Tribunal that the First Respondent was not attempting to blame her staff. The staff had been told not to mislead the court, again referred to in the office manual, and the First Respondent had not permitted the court to be misled indeed she had forbidden it.

The Tribunal's Findings

The relationship between Principle 8 and Principles 4 and 5.

81.7 In respect of this and a number of other Allegations, the First Respondent had argued that a breach of Principle 8 did not extend to a breach of Principles 4 and 5. Principle 8 was not specifically pleaded in relation to Allegation 1 but was pleaded in the overarching allegation 9, which had been admitted by the First Respondent. The First Respondent had accepted that she had failed as a manager but denied that she had breached Principles 4 and 5 as she was not a supervisor nor was she the fee earner. The Tribunal considered this submission at the outset as it would inform its approach not only to this Allegation but also to other Allegations where a similar defence had been raised.

81.8 The Tribunal had been referred to the practice framework rules by the First Respondent. The Tribunal noted Rule 19.1 which stated:

> "An authorised body and its managers and employees must at all times ensure that they act in accordance with the requirements of the SRA's regulatory arrangements as they apply to them".

On the First Respondent's own case, she was a manager of an authorised body.

81.9 Rule 19.2 stated:

> "A solicitor, REL or RFL, who is a member or shareowner of an authorised body which is a company must not cause, instigate or connive at any breach of the requirements imposed under the SRA's regulatory arrangements by the authorised body or any of its managers or employees".

The First Respondent had admitted, in relation to Mr C and Mrs KG that her failings had led to harm and loss to the clients.

81.10 Rule 19.4 stated:

> "The partners in an authorised body which is a partnership are responsible not only as managers but also jointly and severally as the authorised body".

The First Respondent was a partner and therefore the point made by Mr Kirk-Blythe that it was the Firm that had clients, not individual fee earners was not persuasive in light of the wording of Rule 19.4.

81.11 The Tribunal considered the contents of the office manual, as it had been invited to do by the First Respondent. This set out the responsibilities of the First Respondent in a number of places. Chapter 10 confirmed that the COLP was the First Respondent. The role of the COLP was described in Appendix 10.1 as follows:

> "The COLP has to ensure compliance with the terms and conditions of the Firm's authorisation and with all its statutory obligations, with a requirement to record and report breaches to the SRA as explained above".

It continued:

> "The COLP's primary duties include:
>
> 1. Ensuring compliance with the complete SRA Code of Conduct and Handbook 2011, with the exception of the SRA Accounts Rules 2011 ("SAR"), which are the responsibility of the COFA. This covers all aspects of professional and ethical obligations including client engagement and updates, providing full and ongoing information to clients about their matters, service delivery, avoidance of conflicts, confidentiality, referrals and the handling of guarantees and undertakings"

The same Appendix also made reference to the Principles:

> "Principles 1 to 6 relate to ways in which you should conduct yourselves, whilst Principles 7 to 10 cover the way in which the Firm must manage itself and comply with regulatory arrangements. It goes without saying that the Partners as the Firm's management, remain responsible for ensuring compliance with the Principles".

81.12 Therefore the First Respondent was responsible for full compliance as a Partner and a manager and this was reinforced by her role as COLP. The First Respondent, in her various witness statements to the Court had described her role in the following terms:

> "I am a partner of the Firm and have overall supervision of all noise induced hearing loss claims dealt with by the Firm".

This was reflective of a supervisory role.

81.13 The Tribunal was satisfied that whether or not she was described as the named supervisor, she had a supervisory role and in any event had responsibility for full compliance with the principles due to her role as Partner, Manager and COLP. The Tribunal therefore rejected her argument that a breach of Principle 8 could not lead to her being responsible for a breach of Principles 4 and 5.

The First Respondent's Witness Statement

81.14 The Tribunal considered what weight to attach to the Witness Statement of the First Respondent. The statement had not been served in compliance with the Tribunal's directions, despite those directions having been made many months ago. The Tribunal noted that the First Respondent's practice had been litigation and she ought to have appreciated that if she intended to give evidence she would have needed to file a statement. The Tribunal's directions had expressly told her so.

81.15 It was right that her witness statement was admitted, indeed it had not been opposed by Mr Dunn. The Tribunal took into account what she had said in her witness statement but it recognised that Mr Dunn had been deprived of the opportunity to test her evidence through cross-examination. The First Respondent had raised some new matters in her statement which the Applicant had not had a chance to look into and the Tribunal took this into account too. The Tribunal concluded that while it could attach some weight to her witness statement, that weight was necessarily limited by those factors.

Adverse Inference

81.16 The Tribunal had been invited by Mr Dunn to draw an adverse inference from the First Respondent's failure to answer questions. It had not been prepared to consider that matter before hearing all of the evidence but it was now appropriate to consider it when determining the Allegations. The Tribunal had in mind Iqbal and Practice Direction 5. The First Respondent had created a situation in which she had not attended and had refused to apply for an adjournment. She had voluntarily absented herself from the hearing and while she may have had an understandable reason for not wishing to attend at this time, her stated intention to never attend meant that she did not have a good reason for not giving an account of herself or her actions. The

First Respondent was answerable to her regulator. She had run a Firm and she had been aware that the Applicant would not have opposed an adjournment. The Tribunal was entitled to take into account the fact that she had chosen not to give evidence. However the Tribunal could not find any Allegation proved solely or mainly on the basis of an adverse inference. It was merely one of the factors which the Tribunal took into account when assessing the evidence as a whole.

Allegation 1

81.17 In considering Allegation 1, the Tribunal had regard to the judgment of DJ Swindley. This was admissible under SDPR Rule 15(2). The Tribunal noted that all 37 claims in the tranche had been struck out. The First Respondent had accepted by virtue of her admission to Allegation 9 that she had failed in her role as a manager. The Tribunal found that she had held a supervisory role, something she had told the Court she did.

81.18 The consequence of her failures had been the striking out of 37 claims. This was clearly not in the best interests of her claimant clients who had expected to receive some money by way of compensation for hearing loss but instead found themselves in some cases liable for the Defendant's costs. This did not amount to a proper standard of service. The Tribunal had considered whether the First Respondent's role gave rise to culpability for a breach of Principles 4 and 5 above and for those reasons was satisfied beyond reasonable doubt that she had breached both those principles through her failure to manage and supervise the conduct of the cases.

81.19 The Tribunal found Allegation 1 proved in full beyond reasonable doubt.

82. **Allegation 2 - Within a witness statement dated 7 July 2016, served upon DAC Beachcroft Claims Ltd ("DAC") in the course of litigation involving her client, Mr P, she made a misleading statement that a document had not previously been served upon her Firm when it had been so served on 24 May 2016, and thereby acted without integrity, contrary to Principle 2 of the SRA Principles 2011.**

Applicant's Submissions

82.1 Mr Dunn submitted that by providing a witness statement to her opponent in litigation containing misleading information, the First Respondent had lacked integrity. It could be inferred that the purpose of the misleading statement was that it allowed the First Respondent not to address any of the issues in the witness statement of CAW. The First Respondent had described it as a mistake that she had referred to being worried about the issue and Mr Dunn stated that this was evidence of motive. She had stated that she took the date from the wrong letter, and had stated that she had both letters in front of her when she made the statement. Mr Dunn submitted that the First Respondent knew that this would provide her with an excuse for not having to respond to the statement of CAW and that accordingly she had acted dishonestly.

First Respondent's Submissions

82.2 The First Respondent admitted the factual basis of the allegation but denied acting with a lack of integrity or dishonestly. She also denied that she had been reckless or manifestly incompetent. She stated that she had "simply made a mistake". In her

answer the First Respondent had stated "At the time of writing her witness statement, the First Respondent had before her two letters from DAC Beachcroft Claims limited". One letter was date stamped 24 May 2016 and the other one 23 June 2016. The witness statement of CAW was attached to both. The First Respondent had continued "in preparing her witness statement, the First Respondent had to extract the relevant dates from a substantial file and would have needed to 'flick' back and forth through the papers in the usual way. The First Respondent was operating under a great deal of pressure and time constraint as the tranche matters were becoming increasingly intensive and worrying. In the circumstances, mistakes can and do happen. The First Respondent simply extracted the date from the second letter rather than the first and used that date in her witness statement". While the First Respondent accepted that she had made a misleading statement in that she had provided inaccurate information, she had done so innocently and accidentally. There had been no attempt to deceive or to knowingly or recklessly mislead.

82.3 The First Respondent denied that this gave her an excuse for not having to respond to the points raised in the witness statement of CAW as she had filed a five-page witness statement which did respond to the comments. Mr Kirk-Blythe confirmed that this five-page witness statement had not been exhibited. The First Respondent denied that an intention to deceive could be inferred because such a tactic "would be obviously doomed to fail" on the basis that it would have been easily discovered as being untrue. The First Respondent described the Applicant's theory as "outlandish". The First Respondent reiterated her position in her witness statement.

82.4 Mr Kirk-Blythe submitted that for the First Respondent to have acted in the manner alleged would have been "remarkably foolish" as it would have been obvious to detect that it had no prospect of success. The Tribunal was reminded of the standard of proof and Mr Kirk-Blythe submitted that the allegation would not even be made out on the balance of probabilities let alone to the criminal standard.

The Tribunal's Decision

82.5 The background facts in respect of this Allegation were not in dispute. The first letter was received by the Firm on 24 May 2016 and the second letter was received on 23 June 2016. The letters in both cases included the statement of CAW. In her Answer to the Rule 5 Statement the First Respondent had stated that at the time of writing her witness statement she "had before her two letters from DAC..." The First Respondent's reference to the statement of CAW having "only been served on 23 June 2016" in her witness statement to the Court of 7 July 2016 was not true. The effect of that statement was that it allowed her to avoid answering the questions raised in that statement. The question for the Tribunal was whether it could be sure that this was the intention when she made the statement or whether it may have been a by-product of an error.

82.6 The Tribunal considered the issue of dishonesty by reference to the test in Ivey which was set out at [74] of that Judgment:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... When dishonesty is in question the fact-finding tribunal must first ascertain

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

82.7 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

82.8 The Tribunal accepted that the First Respondent was under pressure at the time and that any gain she may have hoped to achieve by writing that statement would have been short-lived. The Tribunal was not satisfied beyond reasonable doubt that the First Respondent knew that what she was writing in the witness statement was untrue. The Tribunal was found the allegation of dishonesty not proved in relation to Allegation 1.

82.9 The Tribunal therefore considered recklessness with reference to the test in R v G. The first part of that test required the First Respondent to have perceived that there was a risk that what she was stating in her witness statement was not true. The Tribunal was not persuaded that she had. The Tribunal concluded she believed that she had found an answer to the question and had therefore not looked further into the file to double-check. In the absence of perception of risk, the Tribunal did not need to consider the next step (whether her actions were reasonable) as recklessness was not proved.

82.10 The Tribunal considered whether the First Respondent had lacked integrity. The Tribunal applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

82.11 The First Respondent, by her own admission, had made a misleading statement. The Tribunal had not been satisfied that she had done so recklessly or dishonesty. However it was still a serious matter. The First Respondent had a duty to take great care to ensure that everything she said in the witness statement was completely accurate and she had plainly failed to do so. The Tribunal was satisfied beyond reasonable doubt that she had failed to act with integrity and had breached Principle 2. For those reasons the Tribunal also found that she had been manifestly incompetent, this was an alternative to recklessness.

82.12 The Tribunal found Allegation 2 proved in respect of a breach of Principle 2 and manifest incompetence but not proved in respect of dishonesty or recklessness.

83. **Allegation 3 - She failed properly to supervise and/or manage overall the conduct of her client, Mr N's, claim resulting in that claim being struck out, and thereby she:**

3.1 failed to act in the best interests of her client, contrary to Principle 4 of the SRA Principles 2011; and/or

3.2 failed to provide a proper standard of service to her client, contrary to Principle 5 of the SRA Principles 2011.

Allegation 4 - Within an Application Notice dated 9 March 2015 served upon the Court and solicitors acting for her opponent in litigation involving her client, Mr N, she made a number of false and/or misleading statements in that application, and thereby:

4.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

4.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

Allegation 5 - In a letter to the Court dated 13 May 2015 regarding her client, Mr N, she made a misleading statement by stating that "due to the experts (sic) delay in providing the report we were unable to serve the report in time" whilst not stating that she had not provided the expert with substantial material upon which his report was meant to be based, which meant that the statement was not correct and/or misleading, and thereby:

5.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

5.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

Applicant's Submissions

83.1 Mr Dunn submitted that it could be inferred that the First Respondent had signed the claim form that was filed with the court. This was the subject of allegation 4. He

confirmed that this document was not exhibited but there was a typed draft which was exhibited which contained the First Respondent's name but not a signature. Mr Dunn further accepted that the First Respondent had not drafted the claim form. He submitted that by providing the court with information that was false or misleading the First Respondent had acted without integrity as she was under a duty to be completely frank in her dealings with the court. Mr Dunn further submitted that the First Respondent had acted dishonestly as she had been seeking to deflect the blame for failures by her or her Firm when signing the claim form.

83.2 The letter to the Court stated 13 May 2015 which was the subject of Allegation 5 appeared on the matter log as having been handled by the First Respondent. She had raised a number of issues in her witness statement which Mr Dunn would have wished to cross-examine her about. Mr Dunn again submitted that the First Respondent had lacked integrity by providing the court with false and/or misleading information and he further alleged that she had been seeking to pretend that there was a good reason for the delay in serving the medical evidence which did not involve the Firm being at fault.

83.3 Mr Dunn noted that in her answer the First Respondent had stated that she did not have access to the files. He told the Tribunal that arrangements had been made for her to have access and that they had been available to her since March 2017. She had not availed herself of that opportunity and had accepted in her witness statement that she could have reviewed the files.

First Respondent's Submissions

83.4 In her answer, the First Respondent had reserved her position in respect of these allegations pending access to the files. In her witness statement, the First Respondent stated that she had not had the opportunity to review the entire file of papers but she accepted that she had been told that she could review them at the offices of the intervention solicitors if she wished to do so.

83.5 The First Respondent did not agree that she had personally acted for Mr N at the material times. She had been responsible for the overall supervision of the matter between January 20 and September 2013. At that point SU had taken over day-to-day responsibility for the matter and the First Respondent had continued to supervise until 1 March 2015 when the Second Respondent had taken over responsibility for supervising the matter. Although the matter log showed the First Respondent being the handler, this was not significant as somebody else could have selected her as the handler when doing work on the file. It was possible that SU had done this as her computer was slow and she sometimes used the First Respondent's computer, forgetting to change the handler details.

83.6 The covering letter with the claim form was unsigned and did not contain the First Respondent's name. The First Respondent had never seen it before and denied completing it. The Second Respondent had taken over supervision of all NIHL matters in March 2015. She was experienced and had been recruited in order that she could "hit the ground running". However there was a brief period of time in March 2015 during which the Second Respondent carried out urgent tasks in the First Respondent's name rather than her own. This may explain why the First

Respondent's name appeared on the claim form. The First Respondent denied writing the letter dated 13 May 2015 and stated that she had not seen this letter before. She believed that the Second Respondent had written the letter in her name because she was anxious that she was not the named supervisor on the file. The First Respondent invited the Tribunal to find that the case of Mr N was handled satisfactorily while she had conduct of it and was supervised adequately while she had supervision of it.

83.7 Mr Kirk-Blythe emphasised the points the First Respondent had made in her witness statement.

83.8 The First Respondent denied allegations 3, 4 and 5 as put. She would have accepted a breach of Principle 8, however this had not been pleaded in respect of those allegations.

The Tribunal's Findings

Allegation 3

83.9 The Tribunal considered this Allegation after making its findings in relation to Allegations 4 and 5 below as these Allegations all related to Mr N's case.

83.10 The Tribunal had found Allegation 4 not proved on the basis that it could not be satisfied beyond reasonable doubt that she signed the claim form. However someone for whom the First Respondent was responsible for supervising clearly had completed the draft and it had contained information that was false and/or misleading.

83.11 The Tribunal had found Allegation 5 proved in full for the reasons set out below.

83.12 The Tribunal had already addressed the question of the First Respondent's supervisory responsibility for breaches of Principles 4 and 5 by virtue of her role as Partner and COLP above. This was relevant to the completion of the claim form. The Tribunal had found that the First Respondent herself was directly responsible for the writing of the letter dated 13 May 2015.

83.13 It could never be in the best interests of clients for claim forms and letters to the Court to contain false and misleading information and it clearly did not amount to a proper standard of service.

83.14 The Tribunal found Allegation 3 proved in full beyond reasonable doubt.

Allegation 4

83.15 The Applicant had not exhibited the signed claim form. The draft did not contain her signature and it was accepted that she had not prepared the draft. The Tribunal was being invited to infer, before considering the alleged breaches of the principles, that (a) the version that was lodged was the same as the draft and (b) that the First Respondent had signed it. The Tribunal was asked to infer this from the fact that her name appeared typed on the draft. The Tribunal had regard to the standard of proof and found that it could not be satisfied beyond reasonable doubt that she had

signed the claim form. The Allegation was therefore not made out on the facts. The Tribunal found Allegation 4 not proved.

Allegation 5

83.16 The relevant section of the letter dated 13 May 2015 stated that "...due to the experts delay in providing the report we were unable to serve the report in time". The obvious interpretation of this sentence was that the delay in serving the medical report was directly linked to a delay on the part of the expert. This letter had been written at the request of the Court to address this specific issue.

83.17 The reason that the report had been delayed was because the expert was unable to complete it without sight of the medical records. He had not received these until 14 March 2015. The report was then completed within a month. The delay between the examination and the report was due to the non-availability of the medical reports, something which was out of his hands. The 13 May 2015 letter made no reference to this. The Tribunal was satisfied beyond reasonable doubt that the letter was therefore misleading as it strongly implied that the expert was responsible for the delay when in fact the delay was due to the medical records not being provided to him. That was a false representation of the position.

83.18 The First Respondent had recorded time on 13 March 2015 at 17.41 for considering the client's medical records prior to sending them to the expert. She therefore knew that the medical records were not available before 13 March 2015 and that as such the expert could not complete his report before then.

83.19 The First Respondent had denied writing the letter of 13 May 2015 and had denied seeing it. The letter contained the First Respondent's reference at the top and her name at the bottom. The log showed the First Respondent being the 'handler' who prepared the letter at 13.52 on 13 May. The log further showed that the First Respondent had taken a telephone call the previous day from the third party insurers when the issue of the delay in providing the medical report had been discussed. This followed a telephone call with the Defendant's solicitors on 24 March 2015 which covered the same topic. The First Respondent had suggested that another fee earner, possibly the Second Respondent, had written the letter in the First Respondent's name. The Tribunal rejected this suggestion. The Second Respondent and other fee earners had done work on the file before and after 13 May and had recorded it in their own names. The Tribunal found beyond reasonable doubt that the First Respondent had written the letter of 13 May 2015.

83.20 The Tribunal considered whether the First Respondent had acted dishonestly. In accordance with Ivey, the Tribunal considered the First Respondent's knowledge of the matters at the time she wrote the letter. She had considered the medical reports when they came in, which was only two months before she wrote the 13 May letter. In the intervening period she had held two telephone conversations on the very topic which formed the subject of the letter. The most recent of those had been the previous day. At the time she wrote the letter, therefore, she knew the exact circumstances of the delay in the medical report being available. In the knowledge of the true circumstances, she had given an explanation which was misleading and false.

83.21 The Tribunal considered, objectively, whether her conduct was honest or dishonest by the standards of ordinary decent people. The First Respondent had written a letter to the Court, in response to a specific enquiry, which contained false and misleading information. The Tribunal was satisfied beyond reasonable doubt that ordinary decent people would regard such conduct as dishonest. The purpose in knowingly writing a letter that was misleading and false was to create an impression in the mind of the Court that was incorrect. The Tribunal found beyond reasonable doubt that the First Respondent had acted dishonestly.

83.22 The First Respondent, in writing a false and misleading letter to the Court had evidently not upheld the rule of law or the proper administration of justice. The Tribunal found beyond reasonable doubt that she had breached Principle 1.

83.23 As a matter of irresistible logic, a solicitor who dishonestly misleads the Court cannot be said to be acting with integrity. The Tribunal found beyond reasonable doubt that she had breached Principle 2.

83.24 The Tribunal found Allegation 5 proved in full beyond reasonable doubt.

84. **Allegation 6 - In a Particulars of Claim served and filed with the Court and her opponent on 22 March 2016 she made a misleading statement, verified with a statement of truth, that her client believed the facts stated in the Particulars of Claim were true, when this had not been confirmed by her client, Mr T, and thereby:**

6.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

6.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

Allegation 7 - In a Particulars of Claim served and filed with the Court and her opponent on 22 March 2016 she made a misleading statement, verified with a statement of truth, that she was authorised by her client, Mr T, to sign the statement of truth, when this was not correct, and thereby:

7.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

7.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

Applicant's Submissions

84.1 Mr Dunn referred the Tribunal to the submissions contained in the Rule 5 statement as amended. Prior to signing a statement of truth in the POC the First Respondent had not complied with paragraph 3.8 of the practice direction to Part 22 of the CPR nor had she provided or arranged to provide any similar advice. The First Respondent had provided false and/or misleading information to the court and in doing so had breached Principles 1 and 2. Mr Dunn also submitted that the First Respondent had

acted dishonestly because of her failures, or that of her Firm, she had not had time to wait to receive the confirmation from her client but wanted to be in a position to advise the court that the particulars of claim had been issued before the hearing on 23 March 2016.

First Respondent's Submissions

84.2 The First Respondent denied the allegation. In her Answer she stated that the facts contained in the POC would have been true as they were based entirely upon the client's instructions. Mr T had immediately signed and returned the particulars without amendment or query and therefore it was clear that he believed that the stated facts were true. The First Respondent submitted that the words "duly authorised" in this context did not necessarily mean "expressly or ostensibly authorised" but may also mean "impliedly authorised" by virtue of the terms of the retainer. The First Respondent's case was that one of her employees had confirmed with Mr T that the particulars were true and that Mr T had given express authority to sign those particulars of claim. The First Respondent submitted that even if the Applicant could successfully show that the employee did not inform her that Mr T had agreed the facts it would then need to prove that the First Respondent's statements were intentionally false. There was no evidence that she had done so and the Applicant's case was disproportionate and unfair. The First Respondent referred to her email to the SRA dated 11 January 2017 in which she had accepted that she made a mistake by initialling the wrong letter to go out in the post. She accepted that sending an incorrect letter to a client was an unfortunate mistake and agreed that it may have caused some confusion in the client's mind. However she did not accept that her mistake was sufficiently serious to merit any allegation of misconduct.

84.3 Mr Kirk-Blythe reminded the Tribunal of the pressure that the First Respondent was under at the material time and stated that she was acutely aware of her failings by sending the wrong letter to the client. That letter been sent out on 22 March and he had signed it on 23 March. Tribunal could infer that the reason the client turned it around as quickly as he did was that a telephone call had indeed taken place. If the Tribunal found this telephone call may have been made the allegation of dishonesty would fail. Mr Kirk-Blythe described the allegation of dishonesty is one that was "extraordinary" in the circumstances.

The Tribunal's Findings

Allegation 6

84.4 The client had not approved the Particulars of Claim (POC) before the First Respondent had signed it. The POC were signed and sent out to the client, the Court and the Defendant's solicitors between 15.02 and 15.09 on 22 March 2016. All of this work was undertaken by the First Respondent, indeed no other fee earner posted time that day. The client had not signed them until 23 March 2016. The First Respondent's case was that a telephone call had taken place between the client and one of her employees in which he had approved the draft. There was no record of this call taking place and the First Respondent had been unable to identify which employee had had this conversation with the client. This would have been a particularly important telephone call in the context of the case and the Tribunal would have expected it to

have been properly recorded in the file. The Tribunal rejected the alternative suggestion put forward by the First Respondent that because the POC was based on instructions taken from the client previously, it was acceptable to sign a declaration that the claimant believed the facts stated were true. This was inconsistent with the CPR and was not an appropriate way to conduct litigation. The client may have wished to clarify, amend or correct his earlier instructions and the fact that in this case he did not was largely down to good fortune.

84.5 The Tribunal was satisfied beyond reasonable doubt that the First Respondent had made a misleading statement in signing this declaration.

84.6 In making a misleading statement arising out of a failure to comply with the CPR, the First Respondent had failed to uphold the proper administration of justice and had breached Principle 1.

84.7 The First Respondent had clearly not been scrupulously careful to ensure that her statements were completely accurate. This was a serious failure and was of a nature exemplified in Wingate and Evans and Malins. The Tribunal was satisfied beyond reasonable doubt that she lacked integrity and had breached Principle 2.

84.8 The Tribunal considered the allegation of dishonesty, applying the test in Ivey. The Tribunal considered the First Respondent's state of knowledge at the time she signed the claim form. The client had clearly had some input into the material that formed the basis of the POC based on his earlier instructions as he did not amend it. The Tribunal needed to be satisfied beyond reasonable doubt that she knew that what she was signing was misleading. The First Respondent's belief did not need to be reasonable, just genuinely held. The Tribunal noted that the First Respondent was under pressure at the time and there was a chaotic situation in the department at the time. The Tribunal could not be satisfied to the required standard that the First Respondent may not have held a genuine belief that the client had confirmed that the facts stated in the POC were true. The Tribunal did not find dishonesty proved in respect of Allegation 6.

84.9 Having found dishonesty not proved, the Tribunal considered recklessness as an alternative allegation, applying the test in R v G [2003] UKHL 50. While it was conceivable that the First Respondent believed that the client had approved the facts in the POC, she would have known that there was a risk that he did not. This was because she had not, on her own case, taken steps to personally double check. She had not spoken to the client and she had initialled the wrong letter to send to him. The pressures on her and on the department referred to above increased the risk of an error occurring and this called for greater care, not less. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had perceived there to be a risk that she was making a misleading statement. It was further satisfied beyond reasonable doubt that her actions in proceeding regardless were not reasonable and that she had acted recklessly. The Tribunal found Allegation 6 proved in respect of Principles 1 and 2 and recklessness but not proved in respect of dishonesty.

Allegation 7

84.10 The facts surrounding the POC are discussed in detail in relation to Allegation 6 above and are not repeated here. This Allegation considered a different sentence in the same declaration within the same document. The Tribunal rejected the First Respondent's suggestion that she had a general authority arising out of her retainer and that she did not need specific authority from the client to sign the POC. This was, again, not compliant with the CPR.

84.11 For the reasons set out above, the Tribunal was satisfied beyond reasonable that in stating that she had authority to sign the POC the First Respondent had made a misleading statement. This was a breach of Principles 1 and 2, which the Tribunal found proved beyond reasonable doubt.

84.12 The Tribunal considered the question of dishonesty. The Tribunal could not be satisfied beyond reasonable doubt that the First Respondent had not believed that she had authority to sign the POC and so it did not find dishonesty proved. However it did find that she had perceived there to be a risk that she may not have had authority and therefore a risk that she would be making a misleading statement for the same reasons and in view of the same circumstances described in relation to Allegation 6. The First Respondent's actions in signing the declaration despite this risk were not reasonable and the Tribunal was satisfied beyond reasonable doubt that the First Respondent had acted recklessly.

84.13 The Tribunal found Allegation 7 proved in respect of Principles 1 and 2 and recklessness but not proved in respect of dishonesty.

85. **Allegation 8 - On 16 December 2015 she filed a signed witness statement containing a number of false and/or misleading statements in support of an application on behalf of her client, Mr G, for an extension of time for the service of particulars of claim and thereby:**

8.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

8.2 acted without integrity, contrary to Principle 2 of the SRA Principles 2011.

Applicant's Submissions

85.1 Mr Dunn and Mr Kirk-Blythe reached the agreed position that at the time the FIO reviewed the file and at the time of the interview of the First Respondent by the SRA the medical report was contained within the "orange packet" containing the case papers but not in the medical report folder or on the correspondence clip.

85.2 Mr Dunn submitted that the reason that the report could not be shown to the court was because it disclosed that Mr G did not have a cause of action where one was being claimed by way of a claim form that had been issued following receipt of the medical report. As a result of the First Respondent's conduct, the District Judge was misled by her evidence. The First Respondent had needed to provide an explanation for the

delay on the part of Firm but she could not disclose that an examination had taken place because that had produced a negative report. Mr Dunn therefore submitted that the First Respondent had acted dishonestly when making her witness statement.

First Respondent's Submissions

85.3 In her answer the First Respondent denied this allegation in full including the allegation of dishonesty. There was no suggestion that anything the First Respondent said in a witness statement was factually incorrect, indeed it was the Applicant's case that it was factually correct but was misleading because of what it did not say not because of what it did say. Mr Dunn confirmed that this was correct. The First Respondent stated that the medical report dated 12 August 2014 was not on the matter file on 16 December 2015 therefore when she was drafting the witness statement she had believed that the contents of the statement to be true and complete.

The Tribunal's Decision

85.4 The witness statement that was the subject of this Allegation was dated 16 December 2015 and the First Respondent had not objected to the amendment of the Rule 5 Statement to reflect this.

85.5 The First Respondent's witness statement stated that an appointment for a medical examination had been booked for 16 August 2014 but that the client had said he would be unable to attend the venue and required a home visit. This was correct. The witness statement did not, however, go on to state that the home visit did take place on 16 August 2014. Instead it implied that it had not taken place as the First Respondent had referred to the expert "being unable to proceed with arranging a medical appointment" due to ill-health. It then referred to enquiries being made to find an alternative agency "who would be able to provide a more suitable appointment for the Claimant to attend". This created a completely false impression that the client was still waiting for a suitable medical appointment having turned down the one that was arranged for him in Hartlepool. Anybody reading the witness statement would have had no understanding that the appointment had, in fact, taken place on 16 August 2014.

85.6 The medical report had been received by 8 December 2014 and was dated 16 August 2014. This was clear from the log which recorded the First Respondent writing to the client on 8 December 2014 "advising of failed medical". The First Respondent's witness statement made no reference to this fact and again, created a false impression that during the later part of 2014 the Firm had been trying to obtain an alternative medical report when in fact it had received one by 8 December 2014, which had concluded that the client did not have a case.

85.7 The Tribunal was satisfied beyond reasonable doubt that the First Respondent had filed a signed witness statement containing false and/or misleading statements.

85.8 The Tribunal considered whether the First Respondent had acted dishonestly with regard to the test in Ivey. The Tribunal considered the First Respondent's state of knowledge and facts at the time she made the statement. The Applicant and First Respondent had agreed the position with regard to the location of the medical

report within the 'packet' or, to give the term its ordinary meaning, the file. The Tribunal accepted their position that it was on the file but not in the part of the file where one would have expected to find it.

85.9 The Tribunal noted that, unlike Allegation 5, the gap in time between the First Respondent dealing with the relevant material and the making of the statement was one year. Taking both those factors into account, the Tribunal could not be satisfied beyond reasonable doubt that the First Respondent knew that what she was writing in the report was misleading and false. The Tribunal found the allegation of dishonesty not proved.

85.10 The Tribunal considered recklessness as an alternative allegation to dishonesty. The First Respondent had been required to prepare this witness statement to address the specific issues of, amongst other things, the apparent delay in the obtaining of a medical report. The appropriate steps to have taken would have been to thoroughly review the file in its entirety. Had the First Respondent done so she would have found the report loose at the back of the file and would also have established from the telephone attendance notes that the medical appointment had in fact taken place on 16 August 2014. The First Respondent knew that by not doing so there was a chance that she would mislead the Court. The events she was being asked to explain went back over a year and the risk of error was high unless she checked the file properly. Despite this, she persisted in preparing the statement in the terms that she had without looking at the file thoroughly. The Tribunal was satisfied beyond reasonable doubt that having perceived this risk, her actions were not reasonable and she had therefore acted recklessly.

85.11 For those same reasons the Tribunal found that the First Respondent had not upheld the proper administration of justice and had not acted with integrity. The circumstances had called for the greatest attention to detail and scrupulousness and had received neither.

85.12 The Tribunal found Allegation 8 proved in respect of Principles 1 and 2 and recklessness but not proved in respect of dishonesty.

86. **Allegation 9 - Between 2013 and August 2016 she failed to ensure that effective systems of management and supervision were in place to ensure that client matters that she supervised were properly conducted and/or that each client, whose matters she supervised, was provided with accurate information regarding the progress of their case and thereby failed to run the Firm and/or carry out her role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8 of the SRA Principles 2011.**

86.1 The First Respondent admitted this Allegation. The Tribunal found this admission to be properly made and found the allegation proved beyond reasonable doubt on the evidence.

87. **Allegation 10 - Dishonesty was alleged with respect to Allegations 2 and 4 to 8 (the "Dishonesty Allegations") but dishonesty was not an essential ingredient to prove those Allegations.**

87.1 The Tribunal had considered the allegations of dishonesty where they were made in relation to Allegations 2, 5, 6, 7 and 8. The Tribunal had not found Allegation 4 proved and therefore was not required to consider dishonesty in relation to that matter. The Tribunal's findings in relation to this are set out in relation to those allegations above. For the reasons set out above this Allegation was proved beyond reasonable doubt in respect of Allegation 5 but not proved in respect of the other Allegations.

88. **Allegation 11 - In so far as the First Respondent was not dishonest with respect to the Dishonesty Allegations, it was alleged that the First Respondent showed a reckless disregard of her obligations, but such recklessness was not an essential ingredient to prove those Allegations.**

88.1 The Tribunal considered the allegation of recklessness in respect of Allegations 2, 6, 7 and 8 as alternatives to dishonesty. The Tribunal's findings in relation to this are set out above in relation to those Allegations. For the reasons set out above the Tribunal found this allegation was proved beyond reasonable doubt in respect of Allegations 6, 7 and 8 but not proved in respect of the other Allegations.

89. **Allegation 11A - In so far as the First Respondent was not dishonest or reckless with respect to the Dishonesty Allegations, it was alleged that the First Respondent was manifestly incompetent as to her obligations, but such manifest incompetence is not an essential ingredient to prove those Allegations.**

89.1 The Tribunal considered manifest incompetence as an alternative to recklessness in relation to Allegation 2. The Tribunal's findings in relation to this are set out in relation to that Allegation above. For the reasons set out above, this Allegation was proved beyond reasonable doubt in respect of Allegation 2 only.

R1 Rule 7 Allegations

90. **Allegation 10 - Between 18 August 2014 and 15 August 2016, in supervising and managing overall the matter of Mr C, the First Respondent failed to ensure that effective systems of management and supervision were in place to prevent the Second Respondent, from:**

10.1 Serving a witness statement dated 23 November 2015 asserting that "The claimant can confirm that a copy of the Claimant's witness statement was placed in the post to the defendants on 5 October 2015". Such statement was false and misleading because the Second Respondent did not post Mr C's witness statement to Keoghs either on this date or near to this date;

10.2 Failing to comply with directions in the Court order dated 24 July 2015, which led to the Court making an order on 25 November 2015 that Mr C's claim was struck out pursuant to CPR 3.4 (2)(c) and that Mr C shall pay the Defendant's costs;

10.3 Failing to inform Mr C that his claim had been struck out due to the Firm's failure to comply with the directions and that he had been ordered to pay the Defendant's costs; and/or

10.4 Failing fully to advise Mr C that the circumstances would not be covered by his After the Event Insurance, and that the matter could be dealt with by the Firm's indemnity insurance.

And thereby:

10.5 failed to act in the best interests of her client, Mr C, contrary to Principle 4 of the SRA Principles 2011;

10.6 failed to provide a proper standard of service to her client, Mr C, contrary to Principle 5 of the SRA Principles 2011;

10.7 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011; and/or

10.8 failed to run the Firm and/or carry out her role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8 of the SRA Principles 2011.

Applicant's Submissions

90.1 Mr Dunn submitted that the facts in relation to Allegation 10 demonstrated that whilst there may or may not have been procedures in place for the overall management and supervision of staff by the Second Respondent, there was inadequate overall management and supervision of the Second Respondent by the First Respondent. If the First Respondent had ensured that effective systems of management and supervision were in place to ensure that the Second Respondent properly conducted the matter such that Mr C, the court and/or opponents were provided with accurate information regarding the case that Mr C's claim would not have been struck out and he would not have faced personal liability for costs.

90.2 Accordingly the First Respondent had breached Principle 4, 5 and 6 as well as Principle 8.

First Respondent's Submissions

90.3 In the First Respondent's response to the Rule 7 statement dated 18 August 2017, she admitted a breach of Principle 8. She denied the remainder of the Allegation. She had stated that she was the partner in charge of the NIHL cases at the Firm and was not the named supervisor for the matter of Mr C. The First Respondent accepted that her failures in respect of Principle 8 had caused loss and harm to Mr C, something she had stated she "profoundly regrets". The First Respondent stated that she had always admitted to the SRA that for a limited period of time she had lost proper control of the NIHL matters. The admission to Principle 8 was not made on the basis that she failed to have a system for supervising client matters. Such a system was, she submitted, in place but that system had broken down. The Firm's office manual, attached to the First Respondent's answer, demonstrated that the First Respondent had devised and implemented a system of supervision.

90.4 The First Respondent denied breaching Principles 4, 5 and 6. While she accepted that, as a manager, all of the principles applied to her to the fullest extent, it was denied that every time an SRA principle was breached by an employee, a manager was strictly liable for that breach. The First Respondent referred to Rule 19.2 the practice framework rules as discussed above in relation to Allegation 1 (R1 – Rule 5). The First Respondent had not given the Second Respondent permission to breach the principles.

90.5 Mr Kirk-Blythe reiterated the points he had raised in respect of Allegation 1 (R1-Rule 5) and reminded the Tribunal that after mid-2014 the First Respondent had been removed from the fee earning role, save for exceptional circumstances, as evidenced by the matter logs.

The Tribunal's Findings

90.6 The First Respondent had admitted a breach of Principle 8 in respect of this Allegation. The Tribunal was satisfied that this admission was properly made and found this proved beyond reasonable doubt on the evidence.

90.7 The Tribunal's findings on the question of the relationship between a breach of Principle 8 and Principles 4 and 5 is set out above. The First Respondent had accepted that her failure to run her business effectively caused loss and harm to Mr C. The Tribunal agreed. Mr C had not been properly advised, a misleading witness statement had been served by the Second Respondent, and the Firm had failed to comply with directions. This had resulted in Mr C's claim being struck out. The Tribunal was satisfied that her failure to run her business effectively had not been in his best interests, nor had it reflected a proper standard of service. The Tribunal found Principles 4 and 5 proved beyond reasonable doubt.

90.8 The trust the public placed in the profession was dependent upon solicitors discharging their obligations and ensuring that their businesses were run properly, in other words in accordance with Principle 8. The First Respondent had failed to do so despite being in charge of the department, a Partner and the COLP. The contrast that she sought to paint between those roles and that of a supervisor was a distinction without a difference. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had failed to maintain the trust the public, specifically Mr C, placed in her or in the profession.

90.9 The Tribunal found Allegation 10 proved in full beyond reasonable doubt.

91. **Allegation 11 - Between 15 July 2014 and 15 August 2016, in supervising and managing overall the matter of Mrs KG, she failed to ensure that effective systems of management and supervision were in place to prevent the Second Respondent from:**

11.1 On or around 21 May 2015, signing a statement of truth on, and serving, responses to a Part 18 request on behalf of Mrs KG that contradicted her client's factual instructions in material respects;

11.2 On or before 10 August 2016, obtaining from her client, Mrs KG, and serving on her opponent in litigation a materially misleading witness statement signed by Mrs KG to address issues that had been raised by her opponent;

And thereby:

11.3 failed to act in the best interests of her client, Mrs KG, contrary to Principle 4 of the SRA Principles 2011;

11.4 failed to provide a proper standard of service to her client, Mrs KG, contrary to Principle 5 of the SRA Principles 2011;

11.5 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011; and/or

11.6 failed to run the Firm and/or carry out her role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8 of the SRA Principles 2011.

Applicant's Submissions

91.1 Mr Dunn told the Tribunal that the Applicant took the same position in respect of this Allegation as it did in respect of Allegation 10.

First Respondent's Submissions

91.2 The First Respondent had also taken the same position in respect of this allegation in that she had admitted a breach of Principle 8 and expressed her regret at the harm and loss caused to Mrs KG. She denied the alleged breaches of Principles 4, 5 and 6 for the same reasons as set out in respect of Allegation 10. Mr Kirk-Blythe repeated that she was not a supervisor and that while she had failed as a manager she had not failed to try.

The Tribunal's Decision

91.3 The circumstances of the handling of Mrs KG's case were similar to that of Mr C. The First Respondent had admitted to a breach of Principle 8. The Tribunal was satisfied that this admission was properly made and found this proved beyond reasonable doubt on the evidence.

91.4 The First Respondent had again accepted that Mrs KG had suffered loss and harm as consequence of her breach of Principle 8. Again, the Tribunal agreed with that analysis. Mrs KG's instructions had been contradicted in the Part 18 responses and the client had then been placed in a compromising position by being asked to provide a misleading witness statement. It was a statement of the obvious that contradicting the client's instructions was not in her best interests and did not reflect a proper standard of service. The Tribunal was satisfied beyond reasonable doubt that the

First Respondent, through her management and supervisory failures, had breached Principles 4 and 5.

91.5 The Tribunal found as a matter of logic, for the same reasons set out in relation to Allegation 10 that the First Respondent had failed to maintain the trust the public placed in her and in the profession.

91.6 The Tribunal found Allegation 11 proved in full beyond reasonable doubt.

Second Respondent

R2 – Rule 5 Allegations

92. **Allegation 1 - On or around 21 May 2015, the Second Respondent sought to mislead her opponent in litigation where she was acting for Mrs KG by signing a statement of truth on, and serving, responses to a Part 18 request on behalf of Mrs KG that she knew contradicted her client's factual instructions in material respects, and thereby:**

1.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

1.2 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011.

92.1 In the statement of agreed facts and admissions, the facts of Allegation 1 were applied as follows:

> "The Second Respondent signed a statement of truth on, and served, Mrs KG's Part 18 Responses which contradicted in a material way her client's factual instructions in her handwritten responses. She drafted Mrs KG's Part 18 Responses, and their contents were, to an extent, based on information contained in the handwritten responses which she herself had previously imported into the soft copy proclaim file.
>
> All solicitors conducting civil litigation in the courts of England and Wales have a duty to uphold the rule of law and the proper administration of justice, and to act with integrity. By acting as she did, the Second Respondent has failed to uphold the rule of law and the proper administration of justice and has not acted with integrity.
>
> All solicitors conducting civil litigation in the courts of England and Wales have a duty to uphold the rule of law and the proper administration of justice, and to behave in a way that maintains the trust the public places in her and in the provision of legal services. By acting as she did, the Second Respondent has failed to uphold the rule of law and the proper administration of justice and to behave in a way that maintains the trust the public places in her and in the provision of legal services.

92.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation proved in full beyond reasonable doubt. In light of that admission, Mr Dunn had applied to withdraw Allegation 2. The Tribunal was satisfied that this was a reasonable and proportionate approach to take and granted that application.

93. **Allegation 3 - On or before 10 August 2016, the Second Respondent misled her client, Mrs KG, and/or sought to mislead her opponent in litigation by procuring and then serving a materially misleading witness statement signed by Mrs KG to address issues that had been raised by her opponent, and thereby:**

3.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

3.2 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011.

93.1 In the statement of agreed facts and admissions, the facts of Allegation 3 were applied as follows:

> "The Second Respondent misleadingly procured from Mrs KG a materially misleading witness statement signed by Mrs KG to address issues that had been raised by BLM, and then sought to mislead BLM by serving the witness statement on them. She received the witness statement from Mrs KG and served it on BLM.
>
> All solicitors conducting civil litigation in the courts of England and Wales have a duty to uphold the rule of law and the proper administration of justice, and to act with integrity. By acting as she did, the Second Respondent has failed to uphold the rule of law and the proper administration of justice and has not acted with integrity.
>
> All solicitors conducting civil litigation in the courts of England and Wales have a duty to uphold the rule of law and the proper administration of justice, and to behave in a way that maintains the trust the public places in her and in the provision of legal services. By acting as she did, the Second Respondent has failed to uphold the rule of law and the proper administration of justice and to behave in a way that maintains the trust the public places in her and in the provision of legal services."

93.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation proved in full beyond reasonable doubt. In light of that admission, Mr Dunn had applied to withdraw Allegation 4. The Tribunal was satisfied that this was a reasonable and proportionate approach to take and granted that application.

94. **Allegation 5 - On or around 15 July 2015, the Second Respondent was complicit in the First Respondent seeking to mislead the Court by avoiding the answering of a direct question put by the Court, whilst answering other questions, in the knowledge that to do so would demonstrate that the First Respondent had previously sought to misled the Court, and thereby:**

5.1 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011; and/or

5.2 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011.

94.1 In the statement of agreed facts and admissions, the facts of Allegation 5 were applied as follows:

> "The Second Respondent's N Witness Statement made no mention whatsoever of any of the steps that had been taken to secure the medical evidence, despite being required to do so by the Court order to which she was seeking to respond.
>
> To do so would have involved the Second Respondent in giving evidence that the First Respondent had misled the Court. She was aware of the position. The Second Respondent avoided answering the question in her witness statement because she knew that she would have had to tell the truth. Doing so made her complicit in the First Respondent seeking to mislead the Court as she was aware that the First Respondent had done this, and had been asked a series of direct questions by the Court and, whilst answering other questions, she entirely avoided setting out the true position.
>
> All solicitors conducting civil litigation in the courts of England and Wales have a duty to uphold the rule of law and the proper administration of justice. In being complicit in the First Respondent seeking to mislead the Court, or alternatively in being reckless as she was, the Second Respondent has failed to uphold the rule of law and the proper administration of justice."

94.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation proved in full beyond reasonable doubt. In light of that admission, Mr Dunn had applied to withdraw Allegation 6. The Tribunal was satisfied that this was a reasonable and proportionate approach to take and granted that application.

95. **Allegation 8 – Dishonesty was alleged with respect to Allegations 1, 3 and 5 (the "Dishonesty Allegations"), but dishonesty was not an essential ingredient to prove those Allegations.**

95.1 In the statement of agreed facts and admissions, the allegation of dishonesty in relation to Allegations 1, 3 and 5 was applied as follows:

"The Second Respondent's actions were dishonest in accordance with the test for dishonesty in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67.

In acting as set out in the paragraphs above referred to within the specific allegations, in respect of the allegations referred to below the Second Respondent's acted dishonestly by the ordinary standards of reasonable and honest people.

Not only was her conduct dishonest by the ordinary standards of reasonable and honest people but the Second Respondent was also aware that it was dishonest by those standards for the following reasons:-

In respect of all the Dishonesty Allegations, as a solicitor, she was aware that it was dishonest by those standards to seek to mislead the Court and / or other solicitors:

In respect of allegation:

1, the Second Respondent appreciated that it is clearly dishonest to sign a statement of truth on a document that contains material facts that are false;

1, the Second Respondent appreciated that it is clearly dishonest to serve a document on her opponent that contains material facts that are false;

3, the Second Respondent appreciated that is it clearly dishonest to mislead her client by procuring a materially misleading witness statement from her, which also covers up a previous error made by the Second Respondent;

3, the Second Respondent appreciated that it is clearly dishonest to serve a materially misleading witness statement, which also covers up a previous error made by the Second Respondent;

5, the Second Respondent avoided answering the question that had been put by the Court because she knew that, to tell the whole truth of which she was aware, she would have had to implicate the First Respondent. She appreciated that, when giving evidence in a witness statement to the Court, she cannot only tell half the truth."

95.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation of dishonesty proved in full beyond reasonable doubt. In light of that admission, Mr Dunn had applied to withdraw Allegations 9 and 10. The Tribunal was satisfied that this was a reasonable and proportionate approach to take and granted that application.

R2 Rule 7 Allegations

96. **Allegation 7 - The Further Allegations against the Second Respondent by the Applicant were that, whilst an employee the Firm and:**

whilst acting for Mr C, she:

7.1 served a witness statement dated 23 November 2015 asserting that "The claimant can confirm that a copy of the Claimant's witness statement was placed in the post to the defendants on 5 October 2015". Such a statement was false and misleading because the Second Respondent did not post the claimant's witness statement to Keoghs either on that date or near to that date

And thereby:

7.2 failed to uphold the rule of law and the proper administration of justice, contrary to Principle 1 of the SRA Principles 2011;

7.3 failed to act with integrity, contrary to Principle 2 of the SRA Principles 2011;

7.4 failed to act in the best interests of her client, Mr C, contrary to Principle 4 of the SRA Principles 2011; and/or

7.5 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011.

96.1 In the statement of agreed facts and admissions, the facts of Allegation 7 were applied as follows:

> "The Second Respondent served a witness statement dated 23 November 2015 asserting that "The claimant can confirm that a copy of the Claimant's witness statement was placed in the post to the defendants on 5 October 2015". Such statement was false and misleading because the Second Respondent did not post the claimant's witness statement to Keoghs either on that date or near to that date.
>
> In the circumstances, the Second Respondent has failed to uphold the rule of law and the proper administration of justice, failed to act with integrity and failed to behave in a way that maintains the trust the public places in her and in the provision of legal services by providing a false witness statement both to Keoghs and the Court.
>
> She has also failed to act in the best interests of her client, Mr C, because it is not in his interests within his litigation for the other side and the Court to be provided with a false statement."

96.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation proved in full beyond reasonable doubt.

97. **Allegation 8 – Whilst acting for Mr C, she:**

8.1 failed to comply with directions in the Court order dated 24 July 2015, which led to the Court making an order on 25 November 2015 that Mr C's claim was struck out pursuant to CPR 3.4 (2)(c) and that Mr C shall pay the Defendant's costs;

8.2 failed to inform Mr C that his claim had been struck out due to the Firm's failure to comply with the directions and that he had been ordered to pay the Defendant's costs; and/or

8.3 failed fully to advise Mr C that the circumstances would not be covered by his After the Event Insurance, and that the matter could be dealt with by the firm's indemnity insurance

And thereby:

8.4 failed to act in the best interests of her client, Mr C, contrary to Principle 4 of the SRA Principles 2011;

8.5 failed to provide a proper standard of service to her client, Mr C, contrary to Principle 5 of the SRA Principles 2011; and/or

8.6 failed to behave in a way that maintains the trust the public places in her and in the provision of legal services, contrary to Principle 6 of the SRA Principles 2011.

97.1 In the statement of agreed facts and admissions, the facts of Allegation 8 were applied as follows:

> "The Second Respondent failed to comply with directions in the Court order dated 24 July 2015, which led to the Court making an order on 25 November 2015 that Mr C's claim was struck out pursuant to CPR 3.4 (2)(c) and that Mr C shall pay the Defendant's costs.
>
> The Second Respondent failed to inform Mr C that his claim had been struck out due to the Firm's failure to comply with the directions and that he had been ordered to pay the Defendant's costs.
>
> The Second Respondent failed fully to advise Mr C that the circumstances would not be covered by his After the Event Insurance, and that the matter could be dealt with by the firm's indemnity insurance.
>
> In the circumstances, the Second Respondent has failed to act in the best interests of her client, Mr C and failed to provide him with a proper standard of service. She has also failed to behave in a way that maintains the trust the public places in her and in the provision of legal services."

97.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation proved in full beyond reasonable doubt.

98. **Allegation 9 - Dishonesty was alleged with respect to Allegation 7 but dishonesty was not an essential ingredient to prove that Allegation.**

98.1 In the statement of agreed facts and admissions, the allegation of dishonesty in relation to Allegation 7 was applied as follows:

> "As a solicitor, she was aware that it was dishonest by those standards to seek to mislead the Court and / or other solicitors and she appreciated that it is clearly dishonest to serve a materially misleading witness statement, which not only seeks to cover up a previous error made by the Second Respondent, namely the failure previously to serve Ms C's witness statement, but seeks to provide a false explanation as to why the witness statement was not served by e-mail. Of course, if it had been served by e-mail, it would have been very easy to prove – hence the need for the Second Respondent to claim that it had been served by post and the need for the Second Respondent to provide a purported excuse for it not having been served by e-mail."

98.2 The Second Respondent had admitted this Allegation in full. The Tribunal found the admission to be properly made and found the Allegation of dishonesty proved in full beyond reasonable doubt. In light of that admission, Mr Dunn had applied to withdraw Allegations 10, 11 and 12. The Tribunal was satisfied that this was a reasonable and proportionate approach to take and granted that application.

Previous Disciplinary Matters

99. None in respect of either Respondent.

Mitigation

First Respondent

100. Mr Kirk-Blythe was given some time to contact the First Respondent to inform her of the Tribunal's findings. Having done so, Mr Kirk-Blythe told the Tribunal that if there were degrees of dishonesty this was at the lower end of the scale in that the First Respondent had not told an outright untruth but had provided an incomplete account in her witness statement.

101. Mr Kirk-Blythe referred the Tribunal to the First Respondent's witness statement which set out her background and her long and arduous journey to qualification as a solicitor. He referred in detail to her health issues which, while not set out in detail in this judgement, the Tribunal had full regard to. Mr Kirk-Blythe confirmed that he did not have medical evidence to support his submissions but invited the Tribunal to accept his submissions on this point. He invited the Tribunal to place this matter in the small residual category of cases where a solicitor was permitted to remain on the Roll despite a finding of dishonesty. The Tribunal could impose a suspension of some

length which would afford the First Respondent the opportunity to re-enter the profession that she had worked so hard to enter in the first place.

Second Respondent

102. In the statement of agreed facts and admissions, the following was advanced by way of mitigation:

> "In mitigation, the Second Respondent states "I can only state that the office environment was one that was very stressful and that it was difficult to provide the high standard and quality of work due to the circumstances set in place by the First Respondent. I accept that mistakes were made when they shouldn't have been and this ultimately led to the failure of client matters and expectations.'
>
> The Second Respondent does not seek, however, to contend that her circumstances affected her decision making to the extent that she did not appreciate that her actions were dishonest. Further, the Respondent does not assert that there are exceptional circumstances in this case which would justify the Tribunal in finding that it fell into the "... small residual category where striking off will be a disproportionate penalty" identified by Mr. Justice Coulson in Solicitors Regulation Authority v Sharma [2010] EWHC 2011 (Admin)."

Sanction

103. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering each of the Respondents' culpability, the level of harm caused together with any aggravating or mitigating factors.

First Respondent

104. In assessing culpability, the Tribunal found that the first Respondent's motivation had been to cover up her own mistakes. There had been systemic failures at the Firm which had resulted in claims being struck out. The First Respondent had tried to avoid that and in doing so had made false and/or misleading statements to the court, reflecting a lack of integrity and in one instance dishonesty. If there had been an effective style of management on her part this may have been avoided. The Tribunal found that the First Respondent had been reactive to the situation brought about by those systemic failures and it had not been a pre-planned course of conduct. There was an element of breach of trust in that clients had trusted her with their claim for hearing loss. The First Respondent bore full responsibility for her misconduct and she was an experienced solicitor albeit less experienced as a manager. She also had additional responsibilities as the Firm's COLP.

105. In assessing the harm caused, the Tribunal noted that there were costs to clients whose cases were struck out. In at least one case this had resulted in the client facing a substantial adverse costs order. There was harm caused to the reputation of the profession, reflected in the fact that a District Judge had required her attendance to

explain her behaviour. The Tribunal found the damage to the reputation of the profession was not inconsiderable.

106. The matters were aggravated by the First Respondent's dishonesty in relation to Allegation 5. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. There is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

107. The misconduct had been deliberate and had continued over a period of time. Its intention was to conceal other failures. The First Respondent knew or ought to have known that her conduct was a material breach of her obligations. The Tribunal was concerned that the First Respondent lacked insight. She had denied that many of the Allegations, subsequently proved, had amounted to misconduct at all and she had attacked the SRA for bringing many of the Allegations in the first place.

108. In mitigation the Tribunal noted that the First Respondent had made an early admission to a breach of Principle 8. She had a previously unblemished career and the Tribunal took into account all that had been said on her behalf by Mr Kirk-Blythe. The Tribunal recognised that the First Respondent had been experiencing considerable personal difficulties, although it noted that some of the failings pre-dated those difficulties. There had been no medical evidence put forward to explain the effect of her personal circumstances on her performance of her role in the Firm.

109. In view of the finding of dishonesty and lack of integrity together with the high culpability and harm in this case, the matter was too serious for there to be no order, a reprimand or a fine. The matters were so serious that the Tribunal did not find that a suspension and/or restriction order would be sufficient for the protection of the public from future harm or for the protection of the reputation of the profession. The only appropriate sanction was a strike off. The Tribunal considered whether there were any exceptional circumstances that could justify a suspension as an alternative to a strike off. Mr Kirk-Blythe had drawn the Tribunal's attention to the First Respondent's personal difficulties but as noted above, the link between those difficulties and her misconduct had not been proved. There was already a chaotic regime in place before the difficulties set in. While the Tribunal had sympathy with the First Respondent's predicament at the time, the circumstances were not exceptional. The only appropriate and proportionate sanction in this case was that the Respondent be struck off the roll. No lesser sanction could be justified.

Second Respondent

110. In assessing the Second Respondent's culpability the Tribunal found that her motivation had been to protect the first Respondent as well as herself. The Second Respondent had conduct of a number of the matters and she was a senior solicitor of some experience. Her conduct was reactive to the failings of the First Respondent but that did not lessen the Second Respondent's culpability. She had direct control of the circumstances in conjunction with the First Respondent and she shared responsibility. The harm caused by the Second Respondent was similar to that of the First

Respondent, albeit the Tribunal noted that the Second Respondent was in a somewhat more junior role.

111. A number of the aggravating factors as identified for the First Respondent applied to the Second Respondent, most obviously dishonesty, in the Second Respondent's case on more than one occasion. However the Tribunal noted that the period of time during which the Second Respondent was involved was shorter as she only joined the Firm in 2015. In mitigation, the Second Respondent had made admissions and the Tribunal was satisfied that she had genuine insight into her misconduct. There had been a greater degree of cooperation with the regulator in that respect.

112. In view of the seriousness of the findings in respect of the Second Respondent, including dishonesty, the Tribunal again found the matters to be too serious to be dealt with by no order, a reprimand or a fine. A suspension and/or restrictions would not be sufficient to protect the public or the reputation of the profession. The only appropriate sanction was that the Second Respondent be struck off. The Second Respondent had not advanced any exceptional circumstances such as to justify a suspension instead and having heard the case in detail, the Tribunal found there to be none. Therefore the only appropriate sanction was that the Second Respondent be struck off the roll.

Costs

113. Mr Dunn applied for the Applicant's costs in the sum of £79,683.39. This was a reduction on the original claim in the schedule of costs as the preparation for the hearing and the hearing itself had taken less time than estimated.

114. Mr Dunn told the Tribunal that based on the Second Respondent's statement of means it was clear that she had various assets and equity in properties although her income was exceeded by her outgoings. The Tribunal was invited to make an order for costs in the usual terms. The First Respondent had provided no information about her financial position, despite a direction that a statement of means should have been served a month ago. Mr Dunn had no representations on the question of apportionment.

115. Mr Kirk-Blythe told the Tribunal that the Firm had entered into an insolvency process in September 2016. The individual partners were personally liable and Mr Kirk-Blythe's company was a creditor for a significant sum. He understood that, following the sale of an investment property that was due to complete at the time of the hearing, there will be no money left once the mortgage, the bank debt and the legal fees had been paid off. There was £180,000 outstanding in respect of the intervention costs and the First Respondent was presently unemployed. Mr Kirk-Blythe invited the Tribunal to make an order for costs that could not be enforced without leave of the Tribunal.

116. Mr Kirk-Blythe submitted that there should be an apportionment of costs, possibly 50-50. He submitted that some of the figures in the Applicant's cost schedule were very high and while he accepted that these were not straightforward proceedings, the time spent preparing the Rule 5 statement, reviewing papers and preparing for the

substantive hearing was high. Mr Dunn responded that it had been necessary to make printed copies of an image of the Firm's hard drive as part of the case preparation.

117. In response to a query from the Tribunal, Mr Dunn told the Tribunal that the Applicant did not recover the costs of the intervention report from the intervention costs and their inclusion in the schedule of costs these proceedings reflected the fact that the report covered both topics.

The Tribunal's Decision

118. The Tribunal considered the schedule of costs carefully and was prepared to carry out a summary assessment. The majority of the costs were reasonable and proportionate but there was a concern that some elements of the cost that related to the intervention may not have been directly relevant solely to these proceedings. The Tribunal decided that the appropriate level of costs should be reduced to £75,000.

119. The Tribunal then considered the question of apportionment. The First Respondent had been more senior within the Firm than the Second Respondent. The First Respondent's misconduct had been a factor in the misconduct of the Second Respondent. The Tribunal also noted that the Second Respondent had admitted the allegations made against her, albeit at a late stage. The First Respondent had contested them and the majority had been proved. The Tribunal determined that the First Respondent should pay two thirds of the Applicant's costs, namely £50,000 and the Second Respondent should pay one third, namely £25,000.

120. The First Respondent had not provided any evidence as to her means. There had been no compliance with the direction that she serve a statement of means if she wished them taken into account, no later than 28 days before the hearing date. The matters which Mr Kirk-Blythe had raised were not matters on which the Applicant had had an opportunity to investigate and the Tribunal was therefore not able to attach any weight to the submissions made on behalf the First Respondent. There was therefore no basis to make an order that costs not be enforced without leave of the Tribunal as no adequate information as to the First Respondent's means had been provided. The Tribunal therefore made an order for costs in respect of the First Respondent on the usual terms.

121. The Second Respondent had served a statement of means which the Tribunal considered. The Tribunal noted that her income was outstripped by her expenditure but it also noted that she appeared to have equity in more than one property. The Tribunal expected that the Applicant would take a pragmatic approach to recovering its costs. The Tribunal therefore made the order for costs against the Second Respondent in the usual terms.

Statement of Full Order

122. The Tribunal Ordered that the First Respondent, SAFINA BIBI SHAH, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £50,000.00.

123. The Tribunal Ordered that the Second Respondent, SHAMILLA HANIF, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00.

Dated this 11th day of April 2018
On behalf of the Tribunal

Nicola Lucking

N. Lucking
Chair