

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11607-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CLAIRE MARGARET WHEELER

Respondent

Before:

Miss N. Lucking (in the chair)

Mr J. Evans

Mrs C. Valentine

Date of Hearing: 31 July – 1 August 2017

Appearances

Chloe Carpenter, counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH (Instructed by Alastair Willcox, solicitor, of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN), for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 7 February 2017. The allegations were that:-
 - 1.1 On 10 February 2014, on the matter of Ms S, the Respondent fabricated and/or backdated all or any of the eight documents exemplified at paragraphs 23 to 81 of the Rule 5 Statement in breach of all or alternatively any of Principles 2, 4 and 6 of the SRA Principles 2011 (“the Principles”).
 - 1.2 Between about 22 July 2011 and 24 January 2014, the Respondent on all or alternatively any of the nine client matters exemplified at paragraphs 85 to 160 of the Rule 5 Statement, fabricated and/or backdated documents in breach of all or alternatively any of Principles 2, 4 and 6 of the Principles and, to the extent that the misconduct took place before 5 October 2011, Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”).
2. In addition, allegations 1.1 and 1.2 were advanced on the basis that the Respondent’s conduct was dishonest. However, it was not necessary to establish dishonesty to prove the allegations.

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 7 February 2017 with exhibit ‘AHJW1’
- The Firm’s Compliance Report dated 16 May 2014
- The Firm’s Investigation Report in respect of the Respondent dated 7 March 2014
- Witness Statement of Natalie Thomas (Risk Partner at the Firm) dated 15 June 2017 with exhibit NT1
- Witness Statement of Helen Powers (IT manager at the Firm) dated 13 June 2017 with exhibit HP1
- Witness Statement of Richard Parnell (the Firm’s former managing partner and Compliance Officer for Legal Practice) dated 7 June 2017 with exhibit RJP1
- Witness Statement of Kathryn Hudson (partner at the Firm who conducted the Respondent’s disciplinary hearing) dated 7 June 2017 with exhibit KMH1
- Witness Statement of Peter Whyman (IT expert instructed in respect of the Ms S matter) dated 7 June 2017 and his reports dated 28 February 2014, 16 May 2014 and 5 February 2017
- Applicant’s Statements of Costs dated 8 February 2017 and 25 July 2017 and a revised schedule of costs dated 1 August 2017
- Hearing bundle (including the Rule 5 Statement and exhibits, the witness statements, correspondence and the authorities on which the Applicant relied)

- Documents handed in at the hearing (a clearer copy of the meta data for the 22 July 2011 letter, an Official Copy of the Register in respect of the Respondent's property, and a letter dated 25 July 2017 from the Applicant to the Respondent drawing her attention to the case of SRA v Davies and McGlinchey [2011] EWHC 232 (Admin))

Respondent

- The Respondent's Written Account to the Firm dated 14 February 2014 and her Statement to the Firm (March 2014)
- The Respondent's reply to the Applicant's letter seeking an explanation dated 14 August 2014 including her further statement
- The Respondent's comments on the schedule of matters where it was alleged she had fabricated documents
- Personal Statement of Ms MB dated 3 August 2014
- To Whom It May Concern letter in support of the Respondent from Ms JZS dated 9 August 2014
- Letter to the Applicant from Ms SS in support of the Respondent dated 13 August 2014
- Letter from the Respondent to the Applicant dated 24 July 2016

Preliminary Matters – Application to proceed in the absence of the Respondent

4. In advance of the hearing the Respondent had indicated that she did not plan to attend the hearing. The Applicant invited the Tribunal to proceed in the Respondent's absence. It was submitted that the Tribunal could and should do so in accordance with Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007.
5. The Respondent had been served with the proceedings and served with notice of the hearing date. The Respondent was aware of the date of the hearing, and of all the other directions which have been made. She consented to the directions dated 31 March 2017. In the circumstances, the Respondent was voluntarily absenting herself.
6. Ms Carpenter referred the Tribunal to the case of R v Hayward [2001] EWCA Crim 168 and the factors that the Tribunal needed to consider when deciding whether or not to proceed in the Respondent's absence. The Applicant's position was that the Respondent was voluntarily absent. She had chosen not to attend and even if the case was adjourned there was no suggestion that the Respondent would attend. In choosing not to attend the Respondent had chosen not to give her account to the Tribunal. The decision to proceed in the Respondent's absence was one that should be exercised with great care and it was only in rare and exceptional circumstances that it should be exercised in favour of the hearing continuing in the absence of the Respondent. The Respondent had a right to be present at the hearing. However, that right could be waived and the Respondent had waived that right. In the circumstances of this case Ms Carpenter invited the Tribunal to proceed in the Respondent's absence.

7. One of the factors that the Tribunal had to take into account was delay on the memories of the witnesses. The Tribunal was very concerned that the matter had been referred to the Applicant in May 2014 and it was over three years later. The Applicant had needed to make its own enquiries and given the number of matters involved it had taken some time. Ms Carpenter acknowledged that there had been a delay at the investigation stage of approximately one year. Once the matter had been referred to the legal department the proceedings had been issued within the six month target timescale.
8. The Tribunal carefully considered Ms Carpenter's submissions and the factors set out in Hayward. The Respondent had not engaged with these proceedings, she was aware of them and aware of the hearing date, having confirmed to the Applicant that she was not going to be attending the hearing. In the circumstances the Tribunal concluded that the Respondent had voluntarily absented herself and it would proceed in her absence.

Factual Background

9. The Respondent was born in August 1986 and admitted to the Roll of Solicitors in November 2010. At all material times the Respondent was practising as an associate solicitor in the family law department at the Lincoln office of Bridge McFarland Solicitors ("the Firm"). The Respondent's employment with the Firm ended on 16 May 2014 by mutual agreement. Since leaving the Firm the Respondent had not worked in legal practice and at the time of the Rule 5 Statement did not hold a current practising certificate.
10. The SRA received a report about the Respondent's conduct from the Firm on 16 May 2014. The report was prepared by the Firm's then Compliance Officer Legal Practice and Managing Partner, Richard Parnell. The Firm explained that they had reason to make the report following a complaint received from the Respondent's client, Ms S, on 10 February 2014. A review of the file of papers relating to Ms S had raised concerns that eight letters purportedly dated between 22 January 2014 and 3 February 2014 had in fact been created by the Respondent on the client file during the afternoon and evening of 10 February 2014, and after the date the letters had allegedly been sent to the client and third parties.
11. The Firm subsequently made enquiries which resulted in it concluding that the letters referred to above had been backdated and not sent. The Firm conducted a wider investigation into the Respondent's client matter files. The Firm interviewed the Respondent as part of its disciplinary procedure on 12 and 13 February 2014. The outcome of the investigation gave the Firm reason to believe that, on a number of matters, the Respondent had backdated letters.
12. On the 31 July 2014, a Supervisor in the employment of the SRA's Supervision Department wrote to the Respondent seeking an explanation for a number of alleged breaches of the SRA Code of Conduct 2011 which she had identified. The Respondent denied the alleged breaches. The Respondent had previously denied any improper conduct during the Firm's investigation, in particular in her written account to the Firm on the Ms S matter dated 14 February 2014 and her witness statement dated March 2014. The SRA sent a further letter to the Respondent dated 8 July 2016

to which the Respondent responded by way of telephone call on 12 July 2016 and letter dated 24 July 2016. A decision to refer the Respondent's conduct to the Tribunal was made on 12 September 2016.

Witnesses

13. The following witnesses gave written and oral evidence:
 - Natalie Thomas
 - Helen Powers
 - Richard Parnell
 - Kathryn Hudson
 - Peter Whyman
14. The Tribunal found all the witnesses to be credible and their oral evidence enabled certain points to be clarified and explored which was of assistance to the Tribunal.
15. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

16. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Adverse Inferences

17. Ms Carpenter invited the Tribunal to draw adverse inferences against the Respondent under its Practice Direction Number 5 and Iqbal v SRA [2012] EWHC 3251 in respect of her failure, as a solicitor, to engage with these proceedings, serve an Answer and attend the hearing to give evidence. Ms Carpenter drew the Tribunal's attention to what Sir John Thomas, the then President of the Queen's Bench Division, stated in Iqbal "*Ordinarily the public would expect a professional [person facing disciplinary proceedings] to give an account of [their] actions.*" Whilst it was submitted that the allegations were clearly proven without any adverse inference, Ms Carpenter stated that, it was open to the Tribunal to draw one.
18. The Tribunal noted that the Respondent had not engaged in the process. She had not admitted the allegations and had not provided an Answer or attended the hearing. She had not provided the Tribunal with any explanation for her conduct. The Tribunal considered that this was a sad case. The delay that there had been from May 2014 to this hearing meant that the investigation and subsequent proceedings had been a spectre that the Respondent had had to contend with for a considerable period of time.

It was possible that she would have been more inclined to come and present her case but for the delay. The Tribunal concluded that the evidence was so overwhelming it was unnecessary for it to draw an adverse inference from the Respondent's non-engagement and non-attendance.

19. **Allegation 1.1 - On 10 February 2014, on the matter of Ms S, the Respondent fabricated and/or backdated all or any of the eight documents exemplified at paragraphs 23 to 81 of the Rule 5 Statement in breach of all or alternatively any of Principles 2, 4 and 6 of the Principles.**

The Applicant's Case

- 19.1 On the 10 February 2014, at approximately 12:45, the Respondent telephoned the Firm's Risk Solicitor, Natalie Thomas, to inform her of a number of issues which had arisen on the matter of Ms S. The Respondent explained that Ms S was "*making her ill*" and that she no longer wished to represent her. The Respondent reported that there had been a Court hearing on 21 January 2014 at which Ms S had been present and that Ms S was aware that the Court had ordered that a witness statement be filed and served by 11 February 2014. According to the Respondent, following the hearing, she had provided Ms S with a copy of the Court Order confirming the date for the filing and serving of the witness statement. She had also asked Ms S to arrange an appointment so that the statement could be prepared.
- 19.2 The Respondent stated that Ms S had contacted her to say that she would not be attending for an appointment as she was unwell and would deal with the preparation of the statement herself. The Respondent informed Natalie Thomas that Ms S had been writing to third parties herself and that, by doing that, she was technically acting for herself. In the circumstances, the Respondent considered that the client's conduct was affecting the Firm's reputation with various professional bodies, the Court and opposing solicitors and that, in view of that, the Firm should cease to act on this matter.
- 19.3 The Respondent stated that she had written to Ms S on 7 February 2014 to remind her of the deadline for the filing and serving of the witness statement. However, over that weekend, Ms S had contacted the Respondent by e-mail to say that she had not been aware of the deadline and had also expressed dissatisfaction with the Respondent's conduct of the matter. In the circumstances, the Respondent considered that there had been a breakdown in the solicitor/client relationship in that it appeared that Ms S had lost trust and confidence in the Respondent, and that the Firm should therefore cease to act for Ms S.
- 19.4 Natalie Thomas agreed with the Respondent's approach and asked the Respondent to prepare a draft letter to Ms S for her consideration, enclosing a copy of the Firm's complaints procedure. Following this, the Respondent prepared a draft letter to Ms S withdrawing from the case and a draft letter to the Court stating that she had withdrawn from the case. At 15:48 on 10 February 2014 the Respondent sent an email to Natalie Thomas attaching the two draft letters. Natalie Thomas sent an email to the Respondent attaching some suggested amendments to the draft letter to the client at 16:00 on 10 February 2014. After this, at 16:07, the Respondent sent an email to Ms S attaching a letter withdrawing from the case.

19.5 Following receipt of the letter, Ms S telephoned Natalie Thomas on 10 February 2014 to make a complaint about the Respondent. Natalie Thomas informed the Respondent of the complaint and asked for a copy of the Respondent's hard copy file. On 11 February 2014, whilst waiting for the Respondent to send to her the hard copy of the file for review, Natalie Thomas reviewed the electronic file relating to Ms S. The outcome of her review was that she had reason to believe that the Respondent had backdated eight letters.

19.6 1) - Purported Letter to Morley Brown dated 22 January 2014

19.6.1 There was a letter before the Tribunal which purported to be a letter to Morley Brown Solicitors (the solicitors acting for the other side) dated 22 January 2014. The letter provided Morley Brown with Ms S's bank details so that their client could pay £10.00 "*in advance of each contact at the contact centre.*" The last paragraph of the letter stated, "*we would be grateful if these details could be passed on to your client as a matter of urgency.*" The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 15:01.

19.6.2 It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 22 January 2014. The time recording log did not show that any time was recorded for correspondence on 22 January 2014. The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" Normally two copies were printed and there was an exact copy of what was sent out for the file. During the course of the Firm's investigation, Morley Brown confirmed to the Firm that they had not received the letter dated 22 January 2014.

19.6.3 It was noted that the Respondent sent a letter to Morley Brown Solicitors on 10 February 2014, enclosing a copy of a letter sent to the Lincoln County Court on that date which suggested a number of amendments to the court timetable. The meta data for the letter dated 10 February 2014 stated that it was created at 15:51 on 10 February 2014.

19.6.4 According to the Applicant, it was to be inferred from the matters above that the Respondent fabricated and/or backdated the purported letter to Morley Brown dated 22 January 2014 at or about 15:01 on 10 February 2014 shortly before she prepared the genuine letter dated 10 February 2014 at or about 15:51 on 10 February 2014 in order to give the false impression that she had progressed the matter after the hearing on 21 January whereas the true position was that the Respondent had failed to take any steps to progress the matter until the letter dated 10 February 2014. It was also to be inferred that the Respondent wished to be able, in her letter to the client withdrawing from the case, to assert that she had been properly progressing the client's case despite knowing that she had not in fact been doing so.

19.7 2) - Purported Letter to "R" Medical Practice dated 22 January 2014

19.7.1 There was a letter before the Tribunal which purported to be a letter to "R" Medical Practice dated 22 January 2014. The letter requested copies of Ms S's medical records and, whilst it made it clear that Ms S was female, it went on to say, "...we enclose herewith his signed authority. We would be most grateful if you could forward copies of his medical records to us as soon as possible."

19.7.2 The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 21:08. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 22 January 2014. The time recording log did not show that any time was recorded for correspondence on 22 January 2014. The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" During the course of its investigation, the Firm made enquiries of "R" Practice as to whether it had received the letter dated 22 January 2014 on around that date. It confirmed that it had not.

19.7.3 The Respondent sent a letter dated 10 February 2014 to "R" Medical Practice on or about 11 February 2014, enclosing a copy of the purported letter dated 22 January 2014 and chasing a response. The meta data printout from the Firm showed that the letter dated 10 February 2014 was created by the Respondent on 10 February 2014 at 21:11. It was to be inferred from the matters above that the Respondent fabricated and/or backdated the purported letter dated 22 January 2014 on 10 February 2014 in order to send it with the letter dated 10 February 2014 to give the false impression that the letter dated 10 February 2014 was the second letter the Respondent had sent to "R" Medical Practice seeking the medical records. The true position was that the Respondent had failed to take any steps to obtain the medical records from "R" Medical Practice until the letter dated 10 February 2014.

19.8 3) - Purported Letter to Lincoln County Hospital dated 22 January 2014

19.8.1 There was a letter before the Tribunal which purported to be a letter to Lincoln County Hospital dated 22 January 2014. The letter made reference to "*his signed authority*" and "*his medical records.*" The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 21:18. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 22 January 2014. The time recording log did not show that any time was recorded for correspondence on 22 January 2014.

19.8.2 The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" During the course of its investigation, the Firm made enquiries of Lincoln County Hospital as to whether it had received the letter dated 22 January 2014 on around that date. It confirmed that it had not.

19.8.3 The Respondent sent a letter dated 10 February 2014 to Lincoln County Hospital on or about 11 February 2014, enclosing a copy of the purported letter dated 22 January 2014 and chasing a response. The meta data printout from the Firm showed that the letter dated 10 February 2014 was created by the Respondent on 10 February 2014 at 21:17. It was to be inferred from the matters above that the Respondent fabricated and/or backdated the purported letter dated 22 January 2014 on 10 February 2014 in order to send it with the letter dated 10 February 2014 so as to give the false impression that the letter dated 10 February 2014 was the second letter the Respondent had sent to Lincoln County Hospital seeking the medical records. The true position was that the Respondent had failed to take any steps to obtain the medical records from Lincoln County Hospital until the letter dated 10 February 2014.

19.9 4) - Purported Letter to Grantham Hospital dated 22 January 2014

19.9.1 There was a letter before the Tribunal which purported to be a letter to Grantham Hospital dated 22 January 2014. Once again, the letter made reference to "*his medical records*" and "*his signed authority.*" The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 21:22. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 22 January 2014. The time recording log did not show that any time was recorded for correspondence on 22 January 2014. The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" During the course of its investigation, the Firm made enquiries of Grantham Hospital as to whether it had received the letter dated 22 January 2014 on around that date. Ms AC confirmed that it had not been received until the Firm's letter of 10 February 2014 was received. She had emailed the Respondent on 13 February 2014 to confirm that she had received her letter dated 22 January 2014 on 13 February 2014.

19.9.2 The Respondent sent a letter dated 10 February 2014 to Grantham Hospital on or about 11 February 2014, enclosing a copy of the purported letter dated 22 January 2014 and chasing a response. The meta data printout from the Firm showed that the letter dated 10 February 2014 was created by the Respondent on 10 February 2014 at 21:21. It was to be inferred from the matters above that the Respondent fabricated and/or backdated the purported letter dated 22 January 2014 on 10 February 2014 in order to send it with the letter dated 10 February 2014 so as to give the false impression that the letter dated 10 February 2014 was the second letter the Respondent had sent to Grantham Hospital seeking the medical records. The true position was that the Respondent had failed to take any steps to obtain the medical records from Grantham Hospital until the letter dated 10 February 2014.

19.10 5) - Purported Letter to Peterborough City Hospital dated 22 January 2014

19.10.1 There was a letter before the Tribunal which purported to be a letter to Peterborough City Hospital dated 22 January 2014. Once again, the letter made reference to "*his medical records*" and "*his signed authority.*" The

meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 21:23. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 22 January 2014. The time recording log did not show that any time was recorded for correspondence on 22 January 2014. The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" During the course of its investigation, the Firm made enquiries of Peterborough City Hospital as to whether it had received the letter dated 22 January 2014 on around that date. It confirmed that it had not.

19.10.2 The Respondent sent a letter dated 10 February 2014 to Peterborough Hospital on or around 11 February 2014, enclosing a copy of the purported letter dated 22 January 2014 and chasing a response. The meta data printouts from the Firm showed that the letter dated 10 February 2014 was created by the Respondent on 10 February 2014 at 21:24. Again, it was to be inferred from the matters above that the Respondent fabricated and/or backdated the purported letter dated 22 January 2014 on 10 February 2014 in order to send it with the letter dated 10 February 2014 so as to give the false impression that the letter dated 10 February 2014 was the second letter the Respondent had sent to Peterborough City Hospital seeking the medical records. The true position was that the Respondent had failed to take any steps to obtain the medical records from Peterborough City Hospital until the letter dated 10 February 2014.

19.11 6) - Purported Letter to Pilgrim Hospital Boston dated 22 January 2014

19.11.1 There was a letter before the Tribunal which purported to be a letter to Pilgrim Hospital Boston dated 22 January 2014. Once again, the letter made reference to "*his medical records*" and "*his signed authority*". The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 21:19. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 22 January 2014. The time recording log did not show that any time was recorded for correspondence on 22 January 2014. Again, the Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" During the course of its investigation, the Firm made enquiries of the Pilgrim Hospital as to whether it had received the letter dated 22 January 2014 on or around that date. It confirmed that it had not.

19.11.2 The Respondent sent a letter dated 10 February 2014 to the Pilgrim Hospital on or around 11 February 2014, enclosing a copy of the purported letter dated 22 January 2014 and chasing a response. The meta data printout from the Firm showed that the letter dated 10 February 2014 was created by the Respondent on 10 February 2014 at 21:20. It was to be inferred from the matters above that the Respondent fabricated and/or backdated the purported letter dated 22 January 2014 on 10 February 2014 in order to send it with the letter dated 10 February 2014 so as to give the false impression that the letter dated 10 February 2014 was the second letter the Respondent had sent to the

Pilgrim Hospital seeking the medical records. The true position was that the Respondent had failed to take any steps to obtain the medical records from the Pilgrim Hospital until the letter dated 10 February 2014.

19.12 7) - Purported Letter to Ms S dated 28 January 2014

19.12.1 There was a letter before the Tribunal which purported to be a letter to Ms S dated 28 January 2014. This provided Ms S with an update following a Court hearing on 21 January 2014, stated that there would be a Fact Finding Hearing in May 2014 and set out the directions the Court had made. The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 15:21. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 28 January 2014. The time recording log did not show that any time was recorded for correspondence on 28 January 2014. The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*"

19.12.2 Further, Ms S did not receive the letter dated 28 January 2014. Ms S told the Respondent during a telephone call on 10 February 2014 that she had not received the purported letters dated 28 January 2014 or 3 February 2014. Ms S stated during her complaint to Natalie Thomas that she had not seen the purported letters dated 28 January 2014 or 3 February 2014. The contemporaneous documents showed that Ms S did not receive the purported letters. The Firm's report stated that "*...the client had e-mailed [the Respondent] on 30 January 2014 requesting urgent confirmation as to when the statement had to be filed with the Court. This was an indication that she had not received [the Respondent's] letter of 28 January 2014.*"

19.12.3 In the purported letter to the client dated 28 January 2014 the Respondent stated "*We are to obtain copies of your GP and hospital records. You kindly provided me with a copy of your written authority regarding this and I am therefore writing to the various hospitals in this regard*". This made no sense if the Respondent had already written to the medical institutions on 22 January 2014. It was submitted the Respondent made this mistake because she fabricated the letter to the client dated 28 January 2014 at 15:21 on 10 February 2014, before she fabricated the purported letters to the medical institutions dated 22 January 2014 between 21:08 and 21:23 on 10 February 2014 and so she caught herself out.

19.13 8) - Purported Letter to Ms S dated 3 February 2014

19.13.1 There was a letter before the Tribunal which purported to be a letter to Ms S dated 3 February 2014. The letter enclosed a copy of the purported letter dated 28 January 2014 and stated, "*I write further to my letter dated 28th January and your most recent emails to me. I am not sure whether these have crossed in the post but for completeness I attach a further copy of my letter and request that you contact my secretary to make an appointment to see me.*"

19.13.2 The meta data printout provided by the Firm showed that the letter was created by the Respondent on 10 February 2014 at 15:25. It was alleged that the Respondent created this letter on 10 February 2014 but backdated it to 3 February 2014. The time recording log did not show that any time was recorded for correspondence on 3 February 2014. However, one unit of time was recorded for correspondence on 10 February 2014. The Firm's report stated that the letter "*had not been printed with the Firm's "macro" down the side*" which was an indication that it "*had simply been printed using "Ctrl + P."*" Ms S did not receive the letter dated 3 February 2014.

The Firm's Investigation

- 19.14 The Firm interviewed the Respondent as part of its disciplinary procedure on 12 and 13 February 2014. The Respondent denied any improper conduct during the Firm's investigation, in particular in her written account to the Firm on the Ms S matter dated 14 February 2014 and her witness statement dated March 2014.
- 19.15 The Firm carried out an investigation into the Respondent's conduct. It should be noted that access to Hotmail at the Firm on the work system was barred between 09:00 and 17:00. The Firm conducted system checks on the Respondent's use of the work system. On 13 February 2014 on the Firm's servers Helen Powers accessed the system logs on the Event Viewer. This displayed logon times for all users. This showed that the Respondent did not log onto the work system on 10 February 2014 until 09:06 and logged off at 19:02 with the log off effected at 19:03. Therefore the Respondent could not, as she claimed, have logged into Hotmail prior to the bar coming into effect at 09:00.
- 19.16 Also on 13 February 2014, Helen Powers used the Firm's web filtering/reporting software, Burstek, to report on the Respondent's internet access on the work system on 10 February 2014 which was the day the Respondent had claimed to have accessed Hotmail at work in order to save the alleged draft emails on her Hotmail account to the work system. This reporting showed that the Respondent had not accessed Hotmail at all from the work system on 10 February 2014 and on that date she had not accessed the internet at all from the work system until 21:00.
- 19.17 On 18 February 2014 Helen Powers checked the Respondent's work PC and Terminal Services account for internet history. By this date the Respondent's internet history for "last week" had been deleted, although internet history for two weeks ago and three weeks ago remained visible.
- 19.18 In light of the Respondent's contentions as to how the documents had been created the Firm instructed an IT expert, namely Mr Peter Whyman of Forensic IT Services, to examine the hard drive of the Respondent's personal laptop computer. Mr Whyman was sent a letter of instruction dated 21 February 2014. Mr Whyman produced two reports, Interim Forensic Report 1, on 28 February 2014 and Interim Forensic Report 2 on 16 May 2014. Mr Whyman produced a further report to the SRA on 5 February 2017.

- 19.19 Mr Whyman's analysis was of the hard drive of the Respondent's laptop (i.e. what she did on her laptop when working on it locally). Any work she did when connected to the work system using VPN (remote access) would show on an analysis of the work system rather than on the Respondent's laptop.
- 19.20 The laptop was used to access the Respondent's Hotmail account. In the relevant period Mr Whyman found evidence that the Hotmail account was accessed from the hard drive of the personal laptop on 26, 28 January and 13 February 2014 but not on 21 January 2014, 3 February 2014 or 10 February 2014. 21 January 2014 was the date the Respondent contended she created the letters to the medical agencies dated 22 January 2014 on her personal Hotmail account whilst working at home. Further 3 February 2014 was the date the Respondent contended she created the letter to Ms S dated 3 February 2014 on her personal Hotmail account whilst working at home and 10 February 2014 was the date on which the Respondent said she transferred the letters in relation to Ms S's matter from her Hotmail account to the Firm's server and, in the case of five of the eight letters (the letters to the medical agencies) her case was that she did this from home on the evening of 10 February 2014.
- 19.21 Mr Whyman's opinion was that given the lack of any internet history showing Hotmail access on 21 January 2014, 3 February 2014 or 10 February 2014 it was unlikely that Hotmail was accessed from the laptop to create or access draft emails on 21 January 2014, 3 February 2014 or 10 February 2014. The laptop showed connection to Hotmail on 26 and 28 January 2014. No draft emails were recovered. However, it was possible that draft emails were created and saved on 26 and 28 January without such draft emails having been recovered.
- 19.22 There were a number of successful remote log-ins to the Firm's server (via VPN) from the laptop during the relevant period, namely on 15 January 2014, 21 January 2014, 26 January 2014, 28 January 2014, 9 February 2014, 10 February 2014 and 13 February 2014. There was no evidence of any Word documents created between 21 January 2014 and 10 February 2014 in relation to Ms S's file that could be found on the hard drive of the Respondent's laptop. Mr Whyman's opinion was that the hard drive of the laptop was not used to create/ edit/ save any Word documents relating to the Ms S matter.
- 19.23 In the report that he prepared for the Applicant, Mr Whyman explained that Microsoft Word documents could have two creation date times namely the time the file was first saved ("file created") and the time the file was initially opened ("content created"). He said that when a document was created from Word using the file new document method the time that this occurred would be shown within the "content created" data. The "file created" date would not be added until the file was saved (which is when it was effectively created on the computer). This meant that it was possible to create a document using the file new document method and work on that document for a period before saving it and that first save would become the "file created" date.
- 19.24 In respect of the eight disputed letters they all had the "content created" and "created" date as the same time or the "content created" time shortly after the "created" time. It was possible to achieve this where the file created and content created dates were the same or very similar, when the document was created using the file save as method. In that instance the document was opened, content added and saved at the same time

resulting in the same (or very similar) timestamps. If a file was open and being edited it was possible to use the file save as method to create a new document so that the resulting file showed little difference between the "content created" and "file created" dates as it did when the file new document method had been used. In Ms Carpenter's submission this negated the Respondent's assertion that she could not have produced the documents in such a short time scale and that the time scale in which they were produced meant that she could not have been creating the documents on 10 February 2017.

- 19.25 Mr Whyman gave evidence to the Tribunal. He explained that a system restore such as the one the Respondent had carried out would restore the computer's systems (but not the contents or documents) to an earlier point in time. It would not delete documents. The only way to delete documents permanently was to overwrite them. Documents created in Hotmail rather than on the laptop would be on the Hotmail server not the laptop. If documents had been created as Word documents and then copied into Hotmail Mr Whyman would have expected to find evidence of those documents on the laptop. If documents had been created via VPN they would not have been found on the laptop. Fragments of emails had been found. Mr Whyman explained that computers did keep fragments of information. He had been able to pull back five pages of email fragments but these did not relate to the Ms S matter. This was all he had been able to find.
- 19.26 The Firm's investigation had been detailed. In evidence Mr Parnell said that the Respondent had been quite well known to him and the Firm had known her well for about five years. She had spent part of her training contract with him. As Mr Parnell's role changed he had not had much to do with the Respondent as an employee. Mr Parnell recalled that the Respondent had raised issues about the fact that her head of department, Ms LM, was not based in Lincoln but could not recall whether this was raised before or as part of the investigation. He explained that there was a childcare lawyer, Ms KR, just down the corridor from the Respondent who gave the Respondent quite a lot of support. Ms KR had been like a mentor to the Respondent and they had been close, discussing work and personal issues.
- 19.27 The Respondent had become the sole family solicitor in Lincoln after Ms JS and Ms SS left. When all three had been there they had worked closely and well together. Mr Parnell acknowledged that the Respondent had still been a junior solicitor. The Firm undertook appraisals. At the time there had been a HR officer and the Respondent could have accessed support from the HR Officer, Mr Parnell or her head of department. Whilst he did not see her on a day to day basis he considered that he had a fairly good relationship with her. He was based in a separate Lincoln office about fifty yards from the office the Respondent was based in.
- 19.28 Mr Parnell accepted that there had been pockets of low morale in the Firm. The Firm had had to make redundancies in 2010/11 for the first time in its history. Mr Parnell was asked whether he thought that the Respondent's workload was high or normal for a family lawyer. He explained that he did not deal with her on a day to day basis but would say that it was on the high side as she had picked up some of Ms SS's work when she had left. However, that perception could be based on what the Respondent had said as part of the investigation process. Staff were not expected to work from home but there was VPN access for those who wanted it.

19.29 Fee earners had targets in terms of chargeable hours and fees and these were reviewed. Mr Parnell could not remember any issues in this regard in relation to the Respondent and said it was not a concern to the Firm. There was nothing that had happened before February 2014 that had put the Respondent on the management team's radar. What happened was not something that Mr Parnell had expected from the Respondent and he had been desperately hoping to find a reasonable explanation for what had happened but could not find one. It had taken him by surprise. Of all the potential people who could have done something he would not have thought it would be the Respondent. The Respondent had been suspended as the investigation suggested that there was a wider issue than just the Ms S matter and the Respondent had access to the clients and their files.

Evidence inconsistent with the Respondent's explanation on the Ms S matter

19.30 On the Ms S matter, the purported letter dated 28 January 2014 stated "*I am therefore writing to the various hospitals in this regard*" (regarding obtaining the medical records). This showed the Respondent could not have written or sent the purported letters dated 22 January 2014 to the medical institutions on or around 22 January 2014. It was averred that because the Respondent fabricated the 28 January 2014 letter at 15.21 on 10 February 2014 before she fabricated the 22 January 2014 letters after 21.00 on 10 February 2014 she caught herself out.

19.31 The Respondent said that she could not have created the eight disputed letters for the first time on 10 February 2014 because the screenshots show they were created and modified in only one or two minutes each which she argued showed that they could only have been saved to the work system by cut and pasting from Hotmail. According to the Applicant, this was a false point. Ten further letters which the Respondent admitted to creating and drafting for the first time on 10 February 2014 also had screenshots showing that they were created and modified in only one minute or less.

The witnesses' oral evidence to the Tribunal

19.32 Ms Thomas had reviewed the paper files, the electronic files and the Firm's ledgers. She told the Tribunal that the Respondent had had a very good relationship with the previous head of department, Ms JS. The Respondent had been a trainee solicitor with the Firm and she had received lots of moral support and guidance. When Ms JS left the department had reduced in size and the new head of department, Ms LM, was based in Grimsby not Lincoln. She was available to the Respondent by telephone and there were departmental meetings. The Respondent had had one full time and one part time secretary. The reason that the Firm had a risk partner was so that support could be offered to fee earners. The Firm knew the Respondent well, she had taken part in their summer placement scheme for three years before she had become a trainee.

19.33 Ms Thomas considered that the Respondent had had an average caseload for family work. She did not accept that the Respondent was under the level of pressure that she would have the Tribunal believe. No client had ultimately lost out. Ms Thomas accepted that Ms S was a difficult client but said that the Firm had an open door policy, did not discipline or beat with a stick, rather staff were encouraged to say something if there was an issue. Once a quarter there was an administration day.

Ms Thomas described the Respondent as a very proud person who took great pride in her work. She thought that this was why the Respondent would not have wanted to say that she had not done something that she should have done.

- 19.34 Ms Powers had worked for the Firm for seventeen years, and became the IT Manager about ten or eleven years ago. The Respondent had demonstrated to her how she said that she had accessed Hotmail. For the purposes of the demonstration Hotmail had been unblocked. The Respondent's explanation as to what she had done had changed as it was disproved.
- 19.35 The Firm had a particular way of printing documents. The Respondent would have been able to print in this way, via VPN, with the documents printing out in the office. The Respondent did not have her own printer in the office. The Firm had printers for groups of people. Ms Powers understood that the Respondent had a secretary and did dictate. She could not say what the Respondent's normal way of working was and how much she typed rather than dictated. Generally, if someone dictated they dictated everything even emails. Ms Powers explained that the date that a document was created never changed but the date it was modified would change.
- 19.36 It made no sense for the Respondent to state that she had worked in Hotmail as her internet connection had not enabled her to work via the VPN. She would still have needed internet access for Hotmail and if she had created a hotspot with her phone in order to access Hotmail she could have done this for VPN as well. The Respondent had accessed VPN on her own laptop.
- 19.37 Ms Hudson had not met the Respondent before she undertook the disciplinary investigation. The Respondent had been based in a different office about forty miles away. Ms Hudson was not on the management board but received the minutes and the Respondent had never been on her radar or come to her attention. She had had a clean disciplinary record.
- 19.38 A final letter had not been sent to the Respondent as part of the disciplinary process as Ms Hudson had been told not to complete the draft she had prepared. However, Ms Hudson felt that there was no other possible outcome except the Respondent's dismissal as she could not have stayed working for the Firm when she had, in the Firm's view, been dishonest.

The Applicant's Response to the Respondent's Explanation

- 19.39 The Respondent stated that she did not fabricate or backdate letters. Her position was that the letters were created by her on the dates they bore but were created by her working at home on her personal laptop in draft emails on her personal Hotmail account. The Respondent said that she would then print the letters from her work computer the next day (by accessing Hotmail at work) and would send the letters out but would not save them to her work computer at the time as she was behind in her administration. She said she would later catch up with her administration and would open up Hotmail at work, and save the letters she had sent to her work computer from her draft Hotmail emails.

- 19.40 According to the Applicant, the Respondent's explanation was not credible. It made no sense for the Respondent to draft letters and save them as draft emails in Hotmail rather than saving them to the work system using the VPN that she admitted she had. Further and in any event, it made no sense for the Respondent to open up Hotmail at work and cut and paste the text into a letter and print the letter to send it, but not save the letter to the work system at the same time which would take a matter of seconds. Hotmail access was barred by the Firm between the hours of 09:00 and 17:00. Many of the letters were saved to the work system between 09:00 and 17:00 and so could not have been saved to the system by cut and pasting from Hotmail as the Respondent contended. Rather they must simply have been created for the first time on that date, and backdated. The Respondent's billing showed that she did not prepare the purported letters on or about the dates they bore.
- 19.41 The fact that the recipients of the letters did not receive the purported letters on or around the dates they bore showed she did not prepare the purported letters on the dates they bore. The Respondent's case that all the letters must have been lost by the Firm or in the post or the DX was not credible.
- 19.42 The Respondent's case was that she created the purported letters to the medical institutions dated 22 January 2014 and purported letter to the client dated 3 February 2014 at home on 21 January 2014 and 3 February 2014 respectively as draft emails on Hotmail. The SRA submitted that this could not be true and that her explanation was not credible. The Respondent's laptop showed no access to Hotmail on 21 January 2014 or 3 February 2014. None of the medical institutions or Ms S received the purported letters. The Respondent did not bill for drafting any letters on the Ms S matter on 21 January 2014 or 3 February 2014.
- 19.43 Further, the Respondent's case was that she uploaded the letters to Ms S dated 28 January 2014 and 3 February 2014 and the letter dated 22 January 2014 to Morley Brown onto the work system on the afternoon of 10 February 2014 (between 15:01 and 15:25) at work by copying them from Hotmail draft emails. The SRA submitted that this could not be true. The Firm's records show that the Respondent did not access Hotmail on 10 February 2014 on the work system and that she did not access the internet on the work system at all until 21:00.
- 19.44 As stated above the Respondent could not access Hotmail in any event at work between 09:00 and 17:00 because it was blocked. The Respondent first logged in at 09:06 so she could not, as she claimed, have logged into Hotmail prior to 09:00. In any event, the Respondent accepted that even if she accessed Hotmail prior to 09:00 she would only be able to keep one email open as if she sought to go between emails after 09:00 she would be closed out of Hotmail by the work system. These were three different letters purportedly with different dates so they would not have all been found on one draft email.
- 19.45 Further, the Respondent's case was that she saved the purported letters dated 22 January 2014 to the work system working at home on her laptop on the evening of 10 February 2014 by cut and pasting from Hotmail. The SRA submitted that this could not be true. The laptop showed no access to Hotmail on 10 February 2014. The work system also showed no access to Hotmail by the Respondent on 10 February 2014.

- 19.46 The Applicant submitted that it was therefore clear that the Respondent simply created the eight aforesaid letters purportedly dated 22 January 2014, 28 January 2014 and 3 February 2014 for the first time on the afternoon and evening of the 10 February 2014 and backdated them, as shown by their “date created” dates and times.
- 19.47 The Firm had made enquiries of the post room assistant who had had no recollection of the Respondent’s secretary, Ms JZS, telling him that they were important letters that needed to go first class. This would not have made sense as letters put in the first class tray would be sent first class. There had been no issues with the post as far as the post room assistant was aware. He had been aware of issues with the tracked DX.

Breaches of the Principles

- 19.48 It was alleged that the Respondent had breached Principles 2, 4 and 6. As to Principle 2 (lack of integrity), Ms Carpenter submitted that if the aggravating feature of dishonesty was proven then it would necessarily follow that the Respondent’s conduct lacked integrity. However, even if (contrary to the Applicant’s submissions) the Tribunal found that the Respondent’s conduct was not dishonest, it was submitted that by backdating and fabricating documents the Respondent’s conduct plainly lacked integrity.
- 19.49 Ms Carpenter explained that in respect of dishonesty and lack of integrity, whilst they overlapped, they were not exact synonyms. All dishonest conduct lacked integrity, but not all conduct lacking in integrity was dishonest. Integrity was assessed objectively. The Respondent’s state of mind as regards the actions constituting conduct lacking in integrity was of course important. For example, a serious breach of a professional rule may lack integrity if it was deliberate or reckless, but not if it was careless. But there was no subjective test, corresponding to the second limb of the dishonesty test, requiring that the person realised that his actions lacked integrity according to the standards of reasonable people possessing integrity. A number of cases have held that a finding of lack of integrity did not require a finding of dishonesty.
- 19.50 In Bolton v Law Society [1994] 1 WLR 512 a solicitor acted in a proposed conveyance of property from his wife to his brother-in-law and disbursed completion monies to his wife prior to completion in breach of his duties to the lender. The conveyance never completed leading to a shortage on client account which was in due course corrected by him. The Tribunal accepted he had not been dishonest – he had naively and stupidly paid out the monies in anticipation of completion - but found his conduct was wholly unacceptable and suspended him from practice for two years. The Court of Appeal agreed with the Tribunal’s penalty. Sir Thomas Bingham MR noted that the solicitor had not been found to have been dishonest but his conduct represented a flagrant departure from the elementary rules which bind anyone, most of all a solicitor, holding client money. The solicitor had not complied with his professional duties to act “*with integrity, probity and complete trustworthiness*”.
- 19.51 In Hoodless and Blackwell v FSA [2003] UKFTT FSM007 the Financial Services and Markets Tribunal had to decide whether Mr Hoodless and Mr Blackwell were Fit and Proper Persons within the meaning of the FSA Handbook. To be Fit and Proper

Persons they had to have “*honesty, integrity and reputation*” and “*competence and capability*”. The Financial Services and Markets Tribunal considered the meaning of dishonesty and the meaning of integrity and held that to be dishonest, the combined test in Twinsectra v Yardley [2002] 2 AC 164 had to be established i.e. that (a) the person’s conduct was dishonest by the ordinary standards of reasonable and honest people and (b) that the person himself realised that by those same standards his conduct was dishonest. It noted that it may be asked whether the combined test for dishonesty was appropriate where one of the statutory objectives was the protection of consumers, and whether a purely objective test for dishonesty would be a better protection.

- 19.52 It addressed that concern by saying: “*But we think it right to adopt the approach [to the dishonesty test] urged upon us, since it was not in dispute that we were required, as an additional matter, to consider the applicant’s integrity, which both sides accepted involved the application of objective ethical standards. In our view ‘integrity’ connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)*”
- 19.53 Mr Hoodless had lacked integrity in improperly attempting to support the price of shares. He had not at the time acted dishonestly but that did not matter as his conduct met the definition of lack of integrity. He had subsequently also acted dishonestly within the Twinsectra test by giving false evidence as to this conduct.
- 19.54 In Scott v SRA [2016] EWHC 1256 (Admin) the High Court (sitting as a Divisional Court, Sharp LJ and Holroyde J) upheld the Tribunal’s finding of lack of integrity against a solicitor who the Tribunal had found not to be dishonest. Dishonesty and lack of integrity had both been alleged. The Tribunal found that the objective limb of the dishonesty test was proven but not the subjective limb. The Tribunal found that the solicitor lacked integrity because he showed no regard at all for his obligation to protect money and assets and had not cared at all about what he was instructed to authorise. It was argued by the solicitor on appeal that the acquittal of dishonesty should have also led to his acquittal of lack of integrity. Sharp LJ and Holroyde J disagreed. They agreed with the judgment of Davies LJ and Ouseley J in SRA v Chan and ors [2015] EWHC 2659 (Admin). They noted that the starting point was the solicitor had failed to act with independence, that his conduct served to diminish public trust and had breached the Solicitors Accounts Rules. He had not asked himself if it was right to make the payments and had not shown any steady adherence to any kind of ethical code. They specifically held that the fact that the solicitor was not dishonest did not mean that it was not open to the Tribunal to conclude that he lacked integrity, that “*there is an obvious distinction*” between the concepts of dishonesty and lack of integrity and “*dishonesty and a lack of integrity are not synonymous terms*”.
- 19.55 In SRA v Wingate and Evans [2016] EWHC 3455 the SRA successfully appealed against the Tribunal’s acquittal of a solicitor of a charge of lack of integrity. Holman J (sitting alone in the High Court) upheld the SRA’s appeal against the acquittal on lack of integrity, holding that a solicitor who signs what on his own case was a sham

contract lacked integrity. Holman J held, following Chan and Scott, “[the SRA] submitted, and I agree, that dishonesty and lack of integrity are not the same. While all dishonesty involves a lack of integrity, not all lack of integrity involves dishonesty. The law requires a subjective element to any finding or conclusion of dishonesty, but the question whether a person lacks integrity is objective.”

- 19.56 In Deidre Newell-Austin v SRA [2017] EWHC 411 (Admin) Morris J upheld the Tribunal’s findings that a solicitor had, as regards two allegations in that case, acted without integrity. The solicitor had been charged with lack of integrity and dishonesty on the first allegation and with lack of integrity but not dishonesty on the second allegation. She was acquitted of dishonesty on the first allegation as neither the objective nor the subjective limb of the dishonesty test was proven. Morris J held, applying Hoodless, Chan and Scott, that lack of integrity and dishonesty were not the same, and that the test of lack of integrity was an objective test alone. He held that a distinction must be drawn between subjective knowledge of the facts of the underlying conduct (which were alleged to give rise to the lack of integrity) and subjective knowledge of the fact that the conduct would be regarded by reasonable people as lacking in integrity. There was no requirement that the solicitor must have realised that his conduct lacked integrity.
- 19.57 In Malins v SRA [2017] EWHC 835 Mostyn J held that dishonesty and lack of integrity were synonymous. Ms Carpenter submitted that this decision was plainly wrong. It was inconsistent with many previous cases. It made no sense as it confused a requirement of the Principles (to act with integrity) with an aggravating feature of misconduct (dishonesty). It was also counter-intuitive. For example, if a referee was asked whether he had any reason to doubt a solicitor’s integrity, the referee would not think they were simply being asked whether the solicitor had ever been dishonest within the meaning of the Twinsectra two stage test. He would think he was being asked more generally about the solicitor’s moral and ethical compass. The SRA was seeking permission to appeal the Malins judgment from the Court of Appeal.
- 19.58 In Williams v SRA [2017] EWHC 1478 Mr Williams’ counsel declined to argue that Malins was correctly decided, and the President of the Queen’s Bench Division Sir Brian Leveson stated (obiter) at “*lest Mr Williams feel that Mr Lawrence has failed to take a point which could have been argued, I ought to make it clear that, in the absence of compelling justification, I would reject Mostyn J’s description of the concept of want of integrity as second degree dishonesty. Honesty, i.e. a lack of dishonesty, is a base standard which society requires everyone to meet. Professional standards, however, rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work. There is a real difference between them.*”
- 19.59 It was submitted that the Tribunal should not follow Malins and should instead follow the previous High Court and Court of Appeal cases set out above and its own previous approach which had been that there was an overlap between dishonesty and lack of integrity (in that all dishonest conduct lacked integrity) but the concepts were not synonymous since lack of integrity did not require dishonesty.

The Respondent's Case

- 19.60 The Respondent had not engaged substantively with the proceedings. She had not served an Answer to the allegations. By the standard directions the Respondent was ordered to file an Answer and all documents on which she intended to rely at the substantive hearing by 15 March 2017. She did not do so. By paragraph 3 of the Order made on 31 March 2017 the Respondent was not permitted to serve an Answer or any documents on which she relied without the leave of the Tribunal, as she failed to comply with the unless order that such documents be served by 18 April 2017. The Tribunal proceeded on the basis that the allegation was denied.
- 19.61 During the Firm's investigation and in correspondence to the SRA prior to the issue of these proceedings the Respondent denied that the eight letters were fabricated or backdated. She admitted that they were only created by her on the work system on 10 February 2014 as shown by the Firm's screenshots, but she contended that the letters had been drafted by her on or about the dates they bore, when working at home, and had been sent out on or about the dates they bore. She explained that her method for doing so was opening her personal Hotmail account at home and creating a draft email into which she would put the wording of a letter into the body of the email or she would attach it by a Word document. She would then open Hotmail at work the following day and cut and paste the letter wording into the letter template on the work system and send out the letter but not save the letter to the work system at that time.
- 19.62 According to the Respondent, on 10 February 2014 she was updating her file to pass it to Natalie Thomas following the client's complaint and so she opened up her Hotmail account, found the draft emails that contained the letter wording and saved the various letters to the system. She accepted that Morley Brown and the medical institutions had not received the letters dated 22 January 2014, which had in five cases purportedly been sent by post and in one case purportedly sent by DX, but she denied that meant they had not been prepared by her on or about the dates they bore or that it meant she had not sent the letters.
- 19.63 The Respondent had told the Applicant that the file of Ms S had been a difficult one from the outset. The Respondent stated that once court proceedings commenced the client became very demanding and unpleasant. The client would not provide documents when requested and her responses to advice and requests were often lengthy, and incomprehensible. Following problems in November 2013 the Respondent had sought advice from Natalie Thomas. She said that she was not provided with continuing support from either Ms Thomas or her head of department. The Court hearing on 21 January 2014 had not been successful from Ms S's point of view.
- 19.64 The Respondent did not feel that the Firm had provided all of the relevant documentation. She had been summoned to a meeting on 12 February 2014 with Ms LM and Mr Parnell and subsequently Ms Powers joined the meeting. Prior to Ms Powers joining the meeting the Respondent had told Mr Parnell and Ms LM how she had created the documents and why she had not just accessed the work system through VPN. She had explained that some days her internet was unreliable and that

the VPN could be very slow. The combination of factors meant that it was easier to work outside the system.

- 19.65 In respect of the letter to Morley Brown dated 22 January 2014 the Respondent said that the letter was added to the system by her on 10 February 2014 but was prepared on 21 January 2014 following a court hearing on the same day. She had been in Court all day and returned home and worked from home for the rest of the evening. Hotmail access was evident on that date. Although Morley Brown had confirmed that the letter was not received by them the letters to the hospitals were also not received and the Respondent asserted that it was conceivable that the letters had been lost. The Respondent's secretary, Ms JZS, remembered the letters.
- 19.66 The client had sent emails to the Respondent over the weekend of 7 February 2014 and also to the other parties. The Respondent had taken the decision over that weekend that she could no longer act for someone who had no trust or confidence in her work. The Respondent worked from home on Sunday 9 February 2014 and was not sure whether the electronic file was up-to-date so needed to check this at work the next day so accessed Hotmail to check that the correct documents were there to update.
- 19.67 In respect of the letters to the hospitals and to the GP dated 22 January 2014 the Respondent submitted that it could not be ignored that these were letters which her secretary recalled. The Respondent did not often request medical records and did not accept the Firm's position that the secretary was simply mistaken. Her secretary had said that she recalled the letters been sent a few weeks ago when she was initially questioned and therefore the Respondent did not accept the Firm's argument that her secretary's recollection was incorrect. There had been other issues with post not being received.
- 19.68 The Firm had noted that the Respondent accessed a number of various hospital websites on 10 February 2014. In the Firm's view this was to obtain the addresses for the first time so that the Respondent could write to them. It was the Respondent's position that she was preparing the chasing letters dated 10 February 2014 and did not have access to the hospital addresses at home. She said that in respect of the 22 January 2014 letters she just had the body of the text on draft email not the addresses as she had added the addresses to those letters at work when she printed them on 22 January 2014. The Respondent queried why if she was preparing letters to the hospitals and GP surgery for the first time at home then, in that case, why was there no search for the GP surgery address.
- 19.69 Ms AC from one of the hospitals had apologised to the Respondent that her original request been overlooked. Subsequently Ms AC had said that the original letter of 22 January 2014 had not been received but a copy had been received with the chaser letter. The Respondent considered that the account of Ms AC had changed due to pressure from the Firm.
- 19.70 In respect of the letter to the client dated 28 January 2014 the Respondent stated that Ms S had responded to this letter by email of 30 January 2014. The email from Ms S made reference to the statement and hearing date which the Respondent submitted Ms S would not have been able to refer to if the letter had not been prepared until

10 February 2014. As to the letter of 3 February 2014 the Respondent was not aware that the client had ever indicated that this letter was not received. In addition the Respondent said that she referred to this letter in her email to the client dated 7 February 2014 and could not have done so if it had not been created until 10 February 2014.

- 19.71 In respect of the alleged creation of the documents on 10 February 2014 the Respondent did not accept that it was possible for the number of documents to be created in the time period shown unless the content was simply cut and pasted from another source, for example Hotmail, which was her position. The Respondent said that the documents were printed by her at work not home.
- 19.72 The Respondent did not accept that she had not logged onto the work system until 09:06 on 10 February 2014. If this was correct she would not have got to Court at the time she did. The Respondent said that she logged onto the system much earlier and accessed Hotmail. She had tried to obtain her Hotmail login time but the logs did not go back far enough.
- 19.73 The Respondent disputed that the Firm's software displayed a full list of the websites accessed arguing that it only displayed the top websites visited and it was conceivable that Hotmail could have been accessed. The Respondent denied that she had deleted her internet browsing history. She also pointed out that Mr Whyman did not have access to her Hotmail account so would not have had access to her draft emails and could not comment as to their existence.
- 19.74 In summary the Respondent did not accept the allegations made against her in respect of the Ms S matter or any other matter. She stated that there was conclusive evidence that she worked in the way that she had explained by adding documents to the electronic system at a later date. The Respondent had provided confirmation from her colleagues as to how she worked in an honest way and from clients outlining their happiness with the service she provided. The Respondent accepted that the way she worked may not perhaps have been ideal but said it was necessary to meet her vast workload and the budgetary requirements whilst providing excellent service to her clients. Whilst she accepted that her administration had fallen behind she denied that at any stage she had ever made up letters.

The Tribunal's Findings

- 19.75 The Tribunal considered each of the eight allegedly purported letters individually. The Tribunal took into account all of the evidence it had heard and read. For each letter the Tribunal considered the screenshots showing the creation date, what was known about the time recording and whether or not the letter had been received around the time it was purportedly sent.
- 19.76 All the evidence led to the conclusion that the letter to Morley Brown had been created on 10 February 2014 in the afternoon in the office and not on 22 January 2014 which was the date on the letter. It was not printed in accordance with the Firm's normal procedure. Morley Brown had confirmed that they did not receive the letter. There was no time recording for the letter and there was neither Hotmail access from the laptop on that day or the day before.

- 19.77 The Tribunal found that the letter to “R” medical practice had been created in the evening of 10 February 2014 and not on 22 January 2014. Again, it was not printed in accordance with the Firm’s normal procedure and there was no “macro” down the side. The medical practice had confirmed that they did not receive the letter. There was no time recording for the letter and there was neither Hotmail access from the laptop on that day or the day before. The Respondent had worked via VPN on 21 January 2014 and if she was working via VPN it would have made no sense to create the document in Hotmail.
- 19.78 The Tribunal found that the other four letters to the various hospitals had also been created on 10 February 2014 and not on 22 January 2014 for the same reasons. The Tribunal did not accept that Ms AC had changed her position when asked for clarification, it was clear from the evidence before the Tribunal that she had made further enquiries and what she had received was the copy letter sent with the chasing letter dated 10 February 2014 and not an original letter of 22 January 2014.
- 19.79 In respect of the letter to the client dated 28 January 2014 the Tribunal noted that this referred to the fact that the Respondent would be requesting Ms S’s medical records. However according to the Respondent she had already requested these on 22 January 2014. This was a significant inconsistency which was likely to have arisen because this letter was created first. Again there was no time recording, the letter was not printed in the usual way and the client did not recollect receiving that letter. Similar points arose in respect of the letter to the client purportedly dated 3 February 2014. The Tribunal found that these letters had also been created on 10 February 2014 and not on the dates they bore.
- 19.80 The Tribunal concluded that the Respondent had fabricated and/or backdated the eight letters. Her explanation as to how these letters had been created was not credible and there was no evidence to support her assertions despite three reports from Mr Whyman and the Firm’s own investigations. The Respondent had not accessed Hotmail on 10 February 2014.
- 19.81 The Tribunal concluded that the Respondent had fabricated and/or backdated the letters to conceal her lack of progress on the case. She had not done what she should have done following the Court hearing on 21 January 2014. By failing to do what she needed to do to progress Ms S’s matter and comply with the Court Order the Respondent had not acted in the best interests of Ms S in breach of Principle 4. By failing to act in the best interests of Ms S and by fabricating and/or backdating documents the Respondent had failed to behave in a way that maintained the trust that the public placed in her and in the provision of legal services in breach of Principle 6.
- 19.82 As to integrity the Tribunal was an experienced Tribunal who knew integrity when they saw it. The Respondent had fabricated and/or backdated the letters with the intention to mislead. She had been deceptive and had not been open with the Firm or her clients. Her actions had lacked integrity and she had breached Principle 2.
- 19.83 Allegation 1.1 was found proved in full to the requisite standard, namely beyond reasonable doubt.

20. **Allegation 1.2 - Between about 22 July 2011 and 24 January 2014, the Respondent on all or alternatively any of the nine client matters exemplified at paragraphs 85 to 160 of the Rule 5 Statement, fabricated and/or backdated documents in breach of all or alternatively any of Principles 2, 4 and 6 of the Principles and, to the extent that the misconduct took place before 5 October 2011, Rules 1.02, 1.04 and 1.06 of the SCC.**

The Applicant's Case

- 20.1 The Firm stated in its compliance report to the SRA that its investigation of the Respondent's client files had revealed similar concerns to the Ms S matter on forty three files. In order to take a proportionate approach, the SRA exemplified nine of these client files in the Rule 5 Statement.

Mr B

- 20.2 The Respondent acted for Mr B on a contact/parental responsibility matter. A purported letter dated 28 January 2013 from the Firm to Ms AW of Lincolnshire Children's Services was on the system. The printout of the Firm's meta data showed that this purported letter was created by the Respondent at 11:35 on 21 March 2013 and backdated to 28 January 2013.
- 20.3 The purported letter asked the addressee to confirm if they would be able to attend a Court hearing on 25 March 2013. It was alleged that the purported letter was not created or sent on 28 January 2013 but was created on 21 March 2013 to enclose with a chaser letter which was sent to Ms AW on the same date. It was not clear from the letter dated 21 March 2013 whether or not it enclosed the purported letter dated 28 January 2013. A copy of the purported letter dated 28 January 2013 could not be found on the physical file, neither could any written confirmation that it had been successfully transmitted by fax. The time recording log did not show an entry for a letter having been created on 28 January 2013.
- 20.4 During the course of her investigation, the Supervisor at the SRA wrote to Ms AW on 27 May 2015 to ascertain whether she had received the letters dated 28 January 2013 and 21 March 2013. Mr BT, of Lincolnshire County Council, replied under cover of a letter dated 1 July 2015, indicating that, "*the electronic indexed documents and the paper file for the case do not hold copies of the letters you have forwarded.*" An e-mail dated 22 March 2013 from Ms JZS at the Firm to the Respondent recorded a telephone message having been taken from Mr BO'C at Social Services on 22 March 2013. He was telephoning further to receiving an e-mail from the Respondent the previous day (21 March 2013) and confirmed that a Social Worker would be in attendance at Court "*on Monday*" (25 March 2013).

Miss C

- 20.5 As part of the Firm's investigation Natalie Thomas reviewed the file. She produced a file note which recorded that: "*NAT reviewing this file. Noting that [the Respondent] wrote to the client requesting further evidence for her application for Legal Help on 09/07/12 and 23/07/12. The client telephoned on 27/07/12 stating that she did not want to continue.*"

- 20.6 Despite that, at 10:42 on 19 October 2012 the Respondent created a purported letter, backdated to 18 September 2012, in which she stated, *"I write further in this matter and note that I have not yet received the financial information requested in my letter dated 23 July 2012 so that I can sign off my legal aid for you."* . The time recording printout showed that the Respondent did not record any time for preparing the purported letter on 18 September 2012.
- 20.7 The Supervisor at the SRA wrote to Miss C on 27 May 2015 to enquire as to whether she had received the letter dated 18 September 2012. Following receipt of that letter, the Supervisor and Miss C had a telephone conversation during which Miss C confirmed that she did not recall having received the letter dated 18 September 2012. Paragraph 3 of the Supervisor's written record of the telephone conversation recorded *"Miss [C] does not recall receiving the letter of 18 Sept 2012. She has retained letters received from [the Respondent], and this letter is not one of them."*

Mrs G

- 20.8 The Respondent acted for Mrs G on a divorce matter. Natalie Thomas conducted a review of this file during the course of her investigation. It was alleged that the Respondent created a client care letter on 21 January 2013 at 12:49 and backdated it to 29 August 2012. It was further alleged that, also on 21 January 2013, she created a covering letter to the client at 12:43 and backdated it to 29 August 2012. The time recording log showed that there were no time recording entries for 29 August 2012.
- 20.9 Natalie Thomas cited, in her file note, a possible explanation for the backdating as, *"there is a File Review Form on the file which does not state the date that the file was reviewed however it was for January and the Form was signed off as having had the corrective action completed on 4 February 2013. The corrective action was purely to show that there was proof of conflict checks. The File Review has been ticked to say that the Letter of Engagement had been sent to the client. There is no signed Letter of Engagement on the file."*
- 20.10 It was alleged that the Respondent created and backdated the letters on 21 January 2013 in order to show compliance for the file review, and in the knowledge that the question as to whether those letters had been sent out was a question which would be asked at the file review. Mrs G was asked by the Supervisor if she received the letters. Mrs G did not reply.

Ms H

- 20.11 Again Natalie Thomas reviewed the file and made a file note. That note recorded that: *"On 15/01/13, Sills & Betteridge wrote to this Firm chasing a response to an e-mail 14/12/12. We do not appear to have a copy of that e-mail on our file. The system appears to suggest that nothing happened between 19/11/12 and 07/06/13 other than a telephone call taken by JZS. No time was recorded however, on 07/06/13 [the Respondent] appears to have created a letter dated 17/01/13 enclosing a copy of the letter received from Sills & Betteridge..."*

- 20.12 The file did contain a telephone attendance note of a call between Ms H and the Respondent dated 19 November 2012 and a telephone attendance note of a call between Ms H and the Respondent's secretary dated 6 March 2013. On 7 June 2013, the Respondent had a telephone conversation with Ms H during which Ms H told the Respondent that she still wished for the matter to be on hold as she and her husband were hoping for a reconciliation. She further stated that she proposed to leave the money which she already had in the Firm's client account where it was for the time being so that, in the event that she needed to instruct an actuary in the future, it would be available. On the same date 7 June 2013, the Respondent created a letter to Ms H but backdated it to the 17 January 2013. The Firm's meta data, showed that the letter was created on 7 June 2013.
- 20.13 On 27 May 2015 the Supervisor wrote to Ms H asking whether she had received the letter dated 17 January 2013. On 1 June 2015, the Supervisor spoke to Ms H, and Ms H stated that in her paperwork she did not have a letter dated 17 January 2013 and that she did not recall receiving the letter.

Mrs K

- 20.14 A file note, prepared by the Firm during the course of its investigation, referred to two letters being created by the Respondent on 24 January 2014, one backdated to 16 September 2013 and the other backdated to 4 December 2013. The Respondent wrote to Mrs K on 6 September 2013 requesting an update as to matters and remarking that she had not received a response to an e-mail which she had sent on 16 July 2013. On 16 September 2013, the Respondent received a letter from Wilkin Chapman LLP dated 12 September 2013 requesting an update following a without prejudice conversation which the Respondent had had with Ms LB of that firm on 4 September 2013.
- 20.15 Following receipt of the letter, the Respondent sent an e-mail to Ms LB, dated 16 September 2013 and timed at 12:17 which said : "*I have received your letter this morning regarding this matter. I have been trying to get in touch with the client since prior to your telephone conversation and I am without instructions. I will shortly be taking steps to close my file but if I do hear anything in the meantime I will let you know.*" Ms LB's reply was dated 16 September 2013 and timed at 13:59.
- 20.16 In respect of the purported letter dated 16 September 2013, the Firm's meta data showed that it was created by the Respondent on 24 January 2014. The letter referred to the communication received from Wilkin Chapman LLP and requested "*substantive instructions*" from the client. As to the purported letter dated 4 December 2013 the Firm's meta data indicated that it was created by the Respondent on 24 January 2014. The letter once again requested up to date instructions from the client and warned that if they were not received by "*mid-January 2014*" the Respondent "*will take steps to close my file.*" The Firm's time recording system showed that time was recorded for writing one letter on 16 September 2013.
- 20.17 The Supervisor wrote to Mrs K on 27 May 2015 enquiring as to whether she had received the letters dated 6 September, 16 September and 4 December 2013. Mrs K responded by way of an e-mail dated 5 June 2015, timed at 20:03. Her response

indicated, *“I have looked through all my correspondence with Bridge McFarland and cannot find any of the letters that you enclosed. I do have some other letters with the name Claire Wheeler on but not those that you specified. I have kept all letters that came and mostly they are signed by [Ms SS].”*

Miss M

- 20.18 Natalie Thomas reviewed the file and made a file note. The first line of it referred to her discovery of a *“letter dated 26/11/13 but created 07/01/14 chasing clients for instructions.”* It went on to say, *“no time recorded.”*
- 20.19 The purported letter dated 26 November 2013 made reference to the Legal Aid Agency having approved an amendment to the client’s funding and requested up to date instructions. The Firm’s meta data, showed that it was created on 7 January 2014 at 11:19. The time recording log showed that no time was recorded for a letter on 26 November 2013.
- 20.20 On 27 May 2015 the Supervisor wrote to Miss M, asking her to clarify whether she had in fact received the letter dated 26 November 2013. Miss M telephoned the Supervisor to discuss the matter on 16 June 2015. Miss M did not recall having received the letter.

Mr M

- 20.21 In respect of Mr M’s matter it was alleged that the Respondent backdated three letters, one to Andrew and Co Solicitors dated 16 May 2013, one to Martin Kaye LLP Solicitors dated 16 May 2013 and one to Ringrose Law dated 25 February 2013.
- 20.22 The Respondent wrote to Andrew and Co Solicitors on 3 July 2013 enclosing a copy of a letter which had purportedly been sent on 16 May 2013. The Firm’s meta data showed that the purported letter dated 16 May 2013 was created on 3 July 2013 at 15:42. Whilst dated 16 May 2013, the letter said: *“We write further to our letter dated 16th May 2013 and note that we have not yet received a response from you.”* The Respondent sent a further letter to Andrew and Co Solicitors on 3 July 2013, dated 3 July 2013, requesting a copy of their client’s file of papers.
- 20.23 The Supervisor at the SRA wrote to Andrew and Co Solicitors on 27 May 2015 to enquire as to whether the letters dated 16 May 2013 and 3 July 2013 had been received. Andrew and Co Solicitors replied on 10 June 2015 enclosing a copy of the only letter received from Bridge McFarland Solicitors which was dated 3 July 2013.
- 20.24 There was also a purported letter to Martin Kaye LLP Solicitors dated 16 May 2013. The Firm’s meta data showed that, whilst the letter was dated 16 May 2013, it was, in fact, created by the Respondent on 3 July 2013 at 15:41. The Supervisor wrote to the Martin Kaye LLP on 27 May 2015 to enquire as to whether they had received the letter dated 16 May 2013. They replied on 29 May 2015 stating that they had retrieved their original file from archives and that, *“we do not appear to have received Claire Wheeler’s letter, there is no copy of it in our archived file and we are still holding the full file of papers.”*

- 20.25 Both of the letters to Martin Kaye LLP and Andrew and Co purportedly dated 16 May 2013 were created within ten minutes of each other on 3 July 2013.
- 20.26 There was also a purported letter to Ringrose Law dated 25 February 2013. The Firm's meta data showed that the letter was created by the Respondent on 6 March 2013 at 15:11 but backdated to 25 February 2013. The purported letter chased a response to correspondence sent in December 2012.
- 20.27 In an e-mail dated 1 June 2015, and in response to the Supervisor's letter dated 27 May 2015, Ringrose Law confirmed that on their original file of papers there was a letter dated 13 December 2012 but no letter dated 25 February 2013. The time recording log indicated that time was charged for four pieces of correspondence on 3 July 2013 and two pieces of correspondence were charged on 16 May 2013. However, it was noted that the Respondent had e-mail correspondence with the client on 16 May 2013 and it was therefore alleged that that time recording related to that.

Mr P

- 20.28 The Respondent acted for Mr P on a divorce matter. There was an exchange of e-mails between the Respondent and her client. The first e-mail was an e-mail from the Respondent to Mr P dated 18 July 2013 and timed at 16:43. There then followed an e-mail from Mr P to the Respondent dated 2 September 2013 and timed at 11:12 in which he chased for an update on his case. There was an e-mail from the Respondent to Mr P, sent on 10 September 2013 at 09:24. In the e-mail the Respondent stated: *"...There is a form in the post to you for your signature so that we can apply for the final part of the divorce..."*
- 20.29 Mr P replied on 11 September 2013, at 10:56, stating: *"I have not received any paperwork in the post this morning?! I'm away from tomorrow eve for the long weekend and as I'm sure you can appreciate do not want to delay things any further!"* The Respondent replied on the same day, at 16:30 and said: *"I apologise for the delay in responding however I have been unavoidably detained at court and don't have access to my file to check when it was sent to you. As soon as I get to the office I will attach the document by e-mail for your signature and return..."*
- 20.30 Mr P sent the Respondent an e-mail the following morning, at 10:11 stating: *"I'm awaiting your e-mail with attached form to sign."* At 10:43 the Respondent replied, attaching a copy of the form for Mr P to sign. She said, *"I attach a copy of the form for your signature and return. The form is dated the 13th September 2013 as that is the earliest date that I can apply for the final part of the divorce, Decree Absolute."*
- 20.31 At 11:40, on 12 September 2013, Mr P sent the Respondent an e-mail setting out four separate points and complaining about the service the Respondent had provided. His e-mail started: *"I am deeply disappointed that we have been unable to draw a line under this stressful emotional matter as was my understanding by 13 September 2013. The following has not been resolved to my satisfaction."* At 12:45, on 12 September 2013, the Respondent sent a detailed reply to Mr P's e-mail.

- 20.32 There was a purported letter dated 13 August 2013. The meta data relating to this document showed that the letter was created by the Respondent on 12 September 2013 at 11:52. It was alleged that the Respondent created this letter on 12 September 2013 but backdated it to 13 August 2013 in order to give the impression that she had been progressing matters. Mr P was asked by the Supervisor if he had received the letter dated 13 August 2013. Mr P did not reply.
- 20.33 The time recording log made no mention of any time having been recorded on this matter on 13 August 2013. There were time recording entries for 12 September 2013. They were: one unit for correspondence out, two units for a telephone call, one unit for correspondence in and two units for preparation and perusal, which had the note, "*2 units prep long letter to the client.*"

Mrs R

- 20.34 The Respondent acted for Mrs R on a non-molestation order matter. The Firm reviewed the file as part of its investigation. There was a purported client care letter addressed to Mrs R dated 20 May 2011. However, it was alleged that this letter was created by the Respondent on 22 July 2011. Mrs R had informed the Supervisor at the SRA that she did not receive this letter. She also explained to the Supervisor that she had to telephone the Firm to chase the Respondent for an update on her case.
- 20.35 There was a further purported letter to the client. It was a letter dated 27 June 2011 and advised Mrs R that she would receive funding from the Legal Services Commission for her case on the condition that she paid a contribution towards it in the sum of £30.57 per calendar month. Mrs R had informed the Supervisor that she did not receive this letter. The Firm's meta data showed that it was created by the Respondent on 22 July 2011 at 15:08.
- 20.36 There was also a purported letter to the Lincoln County Court dated 18 May 2011 enclosing an Affidavit of Service for the Court file. The meta data showed that the letter was created by the Respondent on 22 July 2011 at 14:10. During the course of her investigation, Natalie Thomas made enquiries of the Court as to whether the letter had been received by the Court and, if so, when. An e-mail from Ms RT, Family Court Clerk at the Lincoln County Court, stated that "*...the cover letter for the affidavit of service was received on 25.7.11.*"

The Applicant's Response to the Respondent's explanation

- 20.37 Ms Carpenter submitted that the Respondent's explanation was incredible. It made no sense for the Respondent to have a practice of drafting letters on client files at home using Hotmail drafts when she had work from home remote access (VPN) which allowed her to draft letters directly onto the work system from home. Even if it were credible that the Respondent would draft letters at home using Hotmail drafts, it made no sense for the Respondent to open Hotmail at work the next day, cut and paste the wording of draft emails into letters and send letters out but not save them at the same time to the work system. Saving them at the time would take a matter of seconds. Further, Hotmail was barred at work between 09:00 and 17:00. All of the letters were saved to the work system between these hours. They therefore could not have been

saved to the work system by cutting and pasting from Hotmail as the Respondent contended.

The Respondent's Case

- 20.38 The Tribunal treated the allegation as denied.
- 20.39 In correspondence to the SRA prior to the issue of these proceedings the Respondent denied fabricating or backdating letters on other client files. She admitted that they were only created by her on the work system on the dates shown by the Firm's screenshots, but she put forward the same explanation as the Ms S matter. She contended that the letters had been drafted by her on or about the dates they bore, when working at home, and had been sent out on or about the dates they bore. Again she stated that her method for doing so was opening her personal Hotmail account at home and creating a draft email into which she would put the wording of a letter into the body of the email or she would attach it by a Word document. She would then open Hotmail at work the following day and cut and paste the letter wording into the letter template on the work system and send out the letter but not save the letter to the work system at that time. The Respondent would save the letters subsequently to the work system by opening up Hotmail at work, finding the draft emails that contained the letter wording and saving the letters to the work system.
- 20.40 The Respondent had submitted her comments on the individual files to the SRA in August 2014 and the Tribunal took these into account. On the matter of Mr B the Respondent stated that she had sent the original letter (dated 28 January 2013) and had chased it (by way of letter dated 21 March 2013) as she had not received a response from Children's Services. She said that the earlier letter was updated on the system on 21 March 2013 as at that stage the Respondent realised it had not been done. The Respondent was not responsible for sending fax transmissions. The lack of time recording for the letter may have been a simple omission to add it to the system. The Respondent also queried how the letter could have been created from scratch in two minutes.
- 20.41 Ms C had been a Louth client originally. This was a legal help childcare matter and was referred by the childcare department to the Respondent as it was not profitable. There had been considerable delay by the time the file arrived with the Respondent and the client had not provided all of the financial evidence for her funding. The Respondent could not charge for any work on the file as it was not recoverable given the lack of evidence. The Respondent wrote to the client to see if she could obtain the correct information but heard no further. No retainer had been created with the client and no formal file should have been opened by the Respondent's colleagues without the correct information.
- 20.42 In respect of Mrs G it was the Respondent's case that clients did not always return the letter of engagement. There were two files as there were two matters, one of which was privately funded and one of which was funded by legal aid. The Respondent queried whether the other matter had been checked for the letter of engagement and whether it had been misfiled.

- 20.43 Ms H had reconciled with her husband and wanted to leave the file open in case it did not work. Time was charged on 7 June 2013 for a later letter to the client.
- 20.44 Although the Respondent's table contained a reference to Mrs K the information provided by the Respondent in part did not correlate with the dates alleged by the Applicant. The Respondent stated that without the file it was difficult to know for certain what the preparation time recorded was for but it was likely that it was for preparation of a telephone note or for lengthy letters that went to the client and her husband on 30 January 2013.
- 20.45 The Respondent stated that she communicated with Miss M by text rather than calls. The client had not wanted to pursue an application for committal at that time as some contact was taking place. The Respondent said that this was a non-chargeable letter for legal aid purposes as the Respondent was simply asking the client to get in touch with her.
- 20.46 In respect of Mr M the Respondent said that the letters had been correctly charged for. No response was ever received from Martin Kaye Solicitors despite the letters and the Respondent's secretary chasing them by telephone. The Respondent's email to the client dated 5 June 2013 confirmed that she was awaiting a response from Andrew and Co regarding her letter. If the Respondent did not create the letter until July she could not have referred to it in email correspondence with the client on 5 June 2013. The time recording on 3 July 2013 was for the chasing letters sent on that date. The letter the Respondent stated was dated 13 May 2013 (which was dated 16 May 2013 in the bundle of documents) referred to the letter dated 16 May 2013. The Respondent said that this was clearly a typographical error by typing over. If the earlier letter had not been received by Andrew and Co surely they would clearly have commented on this as being the reason they had been so late in eventually responding. They did not.
- 20.47 There was no reference to Mr P in the Respondent's response, however Mr P was not one of the client's detailed in the SRA's letter of 31 July 2014 to which the Respondent was replying at that time.
- 20.48 The letter on Ms R was to the Court containing the Affidavit of Service. If this had not been sent to the Court shortly after the hearing when the injunction was made the Respondent contended that the Court would have written to the Firm. In addition the Court would question if a letter dated 18 May 2011 was received by them in July. The fact that the Court did not question the whereabouts of the Affidavit was evidence that it had been received.

The Tribunal's Findings

- 20.49 The Tribunal considered each of the nine client matters individually and found that the Respondent fabricated and/or backdated the letters on the matters as alleged.
- 20.50 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Mr B because the screenshot from the Firm's computer system showed that the purported letter dated 28 January 2013 was only created by the Respondent for the first time on 21 March 2013. In addition a copy of the purported letter dated

28 January 2013 could not be found on the physical file, nor could any written confirmation that it had been successfully transmitted by fax. The Respondent billed no time for drafting any correspondence on the Mr B file on 28 January 2013. The purported letter was not received by the recipient and social services did not respond to the Respondent until March 2013.

- 20.51 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Miss C because the screenshot from the Firm's computer system showed that the purported letter dated 18 September 2012 was only created by the Respondent for the first time on 19 October 2012. In addition the Respondent billed no time for drafting any correspondence on the Miss C file on or around 18 September 2012. Miss C did not recall having received the letter dated 18 September 2012. She had retained letters received from the Respondent and this letter was not one of them.
- 20.52 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Mrs G because the screenshots from the Firm's computer system showed that on 21 January 2013 the Respondent created a client care letter which she dated 29 August 2012; and also on 21 January 2013 she created a covering letter to the client which she dated 29 August 2012. In addition, the Respondent billed no time for drafting any correspondence on the Mrs G file on 29 August 2012.
- 20.53 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Ms H because the screenshot from the Firm's computer system showed that the purported letter dated 17 January 2013 was only created by the Respondent for the first time on 7 June 2013. In addition, the Respondent's billing on this file showed no time charged for a letter on 17 January 2013 and the Respondent charged for writing two letters on 7 June 2013. Ms H had stated that in her paperwork she did not have a copy of a letter dated 17 January 2013 and she did not recall receiving the letter.
- 20.54 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Mrs K because the screenshots from the Firm's computer system showed that the purported letters dated 16 September 2013 and 4 December 2013 were only created by the Respondent for the first time on 24 January 2014. In addition, the Respondent billed no time for drafting any correspondence on the Mrs K file on 4 December 2013. Mrs K had confirmed that she could not find the letters in her possession. She had kept all letters that came.
- 20.55 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Miss M because the screenshot from the Firm's computer system showed that the purported letter dated 26 November 2013 was only created by the Respondent for the first time on 7 January 2014. In addition, the Respondent's billing on this file showed no time charged for a letter on 26 November 2013. Miss M had stated that she did not recall receiving a letter dated 26 November 2013.
- 20.56 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Mr M because the screenshots from the Firm's computer system showed that the purported letter to Ringrose Law dated 25 February 2013 was only created by the Respondent for the first time on 6 March 2013 and that the purported letters dated 16 May 2013 to Martin Kaye and Andrew and Co were only created by the

Respondent for the first time on 3 July 2013. In addition, the Respondent billed no time for drafting any correspondence on the Mr M file on 25 February 2013. Also, Ringrose Law, Martin Kaye and Andrews and Co had confirmed that they did not receive letters dated 25 February 2013 or 16 May 2013.

- 20.57 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Mr P because the screenshot from the Firm's computer system showed that the purported letter dated 13 August 2013 was only created by the Respondent for the first time on 12 September 2013. In addition, the Respondent's billing on this file showed no time charged for a letter on 13 August 2013. Further, the Respondent's email chain with Mr P was inconsistent with her having sent any correspondence to him in August 2013.
- 20.58 The Tribunal concluded that the Respondent had fabricated and/or backdated the letter in respect of Mrs R because the screenshots from the Firm's computer system showed that the purported letters were only created by the Respondent for the first time on 22 July 2011. In addition, Mrs R confirmed that she did not receive letters dated 20 May 2011 or 27 June 2011 and the Court stated it did not receive the cover letter for the affidavit of service until 25 July 2011.
- 20.59 It was alleged that the Respondent had breached Principles 2, 4 and 6 of the Principles and Rules 1.02, 1.04 and 1.06 of the SCC in respect of the misconduct that took place before 5 October 2011. Principle 2 required a solicitor to act with integrity. Rule 1.02 also required a solicitor to act with integrity. Principle 4 required a solicitor to act in the best interests of each client and Rule 1.04 required the same. Principle 6 required a solicitor to behave in a way that maintained the trust that the public placed in them and in the provision of legal services. Rule 1.06 prohibited a solicitor from behaving in a way that was likely to diminish the trust that the public placed in them.
- 20.60 The Respondent had been found to have fabricated and/or backdated letters on nine separate client matters. This had been done with the intention to mislead. The Respondent had been deceptive and had not been open with the Firm or her clients. Her actions had lacked integrity and she had breached Principle 2 and Rule 1.02.
- 20.61 The Respondent had fabricated and/or backdated the letters to conceal her lack of progress on the cases or her failure to send key documents such as the client care letter. She had failed to send an affidavit of service for a non-molestation order for some weeks which could have been detrimental to her client. The Respondent's conduct meant that she had not acted in the best interests of the nine clients exemplified in allegation 1.2 in breach of Principle 4 and Rule 1.04. By failing to act in the best interests of each client and by fabricating and/or backdating documents the Respondent had failed to behave in a way that maintained the trust that the public placed in her and in the provision of legal services in breach of Principle 6 and had behaved in a way that was likely to diminish the trust that the public placed in her in breach of Rule 1.06.
- 20.62 Allegation 1.2 was found proved in full to the requisite standard, namely beyond reasonable doubt.

21. Allegation 2 - Dishonesty in respect of allegations 1.1 and 1.2

The Applicant's Case

- 21.1 The Applicant alleged that the Respondent's actions were dishonest according to the test laid down in the case of Bullitude v The Law Society [2004] EWCA Civ 1853, applying the test for dishonesty as formulated by the House of Lords in the case of Twinsectra. The Respondent acted dishonestly according to the ordinary standards of reasonable and honest people ("objective test") and she realised that by those standards her conduct was dishonest ("subjective test").
- 21.2 Ms Carpenter submitted that backdating and fabricating documents on client files was plainly dishonest under the objective test. Reasonable and honest people would regard such conduct as dishonest.
- 21.3 As to the subjective test, it was submitted that the Respondent must have realised at the time that her conduct would be regarded by reasonable and honest people as dishonest because:
- It was obviously dishonest. As a qualified solicitor at the time of the misconduct, the Respondent must have known the seriousness of backdating and fabricating documents and that it was a dishonest thing to do.
 - The Respondent backdated and fabricated documents across ten files over a period of more than two and a half years (22 July 2011 to 10 February 2014). This was not a case of an isolated act. It was repeated and systematic misconduct.
 - The Respondent put forward an untrue explanation to the Firm in 2014 and to the SRA in correspondence in 2014 to 2016. It was to be inferred that she did so because she was aware that her conduct had been dishonest.
 - The Respondent did not make known the error of her ways to her employer. Rather, she remained silent about what she had done and concealed her conduct. Her misconduct was only uncovered when Natalie Thomas set about reviewing the file of Ms S.
 - The Respondent deliberately misled her clients and third parties by stating that she had already sent correspondence when, in fact, she knew that not to be the case.
 - The Respondent deliberately fabricated and backdated documents to misrepresent to her employer that her files were in good order and that she was progressing her cases.
- 21.4 It was not necessary for the Applicant to prove the Respondent's motive in fabricating and backdating documents. However, Ms Carpenter submitted that her motive was in seeking to pre-empt or deal with complaints from clients, or in order to get her files through internal file reviews, in order to give the impression she was properly conducting her files and had been progressing matters when in fact she had not been doing so.

- 21.5 For example, on the Ms S matter, there was a hearing on 21 January 2014 at which the court ordered that (i) Ms S must provide a witness statement by 11 February 2014; (ii) the Respondent must obtain Ms S's medical records by 25 February 2014; and (iii) that Ms S was entitled to £10 per contact visit. Following the hearing, Ms S wrote a number of emails to the Respondent complaining that the Respondent was not progressing the matter, stating that she did not know the date her witness statement was due, stating she wished to see her medical records before serving her statement and stating that she was not receiving the £10 payment per contact visit the court had ordered. The Respondent eventually sent Ms S an email on 7 February 2014 attaching the wording of the Order the Court had made on 21 January 2014, which stated the statement was due on 11 February 2014. This prompted an angry response from Ms S that she had not been aware of this.
- 21.6 By 10 February 2014, the Respondent had resolved to withdraw from the case and sought Natalie Thomas's view on this at 12:45. Natalie Thomas agreed and asked the Respondent to draft a letter to the client for Natalie Thomas's review. The Respondent did so in the afternoon of 10 February 2014. In the afternoon and evening of 10 February 2014 the Respondent fabricated letters (to Morley Brown, the client and medical institutions) to give the false impression to a reader of the file that she had progressed the case since the hearing on 21 January 2014 by taking the steps required in the order i.e. to provide Morley Brown with her client's bank details so their client could make the £10 payment per contact, to obtain the medical records, to inform the client as to the requirements of the order etc. In fact she had taken no steps to progress the matter until 10 February 2014. She fabricated the letters to the medical institutions dated 22 January 2014 on 10 February 2014 to send with letters to the medical institutions dated 10 February 2014 to give the impression that the letters dated 10 February 2014 were her second request for the medical records, whereas in fact they were her first request.
- 21.7 Given the above the Applicant submitted that both the objective and the subjective limbs of the test for dishonesty were made out.
- 21.8 Ms Carpenter submitted that, whilst the Tribunal was entitled to take into account the testimonial evidence that the Respondent had provided, no real weight should be attributed to that evidence. Ms SS had left the Firm before the investigation and Ms JZS spoke of her own experience of the Respondent.

The Respondent's Case

- 21.9 The Respondent had not admitted or denied the allegation. The Tribunal treated the allegation as denied. In her response to the SRA before the proceedings she had produced some supporting statements. As dishonesty was alleged the Tribunal considered these as part of the Respondent's case.
- 21.10 Ms MB had worked with the Respondent. She outlined the difficulties she considered that the family department in Lincoln had experienced. She said that the Respondent had not received help or assistance with her workload and had had several demanding cases at the beginning of 2014. Ms MB had been disappointed as to how the Firm had treated the Respondent. She felt that the Firm had completely let the Respondent down at a time when she had so much to look forward to in her career and that the

follow up disciplinary meeting was very bullying and aggressive towards the Respondent.

- 21.11 Ms JZS had been the Respondent's secretary. She had always found the Respondent to be a dedicated, hardworking and honest person. In Ms JZS's view the Respondent coped extremely well with the workload but to achieve such a high standard, as she did at all times, the Respondent often sacrificed her evenings by staying late after close of business and also worked from home most weekends. In her opinion, the Respondent did not receive the support and assistance she should have received. The Respondent had been left on her own to run a very busy department as a newly qualified solicitor and even under those circumstances she still was able to meet deadlines and not be hindered by the amount of work she had to deal with.
- 21.12 Ms JZS recalled the Respondent asking her to take copies of Ms S's signed authority for the release of her medical records which the client had signed at Court the previous day (21 January 2014) and that she stapled a copy to each of the letters that the Respondent had handed to her, the Respondent having typed and printed them herself. Ms JZS remembered speaking to the office assistant in the post room to tell him that the letters needed to go first class and placing the letters in the first class post tray bound by an elastic band.
- 21.13 Ms SS had worked with the Respondent until she was made redundant in November 2012. She had been the Respondent's direct supervisor between April 2011 and November 2012. During this time she had had no concerns over the Respondent's file management. Family law presented a unique set of challenges and it was not unusual for clients to simply not respond to letters.
- 21.14 Ms SS had no hesitation in supporting the Respondent in refuting the allegations which had been made against her, she had always found the Respondent's integrity to be beyond reproach. She had also always found the Respondent to be hardworking, empathetic and dedicated to serving her client's best interest including working long hours and taking work home to complete in the evening and on the weekend. She stated that both she and the Respondent had had to take work home due to conflicting demands on their time and lack of available support. Ms SS considered the Respondent to be a solicitor of good repute and a credit to the profession. She had been held in high regard by her colleagues at the Firm, her clients and the local judiciary.

The Tribunal's Findings

- 21.15 Allegation 1.1 had been found proved, including lack of integrity. The Respondent had not only created the fabricated and/or backdated letters on 10 February but in the case of the medical practice and the hospitals had sent letters chasing the purported letters of 22 January 2014 and those subsequent letters had enclosed copies of the fabricated/backdated letters. The Respondent had involved quite a lot of people in her deception, including the hospital departments who were led to believe that they had not responded to earlier correspondence. The Respondent's conduct was clearly dishonest by the standards of reasonable and honest people. The objective limb of the test set out in Twinsectra was satisfied.

- 21.16 The Tribunal considered the subjective test as set out in Twinsectra. The Respondent had concealed her misconduct and when challenged that her explanations were not credible she had not admitted what she had done. She had altered her account as it was disproved. If the Respondent had considered her conduct was honest by the standards of reasonable and honest people she would have admitted what she had done. The irresistible inference from the fact that she concealed what she had done was that she realised that by those standards her conduct was dishonest. The subjective limb of the test set out in Twinsectra was satisfied. The Tribunal found dishonesty proved, beyond reasonable doubt, in respect of allegation 1.1.
- 21.17 Allegation 1.2 had been found proved including lack of integrity. The Respondent had deliberately deceived her clients, the Court, other solicitors and the Firm. Again the Respondent had involved quite a lot of people in her deception. The Respondent's conduct was clearly dishonest by the standards of reasonable and honest people. The objective limb of the test set out in Twinsectra was satisfied. For the same reasons as set out in respect of dishonesty and allegation 1.1 above the Tribunal found that the subjective limb of the test set out in Twinsectra was satisfied. Accordingly, the Tribunal found dishonesty proved, beyond reasonable doubt, in respect of allegation 1.2.
- 21.18 Allegation 2 was proved in full to the required standard of proof, namely beyond reasonable doubt.

Previous Disciplinary Matters

22. There were no previous matters.

Mitigation

23. In the Respondent's statement to the Applicant, sent in August 2014, the Respondent referred to the prevailing circumstances at the Firm. The head of the family department, who had been based in Lincoln, Ms JS had left the Firm. The Respondent and another family solicitor (Ms SS) together with two secretaries remained based in Lincoln (Ms JZS and Ms JC) with the head of department based in Grimsby. The Respondent contended that she had little contact with Ms LM and that she was not available to assist her when required. Ms SS had been made redundant and the Respondent was working twelve sometimes fourteen hour days between working at home and the office. The Respondent said that the office manager, Ms JB, had raised concerns about the hours she was working and that the Respondent was regularly asking Ms JB for support and assistance.
24. The Respondent explained that it got to the stage where she did not ask Ms LM for assistance because she felt it was pointless as her input was not forthcoming or helpful; it was as though she could not be bothered to help. As a result of problems and stress at work the Respondent said that she was diagnosed by her doctor as having very high blood pressure and her family members raised concerns about her health and well-being.

25. The Respondent stated that she was dedicated to the Firm and wanted to make the department profitable which was why she worked such long hours and gave her all to give clients good customer service. This resulted in her working in the way that she was, often adding electronic documents to the system at a later time because she had not saved documents when she printed them. The Respondent explained that she would print documents off just before she was setting off to Court or before seeing clients and would not therefore save them to the system or do what she classed as administrative jobs unless she was having an admin day at the office. She accepted that this way of working was not ideal but stated that it was clearly a by-product of the vast workload that she had. In the long list of work that the Respondent had to get done the administrative tasks were lowdown on that list. She stated that she did always update her files in the end but she accepted that this had not always been done at the exact time that work was created.
26. The Respondent felt from the outset of the Firm's investigation that they wanted to find her guilty. She did not consider that the investigation was procedurally fair.

Sanction

27. The Tribunal referred to its Guidance Note on Sanctions (December 2016-5th Edition) when considering sanction.
28. The Tribunal assessed the Respondent's culpability as high. The Respondent's motivation for the misconduct appeared to be to cover up her lack of action on the files. It was not known why she had not done what she purported to at the time she purported that she had done it. The misconduct was planned. She had fabricated and/or backdated documents and the allegations found proved related to ten clients. The Respondent's clients had trusted her and she had acted in breach of that trust. When a client puts their matter in a solicitor's hands that client thinks that the solicitor is doing what they are supposed to be doing and the Respondent was not. This was especially relevant in this case as the Respondent was a family lawyer and some of the matters involved children and clients experiencing domestic abuse. The Respondent had direct control of the circumstances giving rise to the misconduct. Her level of experience when she fabricated and/or backdated the first of the documents set out in the allegations was less than a year but by 2014 she had been qualified for approximately three and a half years. There was no information before the Tribunal as to any long term harm and Ms Thomas had confirmed that no client had lost out. The Respondent had deliberately misled the Regulator.
29. In terms of the harm caused by the misconduct Ms S had been distressed and Mr P had faced delay in finalising his divorce. The impact of the Respondent's misconduct on those directly and indirectly affected by the misconduct was not high. However the harm to the reputation of the profession and the Firm's reputation was significant. The Firm had had to write to clients, other firms of solicitors, medical professionals and the Court to establish the true position and this would invariably have caused reputational damage. The Tribunal did not consider that the Respondent had intended any harm but considered that harm was reasonably foreseeable as a result of her misconduct. Ms S had had to wait for the monies for contact, she had also had to provide her statement in her family proceedings without the assistance of the Respondent.

30. Dishonesty was alleged and proved. The misconduct was deliberate, calculated and repeated. It had continued over a period of time. Clients involved in family matters were potentially vulnerable and whilst the Respondent did not take advantage of a vulnerable person she did not do what she should have done. The Tribunal had before it information as to Ms S's own difficulties and an affidavit of service was not filed in a timely manner for a client who had obtained a non-molestation order. The Respondent had concealed her wrong doing and she must have known or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession. There had been a detrimental impact on the Firm and some of the clients. These were all aggravating factors. There were no mitigating factors.
31. A finding that dishonesty had been proved will almost invariably lead to striking off save in exceptional circumstances. The Tribunal took a holistic approach to sanction given the similar factual nature of the allegations. The Tribunal took into account that the purpose of sanction was both to punish the misconduct and deter others. The Tribunal considered the range of sanctions available to it commencing with No Order. However it concluded in light of its finding of dishonesty in respect of ten client matters that No Order, a Reprimand, a Fine, a Restriction Order and Suspension were insufficient sanction to protect the public and the reputation of the profession. The Respondent's misconduct was so serious that these lesser sanctions were inappropriate. Strike-Off was the appropriate sanction absent any exceptional circumstances.
32. The Tribunal then considered whether there were any exceptional circumstances that would mean that the sanction should be reduced to one of Suspension. Whilst acknowledging that this was a sad case the Tribunal had no evidence as to exceptional circumstances before it. The Respondent had made no admissions and there was no evidence of genuine insight or contrition on her behalf. The Tribunal had read and considered all that was said by and on behalf of the Respondent in the bundle of documents. The Tribunal had heard Ms Thomas describe the Respondent as a proud person. Mr Parnell had told the Tribunal that he had desperately hoped that there was a reasonable explanation for what had happened but could not find one. There was no medical evidence to show that at that time the Respondent had been affected by physical or mental illness that affected her ability to conduct herself to the standards of a reasonable solicitor. Whilst the Respondent was relatively inexperienced and, after Ms JS left, her head of department had been based elsewhere there was no evidence that she had been inadequately supervised. In all of the circumstances of the case the appropriate sanction was for the Respondent's name to be Struck Off the Roll of Solicitors.

Costs

33. The Applicant applied for its costs, supported by a revised costs schedule in the sum of £35,373.00. This reflected the fact that the hearing had not lasted four days and that Mr Whyman's charges had been reduced as he had given his evidence by video link.
34. The Respondent had complained about the time taken to investigate this matter. The Tribunal was also concerned that the events in question took place almost three and a half years ago. The Applicant submitted that as regards the time taken to investigate

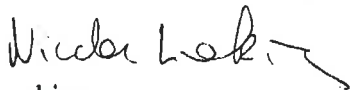
this matter, this was a complex case which required investigation of over forty matters. In light of the Respondent's points in respect of Mr Whyman's first two reports issued to the Firm, the Applicant had obtained a further report from Mr Whyman dated 5 February 2017. The supervisor's costs were £3,000 and Ms Carpenter was not aware that any additional costs had been incurred due to the delay of about a year at that stage. She conceded that this was a possibility given the supervisor would have needed to remind themselves of the position.

35. The Respondent had not provided any evidence as to her means. The Applicant had obtained official copies of the register showing the Respondent as the sole proprietor of her property, which was subject to a mortgage.
36. The Tribunal assessed the Applicant's costs. The Tribunal considered that there had been lamentable delay in this matter. That delay had occurred at the investigation stage and, whilst mindful that the costs would ultimately fall to the profession, the Tribunal determined that it was not fair for the Respondent to have to pay the costs of the investigation stage. Accordingly, the sum of £3,000.00 was deducted from the costs claimed.
37. The Tribunal had no evidence of the Respondent's means. It was not known if she was working but if she was working it was not as a solicitor and the Tribunal's order would not deprive her of her income.
38. The proceedings had been properly brought and all allegations proved. It was appropriate that the Respondent paid the Applicant's costs. Having carefully considered the costs schedule the Tribunal assessed costs in the sum of £32,373.00 and ordered that the Respondent pay the costs in this sum.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, CLAIRE MARGARET WHEELER, 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 £32,373.00.

Dated this 9th day of August 2017
On behalf of the Tribunal



N. Lucking
Chair

Judgment filed
with the Law Society
on 09 AUG 2017

