

**SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11643-2017

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAKSHEENIE ABEYWARDENE

Respondent

---

Before:

Mr J. A. Astle (in the chair)  
Mr S. Tinkler  
Mr M. Palayiwa

Date of Hearing: 26 July 2018

---

**Appearances**

There were no appearances as the matter was dealt with on the papers.

---

**JUDGMENT ON AN AGREED OUTCOME**

---

### **Allegations**

1. The allegations against the Respondent in the Rule 5 Statement dated 25 April 2017 made by the SRA were that:-
  - 1.1 Between 2009 and 2012, she submitted claims to the Legal Aid Agency in immigration matters, which she knew to be improper. She thereby breached any or all of Principles 2, and 6 of the SRA Principles 2011.
  - 1.2 During an interview on 21 January 2015, she failed to deal with auditors from the LAA in an open and co-operative manner when she provided information about the role of YF and KM at the Firm, which was misleading, in order to create a legitimate basis for claims made to the Legal Aid Agency for interpreter travel times and travel expenses. She thereby breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011.
2. Dishonesty was alleged with respect to the Allegations at paragraphs 1.1 and 1.2, but dishonesty was not an essential ingredient to prove those allegations.

### **Documents**

3. The Tribunal had before it the following documents:-
  - Rule 5 Statement dated 25 April 2017
  - Medical reports relating to the Respondent
  - Memoranda of Case Management Hearings dated 19 September 2017 and 8 February 2018
  - Proposed Agreed Outcome

### **Factual Background**

4. The Respondent was born in 1952 and was admitted to the Roll of Solicitors on 1 April 1985. At the time of the hearing her name remained on the Roll of Solicitors. The Respondent's last Practising Certificate, which was for the practice year 2014/2015 had been terminated on 7 December 2015 and she was not practising at the time of the hearing.
5. The Respondent had been a partner at Ziadies LLP, 516 Brixton Road, London, SW9 8EN ("the Firm"). She had become the sole member of the LLP from 24 April 2015. She was also head of the Firm's immigration department. SRA records showed that the Firm ceased on 31 July 2015. Until the closure of the practice, the Respondent was sole equity member of the Firm.

### **Application for the matter to be resolved by way of Agreed Outcome**

6. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Agreed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions and an appropriate and proportionate way to resolve the matters.

7. The Applicant applied, insofar as it was necessary, to amend Allegation 1.2 to reflect the admissions in the Respondent's Answer dated 31 May 2018. The amended basis of this Allegation is set out in the Agreed Outcome.

### **Findings of Fact and Law**

8. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
9. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made. The Tribunal granted leave for Allegation 1.2 to be amended as sought.
10. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
11. The Respondent had made admissions to serious professional misconduct including dishonesty. Her misconduct included misleading the Legal Aid Agency ("LAA") by submitting claims which she knew to be improper and failing to deal with the LAA's auditors in an open and co-operative manner.
12. The improper claims had taken place over a three-year period and involved at least £800,000 of public funds being wrongly claimed. The Respondent was very experienced and had been operating at partner level at the material time. In addition she was head of the Immigration Department. The Respondent's culpability was therefore assessed as high. The harm caused was substantial in circumstances where large sums of money had been improperly claimed. The loss caused to the LAA was significant, albeit the Tribunal noted that she had repaid £800,000. The damage to the reputation of the profession was severe.
13. The Tribunal noted the mitigation put forward by the Respondent and recognised in particular the circumstances of her ill-health. It also accepted, as noted above, that she had repaid a very substantial amount of money to the LAA. The misconduct was clearly too serious for a fine, reprimand or suspension in light of the finding of dishonesty. The only appropriate sanction that would adequately reflect the seriousness of the misconduct and protect the public and the reputation of the profession from future harm was a strike off.
14. The Tribunal considered whether there were any exceptional circumstances that could justify a lesser sanction. The Tribunal had regard to the medical evidence submitted on the Respondent's behalf. It was not suggested that this amounted to exceptional circumstances and the Tribunal found no such circumstances that could justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck off the roll and the Tribunal therefore approved the sanction proposed by the parties.

15. For the avoidance of doubt, while the Tribunal noted the Respondent's intention to give an undertaking never to apply for restoration to the Roll, that was a matter between the Respondent and the Applicant. The Tribunal had no jurisdiction to make such an order, or to endorse an undertaking of any description.


### Costs

16. The parties had agreed that the Respondent would pay the Applicant's costs fixed in the sum of £17,218.75. The Tribunal was satisfied that this was an appropriate sum and approved this element of the agreed outcome.

### Statement of Full Order

17. The Tribunal Ordered that the Respondent, DAKSHEENIE ABEYWARDENE, 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 £17,218.75.

Dated this 21<sup>st</sup> day of August 2018  
On behalf of the Tribunal



J. A. Astle  
Chairman

Judgment filed  
with the Law Society  
on 21 AUG 2018

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAKSHEENIE ABEYWARDENE

Respondent

---

---

AGREED OUTCOME

---

---

1. By an Application dated 25 April 2017 and statement made pursuant to Rule 5(2) of the Solicitors Disciplinary Proceedings Rules 2007, which accompanied that Application (the "Rule 5 Statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Mrs Daksheenie Abeyewardene ("the Respondent").

**Allegations**

2. The allegations against the Respondent made by the SRA are that:-
  - 2.1 Between 2009 and 2012, she submitted claims to the Legal Aid Agency in immigration matters, which she knew to be improper. She thereby breached any or all of Principles 2, and 6 of the SRA Principles 2011 (Allegation 1.1).
  - 2.2 During an interview on 21 January 2015, she failed to deal with auditors from the LAA in an open and co-operative manner when she provided information which was misleading in order to satisfy the auditors that the firm was compliant with record keeping and contract requirements. She thereby breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011 (Allegation 1.2)<sup>1</sup>.
3. It was further alleged that the Respondent had acted dishonestly in relation to the conduct set out at in allegations 1.1 and 1.2. At the time that the Applicant issued proceedings against the Respondent, it was well established that the Tribunal would need to ask itself first whether the Respondent acted dishonestly by the standards of reasonable and honest people and secondly whether he or she was aware that by those standards, he or she was acting dishonestly (the combined test laid down in the House of Lords Judgment in Twinsectra Ltd v Yardley and Others [2002] UKHL 12).

---

<sup>1</sup> Insofar as necessary, the SRA seeks leave to amend allegation 1.2 in the Rule 5 Statement to reflect the admissions made by the Respondent in her Answer filed and served on 31 May 2018.

4. In the Supreme Court Judgment in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67, Lord Hughes set out the test for dishonesty at paragraph 74 of the Judgment as follows:

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

5. The test to be applied by the Tribunal, in considering the allegation of dishonesty, is the test as set out in Ivey. Essentially, there are two issues for the Tribunal to consider. Firstly, the actual state of mind of the Respondent including her knowledge or belief as to the facts and secondly, whether her conduct was dishonest applying the objective standard of ordinary standards of ordinary decent people.

#### **Admissions**

6. The Respondent admits the rule breaches set out in allegations 1.1 and 1.2 and further admits the allegations of dishonesty in respect of both these allegations under the test in Ivey. Specifically:
  - 6.1 The Respondent admits allegation 1.1 in the terms alleged, namely that between 2009 and 2012, she submitted claims to the Legal Aid Agency in immigration matters, which she knew to be improper. She thereby breached any or all of Principles 2, and 6 of the SRA Principles 2011. She further admits that she acted dishonestly.
  - 6.2 The Respondent admits allegation 1.2 on an amended basis, namely that during an interview on 21 January 2015, she failed to deal with auditors from the LAA in an open and co-operative manner when she provided information which was misleading in order to satisfy the auditors that the firm was compliant with record keeping and contract requirements. She thereby breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011. She further admits that she acted dishonestly.
7. The SRA has considered the admissions made by the Respondent and has considered, in light of those admissions, whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed are in the public interest and that it is a proportionate and appropriate way of resolving this matter particularly in light of the Respondent's health conditions. It is agreed that the necessary and proportionate sanction to protect the public interest and reputation of the profession is for the Respondent to be struck off the Roll. Further, the Respondent undertakes never to apply to be re-admitted to the Roll.

## Agreed Facts

8. The Respondent was born in 1952 and was admitted to the Roll of Solicitors on 1 April 1985. Her address is [REDACTED]. The Respondent's name remains on the Roll of Solicitors. Her last Practising Certificate, which was for the practise year 2014/2015 was terminated on 7 December 2015 and she is not currently practising.  
**FULL DATE OF BIRTH AND ADDRESS REDACTED BY THE TRIBUNAL.**
9. At all material times, the Respondent was the sole equity partner at Ziadies Solicitors ("the firm"), 516 Brixton Road, London, SW9 8EN until 24 April 2015 when her partner, Mrs M, resigned from the firm. The Respondent was also head of the firm's immigration department. The firm ceased on 31 July 2015.
10. The firm received a letter from the Legal Aid Agency ("LAA") in or about June 2014 addressed to the Respondent with a request that 150 named immigration files covering the period 2009 to 2012 be sent to the LAA for audit. All but two files were sent to the LAA and following their audit, the LAA requested a meeting with the Respondent. The meeting took place on 21 and 22 January 2015. Notes were made of that meeting and the Respondent signed the notes to confirm that the facts in the interview record were a true record and came from her personal knowledge. On 22 January 2015, the Respondent provided a note of "Clarifications" to the LAA in relation to the interview on 21 January 2015.
11. The LAA set out their findings of the file reviews in a letter dated 20 March 2015. The LAA noted the review had indicated there had been systematic, gross over-claiming for both disbursements and profit costs on hourly rate cases, in particular on Legal Help matters. The LAA also found the vast majority of files reviewed did not have invoices for interpretation on them and that interpreters had worked on files as fee earners. The LAA requested that the firm repay £1,022,952 in respect of identified over-claiming on disbursements and profit costs from 2009 to 2012.
12. The Respondent's partner, Mrs M made an initial report to the SRA in an email dated 1 April 2015. Mrs M stated in her report:

*"I am the Compliance Officer for Ziadies Solicitors, and I will be writing to you in due course with more detail. There are some serious issues that I am obliged to draw to your attention concerning Ziadies and the conductor (sic) of Partners (including myself) and other employees. I am seeking legal assistance to prepare a report for you.*

*I have taken advice today, but the Solicitor I have instructed is away until 13 April 2015, and I anticipate reporting to you on his return as soon as possible thereafter, hopefully by 20 April 2015.*

*Yours faithfully"*
13. On 20 April 2015, the Respondent's representatives responded to the LAA's letter of 20 March 2015. The Respondent's representatives confirmed that whilst the Respondent accepted no liability, in the interest of resolving matters, she would pay a lump sum of £800,000 to the LAA in full and final settlement of all claims. On the same date, the Respondent's representatives reported to the SRA that the LAA had identified concerns about file administration and "a possible risk of over claiming".
14. In a detailed report dated 26 April 2015, Mrs M's representatives notified the SRA of concerns about the firm's immigration department and its relationship with LAA.

15. On 22 May 2015, the LAA confirmed in a letter to the Respondent's representatives that they would accept the Respondent's offer of £800,000 in full and final settlement of monies due to the LAA only in respect of repayments, which came to light on the file review exercise. The Respondent entered into a settlement agreement with the LAA in or around October 2015 regarding the repayment of this sum.
16. An inspection of the firm's books of account and other documents was commenced by an Investigation Officer ("IO") at the SRA on 1 December 2015. The inspection was commenced due to concerns in respect of overcharging in immigration matters funded by Legal Aid. The Respondent was responsible for making claims to the Legal Aid Agency ("LAA"), as head of the firm's immigration department. Mrs M had no involvement in making claims to the LAA. A Report ("FIR") dated 8 June 2016 was produced as a result of the inspection.
17. On 19 July 2016, the SRA wrote to the Respondent and Mrs M requesting an explanation. The Respondent's representatives responded to the letter on 30 August 2016. The Respondent accepted that the issues raised by the LAA were significant but the errors identified by the LAA were not accepted, or agreed as drafted. The Respondent did not accept the comments made by Mrs M and did not accept the events described by Mrs M, or that it accurately reflected matters. Mrs M's representatives responded to the letter on 5 September 2016.
18. The SRA issued proceedings against the Respondent in an Application and Rule 5 Statement dated 25 April 2017. The Respondent provided her Answer to the Rule 5 Statement on 31 May 2018.

**Allegation 1.1: Between 2009 to 2012, she submitted claims to the Legal Aid Agency in immigration matters, which she knew to be improper. She thereby breached any or all of Principles 1, 2, and 6 of the SRA Principles 2011**

19. In June 2014, the firm was the subject of an audit by the LAA when the LAA requested 150 files from the Respondent and reviewed 31 of those files. Following this, the LAA began a formal investigation and reviewed a further 40 files, which they took from the Respondent's office and home in January 2015. The results of the formal investigation were set out in a letter dated 20 March 2015 from the LAA to the Respondent.
20. The LAA reviewed 10 files from each year 2009 to 2012 with a total of 40 files being reviewed. The LAA stated in their letter that following their visit on 21 January 2015:

*"...additional files were requested due to "ongoing concerns over the firm's level of billing to the LAA.*

**General findings**

*"The review gave rise to "further significant concerns as to the level of claims submitted to the LAA from 2009 to 2012. The review indicates that there has been systematic, gross over-claiming for both disbursements and profit costs on hourly rate cases, in particular on Legal Help matters.*

Running record of costs discrepancies

*"Each of the files contains a running record of costs (or billing sheet) which is hand written and matches the amounts claimed on the CWA*



*submissions. But these billing sheets bear no resemblance to the record of work done on the files themselves. There is a serious question to be answered as to how an individual reviewing these files could have composed these billing sheets. The billing sheets represent egregious inflations of the work actually evidenced on the files. The view taken by the assessors is that the work evidenced on the file is far more likely to be a true picture of the work actually done.*

*There has also been an acknowledgement that attendance notes and invoices were added to the files provided for the file review exercise dated 5 June 2014. In light of the review of files here it appears that the response to that exercise was a deliberate attempt to conceal the over-claiming which has been undertaken. This is a very concerning indicator and is in our view further evidence of wider mis-reporting and claiming.*

#### *Lack of invoices*

*The vast majority of files reviewed did not have invoices for interpretation on them. In particular files where Kiflom Mebrahtu and Yared Fessahaye were cited as interpreters had no invoices on them.*

21. The LAA initially sought to recoup the sum of £1,139,376 from the Respondent in respect of sums over-claimed by the firm across the years 2009 to 2012. This sum was reduced to £1,022,952, as the LAA had previously recouped the sum of £116,451 following a Contract Compliance Audit in the same period.
22. The firm had a contract in place with the LAA for immigration work. As part of the process for receiving payment from the LAA, the firm would submit claims for each eligible matter through an on-line portal. The claims would include the firm's profit costs and disbursements, which would include interpreter's fees. Details of the sums claimed were retained on the client matter file. The Respondent, as head of the firm's immigration department, was responsible for making claims to the LAA.
23. The LAA noted that the billing sheets bore no resemblance to the record of work done on the files and that the billing sheets represented egregious inflations of the work actually evidenced on the files. In addition, the vast majority of files reviewed did not have invoices for interpretation on them. Evidence for the interpreters' work (generally YF and KM) was largely missing from the files. Between 2009 to 2012, YF and KM had created the handwritten billing sheets. The Respondent was responsible for inputting claims onto the bulk-load online portal to the LAA and completed the claim forms from the information on the hand written billing sheets.
24. The Respondent admits in her Answer that she had few records to support the notes she recreated and it was a "best guess" on many occasions by looking at the files to determine the work that had been carried out. The Respondent never saw records from YF or asked for records from YF confirming that he paid interpreters to work on files and presumed that he kept his own records. The Respondent did not cross check every disbursement claimed with the files to see if there was an attendance note to ensure it was correct and did not ask YF or KM for invoices when she claimed disbursements. The Respondent now accepts that she could not be certain who had interpreted on what day, how far they had travelled and the costs of this, as she had no contemporaneous records.

25. The Respondent accepts that some of the attendance notes inserted into the files seized in June 2014 were improper, as they were recreated for the LAA audit to satisfy the LAA that the firm was compliant with their record keeping and contract requirements. The Respondent further accepts that in adding attendance notes and invoices to the files, this was an attempt to mislead the LAA that the files were "in order".
26. The IO reviewed 31 client files retained by the LAA following their request in June 2014. YF had also been employed by the firm as a part-time office manager from 2005 onwards and he had also acted as an interpreter. During interview with the LAA on 21 January 2015, the Respondent confirmed that YF was an interpreter, had a contract of employment, was paid once a month on a fixed salary at the firm and stopped being employed in December 2014.
27. In response to questions from the LAA auditors about why YF claimed travel and waiting if he was employed, the Respondent replied:
- "because he came specifically for an interpreting job. His office work wasn't regular. He would do it as and when. Except for scanning and storage - removing files. So his presence in office was not generally required."*
28. When questioned by the LAA auditors about whether an interpreter would claim travel and waiting if a client attended the firm when they were already at the firm for a booked appointment, the First Respondent had replied:
- "no they would split it or make a new appointment."*
29. In her "Clarification" notes from the meeting, which the Respondent provided to the LAA auditors on 22 January 2015, the Respondent stated that YF's position at the firm was formalised in 1995, as an office administrator and that he worked on a very ad hoc basis. The Respondent also stated that over the years, YF became more involved in administration and would interpret nearly every day. The Respondent confirmed that YF had no contract of employment and engaged in his own business, providing interpretation services for other organisations as well as her firm.
30. The IO noted that as YF was an employee of the firm from 2005 to until December 2014 and also undertook work as an interpreter, it was not appropriate for him to claim for travel time and travel expenses to and from his normal place of work, namely the firm's office. From the IO's review of thirty one client matter files, the IO noted that YF had provided invoices in seventeen matters where he had claimed travel time and travel expenses to and from the firm's office. The IO calculated that a minimum sum of £2619.05 was improperly claimed from the LAA for travel time and travel expenses. In all matters, interpreters had claimed attendances at the firm at a rate of £15 per hour and travel/waiting at a rate of £12 per hour. Fares/mileage was either in the sum of £9.50 or £11.90.
31. The Respondent confirmed in her Answer that the content and information on the invoices reviewed in the thirty one client matter files should be treated with caution and should not necessarily be relied upon as accurate records of fact, as the majority were created after the event specifically for the LAA audit. Interpreters could claim whatever travel time they had incurred at £12 per hour but the Respondent only agreed to pay a maximum of 3 hours, as she knew she may not be able to recoup anymore from the LAA.

Four examples of improper claims are exemplified below:-

Client MAG

32. During November 2010, January 2011 and February 2011, YF provided interpreting services to the firm. Copies of the invoices retained on the client file showed the following:

Date	1/11/10	11/11/10	15/11/10	7/1/11	15/2/11
Attendance (in minutes)	90	60	60	60	45
Attendance costs	£22.25 <sup>2</sup>	£15.00	£15.00	£15.00	£11.25
Travel (in hours)	3	3	3	2	3
Travel costs	£36.00	£36.00	£36.00	£24.00	£36.00
Fares/Mileage	£11.90	£11.90	£11.90	£9.50	£11.90
Total Claimed	£70.15	£62.90	£62.90	£48.50	£59.15
Amount over-claimed	£47.90 (per invoice)				
Total over-claimed	£225.10				

33. The IO calculated that the amount over-claimed for this matter was £225.10, as travel time and travel expenses should not have been claimed.

34. The Respondent confirmed that the invoices were created for the LAA audit. The Respondent accepts that if she was wrong about YF's entitlement to claim travel, then she would have to accept this was an over-claim on the occasions where YF personally interpreted but it was an error of what could and could not be claimed. The Respondent also accepts that if travel costs were not apportioned, this should have been done and the lack of records meant that she could not be confident that claims made were correct. The Respondent could also not be certain who had carried out interpreting work on any given day and could not be certain about travel costs, due to the lack of contemporaneous records.

Client TGW

35. During May 2010 and April 2011, YF provided interpreting services to the firm. Copies of the invoices retained on the client file showed the following:

Date	4/5/10	5/5/10	7/5/10	10/5/10	20/5/10	24/4/11
Attendance (in minutes)	90	160	100	60	30	60
Attendance costs	£22.25 <sup>3</sup>	£40.25 <sup>4</sup>	£25.00	£15.00	£7.50	£15.00
Travel (in hours)	3	3	3	3	3	3
Travel costs	£36.00	£36.00	£36.00	£36.00	£36.00	£36.00
Fares/Mileage	£11.90	£11.90	£11.90	£11.90	£11.90	£11.90
Total Claimed	£70.15	£87.90	£72.90	£62.90	£55.40	£62.90
Amount over-claimed	£47.90 (per invoice)					

<sup>2</sup> Based on the time claimed in the invoice the correct sum for attendance was £22.50

<sup>3</sup> The correct sum for attendance should be £22.50 based on the time claimed in the invoice

<sup>4</sup> The correct sum for attendance should be £40.00 based on the time claimed in the invoice

<b>Total over-claimed</b>	<b>£287.40</b>
---------------------------	----------------

36. The IO calculated that the amount over-claimed for this matter was £287.40, as travel time and travel expenses should not have been claimed.

37. The Respondent confirmed that invoices had been created for the LAA audit were not contemporaneous and any conclusions resulting from these documents carried little weight.

Client TY

38. During October 2010, November 2010, July 2011 and 16 September 2011, YF provided interpreting services to the firm. Copies of the invoices retained on the client file showed the following:

Date	15/10/10	18/10/10	22/10/10	18/11/10	14/7/11	18/7/11	22/7/11	16/9/11
<b>Attendance (in minutes)</b>	72	150	60	30	60	60	45	60
<b>Attendance costs</b>	£18.00	£37.50	£15.00	£7.50	£15.00	£15.00	11.25	£15.00
<b>Travel (in hours)</b>	2	2	2	1	2	2	1.3	2
<b>Travel costs</b>	£24.00	£24.00	£24.00	£12.00	£24.00	£24.00	£18.00 <sup>5</sup>	£24.00
<b>Fares/ Mileage</b>	£11.90	£11.90	£11.90	£4.50	£11.90	£11.90	£9.35	£11.90
<b>Total claimed</b>	£53.90	£72.40 <sup>6</sup>	£50.90	£24.00	£50.90	£50.90	£38.60	£50.90
<b>Amount Over-claimed</b>	£35.90	£35.90	£35.90	£16.50	£35.90	£35.90	£38.60	£35.90
<b>Total over-claimed</b>	<b>£259.25</b>							

39. The IO calculated that the amount over-claimed for this matter was £259.25, as travel time and travel expenses should not have been claimed

40. The Respondent confirmed that invoices and attendance notes were created for the LAA audit and that the lack of records meant that she could not be sure that the claim made was correct at the time of billing.

Client HYZ

41. During August 2008, September 2008, November 2008 and July 2010, YF provided interpreting services to the firm. Copies of the invoices retained on the client file showed the following:

<sup>5</sup> The correct sum for travel should be £15.60 based on the time claimed in the invoice

<sup>6</sup> The correct sum for attendance should be £73.40 based on the time claimed in the invoice

Date	12/8/08	1/9/08	7/11/08	22/7/10
Attendance (in minutes)	60	60	72	60
Attendance costs	£15.00	£15.00	£18.00	£15.00
Travel (in hours)	3	3	3	3
Travel costs	£36.00	£36.00	£36.00	£36.00
Fares/Mileage	£11.90	£11.90	£11.90	£11.90
Total Claimed	£62.90	£62.90	£65.90	£62.90
Amount over-claimed	£47.90 (per claim)			
Total over-claimed	£191.60			

42. The IO calculated that the amount over-claimed for this matter was £191.60, as travel time and travel expenses should not have been claimed.
43. The Respondent confirmed that invoices and attendance notes were created for the LAA audit and the lack of records meant that she could not be sure that the claim made was correct at the time of billing.
44. During interview with the LAA on 21 January 2015, the Respondent informed the LAA that she was responsible for billing files after 2010 and the process for billing consisted of her going through the files with either the fee earner, an administrator or another solicitor and calculating the billing. The Respondent also confirmed in interview that she would check whether the attendance matched the disbursement and whether there was an invoice on the file. If there was an invoice but no attendance note the Respondent stated that she would ask the fee earner for one.
45. The Respondent admitted that the running record of costs was not accurate. She also explained that travel and waiting claims made by interpreters were not checked by the paralegal responsible for preparing invoices, as she *"takes their word for it"*. The Respondent said, *"there was an element of trust that they would invoice correctly"*. The Respondent further confirmed that interpreters attending the firm could claim for whatever time was incurred for attendance, travel, waiting and travel costs. The Respondent informed the LAA auditors that YF would pay other interpreters. However, the LAA found no evidence of this on the files they reviewed.
46. When asked whether there was a schedule of cases, which detailed payments, made to an interpreter, the Respondent replied, *"yes I suppose"* and *"I can't say we maintain a schedule but we must have information as to what cheques pertain to what. I don't check it."*
47. The Respondent confirmed that there was no audit trail to prove YF's arrangement regarding paying interpreters, as he never provided any records. The Respondent also sought the assistance of YF and KM to bill files. The Respondent now realised it was irresponsible not to have proper records and to allow those who had a financial interest in overbilling files to have responsibility for creating billing sheets. The Respondent accepts there were no attendance notes on files, so it was hard to know who had interpreted and no contemporaneous records to confirm who had carried out work on many files. Further, the Respondent accepts that invoices were created at the time of submitting bills to the LAA and that YF and KM created invoices to justify the work claimed. The Respondent would not have been able to identify who had carried out interpreting work from the file and she had no other records to confirm or prove this.

48. In response to the SRA's letter of 19 July 2016, the Respondent's representatives confirmed on behalf of the Respondent that whilst she did not accept files were deliberately overbilled, she accepted that she had not behaved in the way that maintains the trust the public placed in her as a solicitor and that there was a breach of Principle 6.

49. The Respondent admits:

49.1 that she submitted claims in respect of interpreter travel time, travel expenses and profit costs to the LAA in immigration matters by inputting data onto the LAA bulk upload system;

49.2 her actions represented to the LAA that these were accurate and justified claims when in fact in a significant number of cases the Respondent did not check whether these claims were accurate and justified against the files, in circumstances where she knew or had reason to believe that evidence to prove the work had been done was not on the files and that she therefore knew these claims were improper; and

49.3 this conduct was dishonest, in particular because it gave the firm a financial advantage.

50. Therefore, in submitting claims to the LAA in immigration matters for interpreter travel time and expenses and profit costs, which she knew to be improper, the Respondent accepts that she failed to act with integrity, in breach of Principle 2 of the SRA Principles 2011 and her conduct has also undermined the trust that the public places in her and the provision of legal services in breach of Principle 6.

#### **Dishonesty in respect of allegation 1.1**

51. The Respondent's conduct was dishonest in accordance with the test for dishonesty stated by the Supreme Court in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67.

52. The Respondent accepts that she acted dishonestly by the standards of ordinary decent people in submitting claims to the LAA via the LAA bulk upload system for interpreter travel times, expenses and profit costs in immigration matters, which she knew to be inappropriate and improper. The Respondent could not have had a genuine belief that this was an accurate claim for costs as she did not check the interpreters' records and there were limited contemporaneous records to confirm the costs incurred and she knew or had reason to believe that in a significant number of cases, evidence to prove that the work had been done was not on the files. The Respondent accepts that she acted dishonestly under the test in Ivey.

**Allegation 1.2: During an interview on 21 January 2015, she failed to deal with auditors from the LAA in an open and co-operative manner when she provided information which was misleading in order to satisfy the auditors that the firm was compliant with record keeping and contract requirements. She thereby breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011<sup>7</sup>**

53. During interview with the LAA auditors on 21 January 2015, the Respondent confirmed that she did not have time to look or review files, sent to the LAA. In response to a question from a LAA about whether files were added to fill gaps, the Respondent said:

*"I don't think so. We call them from storage and I looked through them and send them on. Nothing was added to the files."*

54. The Respondent signed the LAA notes of interview to confirm that "...the facts in this interview record are true. The facts come from my personal knowledge").

55. The following day (i.e. on 22 January 2015) the Respondent provided a note of clarifications to the LAA, correcting some of her comments in her interview on 21 January 2015. In that note, the Respondent addressed files, which were sent to LAA and stated that:

*"Re the files which were sent in to the LAA, I did review the files. Where there were no invoices they were put in as per the billing sheet. Missing attendance notes were also supplied."*

56. The LAA stated in their letter dated 21 March 2015 that:

*"There has also been an acknowledgement that attendance notes and invoices were added to the files provided for the file review exercise dated 5 June 2014. In light of the review of files here it appears that the response to that exercise was a deliberate attempt to conceal the over-claiming which has been undertaken. This is a very concerning indicator and is in our view further evidence of wider mis-reporting and claiming."*

57. In response to the SRA's letter of 19 July 2016, the Respondent's representatives explained that the Respondent had readily confirmed from the outset that attendance notes had been added to files and that the attempt was not to mislead the LAA but to explain what had been done.

58. The Respondent accepts in her Answer that some of the attendance notes inserted into the files seized in June 2014 were improper. The Respondent accepts there were limited contemporaneous attendance notes on many files and no invoices from YF or KM. Some attendance notes did not state if YF or KM had interpreted and evidence for interpreters' work was largely missing from the files. The Respondent further accepts that she had few records to support the notes that she recreated i.e. limited time recording and no handwritten notes. The Respondent admits that it was a "best guess" on many occasions by looking at the file, knowing what work had to go into producing the work evidenced and drafting attendance notes from her experience (and sometimes from post-it notes/comments on the file) and dating them by considering the calendars, the work prepared (such as letters, representations or statements).

---

<sup>7</sup> See comment at 1 regarding amending this allegation

59. The Respondent admits that attendance notes and invoices were added to the file for the June 2014 audit to satisfy the LAA that the firm was compliant with their record keeping and contract requirements. The Respondent accepts that this was an attempt to mislead the LAA that the files were "in order".
60. The Respondent admits that in the interview with the LAA on 21 January 2015, she misled the LAA auditors by claiming that the firm's files had not been added to when she knew this to be untrue. She accepts that this misleading information was knowingly provided by her in order to satisfy the auditors that the firm had complied with record keeping and contract requirements i.e. to create the appearance of compliant files. On 22 January 2015, the Respondent provided a note of clarifications to the LAA, correcting some of her comments in her interview on 21 January 2015.
61. The Respondent accepts that she breached Principle 2 and 6 of the SRA Principles 2011 on the basis that she misled the LAA when she confirmed to the auditors during interview that the files were not added to for the audit. The Respondent also accepts that YF could not claim for travel time and expenses when he was employed part-time. Further, the Respondent accepts that she wrongly claimed expenses for interpreters and paid interpreters' expenses when she did not check or have proof that the work had been carried out.

#### **Dishonesty in respect of allegation 1.2**

62. The Respondent's conduct was dishonest in accordance with the test for dishonesty stated by the Supreme Court in Ivey.
63. The Respondent acted dishonestly in her failure to deal with the LAA auditors in an open and co-operative manner, as she misled them during interview on 21 January 2015 when she stated that files had not been added to when she knew this was not true. In particular, she told the LAA auditors that nothing had been added to the files when this was untrue. The Respondent also signed the LAA notes of interview to confirm that the facts in the interview record were true when she knew they were untrue. The Respondent misled the auditors to create a legitimate basis for claims made to the LAA, as she knew that the files were not compliant as there were limited no contemporaneous notes on the files. The Respondent accepts that her conduct was dishonest and that it was an attempt to avoid or reduce the risk of adverse consequences for the firm.

#### **Mitigation**

64. The following is put forward by the Respondent as mitigation for the breaches admitted above. These are not adopted or not necessarily accepted by the SRA.
65. Whilst the Respondent accepts that as she failed to check billing sheets, that they may not have been accurate and that all claims may not have been justified, she does not accept that there had been intentional systematic gross over-claiming.
66. The Respondent states that when she input the data on the bulk upload system for the LAA she believed the billing sheets reflected the work that was done and that she placed too much trust in YF and KM believing that they had their own records to support the work they, or those they delegated work to, carried out. Now that she had reviewed the LAA audit summary, she accepts this was not the case.
67. Some of the attendance notes inserted into files seized by the LAA in June 2014 were improper, as they were recreated for the audit but were not a deliberate attempt to



conceal over-claiming. The Respondent recreated attendance notes of work that she believed was done but accepts that there were limited contemporaneous attendance notes and no invoices from the interpreters, YF or KM, to support these.

68. The Respondent was very stressed during the LAA interview and found it hard to recollect matters accurately. She believes this is due to her medical condition.
69. The Respondent repaid £800,000 to the LAA following the audit. In order to raise these funds she re-mortgaged her property and relied on funds saved for her pension.
70. The Respondent, through her representatives, notified the SRA about the possible risk of overclaiming in a letter dated 20 April 2015.
71. The Respondent has suffered from numerous and debilitating serious chronic illnesses for a number of years including SLE and APS which have caused cognitive decline. These conditions are exacerbated by stress and she accepts that these difficulties had an impact on her professional life including her ability to process information, make judgements and manage her work and her firm. She accepts that due to the pressures of work and her illness she delegated tasks to others to relieve the burden on her but failed to properly supervise or check that work was done in respect of claims made for interpreter time, expenses and profit costs. She accepts that pressures of work and her ill health led her to neglect administrative matters and compliance.

## **Outcome**

72. The parties agree that a sanction of striking off is necessary and proportionate.
73. It is agreed that the seriousness of the admitted misconduct including dishonest conduct is at the highest level such that neither a reprimand, a fine nor a suspension from practice would be a sufficient sanction nor would it protect the public and the reputation of the profession. It is agreed that the protection of the public and the protection of the reputation of the legal profession requires her being struck off the Roll of Solicitors. It is also agreed that, although there are mitigating circumstances, there are no exceptional circumstances relating to the admitted misconduct in this case which would justify a sanction other than strike off.
74. The SRA and the Respondent submit to the Tribunal that the following outcome is appropriate:
  - 74.1 An order that the Respondent be struck off the Roll of Solicitors;
  - 74.2 An order that the Respondent pay the SRA's costs of these proceedings fixed in the sum of £17,218.75.

## **Explanation as to why such an order would be in accordance with the Tribunal's sanction guidance**

75. The Respondent was sole equity partner in the firm at the time of the misconduct. She was responsible for uploading bills to the LAA in immigration matters via the firm's bulk load online portal. Evidence did not always exist to prove the actual work that had been done, by whom the work had been done, or the advice that had been given and she did not check the billing sheets against the file to check whether work had in fact been done. The Respondent did not check claims made by interpreters nor did she confirm that the work had been carried out. She accepts that she had effectively delegated the

creating of billing sheets to those with a direct financial interest in the claims but did not check these. She submitted the claims to the LAA representing that they were accurate and justified when she had not established this was the case and in many cases knew or had reason to believe that there were shortcomings on the files and no evidence on file to prove the work had been done.

76. She also misled the LAA auditors by telling them that documents had not been added to files in response to the audit, when in fact they had although on 22 January 2015, the Respondent provided a note of clarifications to the LAA, correcting some of her comments in her interview on 21 January 2015. Her motivation for adding file notes and invoices to the files was to give the impression the files were compliant when she knew that the files were not compliant, as there were limited contemporaneous notes on the files. The Respondent's actions in adding notes to the files was planned and she was directly responsible for these actions. Claims, which the Respondent made to the LAA, gave the impression that interpreters had travelled to the firm's offices for each separate client instruction, as they had charged travel time for each client separately. This was not correct. Further, no records were kept to establish if travel times and costs were accurate and/or apportioned.
77. The Respondent admits that her conduct was dishonest and her level of culpability is high. This is a significant departure from the "complete integrity probity and trustworthiness" to be expected of a solicitor.
78. The following factors aggravate the seriousness of the Respondent's misconduct:
  - 78.1 The misconduct involves admitted dishonesty.
  - 78.2 The misconduct was deliberate, calculated and repeated.
  - 78.3 The misconduct continued over a period of time.
  - 78.4 The misconduct involved the concealment of wrongdoing.
  - 78.5 The misconduct occurred when the Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and reputation of the legal profession.
  - 78.6 The misconduct had a direct financial impact upon the Legal Aid fund as the Respondent claimed costs to which she was not entitled to.
79. The following factors mitigate the seriousness of the Respondent's misconduct:
  - 79.1 The Respondent repaid £800,000 to the LAA in full and final settlement of all claims in or around October 2015.
  - 79.2 The Respondent, through her representatives, voluntarily notified the SRA about the possible risk of overclaiming in a letter dated 20 April 2015.
  - 79.3 The Respondent, through her representatives, has co-operated with the SRA throughout the investigation. Although the Respondent was at times unable to provide timely responses to the SRA and Tribunal, this was a consequence of her numerous and debilitating serious chronic illnesses.

80. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions the SRA contends, and the Respondent accepts, that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

P. MILTON

.....

On behalf of the Solicitors Regulation Authority  
Date: 24.07.2018

D ABEYWARDENE

.....

Daksheenie Abeyewardene  
Respondent  
Date: 24.07.2018