SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11662-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KATE LOUISE SANDERSON Respondent

Before:

Mr A. Ghosh (in the Chair)
Mr G. Sydenham
Mr M. Palayiwa

Date of Hearing: 30 November – 1 December 2017

Appearances

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

The Respondent represented herself.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 On a date between 21 October 2014 and May 2015, by creating two Insurance Policy Schedules purportedly dated 21 October 2014 with increased indemnity limits of £50,000 and £100,000 respectively ("the Policy Schedules"), which she knew or ought to have known would mislead the Legal Expenses Insurance providers, she breached either or both of :

1.1.1 Principle 2 of the SRA Principles 2011 ("the Principles"); and

1.1.2 Principle 6 of the Principles.

1.2 On or around September 2015 by creating purported attendance notes in relation to calls which she was aware had not taken place and correspondence that had not been sent on the file relating to her client Mr. TS, she breached both or either of :

1.2.1 Principle 2 of the Principles; and

1.2.2 Principle 6 of the Principles.

2. While dishonesty was alleged with respect to allegations 1.1 and 1.2 proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Documents

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

- Notice of Application dated 2 June 2017
- Rule 5 Statement and Exhibit EP1 dated 2 June 2017
- Respondent's Answer to the Rule 5 Statement (undated)
- Applicant's Schedule of Costs dated 22 November 2017

Preliminary Matters

4. At the commencement of the hearing on 30 November 2017, Mr Bullock informed the Tribunal that the Respondent had mistakenly gone to the Applicant's offices in Birmingham as she was under the misapprehension that the hearing was to be held there. In the circumstances, it would be inappropriate to apply to proceed in her absence. He suggested that the matter be adjourned to the following day.

5. The Tribunal adjourned the hearing to the following day. It would clearly be out of the question to proceed in the Respondent's absence in these circumstances. Whilst it would be possible for the Respondent to attend in the afternoon, it would be fairer to adjourn the hearing to the next day, rather than for the Respondent to rush to London and to arrive in possibly a flustered state. There was plenty of time for the hearing in any case as it had been listed for 4 days. Accordingly, the matter was adjourned to 10.00am on Friday 1 December 2017.

Factual Background

6. The Respondent was born in 1986 and was admitted to the Roll of Solicitors in March 2012. She did not hold a current practising certificate. At all material times until 13 April 2016 the Respondent was employed by Express Solicitors, latterly Express Solicitors Limited, ("the Firm"), having first been employed by them on 11 June 2012.

7. The Firm represented Mr TS in a personal injury matter and were acting under a Conditional Fee Agreement ("CFA"). The Respondent was the solicitor with conduct of that case. The case was insured by KLB under a policy dated 13 March 2013 ("the Original Policy Schedule"). The Original Policy Schedule confirmed the indemnity was at level 1, and was for £10.

8. On 21 October 2014 the Respondent wrote to KLB asking for an increase in indemnity to £50,000. KLB responded by email on 22 October 2014 asking for a completed Enhance Upgrade Form, and a copy of Counsel's advice, when the latter was available. The Respondent chased KLB for a response on 12 November 2014. KLB responded later that day, referring the Respondent to their email of 22 October 2014.

9. On 14 November 2014 Ms AP, an administrative assistant at KLB, emailed a copy of the Enhance Upgrade Form to the Respondent for her to complete if she wished to increase the level of indemnity which the Respondent duly returned the same day. Various correspondence then passed between the Respondent and KLB until 16 November 2015, when the file of Mr TS was passed to the Firm's Costs team.

10. On 20 November 2015, AS (the in-house costs team's 'Advocate Technical Lawyer' at the Firm), emailed KLB referring to a letter from the Respondent dated 15 September 2015. Mr AR, an underwriter at KLB, responded by email on 23 November 2015 stating that they had never received a letter from the Respondent dated 15 September 2015, and advising that the indemnity cover in place in relation to Mr TS was at level 1 and was for £10.

11. AS replied that day, enclosing two Policy Schedules, both purportedly dated 21 October 2014 ("the Policy Schedules"), with limits of indemnity of £50,000 and £100,000, together with additional correspondence. Mr AR asked for the correspondence that had accompanied those schedules to be sent to him. AS forwarded a copy of an email dated 20 May 2015 purportedly received by the Respondent from Ms AP with a copy of the Policy Schedules attached ("the alleged Ms AP email").

12. By an email dated 14 January 2016, KLB advised the Firm that it had received a claim under the policy for adverse costs and disbursements in the region of £25,000, and that the claim had been rejected. Whilst it was accepted that KLB were on cover from March 2013, it was not accepted that they had issued any additional Policy Schedules providing enhanced cover, and the policy issued to Mr TS on 13 March 2013 was limited to £10. KLB explained that although certain communications were exchanged in relation to increasing cover, it had fully investigated its systems and its records did not show that there had been an increase in

the level of indemnity cover in Mr TS's case at any stage. Furthermore, there was concern about the validity of the two Policy Schedules that the Respondent claimed had been received from KLB.

13. Following an email dated 1 February 2016, the Respondent met with 2 partners from the Firm regarding the allegations made by KLB in respect of the Mr TS file, as well as other matters. At that meeting the Respondent explained that the hard copies of the Policy Schedules on the file had been scanned into the electronic file. The Respondent stated that she had "forwarded this to herself on email as [she had] had this issue before when the attachment does not drag onto the file". She also explained that she put things onto the system the same day although there might be an exception if she had a particularly large number of calls. She believed that 20th May was the correct date. She also confirmed that "she uses Avaya unless it is not working. If avaya does not work, she uses her mobile is (sic) working from home as her home phone is "not great"."

14. A further meeting was held on 21 March 2016 between the Respondent, during which a number of concerns were raised with the Respondent in respect of attendance notes and correspondence on the Mr TS case file. At that meeting the Respondent was unable to explain why:

- It had taken 3 – 4 months to finalise an increase in cover;
- She had not noted the names of the person or fee earner she had spoken to on telephone attendance notes in the file;
- Telephone calls she said had been made were not recorded on the Firm's server;
- The Firm could find no record of calls made by her from her desk phone nor why KLB could find no record of those calls;
- A letter to KLB dated 16 July 2015 was not created on the Firm's case management system until 9 September 2015, nor why KLB stated it had not received that letter. The Respondent confirmed that as the letter had her initials on it, she had created it, but could not explain the discrepancy as regards the date;
- She received the Policy Schedules on 21 October 2014 when her email of that date would not have been read and dealt with until 22 October 2014 at the earliest.

15. The Respondent's attention was drawn to the fact that the alleged Ms AP email looked very different to other emails genuinely received from KLB on other matters where the Firm had a top up policy with KLB. She was also informed that KLB maintained "very clearly that this email was not sent by [Ms AP] to [the Respondent] and further that [KLB] say this email has been manipulated to show two policy schedules having been issued". The Respondent maintained that she "wouldn't do anything like that", but was unable to explain the difference between that email and genuine emails in other cases, nor why an email containing updated policy schedules would have been sent by Ms AP as opposed to from one of the three underwriters at KLB as was standard practice.

16. It was also noted that the attachments to that email appeared to be different documents to those the Respondent stated were attached. It was pointed out that a genuine email dated 14 November 2014 from Ms AP had been sent earlier in the matter of Mr TS which had exactly the same attachments as those seemingly attached to the alleged Ms AP email. The Respondent was unable to explain this; she denied any wrongdoing.

17. As regards the telephone attendance note of a conversation between the Respondent and Mr NA (an underwriter at KLB) on 11 September 2015, Mr NA had advised KLB "that the phone call did not happen ..... he was not the underwriter on the case, if he had received any communication about it or a phone call about this case he would have emailed the specific underwriter". The Respondent confirmed that she made the attendance note and that no one else used her computer log in.

18. A formal investigatory meeting was held at the Firm on 24 March 2016. In relation to the telephone attendance of 11 September 2015, it was put to the Respondent that:

> "on the 10th September we can see you looked at one of [Mr RW's] cases. [Mr NA] is mentioned on a [KLB] policy and then the next day we get this call recording from you 11th September that references [Mr NA], now we know from speaking to [KLB] that they strongly deny that happened and have looked though both their systems and also [Mr NA] himself so we just have to, you know is it a coincidence that you would have looked at this file and seen [Mr NA's] name and then a call note appearing the next day?"

19. The Respondent replied she could not say. She would only access other peoples' cases if she was taking a call or dealing with something on a file for that particular person. However there was no record of her taking a call or doing any work on Mr RW's file on 10 or 11 September and the Respondent could not recall going into that case.

20. The Respondent was asked why she had accessed one of her old files (which had been closed in October 2014) on 10 September 2015 where she viewed two letters from Mr NA at KLB. She then displayed a genuine email from Mr NA to Mr RW and then went straight back into the case of Mr TS before looking again at the genuine email from Mr NA. Shortly afterwards the Respondent had forwarded herself a copy of the alleged Ms AP email dated 20 May 2015. The Respondent stated that she had no recollection of doing this, nor did she have any idea as to why she might have done so.

21. The Respondent denied falsely creating the policies, falsifying the letter dated 16 July 2015, fabricating the email purportedly sent to KLB on 15 September 2015 and attaching telephone attendance notes to the file when no calls had actually been made.

22. When it was put to her that the attachments to the alleged Ms AP email were "the same attachments from the November 2014 email and .... [were] not the two policy schedules that [were] in the file separately", the Respondent offered no explanation.

23. At the end of the meeting the Respondent was informed that there "were a number of things which to be frank don't appear to add up at face value" so she "remain suspended".

24. The matter was reported by the Firm to the SRA in email dated 24 March 2016. The Firm later provided the SRA with additional information including its "Investigation Summary".

25. On 16 June 2016, the SRA sent an "EWW" letter to the Respondent asking for her response to the allegations against her by 1 July 2016. The Respondent provided her response on 1 July 2016. She stated that she agreed with the references to her previous comments contained within the EWW letter, but was "unable to comment on the creation of the policy documents as previously outlined to [the Firm]. I did not create the policy documents and have no recollection of anything untoward at the time. It would have been of no benefit to me to create such documents".

26. She further stated that:

> "There are references in your letter to my responses during interview, saying I did or did not do something. I made it clear that I could not recall exact matters, I answered the questions I could and on occasions gave an explanation of what would have been done in such circumstances.
>
> I am unable to comment on specific pieces of work, calls, call notes and correspondence from so long ago. I have always worked at or above capacity in terms of case load ... All I can say is that if I took a call I would log the same, if a letter/email was prepared, it would be printed and/or sent".

27. The Respondent denied giving her password to anyone other than possibly IT, although maintained that all members of staff had access to computerised files on the case management system. She also described circumstances wherein she may have scanned documents into the system as opposed to 'dragging and dropping' emails into the system, for example, when there had been problems with attachments to emails. Further, she explained that:

> "I have always worked hard in my employment. My previous record has been very good. I have been promoted and had a good billing and time recording history at [the Firm]. I had at times been under pressure during my employment and had suffered with personal issues and spent 2015 into 2016 suffering from Depression and Anxiety to which I have received counselling, CBT and prescription medication.
>
> I am an honest individual who has always worked hard.....
>
> I deny creating any policy documents/schedules"

28. The SRA raised a further allegation with the Respondent in a second EWW letter dated 14 October 2016 asking for her response to that further allegation by 28 October 2016. The Respondent replied on 28 October 2016 and repeated that she was unable to comment on the creation of the said documents, and that she was

unable to comment on specific pieces of notes and correspondence from so long ago, saying she would "never have been able to remember work carried out on every file".

29. She again stated that she was "an honest individual who has always worked hard and continued to develop my knowledge and skills. I had always worked hard at [the Firm] throughout my employment with them".

30. On 12 December 2016 an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

Witnesses

31. The Respondent gave oral evidence and denied that she created the Policy Schedules or any telephone attendance notes, emails or letters. She explained that her IT knowledge was such that she would not know how to create the Policy Schedules. Whilst she had no specific recollection of the calls she made and received in relation to Mr TS's matter, she would only log calls that she had made. She accepted that there were some details that "did not add up", but denied that she had done anything wrong, and had no recollection of anything untoward. She was unable to provide any alternative explanation; she had not created any false documents and it was inappropriate to speculate as to who else may have done so or why. When asked if she accepted that the Policy Schedules were not genuine, the Respondent explained that it was a difficult question to answer and that on the basis of what KLB said, it was alleged that they were not genuine. The Respondent could think of no reason why on 22 October 2014 KLB would write in relation to the completion of forms to upgrade the policy if it had already been upgraded on 21 October 2014. She accepted that an increase in the indemnity would be as a result of discussions between her and KLB, but was unable to recall when she reached agreement with KLB to increase the indemnity, or having any discussions in that regard. The Respondent was unable to explain why the Policy Schedules were sent to her on 20 May 2015, even though they were dated 21 October 2014. She did not recall querying the delay with KLB, and was unable to comment on why there was a further delay before she attached the Policy Schedules to the Firm's case management system.

32. The Respondent referred to a letter from the Firm's managing partner, who stated that he could offer no explanation as to why the Respondent would have "manipulated the documents as [KLB] seem to believe she has. She would not gain any particular advantage in doing so, as far as I can tell." He described the Respondent as "a highly regarded solicitor within the firm who has good levels of client satisfaction and who has previously shown her work to be of good quality. She is generally well organised and, prior to this matter arising, we have not had any concerns about her work. Indeed, she was promoted to the role of Associate Solicitor in September 2015."

33. The Respondent stated that the Firm had many cases that had no ATE cover or ATE had been refused, as it took on risky work and difficult cases. In the event that there was a case with no cover and the matter was to be discontinued, she would have discussed this with her manager and would not have been afraid to do so. The Respondent relied on the letter from the Firm's managing partner in that regard. Mr Bullock referred the Respondent to that letter which also stated that "it is not uncommon, as our cases proceed, for After The Event Insurers to refuse to provide

further cover. ... In rare circumstances, after careful consideration with the client, we will sometimes proceed under a [CFA] without insurance and in some situations if After the Event Insurers will not continue to insure cases we will advise the client to discontinue their action. Assuming fee earners have followed our processes and acted in the best interests of our clients, we are never critical of them in a case where an insurer is not prepared to provide further cover." Mr Bullock submitted that it was clear that in fact it did not happen often that cases proceeded without ATE insurance, and that the managing partner's letter was inconsistent with the Respondent's evidence. The Respondent explained that taking into account the Firm's overall caseload it may be rare, but she had numerous cases with no ATE.

34. Mr Bullock stated that if the Policy Schedules were false, and were sent on 20 May 2015, it followed that someone at KLB falsified the documents if the Respondent had not done so. The Respondent stated that "something happened somewhere", but that it was not for her to "allege that someone else had falsified them".

35. As regards the telephone attendance notes dated 4 February, 20 May and 11 September 2015, the Respondent accepted that she had created those attendance notes. She stated that she would only create notes for calls actually made. She was unable to explain why the letter dated 16 July 2015 was not put on the system until September 2015. The Respondent could not recall whether she received non-delivery notices for the email dated 4 February 2015 (which was likely to have been returned due to the size of the attachments) or the 15 September 2015 email (which would have been returned due to the incorrect email address).

36. The Respondent agreed that if the telephone attendance notes and letters had been fabricated, that would be dishonest.

Findings of Fact and Law

37. 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. The Respondent denied all the allegations.

38. **Allegation 1.1 - On a date between 21 October 2014 and May 2015, by creating the Policy Schedules, which she knew or ought to have known would mislead the Legal Expenses Insurance providers, she breached either or both of Principle 2 and Principle 6 of the Principles.**

Applicant's Submissions

38.1 The £10 indemnity was in place as an initial holding figure to confirm that insurance was in place. As the solicitor with conduct of the case, it was for the Respondent to negotiate with KLB as to the appropriate amount of the indemnity. The Respondent created the Policy Schedules so as to conceal that she had failed to increase the indemnity. The case was discontinued on 15 September 2015, shortly before it was due to go to trial. After discontinuance, the file was passed to the AS to deal with the

assessment of the defendant's costs. All of the documents complained about were present on the file when it was delivered to AS.

38.2 KLB stated that although certain communications were exchanged in relation to increasing cover, their records did not show that there had been an increase in cover at any stage, and their systems showed that the policy issued on 13 March 2013 was limited to £10.

38.3 In their email of 14 January 2016, KLB confirmed that they did not issue the Policy Schedules, stating "despite an extensive search of our Proclaim system, these schedules cannot be found .... Basically then we are saying that those documents were not issued by us......I can think of no other way to put it than to suggest that documents sent to us may have been 'forged' - as incredulous as I am I cannot think of any other tangible explanation". Mr Bullock submitted that there were a number of matters that corroborated KLB's position as to the genuineness or otherwise of the Policy Schedules:

- The evidence from KLB that (i) there was nothing on record to show that the indemnity cover had been increased; (ii) there were a number of irregularities on the Policy Schedules (the start date was incorrect, the copies were of poor quality, there was typographical error); (iii) the email attaching the Policy Schedules could not be located; and (iv) the fact that it was not part of Ms AP's role to send out policy schedules was unchallenged.

- The email from the Respondent requesting an increase in the level of indemnity cover was sent at 16:04 on 21 October 2014. KLB confirmed if such a request had been received by them, it would not have been processed that day and would certainly not have been processed by Ms AP, firstly as she only worked in an administrative capacity and any increases to policy schedules could only be done by underwriters. Moreover, Ms AP's work hours were only until 3.15pm so she would not have seen, nor been able to reply to, an email from the Respondent sent at 16.04 until the next day (at the earliest).

- The email of 22 October 2014, whereby KLB requested a copy of Counsel's advice when available, together with a request for the completion of the Enhance Upgrade form, was nonsensical if the policy had been increased the previous day.

- On 12 November 2014, the Respondent requested a copy of the upgrade form when upgrade cover had supposedly already been obtained.

- On 12 November 2014, the Respondent completed an "Increase Limit of Indemnity Request Form" which was submitted to KLB. The form requested an increase to £50,000. Mr Bullock submitted that this request was nonsensical if there was already insurance in place for £100,000.

38.4 Mr Bullock submitted that even on the interpretation of the facts that was most generous to the Respondent, there was no evidence that the Policy Schedules were in the hands of anyone until May 2015 (assuming, in the Respondent's favour, that the email of that date was genuine). Even if that were the case, there was no explanation as to why there was a delay of 7 months in sending the Policy Schedules to the

Respondent. Further, given the importance of the insurance, there was no explanation as to why the Respondent did not chase KLB regarding the policies, nor why they were not placed on the system until September 2015.

38.5 Mr Bullock submitted that the Respondent's assertions that the Policy Schedules dated 21 October 2014 were genuine documents was neither credible nor possible.

38.6 It was submitted that the Respondent was the person responsible for creating the Policy Schedules for the following reasons:

- The Policy Schedules must have necessarily been created by someone at the Firm. There was no obvious reason why an underwriter or Ms AP would create documents of that nature.

- The Respondent had conduct of the Mr TS matter. She had the opportunity to create the file as she managed both the physical and electronic files. Further, she had a motive to do so. She was aware that the matter was being discontinued and that there was no ATE insurance in place in excess of £10. As the person with that knowledge, she had reason to fabricate the Policy Schedules.

- She was dealing with the Policy Schedules on 10 September 2015, as was evidenced by the printout provided by the Firm from its case management system. There was no evidence that the Policy Schedules existed before that date.

- The Respondent was responsible for scanning the Policy Schedules onto the case management system and she was the one who claimed to have received the alleged Ms AP email.

- Despite purportedly being dated 20 May 2015 the alleged Ms AP email was not imported onto the case management system until 10 September 2015. On that date the Respondent had opened and reviewed other genuine emails received from Ms AP dated 13 and 14 November 2014. The alleged Ms AP email was almost identical to an email dated 14 November 2014, and appeared in the case management system 15 minutes after the Respondent viewed that genuine email.

- The Firm could not find a record of the original email being received from Ms AP on 20 May 2015, and KLB confirmed that having looked at Ms AP's email outbox and their own server they could not find any trace of the email having been sent. Mr Bullock submitted that the Respondent's actions were consistent with her using other documents as a template for fabricating the email of 20 May 2015, and that it was clear that the alleged Ms AP email was never in fact sent or received.

- On or around 10 September 2015 the Respondent scanned the Policy Schedules, emailed them to herself and then placed them onto the case management system, instead of simply dragging and dropping the original email and its attachments into the case management system in the usual way. The Respondent's departure from the usual way of dealing with documents could only be satisfactorily explained on the basis that she had herself created the Policy Schedules (or caused them to be created by an unknown third party).

- The Respondent failed to explain how she came to be in possession of the hard copy version of the Policy Schedules which she scanned and emailed to herself.

- The Respondent could not explain why KLB would send one policy schedule for £50,000 and another for £100,000 when she had only requested an increase of the indemnity for £50,000.

38.7 The Respondent's motive for fabricating the Policy Schedules was obvious. Under the CPR, where a matter is discontinued by the claimant, the claimant is liable to pay the defendant's costs. At that time, the significance of having proper ATE insurance in place would assume significance in a solicitor's mind. The time lapse between 10 September (by which point the Respondent knew that the claim was going to be, or was likely to be discontinued) and 15 September was very short. The creation of the Policy Schedules was explained by the Respondent's panicked reaction to her discovery that she had failed to obtain an increase in indemnity cover. This was not the result of a clear and well thought out fraud, but rather bore the hallmarks of a rushed and panicked decision to try to conceal her error from the internal scrutiny of the Firm, or to persuade the insurers to pay, or both. In order to give credence to her claim for costs from KLB, the Respondent doctored a genuine insurance policy schedule, to amend it to reflect an increased indemnity limit, which was completely unauthorised by KLB.

38.8 By allowing her colleagues in the Firm's costs team to forward copies of the Policy Schedules to KLB in support of the claim for costs, she knew or must have known that those documents would give the misleading impression that an enhanced level of indemnity had been given, and that the costs being claimed by the Firm should be paid when such was not the case.

38.9 It was clear that the Respondent's actions were in breach of Principles 2 and 6. A solicitor of integrity would ensure that any documents that came out of her office were strictly truthful and accurate, and would not therefore create a document which she knew was not what it purported to be. Under no circumstances would such a solicitor forward a document that she knew to be false to a third party Insurer as a means of substantiating her claim for costs from that insurer.

38.10 Moreover, knowledge that a solicitor had falsely created documents which she knew to be misleading, and that she had subsequently attempted to rely on would necessarily impair the good repute of, and the diminish the trust the public placed in, both the solicitor and the profession.

Respondent's Submissions

38.11 The Respondent denied that she had fabricated the Policy Schedules, and was unable to comment on their creation. The Policy Schedules were of no benefit to her personally. She would not speculate as to who had created the documents, or why, but denied that she was responsible for doing so. The Respondent further submitted that if the KLB version was correct, it would seem that the documents were false, however, she had no reason, when seeing those documents, to consider that they were anything other than genuine.

The Tribunal's Findings

38.12 The Tribunal noted the inconsistencies between the Policy Schedules as against legitimate schedules. The Tribunal accepted the evidence provided by KLB to the Firm, and the Firm's own investigations, and found that the Policy Schedules had not been created by KLB. The Tribunal determined that the Policy Schedules had not been sent to the Respondent by AP in an email dated 20 May 2015. It was not credible that KLB would have delayed in the sending of the Policy Schedules for 7 months, and further, it would not have sent out 2 schedules on the same date for differing amounts. Further, it was not part of Ms AP's role to send out schedules, and the email to which it was alleged that the Policy Schedules were attached made no mention of them as attachments, whilst other documents were mentioned. Given the important nature of such documents, it was highly unlikely that they would be mis-described when attached to an email.

38.13 The Tribunal noted that the request for an increase in the level of indemnity was sent on 21 October 2014, and that the Policy Schedules were also dated 21 October 2014. An email was sent by KLB on 22 October 2014 requesting the completion of an Enhance Upgrade Form. The Tribunal found that this email would not have been sent had the indemnity been increased on 21 October 2014 as was suggested by the Policy Schedules. Whilst there was evidence of email requests sent by the Respondent in relation to increasing the indemnity, KLB had responded with requests for more information. The Respondent had been unable to recall or point to any conversation she had had with KLB whereby they confirmed that the indemnity limit would be increased.

38.14 The Tribunal considered that if, as was the Respondent's case, the Policy Schedules had been received by email on 20 May 2015, there would have been no reason for her to request an increase to the indemnity limit in her letter dated 16 July 2015. The Respondent has been unable to explain why this request was made. The Respondent was also unable to explain why she had not placed the Policy Schedules on the Firm's case management system until September 2015, shortly before the file was to be sent to the Firm's costs department. The Tribunal found that in giving her evidence the Respondent prevaricated and failed to provide direct answers to the questions asked. Whilst the Tribunal accepted that people's memories fade with time, it noted that even when questioned by her then employers a few months after the event, the Respondent had been unable to furnish any explanation on the basis that she had little or no recollection of the matter. The Tribunal found this to be incredible.

38.15 The Tribunal found beyond reasonable doubt that the Policy Schedules had been fabricated by the Respondent. In September 2015, when the matter was discontinued, the Respondent realised that she had failed to secure the indemnity increase, which meant that the defendant's costs would have to be paid either by the client or by the Firm. In order to conceal that error, the Respondent created the Policy Schedules in the hope that KLB would pay out, and the Firm would not come to understand her error. The Tribunal did not accept that the Firm often undertook work with no insurance. Whilst the Respondent sought to rely on the comments of the managing partner, it was clear from his letter to the SRA that it was only in rare circumstances that the Firm would undertake claims without ATE insurance.

38.16 The Tribunal determined that in fabricating the Policy Schedules, the Respondent had breached Principles 2 and 6 as alleged. No solicitor acting with integrity would fabricate insurance policies so as to conceal their own error. Such conduct diminished the trust the public placed in the Respondent and in the provision of legal services. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt.

39. **Allegation 1.2 – On or around September 2015 by creating purported attendance notes in relation to calls which she was aware had not taken place and correspondence that had not been sent on the file relating to her client Mr TS, she breached both or either of Principle 2 and Principle 6 of the Principles.**

Applicant's Submissions

39.1 The Respondent created 3 telephone attendance notes, 2 letters and an email which were not genuine records, and did not take place as purported.

Telephone Attendance Notes

39.2 Mr Bullock submitted that telephone attendance notes dated 4 February, 20 May and 11 September 2015 did not record conversations that the Respondent had with KLB; those calls did not take place.

39.3 KLB confirmed that, having investigated its records, it did not receive any calls from the Respondent on 4 February or 20 May 2015. Further, the Firm's BT phone records showed that the Respondent did not make any calls to KLB on those dates. The Respondent's Liquid Voice system information also showed that no calls were made to KLB on those dates as claimed. When checking its systems, the Firm located other calls logged by the Respondent on 4 February 2015 that appeared on both the Firm's BT telephone records and the Liquid Voice system, at a similar time to that she had purportedly spoken to KLB. Accordingly, it was unlikely that there were any technical issues with the Firm's systems at that time.

39.4 As regards the telephone attendance note of 11 September 2015, the day before the Respondent had looked at a file of one of her colleagues where insurance was provided by KLB and Mr NA's name had appeared as the underwriter. KLB maintained that their records did not show that a telephone conversation took place with the Respondent on 11 September 2015, and Mr NA denied ever speaking with the Respondent about the Mr TS matter. Mr Bullock submitted that it appeared that the Respondent had looked through this other file for the name of an underwriter which she then used in her file note to make it appear that she had legitimately spoken to KLB regarding the increase to the level of indemnity for her client Mr TS.

39.5 The Respondent was given the opportunity to provide the Firm with her personal telephone records to show whether she had made the calls using a personal device; no records were provided by her.

Letters

39.6 The Firm's IT experts stated that the attachments to an email dated 4 February 2015 were too large so the email would not have been sent and the Respondent would have received a report confirming that her email had not been delivered.

39.7 The Respondent also created a letter dated 16 July 2015 addressed to KLB requesting a further increase in indemnity to £100,000. KLB stated that it could not trace that it ever received a copy of that letter. The Firm's print out from its case management system showed that despite being dated 16 July 2015, the letter was not placed on the system until 17.35 on 9 September 2015, and it could not therefore have been sent to KLB on 16 July 2015 as suggested. Furthermore, there would be no reason for the Respondent requesting an increase of the indemnity to £100,000 when, on her evidence, she was already in possession of an updated Policy Schedule purportedly dated 21 October 2014 where the level of indemnity had already been increased to £100,000.

Email

39.8 The Respondent also purportedly sent an email with attached a letter to KLB on 15 September 2015 wherein she advised the latter that:

> ".... we have entered negotiations to settle this matter on a 'drop hands' basis. This has been rejected.
>
> The Claimant has now formally discontinued his case.
>
> We confirm we will revert to you with the Defendants (sic) costs details shortly"

39.9 The email was sent to an email address that included a full stop at the end. The Firm's IT expert stated that it would not have been possible to send the email and that the Respondent would have received a failed delivery notification. KLB confirmed that it never received this email.

39.10 The Firm provided an example of a 'bounce back' notification for an email that was sent to the address including the full stop at the end. It showed that "delivery had failed ..." as "the format of the e-mail address isn't correct".

39.11 Mr Bullock maintained that the Respondent created the above attendance notes and items of correspondence, to substantiate her claims that she had been liaising with KLB in respect of her request for an increased indemnity level for her client Mr TS, and that in doing so she had acted in breach of Principles 2 and 6. He submitted that a solicitor of integrity would not create attendance notes in respect of calls which she knew had not taken place, nor would she create copies of correspondence that she knew had not been sent, and then place the same on her file to create the impression that such conversations and correspondence had taken place or been sent. Under no circumstances would such a solicitor fabricate documents in an attempt to substantiate her claim that increased indemnity had been approved by the Insurance Company. Moreover, knowledge that a solicitor had falsely created such documents which she

knew to be untrue and misleading, and the subsequent attempt to rely on the contents of the same would necessarily impair the good repute of, and the diminish the trust the public placed in, both the solicitor and the profession.

Respondent's Submissions

39.12 The Respondent submitted that she had always worked at or above her capacity in terms of her caseload. Given her caseload and the fact that the case the Mr TS matter had concluded 2 – 3 years ago, she was unable to recall the work she had undertaken on that matter. She was unable to comment on specific pieces of work, calls, notes and correspondence. When she took a call it wold be logged the same day, and if an email or letter was prepared, it would be printed and/or sent.

The Tribunal's Findings

Telephone Attendance Notes

39.13 The Tribunal noted that both the Firm and KLB had sound and sophisticated systems for the recording of calls made and received. Neither the Firm nor KLB had any record of the calls the Respondent alleged took place on 4 February and 20 May 2015. The Firm had checked its phone bill and the Liquid Voice system and could find no trace of the calls. The Respondent stated in her oral evidence that she had obtained her personal phone bill which did not evidence that she had used her own phone to make those calls. The Tribunal noted that both of those calls were said to have taken place on dates when there was also correspondence, the authenticity of which was in question. In particular, the 20 May 2015 call referred to KLB confirming that top up cover was in place, and that the policy would follow. The call was timed at 15.25, with the alleged AP email attaching the Policy Schedules timed at 16.19.

39.14 The Tribunal did not accept that the Respondent had spoken to Mr NA on 11 September 2015 in relation to the TS case. It was noted that he was not the underwriter in relation to that matter. It was further noted that his name appeared in a file that had been checked by the Respondent the previous day. The Respondent had provided no explanation as to why she needed to look at that file.

39.15 The Tribunal determined that there was a clear link between the telephone attendance notes and the Respondent's fabrication of the Policy Schedules. This was particularly evident in the 20 May telephone attendance note. The Tribunal found that the attendance notes had been fabricated by the Respondent to support her assertions that she had been in communication with KLB in relation to the increase in the indemnity, and had received the Policy Schedules from KLB; the fabrication of the telephone attendance notes was intended to strengthen the validity of the Policy Schedules. Accordingly, the Tribunal found beyond reasonable doubt that the telephone attendance notes did not reflect actual calls made by the Respondent and had been falsely created by her.

Letters

39.16 As regards the letter dated 4 February 2015 that was attached to an email, the Tribunal noted that the Firm's IT experts stated that the attachments were so large such that the

email would not have been sent and the Respondent would have received a report confirming that her email had not been delivered. The Tribunal could not be sure beyond reasonable doubt that the letter was not sent. The Tribunal noted that the Respondent stated that in the event that the email "bounced back", she would have sent the items out in the post. Given the numerous medical reports that were attached to the email, the Tribunal determined it was likely that the letter would have been sent by post. Accordingly, the Tribunal did not find that the letter of 4 February had been fabricated by the Respondent.

39.17 As regards the letter dated 16 July 2015, the Tribunal noted that the Firm's case management system showed that despite being dated 16 July 2015, the letter was not placed on the system until 9 September 2015. Furthermore, there was no reason for the Respondent to request an increase of the indemnity to £100,000 when on 20 May 2015 she had received an updated Policy Schedule where the level of indemnity had been increased to £100,000. As with the telephone attendance notes, the Tribunal found beyond reasonable doubt that this letter had been falsely created by the Respondent.

Email

39.18 The Tribunal accepted that the email of 15 September 2015 would not have been received by KLB, due to its inclusion of a full stop at the end of the email address. It also accepted that the Respondent would have received notification that the email was unable to be delivered. The Tribunal could not be sure beyond reasonable doubt that the email had been fabricated by the Respondent simply because it was incorrectly addressed and there was no evidence on the file of the email she would have received as regards delivery. Accordingly, the Tribunal did not find that the email had been fabricated by the Respondent.

39.19 The Tribunal found that no solicitor acting with integrity would fabricate telephone attendance notes and letters in order to conceal their mistake, and cause others to believe that conversations were had, and letters were sent, when in fact that was not the case. That this conduct would diminish trust in the provision of legal services was self-evident. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt as regards the telephone attendance notes and the letter dated 16 July 2015.

40. **Dishonesty**

Applicant's Submissions

40.1 The Respondent's actions were dishonest in accordance with the test for dishonesty formulated by Lord Hughes in Ivey v Genting Casinos (t/a Crockfords) [2017] UKSC 67:

> "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 of those facts is established, the question whether his conduct was honest or dishonest it 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."

40.2 When the Chair observed the entire passage above cited from Lord Hughes' judgment was obiter dicta, Mr Bullock submitted that even if that part of the judgment obiter, which in his view may not be the case, considerable weight should be given to it. Even under the combined test in Twinsectra v Yardley and others [2002] UKHL 12, namely that the Respondent's actions were dishonest by the ordinary standards of reasonable (the objective test) and honest people and she realised that by those standards she was acting dishonestly (the subjective test), the Respondent had been dishonest. This was not a case where the Respondent accepted the conduct but stated that she did not consider that it was dishonest by ordinary standards. She accepted, in her evidence, that the fabrication of letters and attendance notes was dishonest.

40.3 If the Tribunal determined that the Policy Schedules, telephone attendance notes, letters and emails were fabricated, and that the Respondent was the person responsible for their fabrication, then she had clearly been dishonest under both tests. The documents were of such a nature that no honest person could properly have created them.

40.4 Mr Bullock submitted that the Respondent had acted dishonestly as:

- She had deliberately created two insurance policy schedules which indicated an indemnity limit greatly in excess of the genuine limit. She then sought to give veracity to those documents by falsifying a chain of correspondence which had purportedly passed between herself and the insurers in connection with those schedules. No honest solicitor would have behaved in such a manner.

- She was afforded the opportunity to provide an innocent explanation for these actions in the course of the Firm's internal investigations into her conduct, to the SRA and before the Tribunal. However, no explanation was provided.

- She made a deliberate and conscious decision to falsely create the Policy Schedules which were formal in nature and which if accepted as true had implications for her Firm, her client and KLB with respect to costs. This was done in an attempt to obtain payment from KLB in respect of adverse costs in respect of her client's claim.

- She then made a further deliberate and conscious decision to seek to conceal what she had done in fabricating the Policy Schedules, by creating a series of false documents designed to give veracity to them. It was inconceivable that any honest and reasonable solicitor would have acted in that manner.

- She made a conscious and deliberate decision to look into the files of one of her colleagues where KLB had provided enhanced insurance cover, to obtain the name of one of the underwriters at KLB. She then used that name to add authenticity to her telephone attendance note dated 11 September 2015.

- She made a further deliberate and calculated decision to look at emails genuinely sent from Ms AP, which were then used to create the alleged Ms AP email.

40.5 Ordinary and decent people would find that those actions were dishonest.

Respondent's Submissions

40.6 The Respondent denied that she had been dishonest. She had not created the Policy Schedules, and her telephone attendance notes, letters and emails were all genuine, recording the communications she had with KLB. The Respondent stated that she was an honest person who had always worked hard and continued to develop her skills and knowledge.

The Tribunal's Findings

40.7 Given the Tribunal's findings in relation to allegations 1.1 and 1.2 above, the Tribunal had no hesitation in finding that the Respondent's actions had been dishonest. Whilst the passage cited from the judgment of Lord Hughes in Ivey was clearly obiter dicta, it was nevertheless strongly persuasive and great weight would be accorded to it.

40.8 No honest solicitor would fabricate documents, letters and attendance notes so as to conceal an omission. The Tribunal determined that at the point that discussions took place in relation to the discontinuance of the matter, the Respondent became aware that she had failed to negotiate an increased indemnity with KLB. She did not tell the Firm or her client. Instead she fabricated documents so that it would appear that cover was in place, such that neither the Firm nor Mr TS would be liable to pay the costs. The total costs of the defendant in the TS matter were approximately £55,000.00.

40.9 The Tribunal determined that the Respondent knew that her actions were dishonest, indeed, she had accepted in her evidence that the fabrication of letters and attendance notes was dishonest, and she knew that at the time. Ordinary decent people would consider that the Respondent's actions were dishonest. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was dishonest as regards both allegations 1.1 and 1.2.

Previous Disciplinary Matters

41. None.

Mitigation

42. The Respondent submitted that she had derived no benefit or personal gain from the TS matter. The allegations that had been found proved against her were of brief duration, lasting from October 2014 to May 2015, and she hitherto had an

unblemished career. At the time of the proven misconduct, she was in the early stages of her career as a solicitor. The Respondent produced a reference that had been provided for her by Counsel in relation to her seeking employment. She informed the Tribunal that at the time the reference was provided, Counsel was not aware of the proceedings against her. She also provided a copy of a message received by her immediate line manager at the Firm (undated) that was complimentary about her abilities as a solicitor. The Respondent explained that she had been unwell at the time, and continued to suffer with health issues. The Respondent asked that the Tribunal took into account the comments of the managing partner at the Firm as detailed in paragraph 32 above. The Respondent submitted that her circumstances were exceptional in line with SRA v Sharma [2010] EWHC 2022 (Admin)

Sanction

43. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition-December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

44. The Tribunal found that the Respondent was singularly and entirely culpable for her misconduct. She had been motivated by her hope to conceal the fact that she had failed to agree an appropriate level of indemnity. In trying to disguise her omission, she had attempted to deceive the insurers into paying out on a policy to a far greater extent than the risk they had agreed. Her actions took a degree of planning. She had to obtain and replicate a policy, create and adapt emails, research the names of staff employed by KLB and create letters and attendance notes so that it seemed as if she had done what she ought on the file. She was in control of the file and was solely responsible for the circumstances giving rise to the misconduct.

45. The Respondent's conduct was aggravated by her proven dishonesty, which was in material breach of her obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in SRA v Sharma [2010] EWHC 2022 Admin:

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

46. Further, her actions were deliberate, calculated and repeated, with the fabrication of a number of documents.

47. Given the findings of dishonesty, the Tribunal considered that the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions were not proportionate. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "....Lapses from the required standard (of complete integrity, probity and trustworthiness)....may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

48. The Tribunal considered the mitigation advanced by the Respondent and determined that she had not provided any circumstances that were enough to bring her in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal took account of her personal mitigation. The Tribunal noted that whilst the Respondent had explained that she was suffering from medical issues at the time, she had not provided any medical evidence in support. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to order that the Respondent be struck off the Roll.

Costs

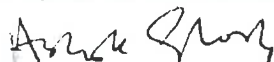
49. Mr Bullock applied for costs in the sum of £9,027.00. This reflected a reduction in the hearing time from the estimated 4 days to 1 day, and consequential reductions to disbursements. The Respondent submitted that the amounts charged for communications with the Tribunal and third parties seemed excessive. Further, the time charged for preparing, finalising and collating the hearing bundle also seemed excessive.

50. The Tribunal noted that Mr Bullock had not included the cost of his attendance at the hearing on 30 November, which he could legitimately have charged for, given that it was the Respondent who had mistakenly attended the wrong venue, and thus caused that day to be non-effective. Any reduction that it would have considered as a result of the Respondent's submissions had been mainly offset by the reduction in the hearing time to 1 day. The Tribunal determined that the appropriate, proportionate and reasonable amount of costs that should be paid by the Respondent was £9,000.00.

Statement of Full Order

51. The Tribunal Ordered that the Respondent, KATE LOUISE SANDERSON, 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 £9,000.00.

Dated this 20th day of December 2017
On behalf of the Tribunal



A. Ghosh
Chairman

Judgment filed
with the Law Society
on 21 DEC 2017