

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11683-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

LAWRENCE PETER MCCULLAGH

Respondent

Before:

Mr E. Nally (in the chair)

Mr P. Jones

Ms J. Rowe

Date of Hearing: 2 and 3 November 2020

Appearances

Charlotte Watts, counsel, of Capsticks Solicitors LLP, of 1 St Georges Road, London, SW19 4DR, for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Applicant were that:
 - 1.1 On the 11 May 2015, he submitted a misleading and inaccurate Curriculum Vitae to Vincent Sykes & Higham LLP (VSH LLP), in that it showed that he was then presently employed by S & Co, when in fact he had been dismissed by S & Co for gross misconduct on the 21 November 2014, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.
 - 1.2 On the 20 and 27 May 2015, he provided misleading and inaccurate responses in interviews with VSH LLP, by informing them that he had to give a month's notice to S & Co, when in fact he was no longer employed by S & Co as he had been dismissed by S & Co for gross misconduct on the 21 November 2014, in breach of all or alternatively any of Principles 2 and 6 of the Principles.
2. Dishonesty was alleged as an aggravating factor with respect to allegations 1.1 and 1.2.

Documents

3. The Tribunal considered all of the documents in the case which comprised an electronic trial bundle containing:

Applicant

- The originating Rule 5 Statement, exhibits and amended transcript of interview
- Witness statement of Rhona Rowland dated 26 January 2017
- Witness statement of Sarah Taylor dated 23 July 2018
- Statements of costs at issue dated 12 July 2017, as at 22 October 2018 and as at the substantive hearing dated 28 October 2020
- Medical report of Dr Tim Garvey dated 25 September 2019
- A "relevant correspondence" section of 36 pages

Respondent

- Respondent's Answer dated 6 October 2017 and further Answer dated 1 March 2018
- Respondent's witness statement dated 12 December 2017 with exhibits
- Medical report of Professor Graeme Yorston dated 29 October 2018
- Personal Financial Statements dated 31 October 2018 and 29 October 2020 with exhibits
- Statement of Means dated 27 November 2017 with exhibits
- 7 character references

Factual Background

4. The Respondent was admitted to the Roll of Solicitors on 15 November 1999. From 25 June 2013 to 21 November 2014 the Respondent was employed at S & Co. From 1 July 2015 to 30 October 2015 the Respondent was employed by VSH LLP.
5. The Applicant began an investigation at S & Co on 15 October 2015 following a report received from the Respondent dated 16 January 2015. On 10 November 2015, during the course of the investigation, VSH LLP made a report to the Applicant raising concerns about the Respondent's conduct during the recruitment process for a position with their firm. Two Forensic Investigation Officers interviewed the Respondent on 10 February 2016 as part of the investigation. A Forensic Investigation Report dated 16 March 2016 was produced.
6. The Applicant wrote to the Respondent on 12 July 2016 raising allegations relating to the matters identified in the report. The Respondent replied by email dated 5 August 2016 enclosing his response and documents he relied upon. The Applicant subsequently contacted VSH LLP requesting further information in the light of the Respondent's reply. VSH LLP replied by email of 26 January 2017 enclosing a signed statement from Managing Partner Rhona Rowland and exhibits.

Witnesses

7. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:
 - Sarah Taylor, Forensic Investigation Officer
 - Rhona Rowland, Managing Partner at VSH LLP
 - Dr Tim Garvey, consultant psychiatrist (instructed by the Applicant)

The Respondent submitted a written witness statement but did not give oral evidence.

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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
9. **Allegation 1.1: On the 11 May 2015, the Respondent submitted a misleading and inaccurate Curriculum Vitae to VSH LLP, in that it showed that he was then presently employed by S & Co, when in fact he had been dismissed by S & Co for gross misconduct on the 21 November 2014, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.**

The Applicant's Case

- 9.1 The Respondent confirmed in interview with the Applicant's Forensic Investigation Officers ("FIOs") on 10 February 2016 that he was employed by S & Co from 25 June 2013 and that he was dismissed on 21 November 2014. The Respondent confirmed to the FIOs that he was unemployed between 21 November 2014 and 1 July 2015 approximately.
- 9.2 On 7 May 2015 the Respondent emailed Louise Davies, a partner of VSH LLP, enquiring whether there were any positions available within their private client department, and stating that he would forward his Curriculum Vitae ("CV") if so. Shortly afterwards, Ms Davies replied to the Respondent, confirming that there was a vacancy and inviting the Respondent to send his CV to her. On 11 May 2015 the Respondent duly did so by email.
- 9.3 The CV that the Respondent forwarded to VSH LLP, under the section giving his employment history, set out that for "*June 2013 to present*" he was employed as a "*Private Client Solicitor – [S & Co]*".
- 9.4 In the investigatory interview with the FIOs, the Respondent was asked about this. His explanation was:

"I just had not updated it and I heard this job was available. I'd been unemployed for a number of months and I just wanted to get a CV off".

The Respondent again confirmed his position in his letter to the Applicant's supervision department dated 5 August 2016:

"I had not deliberately set out to lie on my CV. I unfortunately, had not updated it since leaving [S & Co]".

- 9.5 The Applicant also relied on the Respondent's reply when asked by the FIOs in interview whether the CV he provided to VSH LLP was misleading. The Respondent was recorded as having replied:

"... it would be misleading. Mmh, but I never, mmh, I never meant to mislead. Mmh, the fact that it was another firm in Northamptonshire, I assume that everyone knew each other. I never intended to mislead".

- 9.6 It was alleged that the Respondent deliberately misrepresented his employment status during the recruitment process for the post of solicitor with VSH LLP by setting out in his CV that he was currently employed by S & Co. In so doing, it was submitted that the Respondent acted without integrity, in breach of Principle 2 of the Principles and failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the Principles.
- 9.7 Dr Garvey, a consultant psychiatrist instructed by the Applicant, produced a report and gave evidence during the hearing on the effect of the Respondent's diagnosed obsessive compulsive disorder ("OCD"). He gave the opinion that he did not think the Respondent's mental health conditions were such that he would have been incapable

of understanding events at the relevant times, or would have been unable to understand the need for correcting misleading information and not to be dishonest.

The Respondent's Case

- 9.8 In his Answer, the Respondent accepted that the CV he submitted was inaccurate. He stated that he reluctantly accepted that the effect of this was to cause a breach of Principle 6.
- 9.9 The Respondent denied that he intended to mislead or that he acted without integrity, contrary to Principle 2.
- 9.10 The Respondent's case was that he had not updated his CV since his departure from S & Co, and that he sent it to VSH LLP without checking it. The Respondent described having applied for another position on 6 February 2015 and having submitted his CV at that time. He was unsuccessful in that application but his CV was kept on file. He stated that he applied for the role at VSH LLP by forwarding the CV from the previous application, which was attached to an email, without checking it. He stated that he believed it would be up to date as he had used it in the earlier application. This was said not to be a deliberate attempt to mislead.
- 9.11 In his witness statement, the Respondent provided some context for his provision of the inaccurate CV. He produced documents relating to diagnosed OCD and anxiety and described other symptoms of dizziness, fatigue, poor concentration and poor memory around the time he left S & Co up to his provision of the inaccurate CV. The Respondent also described a dispute with S & Co and concerns, which he had himself reported to the Applicant, about the lawfulness of certain work which the Respondent said in his witness statement caused "huge pressure and worry" at the time. The Respondent also stated that his father had died the day before he was dismissed from S & Co and that he travelled to be with his family for the funeral in December 2014. At the same time, and progressively thereafter, his mother's health deteriorated which also had a significant impact on him. He described his sleeping cycle being disturbed, being forgetful and disorganised (including with regards to his medication) and struggling to deal with basic administration tasks. He described this context in support of his contention that his provision of the inaccurate CV had been an error and that properly considered in context, his actions had not lacked integrity.
- 9.12 The Respondent referred the Tribunal to comments from Professor Yorston, the consultant psychiatrist he had instructed, who gave the opinion that the issues with which the Respondent was concerned at the time "could have led to him being forgetful about whether or not he had updated his CV." The Respondent reminded the Tribunal that the burden of proof was on the Applicant and that the applicable standard of proof was beyond reasonable doubt.
- 9.13 In his witness statement, the Respondent stated that after his dismissal from S & Co, their website showed that he had no connection with that firm. The Respondent described chasing the firm to ensure his details were removed promptly. He submitted that this was not the action of someone who sought deliberately to mislead about still being employed there.

- 9.14 The Respondent also stated in his witness statement that given the degree to which solicitors and partners in Northamptonshire knew one another, it was “unthinkable that anyone would even attempt to do” what the Applicant alleged.
- 9.15 The Respondent considered that the report made to the Applicant by Ms Rowland of VSH LLP contained various errors. For example, he stated that the report gave the erroneous impression (for which she later apologised to the Applicant) that the Respondent had been dismissed over the CV issue. He submitted that this demonstrated how easy it was inadvertently to mislead.
- 9.16 The Respondent also contended that the transcript of the interview with the FIOs should be treated with some caution as the issues to which the allegations related were “sprung” on him towards the end of a lengthy interview about which he had been highly anxious and before which he had not slept. His preparatory focus had been allegations relating to S and Co and no mention had been made of the VSH LLP issues until late in the investigatory meeting itself. The Respondent considered that the false impression that he had been dismissed for issues relating to the misleading CV coloured the way the FIOs conducted the investigatory interview which influenced the way the discussion went.
- 9.17 For example, the Respondent had replied to a question put to him by saying that the CV would be “misleading” when a fuller and more accurate reply would have been “it would be misleading ... if done by someone intending to mislead”. He had also stated in the investigatory interview that he never intended to mislead. He attributed some of his answers to the FIOs, which he considered did not make much sense, to his shock, anxiety, OCD and tiredness.
- 9.18 The Respondent did not give oral evidence at the hearing. He explained that this was in order to protect his mental health. He explained this decision by reference to the medical reports which were before the Tribunal. In light of his diagnosed condition and his explanation, he invited the Tribunal not to draw any adverse inference from his failure to submit to cross-examination.

The Tribunal’s Decision

- 9.19 The Respondent had admitted that the CV he had submitted to VSH LLP was inaccurate. The underlying factual basis of the alleged professional breaches was therefore not disputed.
- 9.20 The Tribunal considered the chronology of the preparation of the CV. The Respondent’s employment at S & Co had ended on 21 November 2014. The Respondent’s father had died and he had travelled to attend his funeral in December 2014. The Respondent’s case was that the misleading CV he ultimately submitted to VSH LLP had been used previously when he applied for another position on 6 February 2015. The Tribunal considered that it may be plausible that the Respondent may not have updated his CV during this time and that this task may have got “lost”.

- 9.21 The Respondent's medical condition had contributed to a fractured employment history in accordance with Dr Garvey's opinion. The Respondent had described himself at the time as being forgetful and disorganised and struggling to deal with basic administration tasks. The Tribunal considered that the Respondent's demeanour during the proceedings was consistent with this assessment and was somewhat disorganised and chaotic. Professor Yorston's opinion was that the Respondent "could have led to him being forgetful about whether or not he had updated his CV."
- 9.22 The Tribunal considered that the Respondent's account of how the CV came to be sent had some degree of plausibility. The Respondent's fractured work history meant that he must have been aware of the role and importance of his CV and had his own system for maintaining and using it. He had described forwarding the CV he had used previously in February 2015, and which had been stored as an attachment to an email, to Ms Davies of VSH LLP without checking it. Whilst this was plainly unsatisfactory, the Tribunal could not be sure, given the evidence mentioned above, that the Respondent's account was not accurate.
- 9.23 Ms Taylor, the FIO who gave evidence during the hearing, had acknowledged that the Respondent had not had notice that issues relating to VSH would be discussed during the investigatory interview. The Tribunal found her to be a straightforward and credible witness who made fair concessions where warranted. Again, in the context of the persuasive medical evidence, and the Respondent's account of the investigatory interview, the Tribunal could not be sure that his account of his comments about the CV being misleading was inaccurate. The Tribunal could not be sure that the comments relied upon by the Applicant amounted to an admission that the Respondent had deliberately misled VSH LLP. The uncontested account of the Respondent having corrected the error with the employment dates in the interview he attended with another firm created further doubt that there had been any deliberate or conscious attempt to mislead by the provision of the CV.
- 9.24 The Applicant was required to prove the allegations beyond reasonable doubt, and the Respondent was entitled to the benefit of the doubts that the Tribunal had, summarised above. The Tribunal did not consider that the inadvertent submission of an inaccurate CV, in these circumstances, could amount to conduct lacking integrity. The Tribunal found the alleged breach of Principle 2 not proved.
- 9.25 The Respondent had admitted a breach of Principle 6; that his conduct in submitting the misleading CV failed to maintain the trust of the public in him and in the provision of legal services. Given that the Tribunal had not found that he acted deliberately, the Tribunal considered that given the full context of the conduct it had not been proved to the requisite standard that public trust would be so harmed. Accordingly, the Tribunal did not consider the Respondent's admission to be properly made, and found the alleged breach of Principle 6 not proved.
- 9.26 Given these findings, the aggravating allegation of dishonesty failed in relation to allegation 1.1.

10. **Allegation 1.2: On the 20 and 27 May 2015, the Respondent provided misleading and inaccurate responses in interviews with VSH LLP, by informing them that he had to give a month's notice to S & Co, when in fact he was no longer employed by S & Co as he had been dismissed by S & Co for gross misconduct on the 21 November 2014, in breach of all or alternatively any of Principles 2 and 6 of the Principles.**

The Applicant's Case

- 10.1 The Applicant relied on evidence presented by Rhona Rowland, Managing Partner of VSH LLP, in her witness statement dated 26 January 2017. She stated that:

"I contacted a former employee of [S & Co] and fellow member of Northamptonshire Law Society, [Mr ES] by telephone on or around 12 May 2015, to ask for an informal indication as to his suitability for the vacant role. [Mr ES] has verbally assured me that [the Respondent] was worth interviewing".

- 10.2 Thereafter, on 13 May 2015, Louise Davies, a partner of VSH LLP, emailed the Respondent inviting him to an interview. Ms Rowland stated in her witness statement:

"On 20 May 2015 [Ms Davies] met with [the Respondent] for an initial interview. At that interview, [Ms Davies] clarified with [the Respondent] that his notice period was 1 month, although there are no written notes of that meeting."

- 10.3 The Applicant's Supervision Department wrote to the Respondent on 12 July 2016 requesting an explanation of his conduct. In his reply of 5 August 2016 the Respondent stated:

"I interpreted the notice period question as to how long until you can start. I explained this at the interview. I understand that in analysing the Interview, when I was asked about a notice period, it would have been the right time to rectify the error on the CV. Unfortunately, I did not. I thought I would bring it up later in the interview at a suitable point. Following the arrangement of a second interview, I thought I would have an opportunity to clarify the CV error."

- 10.4 Ms Rowland confirmed in her statement that the Respondent's second interview was on 27 May 2015 with her and Ms Seddon. VSH LLP provided a copy of their Interview Assessment Form dated 27 May 2015 for the meeting with the Respondent which recorded:

"Notice period 1 month – [R] apparently not in work at present due to illness. May be negotiable? Referee – [Mr ES]"

The reference in the interview notes to [R] was said to refer to Mr RS of S & Co. The note recorded that the Respondent had informed his interviewers at VSH LLP that Mr RS was not at work at the time, and the Applicant's case was that this indicated

that in making this remark the Respondent was adding to the overall impression he provided to VSH LLP that he was in current employment with S & Co.

- 10.5 Ms Rowland provided details of the discussions with the Respondent during the second interview in her witness statement:

“We also discussed [the Respondent’s] current employment with [S & Co]. This firm and its senior partner, [Mr RS], were also known to myself through Northamptonshire Law Society. Due to this knowledge, I was aware that Mr RS had been [redacted] and was at that time absent from the office. I asked [the Respondent] what his notice period was and he told us that it was 1 month. I asked whether this was negotiable and he said it might be. I asked [the Respondent] whether [Mr RS] would be able to provide a reference. [The Respondent] said he would ask. Notes of this meeting were typed up contemporaneously.”

- 10.6 The Applicant relied on the Respondent’s response when questioned in interview by the FIOs about why he told VSH LLP that he had a month’s notice when in fact at the time he was unemployed. He stated:

“...She asked what my notice period at [S & Co] was so I answered that question, a month. But I just wanted a month to sort everything out with [S & Co]”.

The Respondent continued with his explanation:

“... My mother’s not very well so I needed some time to sort of sort things out with her and I wanted to just finish the [S & Co] business”.

- 10.7 The Applicant’s case mirrored the response of one of the FIOs who had stated in reply:

“but you could have said that at the time, but you didn’t. You actually said and continued basically with what the misrepresentation is on your CV by saying, yeah, its a month’s notice. So it’s continuing the misrepresentation that started off on the CV rather than clearing it and saying well, actually, that’s correct. I should have updated it to say finished in November 2014...”

- 10.8 The Respondent confirmed to the FIOs that he had not disclosed in interview to VSH LLP that he was dismissed from S & Co in November 2014.

- 10.9 Following the second interview on 27 May 2015, Ms Davies emailed the Respondent on 28 May 2015 to offer him a job with VSH LLP as a solicitor. In her email she stated:

“I understand that you are on a month’s notice and subject to you sorting yourself out at your end, would hope that you could start sooner rather than later so that we have a bit of an overlap with [A] and [B], who both leave on 14th August”.

The Respondent replied by email the same day accepting the offer of employment.

- 10.10 The Respondent explained to the FIOs that he was subsequently dismissed from VSH LLP on 30 October 2015, the day that he informed them that he had left S & Co in November 2014.
- 10.11 Ms Rowland stated in her statement that the partners of VSH LLP had resolved on or around 23 October 2015 to dismiss the Respondent on notice on 30 October 2015. She stated that on 24 October 2015, during a conversation with a current employee of S & Co, she was encouraged to contact Mr RS. On 26 October 2015, she had a conversation with Mr RS, and she stated that he informed her that the Respondent had been dismissed in October 2014 on the grounds of gross misconduct, and that he had brought employment tribunal proceedings against S & Co.
- 10.12 Ms Rowland stated that the Respondent had approached her at approximately 2 p.m. on 30 October 2015 because he had received an email from the Applicant to say he had been removed from VSH LLP's bulk renewal for his practising certificate as he had not completed the required hours for CPD training. Ms Rowland provided a note of her conversation with the Respondent on 30 October 2015 which recorded:

"... He then went on to say that he had checked the rules and he thought he was ok with 8 CPD because he had had some "time off" after leaving [S & Co] so he only needed 8 hours. I challenged him on the basis that he had provided us with a CV that indicated that he was still employed by [S & Co] in May 2015 and had told us (I have an email from [L] which confirms this) that he had to give a months' notice so we understood that he had been continually employed until he joined us. He said "Well actually, I left [S & Co] at the end of the last CPD year and had some time off because my dad had died and my Mum was unwell. I meant I had some time off from the job..."

- 10.13 VSH LLP wrote to the Respondent on 30 October 2015 confirming his contract of employment had been terminated for reasons explained to him during a meeting held that day. Ms Rowland informed the FIOs that the Respondent had been dismissed due to a downturn in work and poor performance. In Ms Rowland's email to the FIO of 16 February 2016 she stated:

"His dismissal was not on the grounds that he had declined to tell us that us (sic) that he had been dismissed by [S & Co] in November 2014."

- 10.14 It was alleged that the Respondent deliberately misrepresented his employment status during the recruitment process for the post of Solicitor with VSH LLP by stating during interviews on 20 and 27 May 2015 that he was required to give one month's notice. In so doing, it was submitted that the Respondent acted without integrity, in breach of Principle 2 of the Principles and failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the Principles.

The Respondent's Case

- 10.15 In his Answer, the Respondent accepted that the responses in the interviews where he made reference to a month's notice constituted a breach of Principle 6.
- 10.16 As with the previous allegation, he denied that he intended to mislead or acted without integrity, contrary to Principle 2.
- 10.17 The Respondent relied on some of the same context summarised in relation to Allegation 1.1. In particular, his position was that he was influenced by his belief that such was the closeness of solicitors and partners within the Northamptonshire legal community that those involved in his recruitment at VSH LLP would be well aware of both his referee, Mr ES, and of Mr RS. Ms Rowland knew both of these individuals and a reference was obtained from Mr ES. The Respondent's position was that given the closeness of the legal community, and this provision of a reference from Mr ES, his assumption that his employment history was known to all involved was reasonable.

The First interview with VSH LLP (20 May 2015)

- 10.18 The Respondent stated in his written statement that he attended the interview at VSH LLP with Ms Davies unaware of the CV error. He had slept very little (if any) the night before and had OCD fears and thoughts in his mind. He described having discussed his work in the past tense during the interview. He stated that he discussed different firms he had worked for, again in the past tense. He discussed how he worked on files and he stated that Ms Davies discussed how VSH LLP dealt with work.
- 10.19 The Respondent stated that during the interview he was asked "what was your notice period at S & Co". His notice period at S & Co had been one month and so he answered "one month". The Respondent stated that, being unaware of the CV error at that time, he thought Ms Davies was asking generally about other firms' terms as both were Northamptonshire firms. The Respondent stated that she had asked what other firms charged for their wills, probate and lasting powers of attorney work and how other firms carried out their work so he did not consider what he believed to be her line of enquiry about other firms to be unusual.

The interview with another firm (also on 20 May 2015)

- 10.20 In his witness statement the Respondent described having another interview with another firm later on the same day. He stated that he recalled, on the way to this interview, that when he had previously applied for the job, the firm had kept his CV on file and then contacted him for an interview. He said at that point he was not sure when his initial application had been made and whether his CV was up to date. He attended the interview at 3.30 p.m. and stated that at the start of the interview he corrected the error on his CV and that the interview carried on well. He exhibited to his statement evidence of efforts to obtain notes of the interview. The Respondent's case was that he did not lie on his CV and having realised it may not be up to date in this case, he corrected the mistake.

10.21 Later on 20 May 2015 the Respondent stated that he received an email from VSH LLP inviting him for a second interview. He realised the CV mistake at that point. He stated that as he had been invited to a second interview he decided he would explain the CV mistake to Ms Davies at the second interview. The email stated that Ms Davies would be one of three attendees at the interview from VSH LLP.

The Second interview with VSH LLP (27 May 2015)

10.22 The Respondent stated that he was shown into the interview room by Ms Davies who said she would not attend the interview but instead Ms Rowland and Ms Seddon would discuss the firm and the files with him. Ms Davies had said she would come and see the Respondent at the end of the interview for a chat. The Respondent stated that he saw Ms Davies as the main interviewer (having interviewed him a week earlier and being head of the Private Client Department). The Respondent stated in his witness statement that he intended to disclose the CV mistake to her when she returned at the end of the interview.

10.23 The Respondent stated that during the interview Ms Rowland spoke about both Mr RS and Mr ES and clearly knew both. The Respondent stated that during the interview the role, the firm and the files he would inherit were discussed. He described both of the interviewers as friendly and easy going. The Respondent said that Ms Seddon talked a lot about the firm and how VSH LLP differed from her previous roles. The Respondent described Ms Rowland then “casually” asking “what’s your notice?” The Respondent described this as having been asked randomly (rather than as part of a series of questions) and not having been asked specifically about S and Co. He had answered “one month”.

10.24 In his witness statement the Respondent explained that as a result of his health and sleeping problems at the time, he wanted to have a month before starting a new job to sort out his sleeping patterns, to spend time with his mother and to improve his general health. He stated that if asked a question “when could I start”, he would have said “in one month”.

10.25 The Respondent stated that during the interview he had various highly distracting OCD thoughts which caused severe anxiety. He provided details in his witness statement but the specifics are not recorded here. He also stated that he was very tired, having slept very little (if any) the night before as a result of his severely disturbed sleeping patterns. He stated that, unfortunately, with these various debilitating thoughts in his mind, he interpreted the “what’s your notice” as the question he was expecting at some point which was “when can you start”. He stated that without thinking he answered “one month”. He described how another question was then asked and his mind moved on to the next question or next OCD intrusive thought.

10.26 As mentioned above, the Respondent had stated that he planned to disclose the CV mistake to Ms Davies at the end of the interview. His mind was therefore focused on seeing her and explaining the mistake. The interview ended and he stated that he stayed seated whilst Ms Rowland and Ms Seddon got up as he expected Ms Davies to return for a chat as indicated. He was then told that he could go as the interview was over. When he explained that Ms Davies had said she would return for a chat at the end of the interview he was advised that she had gone home.

- 10.27 The Respondent disputed elements of Ms Rowland's statement relied upon by the Applicant. He denied that he had discussed Mr RS' illness or that he had mentioned having to ask about arranging a referee. He suggested that the notes Ms Rowland had made during the interview included her own jottings reflecting her thinking ahead and not merely answers he had given. He submitted that her notes from May 2015 did not reflect what had been said and that they had been relied upon in January 2017 to compose a witness statement which should be treated with some caution by the Tribunal. The Respondent specifically denied that he discussed any "current employment" at S & Co. He considered that Ms Rowland was mistakenly confusing her own knowledge gleaned from the local Law Society and other solicitors with what was said during his interview.
- 10.28 The Respondent stated that comments made by Ms Rowland five or ten minutes into the interview about Mr RS had surprised him in their tone and detail. However, when the Respondent learned that she had contacted Mr ES before inviting the Respondent for interview, he considered that she was aware of his issues with Mr RS and was attempting to find common ground with the Respondent having spoken to Mr ES for a reference. The Respondent noted that Mr ES was a former partner of S & Co and submitted that this fact was relevant to the reasonableness of his assumption that as a result of talking to Mr ES, Ms Rowland knew about his situation including that he had not worked at S & Co for some time. The Respondent further stated that the fact that Ms Rowland had carried out what he described as due diligence on his application the day after he had sent in his CV by contacting Mr ES convinced him that she was fully aware of his position.

After the interviews

- 10.29 The Respondent received an emailed offer of employment on 28 May 2015. He stated that the email requested the names of his referees and that he decided to obtain these details and then email them to VSH LLP with an explanation of the CV mistake.
- 10.30 The Respondent described meeting with Mr ES who confirmed that he would act as a referee. Mr ES advised the Respondent that Ms Rowland had already contacted him weeks before and they had a good chat. Mr ES said he knew her very well. The Respondent stated that when he heard this, it confirmed the view that he would have informed her of everything and therefore VSH LLP would be aware of the CV mistake. In his witness statement the Respondent stated that he thought Ms Rowland would have had his CV with her when she called Mr ES and that the purpose of the call was to verify his details and take a reference.
- 10.31 The Respondent stated that he believed that VSH LLP would have also checked the Law Society website which would have shown that he was not working at S & Co and would have checked the S & Co website which again showed that he was not working there.
- 10.32 The Respondent stated that in her witness statement Ms Rowland had acknowledged that the reference from Mr ES described his role at S & Co in the past tense. The Respondent's position was that he genuinely believed that VSH LLP was aware of his CV mistake.

Starting work at VSH LLP

- 10.33 The Respondent stated that he gave his Practising Certificate and P45 to Ms Rowland and that both documents showed that he had not been employed at S and Co recently. The Practising Certificate was dated from February 2015 and the P45 showed recent receipt of Jobseekers benefit and not a salary. Ms Rowland had confirmed in her evidence that it was possible she had been given these documents.
- 10.34 The Respondent described working closely with a senior solicitor when he started work at the firm. He stated that comments she made about compliance reinforced his belief that Ms Rowland would have made checks on his position and would be aware of his employment history.
- 10.35 The Respondent stated in his witness statement that shortly after he began working at VSH LLP Ms Rowland had asked him a question about Mr RS' situation. The Respondent considered that this illustrated that the topic had not been discussed at interview, contrary to Ms Rowland's recollection, as he maintained there would have been no reason to ask about something if it had recently been discussed.

Final meeting

- 10.36 The Respondent stated that in the meeting in which his employment contract was terminated, both Ms Davies and Ms Rowland used warm words and thanked him for the work he had done. Ms Rowland told him to use the three months' paid notice to sort his problems out so that he could return to work without them. He stated that at no point in the meeting did they raise the issue of the CV mistake and so he considered he had no chance to discuss the matter with them.
- 10.37 The Respondent stated in his witness statement that in an exchange with Ms Rowland before the final meeting he had told her about the employment situation, which he said he believed she already knew. She told him to think about his statement but he considered he had nothing to think about as he was only saying what he believed she knew. He described being shocked by her reaction, but said that the CV mistake was not raised in the exit meeting and he never had chance to explain. His view was that had he had an opportunity to explain there may well have been no report made to the Applicant.
- 10.38 The Respondent relied on the submissions summarised above in relation to allegation 1.1 about the investigatory meetings with the FIOs. On the basis of the mistaken belief under which he considered the FIOs conducted the interview and his own health, condition and confusion during the interview he invited the Tribunal to place limited weight on the transcript. Specifically, the Respondent stated that when he told the FIOs that he had said in his second interview that his notice period at S & Co was "one month" he had meant that this was his notice period, in the past tense, and he was not, as suggested by the transcript, acknowledging that he had referred to this being his current notice period. During cross examination Ms Taylor, one of the FIOs, had acknowledged that during the investigatory interview she had not recognised that the Respondent had been quoting one of the VSH LLP interviewers.

- 10.39 The Respondent repeated the points summarised above in relation to allegation 1.1 about his illness, OCD, depression and anxiety and the effect these conditions had on him at the relevant time. These matters were said to have influenced his conduct markedly and when considered in this context his conduct did not lack integrity. Professor Yorston gave the opinion that because of his diagnosed condition the Respondent does not deal well with questions that interrupt his train of thought and that it was “entirely possible for [the Respondent] to have been distracted from raising important points in interviews if he was thrown off balance by unexpected questions or areas of discussion”. On the subject of the OCD thoughts to which the Respondent had referred, Professor Yorston stated that “Although such fears might appear ridiculous and easily dismissible to someone without OCD, the very nature of obsessive compulsive disorder makes it impossible for the sufferer to dismiss them”. He gave the opinion that “it is entirely plausible for [the Respondent] to have gone into his interviews with the intention of telling the firm about his current employment status but to have been distracted from doing so by the type of questions he was asked in his first interview (the types of work he had done, rather than a chronological history of his jobs) and the casual tone and unexpected comments about the partner at [S & Co] in the second interview”.
- 10.40 The medical expert instructed by the Applicant, Dr Garvey, who had given evidence during the hearing, agreed that the Respondent’s OCD amounted to a disability. He accepted that the Respondent may struggle to answer unexpected questions and that his condition had impacted his career. Dr Garvey gave the opinion that the Respondent had a tendency towards checking his work and slowness which meant that he had problems “moving quickly and easily from one set of thoughts or circumstances to another”. He also agreed that the Respondent’s condition made him especially anxious about making mistakes.
- 10.41 The Respondent repeated his invitation for the Tribunal not to draw adverse inferences from his decision not to give oral evidence as summarised in relation to allegation 1.1.

The Tribunal’s Decision

- 10.42 The Tribunal accepted the Respondent’s explanation of his decision not to give evidence and submit to cross examination. No adverse inferences were drawn from this decision. In light of the expert medical evidence produced, which supported the Respondent’s description of potential effect on his health of doing so, the Tribunal considered that it would be unfair to do so.
- 10.43 There were no contemporaneous notes taken of the interview of 20 May 2015. In his investigatory meeting with the FIOs the Respondent acknowledged that he had stated one month was his notice period at S & Co. To that extent he acknowledged the underlying factual basis of the allegation – he had given the answer “one month” when asked “what was your notice period at S & Co”.
- 10.44 The Tribunal found the explanation that the Respondent was referring to what his notice period had been in the past to be contrived. The Tribunal did not consider that it was credible that an academic or hypothetical question about notice periods would be posed during a job interview, and Ms Rowland’s evidence was that it was not. The

context of the question was a job interview with a firm looking to recruit. The Tribunal considered that the natural meaning of the question was clear.

- 10.45 The amended transcript of the Respondent's comments in the investigatory interview of 10 February 2016 with the FIOs, to which the Tribunal was referred, recorded him stating:

"She asked what my notice period at [S and Co] was, so I answered that question, a month. But I just wanted a month, ummh. to sort everything out with [S & Co]."

The Tribunal considered that the Respondent's comments clearly explained why he gave the answer he did: he wanted a month to sort things out. The Tribunal did not consider that this explanation of "But I just wanted a month ... to sort everything out" was compatible with his account to the Tribunal that he was considered he was answering a question about what his notice period had been. Even allowing for the fact acknowledged by Ms Taylor that the Respondent had not had notice that issues relating to VSH LLP would be discussed during the investigation meeting, and allowing for the Respondent's anxiety, OCD, tiredness and confusion, the Tribunal considered the meaning of the words was clear.

- 10.46 This initial explanation of his comments was consistent with what the Respondent told the Applicant's Supervision Department by letter dated 5 August 2016. He stated that:

"I interpreted the notice period question as to how long until you can start."

This comment was made in writing in response to a formal request from his regulator for an explanation of his conduct. The points that the Respondent had made about the investigatory interview, and his condition during it, did not apply. He gave the same explanation he had given to the FIOs four months previously; his answer reflected how long before he could start work with VSH LLP. The Tribunal preferred the more contemporary account, provided to the FIOs in February 2016 and repeated to the Applicant in August 2016, to the account given to the Tribunal in the witness statement prepared for the hearing.

- 10.47 The Respondent's letter to the Applicant of 5 August 2016 acknowledged that in retrospect he recognised that:

"I understand that in analysing the Interview, when I was asked about a notice period, it would have been the right time to rectify the error on the CV."

Again, there was no suggestion that when he said "one month" he was speaking about what his notice period had been in the past or understood the question to have been motivated by curiosity about notice periods in general amongst local firms. The Tribunal found beyond reasonable doubt that the Respondent's answer of "one month" to the question of "what was your notice period at S & Co" was misleading.

10.48 Ms Rowland's evidence was that an interview assessment form was typed up directly after the second interview of 27 May 2015. Her evidence was that she had asked what the Respondent's notice period was and that he had said that it was one month. She stated that she had asked whether this was negotiable and the Respondent had said that it might be. The Tribunal found Ms Rowland to be a credible witness who told the truth as she recalled it. The Tribunal accepted her evidence that the notes of the second interview were typed up contemporaneously.

10.49 In his witness statement the Respondent took issue with the interview assessment form and his position was that some of Ms Rowland's notes reflected her own thinking (on matters known from elsewhere or her future intentions) rather than answers he had given. In his statement he accepted, however, that

"[Ms Rowland] asked me casually 'what's your notice' and I said one month."

Again, to that extent, he admitted the underlying facts on which the allegation was based. This account, from the Respondent's witness statement, was consistent with the contemporaneous note made by Ms Rowland.

10.50 The Tribunal considered that subsequent correspondence cast light on the Respondent's answer during the second interview. By email dated 28 May 2015, Ms Davies had offered the Respondent the solicitor position. In her email she had stated:

"I understand that you are on a month's notice"

She also expressed the hope he may be able to start sooner (which was consistent with the note on the interview assessment form that his notice period may be negotiable). In a reply sent the following day, the Respondent accepted the job offered, responded to a question about referees, and made no comment on the subject of the notice period or the possibility of being able to start sooner than a month. This was a situation free from the pressure, pace and formality of an interview in which the Respondent could have corrected the error with the CV or clarified his employment status and lack of notice period. He did not do so when it was clear from the terms of the email he had received that Ms Rowland was under the impression that his notice period was one month.

10.51 The Respondent's case was that he had intended to correct the mistake on his CV during the second interview, but was prevented by a combination of his medical condition and the way events unfolded from doing so. No medical evidence was presented to the Tribunal to suggest that the Respondent was unable to correct the misleading position in an email. However, the Respondent's emailed reply, sent a day after the email to him, ignored the subject of notice. The Tribunal considered that this undermined the credibility of the Respondent's account of his conduct during the second interview.

10.52 The Respondent's account that, as a result of various debilitating thoughts in his mind, he interpreted "what's your notice" as "when can you start" again appeared contrived to the Tribunal. Particularly when considered in the light of the

Respondent's failure to address the point when it was raised unambiguously in a subsequent email the Tribunal did not find the Respondent's account credible. Ms Rowland's evidence about their exchange including the Respondent stating that his notice period may be negotiable was supported by her interview assessment form. The fact that this reflected her understanding was clear from her email to the Respondent offering him the post which referred to his one month's notice. The Tribunal found beyond reasonable doubt that the Respondent's answer of "one month" to the question of "what's your notice" during the second interview was misleading.

- 10.53 Having found that the Respondent's answers were misleading, the Tribunal moved on to consider whether the alleged breaches of the Principles were proved to the requisite standard.
- 10.54 The Respondent had admitted that his conduct breached Principle 6 in his Answer. The Tribunal considered that this admission was properly made and found the breach proved beyond reasonable doubt. Public trust in the Respondent and in the provision of legal services would not be maintained by a solicitor providing misleading and inaccurate responses to questions in a job interview.
- 10.55 The test for conduct lacking integrity was set out in Wingate v SRA [2018] EWCA Civ 366 in which it was stated that integrity connotes adherence to the ethical standards of one's own profession. Whilst the judgment states that unrealistically high standards must not be set, in [100] Lord Justice Rupert Jackson stated "Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse."
- 10.56 The Respondent denied that he had acted without integrity. His case during the hearing was that in the first interview he had been unaware of the CV error and he thought he was being asked about other firms' terms and that when he said his notice period was one month, he was talking in the past tense about his previous role. As set out above, when speaking to the FIOs and writing to the Applicant in 2016 the Respondent had stated that he wanted to month "to sort everything out". The Tribunal had preferred this account for the reasons set out above. It was understandable, from everything the Respondent had described about his health and events at the time, that he wished for a month to sort things out. However, he achieved this by giving a misleading answer to a question about notice.
- 10.57 The Respondent's evidence was that during the second interview his mind had been focused on correcting the CV error with Ms Davies when she returned at the end of the interview. However, the issue arose naturally during the interview and the Respondent again said that his notice period was one month. As set out above, the Tribunal considered the Respondent's account that he intended to clarify the position was undermined by the fact that he chose not to do so in the subsequent email. By this stage, on his own version of events, the Respondent had realised that his CV wrongly stated that he remained employed at S & Co. The Tribunal considered that acting with integrity required that the error on his CV and the misapprehension under which Ms Rowland was labouring be corrected at this stage.

10.58 In considering whether the Respondent's conduct in making the misleading statements in both interviews amounted to a breach of Principle 2, the Tribunal considered the medical evidence to which it was referred carefully. Professor Yorston's opinion was that the Respondent does not deal well with questions which interrupt his train of thought. He considered that it was entirely plausible that the Respondent had intended to correct the CV error and to mention his current employment status but was:

“distracted from doing so by the type of questions he was asked in his first interview (the types of work he had done, rather than a chronological history of his jobs) and the casual tone and unexpected comments about the partner at [S and Co] in the second interview.”

10.59 Dr Garvey had given the opinion that the Tribunal would need to take the effects of the Respondent's medical condition into account when assessing his behaviour both in the job interviews and also the interview with the FIOs. Dr Garvey also stated:

“I do not think however that [the Respondent's] mental health conditions are of such a nature that he would have been incapable of understanding events at those times, or that these would have led to an inability on his part to understand the need for correcting misleading information and not to be dishonest.”

10.60 The effects of the conditions described by the two medical experts and the Respondent were significant. They included a degree of slowness, difficulty moving quickly and easily from one set of thoughts to another, keeping anxiety under control and highly distracting and distressing intrusive thoughts. There was no evidence that he was incapable of understanding events or would not know not to mislead. There was no evidence that he would be incapable of providing an accurate answer when this was required. Dr Garvey had stated that he not think that the Respondent's medical conditions would have precluded him from understanding the facts:

“such that he would have been unable to correct any misapprehensions the firm had about his previous employment if he were aware of these”.

10.61 The Tribunal accepted that the impact of the medical conditions diagnosed was very significant. However, the Tribunal did not accept that the Respondent was unable to give an accurate, non-misleading, answer to the simple questions which had been posed. The medical evidence did not support that conclusion. The Tribunal found the Respondent's explanations of his comments to be contrived and unpersuasive. Whilst his desire for a month to sort various things out was entirely understandable, the Tribunal found proved to the requisite standard, for the reasons set out above, that the Respondent had achieved this by knowingly providing misleading answers which gave the impression he was still employed at S & Co and that his notice period was one month.

10.62 The Tribunal considered that acting with integrity required correcting any misapprehension others may have had on this issue. Whether or not he was currently employed and was subject to a notice period were significant facts self-evidently highly relevant to a recruitment exercise. A solicitor acting with integrity could not

rely on the interviewer knowing the true position through other means. He had provided misleading answers in two interviews and the Tribunal had found his explanation to be contrived and unpersuasive. The Respondent had received a job offer in which the mistaken belief that he was employed and had a notice period of a month was repeated and he remained silent on the issue. The Tribunal found beyond reasonable doubt that this amounted to failing to act with integrity in breach of Principle 2.

11. Allegation of dishonesty in relation to allegations 1.1 and 1.2.

The Applicant's Case

- 11.1 Dishonesty was alleged as an aggravating factor in relation to both allegations. Due to its age, the Rule 5 Statement made reference to an outdated test for dishonesty. Ms Watts confirmed that the correct test, from Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67, had been drawn to the Respondent's attention. Ms Watts directed the Tribunal to the email in which this was done. The Applicant relied on the test set out in [74] of that case:

“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”.

- 11.2 It was alleged that in submitting a CV to a prospective employer stating that he was currently employed by S & Co, when he had not worked for the firm for approximately seven months, and subsequently stating in first and second interviews with them that he was required to give one month's notice, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.
- 11.3 Whilst not a requirement under the Ivey test, it was alleged in the Rule 5 Statement that not only was the Respondent's conduct in submitting his CV and making those statements concerning his notice period dishonest by the ordinary standards of reasonable and honest people but he must also have been aware that it was dishonest by those standards. The following statements made by the Respondent were submitted to demonstrate that he deliberately misrepresented his employment history and employment status in his interviews at VSH LLP in order to gain the advantage of employment with that firm:

“She asked, I heard the question, what was your notice period there, and I said a month and then she started talking about something else”; and

“I didn't mention that I'd been dismissed either in November, no”.

- 11.4 What was described as an expression of remorse, made in the interview with the FIOs, was submitted to be an implicit admission that the acts in question were wrong:

“I didn’t realise I had actually passed that CV and then I didn’t, during the interview and it was mentioned and it was passed over very quickly and they were talking about other things and I should have went back to it and mentioned it and put the record straight. But it just carried on, the interview went through very quickly so I just carried on”.

The Applicant also relied on a further such comment in the Respondent’s letter of 5 August 2016 as a further implicit admission:

“when I was asked about a notice period, it would have been the right time to rectify the error on the CV. Unfortunately, I did not”

- 11.5 In summary, the Applicant’s case was that the Respondent provided a CV to VSH LLP misrepresenting that he was still employed at S & Co. He was alleged to have had an opportunity at two interviews prior to his recruitment (on 20 May 2015 and 27 May 2015) to correct the misleading information contained within his CV. The Respondent knew at the time he said during interviews that his notice period was one month that this was untrue as he was unemployed, and that this would continue the inaccurate impression provided by his CV. However, instead of providing VSH LLP with the true position regarding his employment history and status, he continued with the false representation in his interviews.
- 11.6 It was further submitted that following the Respondent’s recruitment he had an opportunity to reflect upon the propriety of his actions and to correct the position with VSH LLP. However, the Respondent was submitted to have failed to exercise proper frankness and candour during his employment, and only to have inadvertently disclosed the accurate position regarding his employment history on 30 October 2015, the date he was dismissed.
- 11.7 The Applicant submitted that, applying the Ivey test, the Respondent’s conduct would be regarded as dishonest by the standards of ordinary decent people.

The Respondent’s Case

- 11.8 The allegation of dishonesty was denied. The basis for the denial is recorded above in relation to the separate allegations.

Allegation 1.1

- 11.9 In essence, the Respondent’s case was that the provision of the misleading CV was entirely inadvertent. His subsequent intention to correct this error was frustrated by a combination of unexpected events and his medical condition, and in any event he genuinely formed the view that VSH LLP were aware of his true employment history. It was submitted that ordinary decent people would not regard such an oversight and subsequent events as dishonest, particularly given the medical context described above.

Allegation 1.2

- 11.10 The Respondent's comments about his notice period at S & Co having been one month were factually accurate. He had no intent to mislead. The initial question on the first interview arose in a discussion about other firms and for the reasons summarised above the Respondent was answering the question "what was your notice period". In the second interview, the question was posed casually and the Respondent's answer of "one month" was an indication of when he would be able to start work at VSH LLP. Again, given the context in which the comments were made, including his genuine belief that his employment history was known by those interviewing him in the second interview, and the Respondent's medical condition, he submitted that ordinary decent people would not regard his answers as dishonest.
- 11.11 The Respondent's evidence was that one effect of his OCD was that had he knowingly behaved dishonestly he would have suffered even more with his mental health. The key event in his mind was that Mr ES, who knew his employment history in detail, had been approached and provided a reference to VSH LLP, and the Respondent was convinced this meant that his original oversight had been corrected.
- 11.12 The Respondent directed the Tribunal to seven character references which spoke of his trustworthiness and honesty. The Respondent invited the Tribunal to take these references into account when assessing if he had any propensity towards dishonest conduct.

The Tribunal's Decision

- 11.13 For the reasons set out above, allegation 1.1 had been found not proved, and so the aggravating allegation of dishonesty also failed.
- 11.14 The Tribunal accepted the summary of the test for dishonesty provided by the Applicant. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey and accordingly the Tribunal adopted the following approach:
- firstly, the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;
 - secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.
- 11.15 In its findings in relation to allegation 1.2, the Tribunal had found that the Respondent had made misleading statements in both interviews. He had said that his notice period was one month in both interviews, when he was not employed at the time and so had no notice period. The Tribunal had found that the Respondent's explanation in his witness statement was contrived and lacked credibility. Applying the first limb of the Ivey test, the Tribunal had found that the Respondent had knowingly provided misleading answers which gave the impression he was still employed at S & Co and that his notice period was one month.

- 11.16 On his own account, by the second interview the Respondent knew that the CV he had submitted was wrong in that it showed he was still employed by S & Co. The Tribunal had found that the Respondent had not taken the opportunity to correct the position when this topic arose in the second interview, and had not been prevented from doing so by his medical conditions. This finding was reinforced by the Respondent's subsequent failure to correct the position when his emailed job offer from VSH LLP made reference to his notice period of one month. The Respondent knew that those at VSH LLP believed he was employed and had a notice period of one month and for his own reasons he did not correct this mistaken belief.
- 11.17 The Tribunal accepted the expert medical evidence from Professor Yorston. He had provided an authoritative account of the impact of the Respondent's conditions and the difficulties that this may have caused during the interviews. He gave no indication that the Respondent would be incapable of understanding events or the need not to mislead. Dr Garvey's evidence was:

"I do not think however that [the Respondent's] mental health conditions are of such a nature that he would have been incapable of understanding events at those times, or that these would have led to an inability on his part to understand the need for correcting misleading information and not to be dishonest."

The Tribunal found that the Respondent was aware that his answers were misleading and did not consider that the medical evidence created doubt on this point.

- 11.18 The Tribunal carefully considered the character references provided by the Respondent and accepted that the Respondent had no predisposition towards dishonesty. The Tribunal considered that he was fundamentally honest, but that he had been aware that his answers in both interviews about his notice period was misleading and inaccurate.
- 11.19 Applying the second limb of the Ivey test, the Tribunal had no doubt that ordinary decent people would find such conduct dishonest. Accordingly, in relation to allegation 1.2 only, the Tribunal found the aggravating allegation of dishonesty proved.

Previous Disciplinary Matters

12. There were no previous Tribunal findings.

Mitigation

13. The Respondent stated that he deeply regretted the proceedings and that they had had a major impact on him and on his employment. He stated that he had demonstrated cooperation throughout the investigation and proceedings.
14. The Respondent invited the Tribunal to consider the nature, scope and extent of the dishonest conduct found proved and submitted that this was a case in which 'exceptional circumstances' applied such that strike off should not be considered inevitable.

15. The Respondent stated that he was affected by mental ill-health at the relevant time which affected his ability to conduct himself to the necessary and his usual standard. He described the incident as being an isolated one off event, that he had an otherwise unblemished professional record and no incidents in his personal life. He described a 'perfect storm' of events which contributed to the conduct involving his mental health, his OCD, depression and anxiety and he submitted that the two medical experts' reports substantiated this view. His sleep cycle had been reversed at the time and he described a 'zombie state' exacerbated by his OCD. He was still mourning his father's death at the time. He had also recently reported Mr RS to the Applicant and was extremely worried about this. His mother's condition had also been deteriorating markedly at the time. He submitted that these factors combined to produce the one-off misconduct and that they amounted to exceptional circumstances.
16. The Respondent invited the Tribunal to consider suspension from practice with conditions rather than strike off.

Sanction

17. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.
18. In assessing culpability, the Tribunal found that the Respondent's motivation for his misleading and inaccurate answers during the two interviews was to secure and retain the job offer. He had referred in evidence to not mentioning an employment tribunal claim he had brought as he did not wish to seem like 'trouble' and the Tribunal considered that a similar motivation existed for the misleading answers. The Tribunal considered that the misconduct in the first interview was spontaneous. The Respondent had been unaware of the CV error and so the misapprehension under which his interviewers were labouring. The Tribunal accepted that the Respondent's medical condition, in particular the effect of the intrusive OCD thoughts and the difficulty switching from one set of thoughts to another and the potential to be distracted from his train of thought by unexpected questions, referred to by the medical experts, reduced his culpability somewhat. The Tribunal considered that these factors hampered the Respondent's ability to deal spontaneously with the issue of his employment when it arose in the first interview, albeit not to an extent that removed responsibility for his actions. By the time of the second interview, one week later, by which time he had become aware of the error with the dates of employment on his CV, the issue would have been less unexpected. Nevertheless, the Tribunal accepted that his misleading answer in the second interview was also spontaneous and not part of any calculated plan. The Respondent had direct control of the events giving rise to his misconduct, however this was again limited to some extent by his medical condition. The Respondent was an experienced solicitor with over ten years' post-qualification experience. The Tribunal did not consider that he had deliberately mislead his regulator. Overall the Tribunal assessed his culpability as moderately high.

19. The Tribunal considered the risk of harm being caused by the misconduct was foreseeable. The Respondent had stated several times that he intended to clarify his employment status, recognising that a failure to do so risked harm to the firm relying on inaccurate and misleading information. Any finding of dishonesty is capable of causing significant reputational harm. In light of the medical evidence presented about the Respondent's medical condition and its effect, the Tribunal considered that the Respondent's awareness of these risks and issues was somewhat limited at the time. Once the full context of the misconduct was understood the Tribunal considered that the scope for reputational harm to the profession would also be somewhat reduced.
20. The Tribunal then considered aggravating factors. A finding that the Respondent had dishonestly given misleading and inaccurate answers in two interviews had been made. The conduct was repeated in that there were two interviews a week apart. The conduct was deliberate to the extent it was not inadvertent but, as stated above, the Tribunal did not consider the misconduct to be calculated or planned. The Tribunal considered that even allowing for the medical evidence and the pressures upon him at the time, the Respondent should and would have known that the answers he gave were in breach of his obligation to provide accurate information. The Respondent failed to correct the position in the days following the second interview when he received the offer of employment. There had been a clear impact on VSH LLP who had been denied the ability to make a decision based on accurate information and had also spent time dealing with the issues raised by the Applicant's enquiries.
21. The Tribunal also considered mitigating factors. The misconduct was of brief duration. The two incidents were separately by a week but were essentially the same reply to the same question. The Respondent had an otherwise unblemished record and had produced positive testimonials which spoke about his professionalism and integrity. The Tribunal accepted that the Respondent had displayed some degree of insight into his misconduct and acknowledged his mistake. The Respondent had made admissions to the Principle 6 allegations in light of this acknowledgment of his mistake. The Respondent's mental ill-health and the other pressures to which he was subject around the time of the two interviews were also mitigating factors.
22. The overall seriousness of the misconduct was high; this was inevitable given the dishonesty findings. In addition, the Tribunal had found that the Respondent's conduct had lacked integrity. As the Respondent had been found to have been dishonest, the Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll.
23. The Respondent had invited the Tribunal to conclude that such exceptional circumstances existed. The Tribunal had regard to the Guidance Note on Sanctions. Paragraph [53] of the Guidance Note on Sanctions summarised what amounts to exceptional circumstances drawing on the case of Sharma and SRA v James et al [2018] EWHC 3058 (Admin):

"In considering what amounts to exceptional circumstances: relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others." (Sharma above).

The exceptional circumstances must relate in some way to the dishonesty (James above)”

24. The nature of the dishonesty was the Respondent providing misleading answers in two job interviews in order to help secure an offer of employment. His answers had been economical and his interviewers had been misled as to his employment status. Whilst the misconduct was not planned, the Tribunal had found that it was deliberate and not inadvertent. He had made positive statements about his notice period. As to scope, the misconduct happened twice: in the interviews of 20 and 27 May 2015. The interviews were of around an hour each, and the misconduct found proved related to one misleading answer in each interview. The extent of the dishonest conduct was these two linked incidents which consisted of two answers separated by one week. The Respondent had also subsequently failed to correct the position, but the allegation found proved focused on his answers during the interviews about being required to give a month's notice and not on surrounding and related failures to correct this answer. The duration of the misconduct was a matter of seconds, with the two incidents a week apart.
25. The Tribunal considered that the Respondent's dishonest conduct was thus of a very different scope and extent to that which was the subject of the decision in James. Whilst not a 'moment of madness' in that there were two incidents, they each took place within seconds, albeit separated by a week. In James, the cases considered involved more extensive conduct taking place over a much longer period.
26. The Tribunal had found that the Respondent had known what he was doing was wrong, and that his medical condition did not impair his ability to recognise this or to correct (or avoid) his misleading answers. However, the Tribunal considered that there was considerable force in the Respondent's submission that a 'perfect storm' had conspired to contribute very significantly to the misconduct found proved. The two medical experts had agreed that the Respondent's OCD amounted to a disability, he suffered from depression and the anxiety with which he suffered generally was heightened by his sleep cycle having been reversed, the fact he was mourning his father's death whilst his mother's serious condition was deteriorating markedly, and he was extremely worried about having reported Mr RS to the Applicant and was involved in employment tribunal litigation at the time having been unemployed for some six months. The Tribunal considered these factors combined were very significant.
27. The Tribunal reminded itself that issues of personal mitigation, in the Respondent's case his OCD, depression, anxiety and the other factors summarised above, were less significant factors than the nature, scope and extent of the dishonesty and the degree of culpability. When assessing the medical evidence in the context of exceptional circumstances, the Tribunal reminded itself this must relate to the dishonest conduct itself. In its findings on liability the Tribunal had found that the Respondent knew that his misleading answers were wrong, such that ordinary decent people would regard his conduct as dishonest. However, the Tribunal also accepted that the Respondent's condition and the factors contributing to the 'perfect storm' described by the Respondent, contributed to his actions. The Tribunal accepted the submission that the Respondent's medical condition, heightened anxiety and specific pressures to which he was subject at the time, impaired his ability to react appropriately to the questions,

and indeed to his own misleading answers once given, in the way an individual without his disability would be likely to do. The Tribunal accepted that the Respondent's condition reduced his culpability to some extent. The Respondent had invited the Tribunal to consider restrictions on practice as a way to guard against any future risk to clients or the public.

28. The Tribunal took this personal mitigation into account. Uppermost in its mind, however, was that the dishonest conduct consisted of two unplanned but misleading answers, each lasting a matter of seconds which took place within one week of one another. The Tribunal was mindful that whilst inevitably a serious matter, the dishonest answers were not planned and could not be described as calculated. The Respondent's record was otherwise unblemished. The Tribunal accepted that these two answers were a departure from the personal and professional standards and conduct of the Respondent. The Tribunal found that the Respondent's case fell within the small residual category of cases where there were exceptional circumstances which meant that strike off from the Roll was not the appropriate sanction. Given the nature, scope and extent of the dishonest conduct the Tribunal did not consider that the protection of the public and reputation of the profession required this ultimate sanction.
29. Having regard to the Sanctions Guidance, the Tribunal did not consider that a reprimand or fine were adequate sanctions. The Tribunal did not consider that a fixed term suspension reflected the seriousness of the misconduct, given the findings about the Respondent's awareness of his actions and the degree of personal gain involved in securing employment through misleading interview answers. The Tribunal considered that the three elements of paragraph [48] of the Sanctions Guidance applied such that indefinite suspension was the fair and appropriate sanction. Paragraph [48] of the Sanctions Guidance states:
- “48. *Indefinite Suspension marks the highest level of misconduct that can appropriately be dealt with short of striking off the Roll. In deciding that an indefinite period of suspension is the fair and proportionate sanction, the Tribunal will have formed the view that:*
- *the seriousness of the misconduct is so high that striking off is the most appropriate sanction; **but***
 - *the presence of truly compelling and exceptional personal mitigation makes that course of action unjust; **and/or***
 - *there is a realistic prospect that the respondent will recover from, for example, illness, addiction, relevant medical condition etc. or respond to retraining so that they no longer represent a material risk of harm to the public or to the reputation of the profession.”*
30. The Tribunal had found that but for the exceptional circumstances found above, strike off from the Roll would be the most appropriate sanction. The Tribunal also considered, based on the medical evidence presented, that there was a realistic prospect that the Respondent would become more resilient and may recover from the medical conditions such that he would be capable of functioning at a level where he no longer represented a material risk to the public or to the reputation of the profession. The Tribunal considered that Indefinite Suspension from the Roll, effective immediately, was the appropriate and just outcome and struck the

appropriate balance between an appropriate sanction, a recognition that the Respondent's actions had harmed the profession and the need to take into account his particular compelling personal mitigation.

31. The Tribunal considered imposing conditions on the Respondent's ability to practice as an alternative, but did not consider this to be appropriate at this stage. Appropriate conditions may be considered in due course and should be informed by all relevant circumstances and evidence existing in the event that the Respondent sought leave to lift his indefinite suspension from practice.

Costs

32. Ms Watts applied for the Applicant's costs as set out in the schedule of 28 October 2020 in the sum of £16,254.20. Ms Watts stated that Capsticks Solicitors LLP had been instructed on an advocacy only capped fee basis and that accordingly the overall fees were low given the Applicant itself had investigated and otherwise conducted the proceedings. She drew the Tribunal's attention to the fee of Dr Garvey in particular and submitted that his instruction by the Applicant had been necessary. Ms Watts stated that whilst she was instructed on a fixed fee basis, the nominal hourly rate taking into account the time spent was £116 which she submitted was reasonable.
33. In reply the Respondent stated that he was concerned that there may have been repetition as various different fee earners were listed in the schedules of costs. He also queried whether the claimed supervision costs related solely to those with which the proceedings concerned or related to other matters in respect of which no allegations were brought. Ms Watts stated that the investigation costs claimed related only to those matters raised in the Rule 5 Statement. The Respondent had provided a Statement of Means dated 29 October 2020, supported by various bank statements and other documentation indicating limited current means and various arrears. He invited the Tribunal to take this evidence into account when considering any award of legal costs.
34. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal accepted that it was appropriate to reduce the figure claimed to reflect a small measure of duplication. However, the Tribunal considered that having regard to the level of documentation, the various case management hearings and the work necessarily involved in the Application the costs claimed were otherwise reasonable in all the circumstances. The Tribunal reviewed the Statement of Means provided by the Respondent. The Tribunal noted that the Respondent was employed full time. The Tribunal considered that as a legal regulator regulating in the public interest the Applicant was experienced in reaching workable instalment arrangements for the recovery of costs and that the Respondent's ability to pay would thereby be taken into account. The Tribunal considered that in all the circumstances it was appropriate for the Respondent to pay the Applicant's reasonable costs. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £15,000.

Statement of Full Order

35. The Tribunal ORDERED that the Respondent, LAWRENCE PETER MCCULLAGH, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on 3 November 2020 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

Dated this 28th day of January 2021
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'Edward Nally', with a stylized flourish at the end.

E. Nally
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
28 JAN 2021