SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11702-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL BRENDAN O'MAOILEOIN Respondent

Before:

Mr L. N. Gilford (in the Chair)
Miss H. Dobson
Mrs C. Valentine

Date of Hearing: 16 February 2018

Appearances

Yash Bheeroo, Barrister, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD for the Applicant.

Gregory Treverton-Jones QC, Barrister, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD for the Respondent.

JUDGMENT

Allegation

1. The allegation against the Respondent was that he provided a witness statement dated 24 March 2015 to Genus Law for the purpose of High Court proceedings which he knew contained false and/or misleading information. In doing so, he breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and Outcome 5.1 of the SRA Code of Conduct 2011 ("the Code").[1]

2. The Applicant also alleged that the Respondent acted dishonestly in respect of the allegation above. However, dishonesty was not an essential ingredient to prove the allegation.

Documents

3. The Tribunal reviewed the documents submitted by the Applicant and the Respondent, including:

   - Two "Hearing Bundles", containing amongst other documents: all pleadings; exhibits; letters from the Solicitors Regulation Authority ("SRA") to the Respondent; Answers from the Respondent; witnesses statements and exhibits; testimonials on the Respondent's behalf; redacted medical records; Standard Directions; Applicant's Skeleton Argument; Applicant's Costs Schedules; and Respondent's Personal Financial Statement;

   - The Applicant's "Bundle of Authorities".

Factual Background

4. The Respondent was born in January 1968. He was admitted to the Bar of England and Wales in 2004 and as a Solicitor on 5 January 2009. In September 2013 the Respondent and a colleague joined the dispute resolution department of Hugh James ("the Firm") based in the London office. The Respondent was employed as a Senior Associate and it was intended that he and his colleague would build up the Firm's insolvency practice. The Respondent already had 12 years of post-qualification experience obtained from employment at two London law firms. He and his colleague were made redundant by the Firm on 8 April 2015 with effect from 8 July 2015. The Respondent's name remains on the Roll of Solicitors. He currently holds a practising certificate (with conditions imposed in late 2017) and he works as a self-employed consultant for gunnercooke LLP.

5. On 1 April 2015, the Firm received a letter of claim from solicitors, Genus Law, acting on behalf of the Firm's former client who had previously instructed the Respondent. The letter of claim alleged that the Firm had been negligent due to its failure on 4 August 2014 to attend the court hearing of an application for summary judgment against that client. Summary judgment was entered. In due course

[1] Principle 2 is mandatory and requires solicitors to act with integrity.
Principle 6 is mandatory and requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services.
A solicitor must achieve Outcome 5.1, namely a solicitor does not attempt to deceive or knowingly or recklessly deceive the court.

insolvency proceedings were issued to recover the judgment debt of £126,267 with associated costs of £23,000.

6. The letter of claim prompted an internal investigation by the Firm which included inspection of the client file. The file established that the Respondent was instructed by the client, the defendant in High Court proceedings, to act on its behalf. The application for summary judgment issued by the claimants' solicitors was received by the Respondent, but he failed to diarise the hearing date and therefore failed to attend the hearing. The client was not notified of the application or the hearing date. The Respondent did not respond to the application in any way.

7. The order for summary judgment was served on the Firm by the claimants' solicitors. The Respondent did not inform his client or the Firm of the existence of the order, the consequences of summary judgment being entered, or the steps to be taken to protect his client's position. No action was taken by the Respondent until the winding up petition relying on the summary judgment and judgment debt was served on the client in January 2015. The client instructed Genus Law to act on its behalf and applications were made by that firm to adjourn the winding up petition and to set aside judgment.

8. The Respondent was asked by Genus Law to provide a statement in support of the application to set aside the summary judgment. The Respondent's signed witness statement endorsed with his statement of truth for the purpose of the High Court proceedings was dated 24 March 2015. He stated as follows:

> "3. Due to a clerical oversight the Claimants' application for summary judgment ("the Application") and the subsequent order for summary judgment dated 4 August 2014 were misfiled and only came to my attention and the attention of the Defendant following service of a winding up petition presented by the Claimants against the Defendant on 26 January 2015.
>
> 4. If the Application had been brought to my attention prior to the hearing, the Defendant would have been informed and further instructions requested from the Defendant to attend the hearing on 4 August 2014 to oppose the Application.
>
> …
>
> 6. In the circumstances, had the Defendant been aware of the Application it would have filed and served evidence in opposition and would have instructed me to ensure that it was represented at the hearing on 4 August 2014."

9. The claimants' solicitors wrote to Genus Law on 31 March 2015 inviting the latter to reconsider the application to set aside the summary judgment. In support of that invitation they explained that they had sent the following documents to the Firm:

- A recorded delivery letter dated 13 June 2014 enclosing (i) the claimants' sealed Application Notice for Summary Judgment with supporting documentation, and (ii) sealed Notice of Hearing on 4 August 2014 timed at 2:45pm;

- A recorded delivery letter and email to the Respondent dated 1 August 2014 enclosing the claimants' Schedule of Costs in respect of both the summary judgment application and the main proceedings;

- The order for summary judgment, the final page of which confirmed that the High Court had sent a sealed copy of the same to the Firm.

10. On 1 April 2015 the Respondent sent an email to Richard Locke, Partner and Head of Dispute Resolution at the Firm. The Respondent explained that the purpose of his email was to set out the background to the matter. The email contained the following explanation:

> "...The claimants issued an application for summary judgment listed for hearing on 4 August which I did not attend as it was not noted in my diary due to an oversight on my part. This is not something that I have ever done before (nor since) and I simply panicked when I discovered that not only had the claimants obtained summary judgment but then went on to rely on it in support of a winding up petition against the Company.
>
> I should have reported to you immediately but I was so upset by what I had done and the consequences not only for the Company but also for my professional reputation and that of the firm that I simply did not know what to say or how to tell you. I have always noted hearings and deadlines but failed to do in this case (sic) and ultimately I have to accept that it was my responsibility.
>
> When the winding up petition was served on the Company, it decided to instruct Genus Law who are based in Leeds where the winding up petition is listed for hearing. They have obtained a validation order and the petition was adjourned to 17 April 2015. In the meantime, they have issued an application to set aside summary judgment and will be asking for a further adjournment of the petition pending the outcome of the application to set aside summary judgment..."

11. The Respondent stated in his witness statement to the High Court dated 24 March 2015 that the application for summary judgment and subsequent order dated 4 August 2014 were misfiled and only came to his attention when served with the winding up petition on 26 January 2015. The Respondent stated in his email to Mr Locke that the application was not dealt with because of his mistake in failing to diarise the hearing date.

12. The Respondent and Mr Locke held a telephone conversation on 9 April 2015. Mr Locke referred the Respondent to the inconsistencies between the March witness statement, the letter from the claimants' solicitors dated 31 March 2015, and the email of 1 April 2015. Mr Locke asked the Respondent whether he received the application for summary judgment. The Respondent confirmed that he did receive the application but had not diarised the date. The attendance note of the meeting recorded the following:

> "... [The Respondent] also accepted that he received the schedule of costs which was delivered by email on 1 August. He said that he had it in his head that the hearing was on 14 August and not 4 August and therefore there was sufficient time to deal with it. It was only after the hearing had gone by that he realised the position.
>
> He confirmed that it was not the case that the documents themselves had been misfiled, he confirmed that he had received the documents but didn't enter details in the diary. He confirmed therefore that his statement was not correct it was the date that had not been put in correctly i.e. misfiled and not the document.
>
> He confirmed that he had the order and that he had basically panicked. He put the documents on the file. He said he did not know why he did this. He said that he couldn't think straight and couldn't deal with this individual client. He said he was mentally out of his depth. He said he just wanted to hide it away from him (the client). He said he just froze and couldn't explain why. He said it had brought him down and he was ashamed to say this.
>
> He said he could not say why he reacted in this way. The matter had broken him down.
>
> He accepted that the matter needed to be put right and that there was a need to file a further statement at court confirming the actual position..."

13. On 10 April 2015 the SRA received a report relating to the Respondent's conduct from Alun Jones, the Firm's Managing Partner.

14. Mr Locke made a witness statement in the High Court proceedings dated 23 April 2015. Mr Locke stated that paragraph 3 of the Respondent's witness statement was not correct and that he did receive a copy of the application notice for summary judgment, the notice of the hearing, and the schedules of costs from the claimants' solicitors in advance of the hearing on 4 August 2014. The Respondent had confirmed that he failed to diarise the hearing date which explained why the Defendant was not represented at the hearing.

15. On the client file there was a copy of a handwritten letter including a second witness statement signed by the Respondent, both dated 24 April 2015. The express purpose of the second witness statement was for the Respondent to clarify matters stated in the March witness statement. The Respondent said that he was under significant pressure both at work and in his personal life at the relevant time and provided details. Mr Locke wrote to the Respondent to acknowledge receipt of the April statement. He informed the Respondent that he did not believe that the statement provided any additional assistance to the client or that it provided an appropriate explanation for the issues that had occurred. He expressed his concern about the accuracy of the statement. He acknowledged that the Respondent had not had an opportunity to consider the file before drafting the document. Mr Locke returned the statement to the Respondent to be forwarded to Genus Law direct by the Respondent if he still felt it was appropriate to do so. The Respondent accepted Mr Locke's advice.

16. A disciplinary meeting took place on 25 June 2015, during which the Respondent again accepted that his March witness statement was misleading. A final written warning was issued by the Firm to the Respondent. As recorded at [4] above, the Respondent had been notified by the Firm in April 2015 that he was to be made redundant in July 2015.

17. The SRA wrote to the Respondent on 7 September 2016 to request an explanation and the Respondent replied by letter dated 23 September 2016. He relied on the contents of his email to Mr Locke on 1 April 2015 and his second witness statement dated 24 April 2015. He informed the SRA that he had been suffering from extreme pressure, both personally and professionally, at the relevant time and provided details of those difficulties in his response. On 27 March 2017 an Authorised Officer of the SRA referred the Respondent's conduct to the Tribunal. The proceedings were received by the Tribunal on 16 August 2017.

Witnesses

18. Allegations 1 and 2 were admitted by the Respondent, who gave oral evidence on oath limited to mitigation. That evidence is summarised below as follows:

18.1 The Respondent was asked by Mr Treverton-Jones why he settled his witness statement containing 2 untruths. The Respondent answered "sheer panic". He described this as "one case, one client, I simply could not cope with it." He accepted that he should have gone to see Richard Locke or somebody else which he did not do. He had learnt from this and in future would take such issues to the compliance department or, if he needed assistance with a case, to a partner. These events were "a reaction to what was going on both personally and professionally", the case "snowballed and I just could not change it".

18.2 This was his only problem file. Subsequently each file was examined by Richard Locke with a fine toothcomb and there were no other issues. For the last 3 years the Respondent had been free to practise and he had done so for most of that time at gunnercooke. There had been no issues concerning the Respondent's integrity during that period.

18.3 The Respondent had learnt his lesson. Every morning as his first task he enters dates into his own and the firm's key dates diary. That diary is shared with the compliance department so that they are aware of all cases and deadlines. At a more personal level, if the Respondent ever has an issue, he goes to see somebody, even if that means seeking medical advice. If the Respondent feels that something is getting on top of him at work, he contacts the compliance department, and explains the situation to them before he does anything. For example, he recently sought advice before giving an undertaking relating to client money.

18.4 Subject to the outcome of the hearing, it was the Respondent's intention to remain at gunnercooke. The firm is supportive and things had gone well there. The Respondent described the firm as potentially "a tough environment because it is 'eat what you kill'". One had to work hard to get the work in, do the work to a good standard, and build up a client base. The Respondent had achieved modest success with the support of his clients, some of whom had provided references and were aware of his position.

18.5 Under cross-examination the Respondent agreed that a solicitor should always discharge their professional duties with integrity and act with complete honesty in all their dealings because of the importance of maintaining trust in the profession. It risked undermining confidence in the profession if trust was broken by dishonest conduct. He had accepted and admitted what he had done. He agreed that there was an overriding duty not to mislead the court. He agreed that providing a witness statement bearing a statement of truth which the solicitor knew contained false information was very serious. He agreed that this was, effectively, perjury. He agreed that the credibility of a person who had been found to have behaved in that way would be damaged. He agreed that a challenge to a solicitor's credibility had very serious consequences.

18.6 The Respondent provided detailed information about his legal experience which started in 1999 and comprised work for 4 different firms. The Respondent and his colleague were responsible for building up the Firm's insolvency practice, a task that brought pressure. In his current firm he is also required to build up his own practice.

18.7 When the Respondent received the summary judgment order from the Court, he realised that he had not attended the hearing and that he had taken steps that had adversely affected his client. The client in the case was described by the Respondent as "difficult" but he had dealt with worse situations before.

18.8 The Respondent was invited to consider his second witness statement dated 24 April 2015 upon which he relied in these proceedings. In that statement he said that it was relevant that he was dealing with "the ongoing pressure of work" (in addition to a number of personal matters). He accepted that most solicitors deal with high-pressure environments and encounter stress and anxiety in their work. However, whilst stress is part and parcel of the job, there were some moments that were more stressful than others, particularly in litigation. The Respondent confirmed that there was no further evidence to corroborate what he said about his personal life.

18.9 It was put to the Respondent that he should not have been working at the time due to the circumstances he described. He responded that he should have gone to see someone at the Firm, he should have taken the opportunity to speak to Mr Locke to explain the pressure that he was under, both at home and at work. With his experience of working in law firms he should have known the dangers of trying to deal with the situation by himself and continuing to work when he was facing these issues. This was why the situation could never happen again: the first thing he would do now was to seek advice both within the firm and, if necessary, outside.

18.10 The Respondent re-read paragraphs 3, 4, and 6 of the March witness statement. He agreed that the content of each paragraph was wrong and that the main substance of the witness statement was incorrect. At the time of preparing these core paragraphs the Respondent was aware that what he said was not the position. At that point his primary purpose and concern were for his own professional reputation as well as the Firm's reputation. He knew deep down that the problem would not go away. He explained his feeling that "everything was collapsing around me. It had been building up, snowballing, and suddenly the clock stopped and I froze". He "just wanted it to go away", and did not tell anyone, not even his wife, until the Firm was notified of the negligence claim by Genus Law in April 2015.

18.11 Once the Respondent received the summary judgment order, the issue, the case, and the client were always present in and, sometimes, at the forefront of his mind. Thinking about the name of the case or the client resulted in him not being able to think straight. When he received the winding up petition in January 2015 he "just shut down and continued to do what I had been doing in relation to this case".

18.12 The Respondent's general practitioner was not available to attend this hearing but the relevant medical records had been provided. The Respondent was a rare visitor to the surgery. The Respondent did not visit the surgery in August 2014 or March 2015. He first consulted his doctor about these matters on 17 April 2015, after the events had come out. The Respondent said that he "effectively just broke down". He described it as "almost a relief" because he could "speak to Richard [Locke] about it". The Respondent told the doctor that he needed help and about the issues. The doctor made a note. The doctor had a long counselling session with the Respondent on 17 April 2015 but the session itself (as distinguished from the attendance at the surgery) was not recorded in the notes. He could not recall why he did not attend his doctor's appointment on 22 April 2015. The Respondent's position was that the information provided by the doctor gave an insight into his condition at the relevant time. The notes accurately recorded that he had improved by the time he saw the doctor on 13 May 2015. He agreed with the note that by 9 December 2015 he seemed to have recovered. He is now in good health, but having to deal with the case again, to the extent even of looking at its title, brought it back to him. He could not explain why: he just could not deal with this case.

18.13 The Respondent was asked to consider the testimonials submitted on his behalf. The reference from Mr Locke stated that Skype meetings with the Respondent were held every Monday morning. There were no allegations against the Respondent in respect of the quality of his work. When he met with Mr Locke to discuss this issue the Respondent was "apologetic, forthright, and straight forward". A reference from a barrister described the Respondent as "a particular and sober man, whose appearance and manner reflect the very high standards he has set for himself in his work. I have always found him to be meticulously careful, punctual, well-organised and conscientious. I have never doubted his professionalism, or his integrity. He is a very popular Solicitor with both clients and the Bar, not least because it is a pleasure to work in a team with someone who is so well prepared. I am sure the judiciary feels the same when they see a case in front of them in which Michael has had a hand in the preparation." The way in which the Respondent conducted himself in the relevant matter was described as being "a million miles away from the practitioner I know". The Respondent agreed that this observation reflected the seriousness of the misconduct which he also accepted and which was why he was at the hearing to explain why he did what he did.

18.14 In answer to a question from the Chairman, the Respondent explained that his partner in the Firm's London office was and remained a solicitor and insolvency practitioner. The Respondent did not discuss personal issues with his partner in relation to this case. He "bottled it up" and did not tell anyone. "It was almost like a meltdown", he said. The Respondent could not bring himself to talk about it even to his professional partner. He agreed with the Chairman that it would have been a simple matter to apply to set aside the summary judgment but he "just shut down". He was able to carry on working from August 2014 to January 2015 but with difficulty. His personality

changed: his mother asked him over the Christmas period what was wrong with him. There were no issues on any of his other cases but only in relation to this one case, which "wore me down". Only he and his partner were in the work environment on a daily basis. His partner would have known that the Respondent was stressed but he would have seen it as "just work". The client would have assumed that the litigation was progressing.

18.15 During the weekly Skype meetings with Mr Locke the Respondent was able to discuss issues regarding workloads and pressures but not in terms of this case. Every time he ought to have dealt with it he "just could not do so". The situation got worse as time went on. The Respondent agreed with the Chairman that apart from this one aberration, this one mistake, he seemed to have been able to carry on with everything else in terms of his practice, either normally or at least without complaint or discussion with anyone else.

Findings of Fact and Law

19. 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.

20. **Allegations 1 and 2 - He provided a witness statement dated 24 March 2015 to Genus Law for the purpose of High Court proceedings which he knew contained false and/or misleading information. In doing so, he breached Principles 2 and 6 of the Principles and Outcome 5.1 of the Code. Dishonesty was alleged.**

20.1 The Respondent admitted allegation 1. Further, he admitted that he had failed to act with integrity in breach of Principle 2, failed to behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6, and that he failed to achieve Outcome 5.1 which required that he did not attempt to deceive or knowingly or recklessly deceive the court. The Respondent admitted allegation 2, namely that he had acted dishonestly.

20.2 The admissions were properly made. The Tribunal found allegation 1 (including the breaches of Principles 2 and 6 and the failure to achieve Outcome 5.1) and the allegation of dishonesty proved beyond reasonable doubt based on the Respondent's admissions and the documents.

Previous Disciplinary Matters

21. None

Mitigation and Submissions on Exceptional Circumstances

22. <u>On Behalf of the Respondent</u>

22.1 Mr Treverton-Jones provided detailed mitigation, which began with an apology from the bottom of the Respondent's heart, both to the Tribunal and to the SRA, that he

stood before the Tribunal having admitted dishonesty and having effectively admitted thereby bringing the profession into disrepute.

22.2 The Respondent is just 50 years of age. He moved to the United Kingdom from Dublin at the age of 17. He studied at the University of Surrey where he met the woman who became his wife. They have been together for 30 years, married for 21 years with teenage children. The Respondent's legal career started in 1999 when he was employed by Moon Beever as a paralegal. He remained at that firm for 11 years, latterly as a solicitor, until 2010. In 2004 he was called to the Bar with an intention to become a barrister. His plans changed with the arrival of his children. In 2010 the Respondent moved to Moorhead James following his admission to the Roll in January 2009. He joined Cardiff-based Hugh James with his colleague in September 2013 to set up the insolvency department in its small London office. The Respondent spent an induction week in Cardiff and he and his colleague were then left in London to get on with the job of building up the insolvency department. Mr Treverton-Jones said that it was no part of the Respondent's case to blame or try to shift responsibility onto the Firm in any way. The London office consisted of the Respondent and his colleague doing insolvency work, with minimal supervision from Cardiff. The supervision took place by weekly Skype meetings with the more senior members of the Firm based in Cardiff. There was also supervision of 3 individual files each quarter. The Partner in the London office was a clinical negligence specialist. It was a pity, perhaps, that there was no insolvency specialist based in London because, had there been, the Respondent might have gone to that person when this particular file started to run out of control. As with so many cases, it was the cover-up that was the problem rather than the original offence.

22.3 Mr Treverton-Jones invited the Tribunal to review the Respondent's personal circumstances as set out in his letter to the SRA dated 23 September 2016. The nature of the client was described by the Respondent as "somewhat difficult and erratic in character". The Respondent hoped to build up a workstream for that client and so took the case on. He found it very difficult to get proper instructions; they were vague and intermittent. As a result the defence filed by the Respondent on the client's behalf was poor. The claimants applied for summary judgment listed for hearing on 4 August 2014. Through an administrative oversight, for which the Respondent took responsibility, the date was not noted in his diary. The Respondent believed that the hearing was to take place on 14 and not 4 August. That was his mistake for which he also took responsibility. The result was that on 4 August his client was unrepresented and summary judgment was entered.

22.4 The Respondent should have reported these events to his superiors immediately he discovered what had happened. He did not do so for the reasons set out in his witness statement. In January 2015 the winding up petition was served on his client who instructed Genus Law. On 24 March 2015 the Respondent produced and signed the witness statement at the heart of the case. There were 2 untruths in that witness statement: (i) it was not true that the relevant documents had been misfiled (ii) it was not true that the matter only came to the Respondent's attention following service of the winding up petition.

22.5 Genus Law wrote the letter of claim on 1 April 2015. The Respondent told the truth to his employers by email on 1 April 2015. On 9 April 2015, 8 days later, a telephone interview with Mr Jones and Mr Locke took place at which the Respondent admitted that the witness statement was untrue.

22.6 On 10 April 2015 Mr Jones made a report to the SRA received by the latter that same day. This was a very straightforward case for the SRA. The investigatory work had effectively been done by the Firm. There was no reason why the whole case could not have been finalised within 3 to 6 months. On 23 April 2015 the Respondent drafted the second witness statement (dated 24 April) which, Mr Treverton-Jones submitted, told the truth. The same day Mr Locke submitted his witness statement to the High Court. By 23 April 2015, one month after the false witness statement had been signed, the matter had been rectified and the Respondent had made a clean breast of it as evidenced by the note of the disciplinary hearing on 25 June 2015. Factors in the decision to give the Respondent a final warning, rather than dismissing him, included that he was obviously very sorry for what had happened and had been from the start and that he had admitted it fully when Mr Locke had questioned him. It was noted that he had a good employment record with the Firm and a good reputation in general and that this was completely outside his usual level of performance. A redundancy procedure was already underway and the Respondent's employment was terminated for that reason on 8 July 2015.

22.7 The first action by the SRA came 8 months after the report on 10 April 2015 when it served a Section 44B Notice on 2 December 2015. In 2016 the Respondent registered with the Judicial Shadowing Scheme. For this purpose a government department made regulatory enquiries with the SRA which seemed to give the Respondent a clean bill of health because he was able to sit on the scheme. On 7 September 2016 the SRA wrote an explanation and warning letter to the Respondent requiring a response by 23 September, which he duly did dealing with the allegations that the SRA raised against him at that stage. The SRA had by this point spent 17 months considering and investigating the matter and they gave him 16 days in which to respond. On 27 March 2017, the SRA decided to refer the matter to the SDT. The Respondent was informed of that decision on 11 April 2017, 2 years and a day after the date of the initial report. The Rule 5 Statement was dated 15 August 2017, 5 months after the decision to refer the matter to the SDT.

22.8 The Tribunal was confronted with this case nearly 2½ years after the matter had been reported to the SRA. In that period the Respondent had obtained work with gunnercooke where solicitors are consultants rather than partners. It was, in effect, an "eat what you kill" operation in which solicitors received a proportion of fees billed on individual cases. The Respondent is highly regarded at gunnercooke where he has done well and built up a practice. In late 2017 the SRA imposed conditions on his practising certificate. Until then the Respondent had been able to work unrestricted. The SRA could not therefore have viewed the Respondent as a risk to the public during the 2½ year period between the report and the imposition of restrictions.

22.9 Mr Treverton-Jones accepted that testimonials were of less significance in a case of admitted dishonesty than in other cases. The doctor's letter confirmed that there were consultations after matters came to light. A letter from Mr Locke confirmed that he had never had any issues with the quality of the Respondent's work or, prior to these

difficulties, any cause for concern. When the Respondent met with him to discuss the issues the Respondent was "apologetic, forthright and straight forward". Rupert Butler, a barrister called in 1988, spoke very highly of the Respondent. A reference from James Storm of Countrywide Dispute Resolution, who had attended the hearing, also spoke highly of him. There were references from the former managing director of various companies and a partner in a firm of accountants who had known the Respondent professionally and personally for over 30 and 15 years respectively. Frances Coulson, the Senior Partner of Moon Beever, confirmed that the Respondent had worked for that firm for 11 years until 2010. Finally, there was a reference from Mr Doublet from gunnercooke who also spoke very highly of the Respondent and who was in court with another representative of that firm. In summary, everyone spoke with one voice about the Respondent in character references which spanned his career.

22.10 Mr Treverton-Jones accepted on his client's behalf that any dishonesty and any false statement by a solicitor in a witness statement were serious matters. In this particular case, however, it was not necessary for the Tribunal to strike off the Respondent. This was an "absolute one off" by a man who had led an unblemished career, both before and after these events. This one-off event was caused by pressures both within and outside work which were "wholly exceptional". The Respondent made admissions on 1 and 9 April 2015 when the matter came to light. By 23 April 2015 the matter had been put right and, so far as was known, no harm was done by the offending witness statement. The Tribunal was also confronted by "an unexplained and extraordinary delay by the regulator" in dealing with this straightforward matter as itemised above.

22.11 This was a case in which the Tribunal did not need to impose the ultimate sanction. The Respondent had proper insight into what had happened and had learnt from what went wrong. He is fortunate in having supportive employers who have stood by him and attended the hearing. The Tribunal could, in all the circumstances, take an exceptionally merciful course.

22.12 Mr Treverton-Jones was permitted by the Tribunal to reply to the submissions made by Mr Bheeroo (set out below) insofar as he had not already dealt with the points in mitigation. Nobody had explained how and in what respects the second witness statement dated 24 April 2015 was inaccurate and the Respondent did not accept that it was. The Chairman reminded Mr Treverton-Jones that there was no allegation in relation to that witness statement and therefore he need not trouble himself further. Mr Treverton-Jones invited the Tribunal to consider the decision of Mr Justice Dove in The Queen On The Application Of Solicitors Regulation Authority v Imran [2015] EWHC 2572 (Admin) at [29] (and see below at [23.7]). In that case the solicitor was imprisoned for a "points swapping" offence and exceptional circumstances were found.

22.13 There was a "resounding silence" from the Applicant on the important point that the Respondent was permitted to carry on practising from April 2015 until the present time. The regulator could not therefore have regarded the Respondent as a risk during that period otherwise it would, presumably, have taken steps to ensure that he could not practise. The Chairman invited Mr Treverton-Jones to explain how that submission fitted into the concept of exceptional circumstances in terms of the Tribunal's view of the misconduct and appropriate sanction. Mr Treverton-Jones

replied that this case could and should have been dealt with by the regulator within a few months because it was not a difficult case. Dishonesty was admitted and the acts and omissions had been admitted throughout. Much of the purpose of sanctioning solicitors was in order to protect the public and the reputation of the profession. It was "highly relevant" that the Respondent had been permitted to practise by his regulator for approximately 3 years since the events with which the Tribunal was concerned and had done so without blemish.

23. On Behalf of the Applicant

23.1 Mr Bheeroo did not address the Tribunal on sanction, recognising that it was properly a matter for the Tribunal's consideration. He made submissions on whether the circumstances were exceptional such as to justify the imposition of a sanction other than strike off. He relied on his Skeleton Argument.

23.2 The starting point where a Respondent had been found to have acted dishonestly was that he would invariably be struck off the Roll unless exceptional circumstances could be shown. This was set out in the Tribunal's Guidance Note on Sanctions at [47] and was considered in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). In Sharma, Mr Justice Coulson considered the previous authorities on the point and identified what he called "impartial points of principle" in deciding whether or not exceptional circumstances arose [13]. These could be summarised as the need to look at the nature, scope and extent of the dishonesty itself; whether it was a momentary act; whether it was a benefit to the solicitor; and whether it had an adverse effect on others.

23.3 The nature, scope and extent of the dishonesty were of the most serious kind. The Lord Chief Justice in Brett v Solicitors Regulation Authority [2014] EWHC 2974 (Admin) [111]-[112] set out the consequences of misleading the Court:

> "[111]…misleading the court is regarded by the court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit. It is not simply a breach of a rule of a game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings. Such conduct will normally attract an exemplary and deterrent sentence…
>
> [112] Where an advocate or other representative or a litigator puts before the court matters which he knows not to be true or by omission leads the court to believe something he knows not to be true, then as an advocate knows of these duties, the inference will be inevitable that he has deceived the court, acted dishonestly and is not fit to be a member of any part of the legal profession."

23.4 The nature of the Respondent's dishonesty in misleading the Court was an example at the higher end of the spectrum. The Respondent confirmed during cross-examination that he knew at the time when making the witness statement that it was untrue. It was only when the Respondent was caught out, having already provided the misleading witness statement, that he chose to put his hands up and say "I accept what I did". That acceptance came in stages: there was an explanation on 1 April 2015 and a further and more detailed explanation on 9 April 2015. Up until that point he had kept

what he had done to himself. This was not a case of one line in a witness statement that happened to be incorrect or untrue. This was a witness statement which was deliberately put together to purposefully mislead anyone who read it, including the Court, into believing that the application notice had never made its way to the Respondent, or to the Firm, and that was why no action had been taken. This was simply not true.

23.5 The Respondent confirmed under cross-examination that he had put the witness statement together to protect his reputation and that of the Firm. Only the Respondent stood to benefit from that action. By putting in the false statement the Respondent sought to conceal his own failures and negligence from his client. Had that statement been accepted by the Court and summary judgment set aside, the Respondent would have concealed his negligence, and his client would have obtained an unfair advantage in the proceedings. Even if his statement was accepted but the application failed, the Respondent would have been the sole benefactor, having successfully concealed his repeated failures from the Court and from his client.

23.6 There were adverse effects on the client, the Court, and the opposing party. The false statement in support of the application compromised the latter. The claimants' solicitors wrote asking Genus Law to withdraw the application with evidence to show that the witness statement was untrue. Had the Respondent's intention been to provide a witness statement in support of a successful application there would have been a clear disadvantage to the opposing party who, for all purposes, followed the correct legal procedures to obtain the order which could have been set aside on the basis of a lie. This was the outcome which the Respondent was expecting; otherwise he would have had no reason to put in the witness statement.

23.7 Dove J stated in Imran at [24]:

> "[24] … at the heart of any assessment of exceptional circumstances, and the factor which is bound to carry the most significant weight in that assessment, is an understanding of the degree of culpability and the extent of the dishonesty which occurred.

At [29] Dove J added that character references may be relevant to the decision of whether or not it is an exceptional case, but is not a factor that is likely to attract very substantial weight.

23.8 Stress and pressure of the job were an occupational hazard, not an exceptional circumstance. Many lawyers were faced with highly pressurised environments and huge stresses, particularly when seeking to build up a practice in a particular area. The only person who stood to benefit from his misconduct was the Respondent, a person of considerable experience. That experience would be sufficient to enable the Respondent to understand exactly what was required when working in a law firm and the integrity that came with the job. The Respondent had direct control and responsibility for the circumstances of the misconduct. This was not a situation where the client had insisted that he do something which he knew was wrong. The level of culpability was very high. The medical evidence took the Respondent only so far. It was not proper expert evidence. The full medical history was not available. A letter

from a general practitioner recording what the Respondent told him and what he prescribed as treatment did not assist the Respondent.

23.9 The reputation of the solicitors profession was severely damaged and the public could have no trust in the Respondent to act honestly in all of his dealings, the Respondent having admitted dishonestly providing a statement to a Court. His credibility was seriously affected, as he accepted in cross-examination. For these reasons this was not a case where exceptional circumstances applied.

Sanction

24. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) (December 2016) when considering sanction. One allegation was admitted and found proved with dishonesty also found proved. The Respondent had admitted breaches of Principles 2 and 6 and failure to achieve Outcome 5.1. The Tribunal was mindful that, in deciding what sanction to impose, it should have regard to the principle of proportionality, weighing the interests of the public with those of the Respondent.

25. The starting point was for the Tribunal to assess the seriousness of the misconduct in order to decide which sanction to impose, recognising that findings of dishonesty would almost invariably lead to striking off, save in exceptional circumstances (see Sharma). The fundamental principle and purpose of the imposition of sanction by the Tribunal was, in the words of the then Master of the Rolls Sir Thomas Bingham in Bolton v The Law Society [1994] 1 WLR 512:

> "… to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth."

26. A dishonest witness statement had been submitted to the Court. Such misconduct could not be addressed by a sanction of "no order", reprimand, financial penalty, or a Restriction Order. Indeed, Mr Treverton-Jones did not suggest otherwise.

27. The Respondent's dishonesty was very serious for the reasons expressed by The Lord Chief Justice in Brett set out at 23.3 above. The Respondent recognised the seriousness of what he had done in his written and oral evidence, albeit that the formal admission of dishonesty in clear terms was not made until later. The Respondent's position, in short, was that this was a one-off event in an otherwise unblemished career when he was subject to wholly exceptional pressures described in his written evidence.

28. The Respondent was solely responsible for his wrongdoing. His motivation for his misconduct was to protect his professional reputation. He was a relative newcomer to the Firm, just completing his probationary period, and tasked with establishing and developing an insolvency practice. The potential damage to the fledgling practice from a negligence claim was easily foreseeable. The Respondent was not working in a bubble. He held weekly Skype meetings with the Head of the Department, Mr Locke. It would have been a simple matter for the Respondent to raise the issue with Mr Locke during one or more of those meetings at any time between receipt of the High Court Order in August 2014 and presentation of the winding up petition to the client in January 2015 or even before providing the offending witness statement in

March 2015. If the weekly Skype meetings were intended primarily to deal with other issues (such as workloads), the Respondent could have taken advantage of the call to book a separate private discussion for a future date by Skype, by telephone, or in person. All he had to do was pick up the telephone at any reasonable time to start the conversation. The Respondent was not all alone in the London office. His colleague, another insolvency practitioner, was present and they could have discussed the problem, even if only on an informal basis. His colleague may not have been able to offer any immediate solutions, but he could have given the Respondent objective guidance on how to make an application to set aside the summary judgment as soon as its existence came to light. He could have acted as a sounding board. The Respondent's evidence was that his colleague must have noticed that he appeared to be stressed. On that basis it would have been easy enough to explain why and ask for help from the person with whom he had moved to the Firm in 2013. It was said to be no part of the Respondent's case that he felt unsupported at the Firm, although there was the merest hint in the mitigation from Mr Treverton-Jones that the Respondent might at some point have been inclined to go down that route. Any suggestion of lack of support would have been inappropriate based on the evidence presented to the Tribunal. The Respondent let the Firm down badly by his misconduct.

29. The testimonials presented the Respondent as a person who uses his very best endeavours to get things right and is conscientious in his approach. The Tribunal's assessment was that the Respondent had made a mistake, perhaps for the first time in his career, which he found impossible to stomach. He was unable to deal with the situation simply and straightforwardly by admitting his error. Instead he concealed what had happened by, as Mr Treverton-Jones described, using a cover-up which was much more heinous than the original mistake. In the event that the error could not be corrected, and summary judgment remained in place, difficult, perhaps even humiliating, though a claim for negligence might have been for the Respondent, any negligence was capable of being compensated by the Firm's insurance policy. While that outcome would not necessarily have rescued the Respondent from the difficulty in which he found himself, he was unlikely to have come before the Tribunal. The appropriate mature action was to act with integrity and own up to his error, at an early stage.

30. The misconduct arose from actions which lasted for 7 months. During this time the Respondent worked on his caseload and continued to build up his practice in a normal way, giving, it seemed, no cause for undue concern. He was, of course, living every day with his decision not to own up to his initial mistake in failing to diarise the hearing or to take any action when he became aware of the order for summary judgment in August 2014. It was unsurprising that the Respondent was concerned about the state of the litigation from August onwards. That anxiety may have contributed to the changes in personality which he said were observed by his close family. There was however no independent evidence from any source of health issues in the period leading up to June 2014 and then from August 2014 to April 2015 when the Respondent visited his doctor for the first time.

31. The Respondent, as an Officer of the Court, acted in breach of a position of trust in submitting a false and misleading witness statement to the Court. The weekly Skype conversations with Mr Locke continued, it seemed, from August 2014 to April 2015. The Respondent admitted in oral evidence that the client would have assumed that the

case was progressing normally until January 2015. The Respondent was a highly experienced solicitor who had been entrusted to develop a new practice for both his own benefit and that of the Firm. The betrayal of the trust placed in him was clear. The harm caused by the misconduct was also obvious. The Tribunal had not been told the outcome of the underlying proceedings - it had no evidence on the point - but it did know that Mr Locke and Mr Jones had to spend time reviewing and reporting on matters. Mr Locke had to prepare and submit a witness statement to the High Court to correct the Respondent's falsehoods. These events took those concerned away from other work that they might have been doing and must have caused considerable anxiety and inconvenience all round. The Respondent's standing with his client was seriously damaged. There was a foreseeable risk that the reputation of the Firm would be damaged. Inevitably in a case such as this, where the Respondent had departed from the "complete integrity, probity and trustworthiness" (per Sir Thomas Bingham in Bolton) expected of a solicitor, the harm to the reputation of the solicitors profession in a competitive market was at the top end of the scale. The public is entitled to expect that solicitors, as Officers of the Court, will tell the truth no matter what the consequences.

32. This was a case of deliberate dishonesty which continued over a period of time. The Respondent made a conscious decision to lie in his witness statement, 3 paragraphs of which were untrue. The intention behind the untruths was to mislead the Court into believing that the reasons for the Respondent's failure to attend the hearing on 4 August and or to make submissions on behalf of his client were other than the reality. He took no action at all between receiving the summary judgment in August 2014 and 24 March 2015, in spite of the fact that in January 2015 the Respondent's failures on the client matter came to a head with service on the client of the winding up petition. The Respondent concealed his initial mistake in failing to diarise the hearing date from all concerned. He had the perfect opportunity to own up to his wrongdoing on receipt of the winding up petition. However he did not confess even at that point. He instead provided the false witness statement 2 months later in response to the request from Genus Law. That witness statement was wrong in substance and contained specific lies. The Respondent had full, unequivocal knowledge of the reason why Genus Law had requested the statement and the purpose to which it was to be put. In spite of the many opportunities along the way for the Respondent to put matters right, by his dishonesty he made the situation much worse. This was not a momentary aberration occurring during an episode of panic, but a sustained pattern of behaviour.

33. The Respondent was the only person who could benefit from his misconduct in terms of protecting his professional reputation. He was not seeking to preserve the reputation of the Firm but instead exposing it to significant risk. If the deception had been successful, protection of the Firm's reputation and the absence of an insurance claim might have been by-products of the Respondent's lies to the Court. The Firm was not given any opportunity by the Respondent to object to and prohibit his course of action which had the potential to expose it to huge reputational damage if the deception became known after, say, the setting aside of the summary judgment.

34. In the Tribunal's view, any delay by the SRA in bringing these proceedings did not constitute an exceptional circumstance such as to justify imposition of a sanction below the level of strike off. Such delay was irrelevant to the Tribunal's view of the misconduct. It was true that the time taken to start the proceedings had provided the

Respondent with an opportunity to continue his practice without conditions on his practising certificate until the latter part of 2017. This was of benefit to him. If it was felt by the Respondent that his right to a fair hearing was prejudiced by the delay, his remedy was to apply for the proceedings to be struck out. It was not unusual for solicitors in these circumstances to be permitted to practise subject to conditions until such time as the proceedings before the Tribunal were concluded.

35. Following the guidance in Imran at [29], the Tribunal stood back from all the individual features of the case, putting first and foremost in its assessment of whether or not there were exceptional circumstances the particular conclusions that it had reached about the act of dishonesty itself as set out above. The Tribunal did not accept the submission that the pressures on the Respondent in and out of work were "wholly exceptional" as submitted by Mr Treverton-Jones. The Respondent performed a conscious, deliberate, dishonest act, 7 months after he made his initial mistake. There was no medical evidence dating back to the material time to explain the Respondent's behaviour. The redacted medical records did not start until April 2015, after the dishonesty had been disclosed. The Respondent's other cases were audited by Mr Locke. That audit revealed that mistakes were not being made as a matter of course. This evidence supported the Tribunal's conclusion that ill health was not a factor underlying the misconduct.

36. The Tribunal considered the mitigating factors. The Respondent had a previously unblemished record. He accepted that what he had done was wrong and had offered a meaningful apology. He had admitted the allegations. His impressive references covering the whole of his legal career testified to the fact that he was considered by many to be a capable and good lawyer. Whilst such evidence was relevant to the decision as to whether or not this was an exceptional case, it was not likely to attract "very substantial weight" (per Imran [29]). The Tribunal was required to look at the extent of the dishonesty and its impact on the character of the particular solicitor concerned, but most importantly on the wider reputation of the profession and how it impinged on the public's perception of the profession as a whole. This was serious dishonesty in terms of the misleading of the Court. The dishonesty had a direct and significant impact on the perception by others of the Respondent's character and on the profession.

37. There were no exceptional circumstances in this case: the Respondent, an experienced solicitor in a supportive environment, made a mistake and covered it up with lies to the Court. He was, ultimately, found out in his deception. The Respondent repeatedly said that he "panicked" but dishonesty, not panic, was at the root of the Respondent's conduct. At the point at which the winding up petition was presented in January 2015, the Respondent was left exposed, because the petition was served on his client and his client knew for the first time that something had gone very wrong. The Respondent should have owned up immediately. That was the point at which a solicitor acting with honesty and integrity would have told the truth even if he had kept his mistake a close secret until then. That was the moment to assess the situation and do the right thing. Instead he took no action for a further 2 months and then made a conscious, deliberate decision to be dishonest.

38. In spite of Mr Treverton-Jones's thorough and careful mitigation on the Respondent's behalf, in the absence of the Tribunal finding that there were exceptional circumstances, the Tribunal ordered that the Respondent's name be struck off the Roll of Solicitors immediately.

Costs

39. The Applicant applied for costs of £7,391.50 in accordance with the Schedule of Costs as at 9 February 2018.

40. Mr Treverton-Jones made no submissions on any element of the costs claimed in the sense that they were, he said, "not unreasonable". He invited the Tribunal to make an order for costs not to be enforced without leave of the Tribunal, the Respondent having been struck off the Roll. Mr Bheeroo opposed that application. He referred to the assets listed in the Respondent's personal financial statement which, on the face of it, totalled over £1.1 million. Mr Bheeroo accepted that the assets consisted largely of life and sickness insurance policies. There were however remaining assets, including unpaid legal fees of £38,000 due to the Respondent, in addition to household joint income. No real reasons had been provided to explain why the Respondent could not meet the relatively modest costs order by way of instalments, even though struck off. That sanction did not necessarily mean that the Respondent would not or could not work again.

41. The Tribunal decided that the Respondent should pay the costs claimed of £7,391.50. Indeed, Mr Treverton-Jones did not attempt to dissuade the Tribunal to decide otherwise. Whilst he had asked that the costs order should not to be enforced without leave of the Tribunal, he had provided no persuasive argument in support of that outcome, which had been opposed by Mr Bheeroo. The Tribunal had considered the Respondent's personal financial statement, limited in weight though it was by the absence of supporting documentary evidence. Ignoring the insurance policies for the purposes of this exercise, assets were available in the form of unpaid legal fees owed to the Respondent from which the costs order could be paid. Alternatively, an instalment payment plan could be agreed direct between the Respondent and the SRA. A "not to be enforced" order would merely increase the Respondent's potential costs liability when the SRA had to seek permission from the Tribunal to recover the costs. The costs were therefore ordered to be paid as claimed without that restriction.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, MICHAEL BRENDAN O'MAOILEOIN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,391.50.

Dated this 6th day of March 2018
On behalf of the Tribunal

L. N. Gilford
Chairman