SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11721-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

BINA MAISTRY — Respondent

Before:

Mr E. Nally (in the Chair)
Mr B. Forde
Mr P. Hurley

Date of Hearing: 6 July 2018 and 15 October 2018

Appearances

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

The Respondent appeared and was represented by Gregory Treverton-Jones QC of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 On 27 August 2015 the Respondent misled a Judge during a hearing. She led the Judge to believe that she was a barrister, and did not correct his misapprehension. In doing so the Respondent was in breach of the following:

1.1.1 Principle 1 of the SRA Principles 2011 ("the Principles"), in that she did not uphold the rule of law and the proper administration of justice;

1.1.2 Principle 2 of the Principles, in that she did not act with integrity;

1.1.3 Principle 6 of the Principles, in that she did not behave in a way that maintained the trust of the public.

The Respondent also failed to achieve Outcome 5.1 of the SRA Conduct of Conduct 2011, in that she knowingly or recklessly misled the Court. It was also alleged that the Respondent had acted dishonestly.

1.2 On 28 September 2015, the Respondent sent a misleading email to a solicitor. She said that at the hearing she had been fresh to the case, and the fee earner dealing with it was a member of staff who had not spoken to anyone else. The Respondent had been supervising the member of staff at least at some time during August. In doing so the Respondent was in breach of the following:

1.2.1 Principle 2 of the Principles, in that she did not act with integrity;

1.2.2 Principle 6 of the Principles, in that she did not behave in a way that maintained the trust of the public.

It was also alleged that the Respondent had acted dishonestly.

1.3 In April 2016 and February 2017, the Respondent attempted to mislead the SRA. She sent a set of attendance notes that she had drafted, but which, on the face of them, the junior fee earner had drafted, and which recorded supervision by another member of staff which had not taken place. In so doing the Respondent was in breach of the following:

1.3.1 Principle 2 of the Principles, in that she did not act with integrity;

1.3.2 Principle 6 of the Principles, in that she did not behave in a way that maintained the trust of the public.

1.3.3 Principle 7 of the Principles, in that she did not comply with her legal and regulatory duties.

The Respondent also failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011, in that she did not co-operate fully with the SRA. It was also alleged that the Respondent had acted dishonestly.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 15 September 2017 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs dated 22 June 2018
- Emails from the Applicant to the Tribunal and the Respondent dated 15 June 2018

Respondent:

- Respondent's Answer to the Allegations
- Respondent's witness statements dated 27 April 2017 and 2 March 2018
- Respondent's Bundle of Documents
- Respondent's letter to the Tribunal dated 13 June 2018
- Emails from the Respondent to the Tribunal and the SRA dated 15 June 2018 and 18 June 2018

Factual Background

3. The Respondent, born in 1974, was admitted to the Roll of Solicitors on 15 July 2005. At the time of the hearing she held a practising certificate.

4. The Respondent was a partner in the firm of ABM Solicitors ("the firm") of 61 Station Road, Hayes, Middlesex, UB3 4BE.

Background

5. M & P Solicitors ("M & P") were acting for the Claimants in a family dispute with the Defendants about the scattering of their mother's ashes. The Respondent's firm was acting for the Defendants and the matter was dealt by a paralegal, ES, who had day to day conduct of the matter. According to M & P, the Respondent was ES's Supervisor.

6. The Claimants had obtained a temporary injunction against the Defendants relating to the scattering of the ashes. The Court had listed the matter for a hearing at 10am on 19 August 2015 to consider whether to extend the injunction for a hearing. The hearing was originally listed at the Royal Courts of Justice but on 18 August 2015, the Court emailed the firm to say that it had been moved to the Mayors and City of London Court in the Guildhall Buildings.

7. As there was a problem with the firm's telephones and emails, ES did not get the email until late on 18 August 2015. The hearing seemed to have been adjourned to 27 August 2015.

8. On 26 August 2015 ES and M & P tried to reach an agreement by telephone. That call was eventually transferred by ES to the Respondent. The parties were not able to reach an agreement. The hearing therefore had to go ahead.

Allegation 1.1

9. At 10am on 27 August 2015, Mr B of M & P appeared for the Claimants. Nobody appeared for the Defendants. The Court decided to adjourn the matter until 10:30am to allow the Defendant's representatives to attend. By 10:30am nobody had attended for the Defendants and the Court made an order in the Claimants favour. The Court also ordered the Defendants to pay the Claimants' costs of the application.

10. Around 10:45am, the Respondent arrived at Court. The Court agreed to reopen the hearing. During the hearing the Respondent stated the following:

> "…My instructions were that this matter has been listed in the Royal Courts of Justice… When I attended the Royal Courts of Justice, I called the solicitors to ask them to inform the court that I am making my way here because I've just been informed that the matter's been listed here and not in Strand …….
>
> … I have been instructed rather belatedly……"

11. The Respondent also stated:

> "….. My instructions were to attend …
>
> ….. From the solicitor in this case, were to attend…".

This suggested to the Court that a solicitor at the firm had instructed someone outside the firm to act on its behalf when in fact the person with day to day conduct of the case was not a solicitor, but a paralegal acting under the Respondent's supervision.

12. The Respondent also stated:

> "No, that order [listing for 27 August] was omitted from my bundle".

This implied that someone had prepared a bundle as a brief for the Respondent.

13. The Judge's comments indicated that he thought the Respondent was, or at least did not have conduct of the case. The Judge stated the following:

> "But your clerk must have looked at the list yesterday? ……
>
> …. The lack of interest demonstrated by your clients is to the extent that his representative turns up three quarters of an hour late because she's not even been shown the relevant order ……

> .... You're the messenger not the .....
>
> ..... you mustn't take anything that I've said as being .....
>
> ..... Anyway it's one of the functions of counsel I'm afraid to ..... be the only target...."

14. The Respondent failed to correct the Judge's impression that she was Counsel. Indeed, the Respondent said to the Judge that she was not taking the criticisms personally. Mr B also thought that the Respondent was Counsel as he referred to her as "my learned friend".

15. On 4 December 2015, there was a further hearing before the same Judge. He issued a judgment in which he stated the following:

> "... I was not wholly given the facts in relation to the late attendance before me of Ms Maistry. At that hearing she put herself forward as an independent advocate, instructed by solicitors; it now appears that she is part of, or partner of the solicitors are instructed by [the defendants]. It is somewhat strange that she told me that she had to phone, from the Royal Courts where she had gone before she attended me late, to that firm of solicitors to find out that the matter was listed in this court, when there is clear evidence that an assistant, a paralegal working for her, had been informed of the location of the court beforehand."

16. On 28 April 2017, the Respondent wrote to the SRA stating:

> "I accept that what I said to the Judge may have been construed by the Judge to mean that I had been instructed by ABM Solicitors. At the time I was so overwhelmed with the order that had been made against my clients that I allowed my concerns to cloud my sensible judgement and I accept I failed to correct the Judge."

17. The Respondent denied her actions were deliberate and stated that she did not have time to correct the Judge in any event.

<u>Allegation 1.2</u>

18. On 18 September 2015, the Claimants' solicitor (from M & P) wrote to the Respondent requesting an explanation as to why the Respondent had implied that she was a barrister during the court hearing. On 28 September 2015, the Respondent replied explaining that she had only introduced herself as an advocate. The Respondent stated "..... the case was not mine" and she "was instructed very late in the day". The Respondent asked the Claimants' Solicitor to explain:

> "... on what basis you alleged that I was familiar with the case when you have known from the outset that [ES] was the fee earner on this matter and never had any dealings with me or any other fee earners of this firm."

19. This email gave the impression the Respondent did not know about the case before 26 August 2015 and that ES had sole conduct of the case and did not speak to any of the other fee earners about it. However, emails that had passed between ES and the Respondent earlier in August 2015 showed that the Respondent had worked on the case before and had supervised ES. The Respondent was therefore not fresh to the case before the hearing and ES did not have sole conduct, but was acting under the Respondent's supervision.

Allegation 1.3

20. Some time after 16 March 2016, the Solicitors Regulation Authority ("SRA") sent a Section 44B Notice to the Respondent asking her for documents relating to the case. The Respondent sent a number of documents to the SRA in response including:

- The employee supervision structure for ES
- A client care letter dated 22 June 2015 stating that ES's Supervisor in this matter was a Ms L, and that while Ms L was on maternity leave from 22 June 2015 to 30 September 2015, ES's Supervisor would be Mr L.

21. The Respondent also sent a series of attendance notes showing the supervision of ES. These provided confirmation that ES had discussed the case with Mr L on 10 June 2015, 14 July 2015, 4 August 2015, 5 August 2015, 6 August 2015, 13 August 2015, 18 August 2015, 25 August 2015 and 26 August 2015.

22. The attendance notes also indicated that on 26 August 2015, ES had discussed the case with the Respondent "to attend RCJ at 10 for direction hearing" and she had told M & P that "she will be advocate in this case".

23. Further attendance notes indicated that on 27 August 2015, ES told the client that the Court had not received the application and that she had not told the Respondent that the location of the hearing had changed from the Royal Courts of Justice to a court at the Guildhall.

24. The Respondent also sent the SRA a file note dated 28 August 2015 dealing with ES's failure to instruct the Respondent in time. This stated that ES did not inform the Respondent about the hearing until the last minute, and that she had given the Respondent the wrong Court details and that she had a last minute change of venue. The Respondent also sent the SRA a copy of a letter dated 28 August 2015 to ES putting her on a Final warning because of her mistakes.

25. On 29 September 2016 the SRA interviewed ES regarding the case. ES confirmed she had been supervised by the Respondent and that it was "on all the client care letters". ES stated the supervision structure was not correct and she had not seen it before. She stated that in March 2016 she had resigned from the firm, in part because she was not satisfied with the lack of supervision.

26. During the interview on 29 September 2016, ES stated that she had mostly dealt with the Respondent about the case because:

> "...there wasn't anybody to speak to about [it] except [the Respondent] because she was on it from the beginning".

ES stated that at the start of the case:

> "I was just liaising with the client and the letters were being dictated to me by Mrs Maistry and I was taking instructions from her ....
>
> I think there were three letters that we sent to [solicitors] that were dictated by her."

27. ES stated that on 12 August 2015 the Respondent:

> "...had to fly to India .... She was contactable by her personal email and by phone..... She instructed me to write to one of the sisters .... I emailed Mrs Maistry about three times about this...."

28. ES also confirmed she had also had some telephone contact with the Respondent. ES stated that on 13 August 2015 she had sent the Respondent a draft application and witness statements. On 14 August 2015 she had emailed the Respondent to ask whether the Respondent had seen the draft application and witness statements and asked her two questions. On 16 August 2015 the Respondent had replied, giving advice on the application and asking for a copy of the application notice. On 17 August 2017 ES had emailed the Respondent a draft order, which the Respondent had revised and returned to ES.

29. ES stated that as there was a problem with the application documents she had discussed the matter with the Respondent when she got back from India:

> "which I think was about the 22nd or 23rd when she was back in the office, I said I have done this thing, it went off with the application, what do I do and she said just get [the clients] to sign a proper copy."

The Respondent stated in an undated letter to the SRA that she did not return from India until 22 August 2015.

30. When the firm received a telephone call from M & P on 26 August 2015 about the case, the call was transferred by ES to the Respondent.

31. In relation to supervision, ES stated that she did not have any contact with Mr L about the case.

32. Mr L sent an email to the SRA on 1 September 2016 stating the firm did not employ him in 2015. He stated he had provided sporadic assistance due to staff shortages at the firm and spent around 4 hours at the firm dealing with property matters. In an email dated 2 September 2016, he stated he had spoken to ES on one case which was "wills and property related" and "my dealing with her was brief and very short" because the Respondent told him that "she would be dealing with this matter".

33. On 15 January 2017, Mr L provided the SRA with a witness statement confirming he had not worked at the firm at all during June or July 2015 and the only days he had worked there in August were on 4, 11, 18 and 26 August 2015 from 2pm to 6pm when he was working with the conveyancing team. These dates did not match the attendance notes provided by the Respondent which indicated supervision had taken place between ES and Mr L on 10 June 2015, 14 July 2015, 5 and 6 August 2015, 13 August 2015 and 25 August 2015.

34. In his witness statement Mr L stated that his one discussion with ES was:

> "... so brief that I could not even recall what exactly we had discussed ... she never called me or showed me any of her files for assistance whether on or off the office."

He confirmed he did not know anything about the case.

35. On 28 April 2017, the Respondent wrote to the SRA and stated she thought Mr L was supervising the case and it was only after sending the attendance notes to the SRA that she had checked with Mr L and found out "he did not speak to [ES] to the extent described in my note."

36. ES confirmed during her interview with the SRA on 29 September 2016 that she had not seen the attendance notes previously and that she had handwritten her attendance notes as she did not have a computer. She provided the SRA with an example of her own attendance note dated 19 August 2015 which stated the client wanted to speak to the Respondent and stated "stress to Bina she was needed".

37. On 3 April 2017 Mr L confirmed, having seen redacted copies of the attendance notes, that he had not seen them before or drafted any of them. He confirmed he was not at the firm's offices for the majority of the dates on them and did not recall ever discussing the case with ES.

38. On 2 December 2016, the SRA asked the Respondent to provide electronic copies of the attendance notes. On 5 December 2016, the Respondent stated she could not provide them as none of them had been saved electronically.

39. On 3 February 2017, the Respondent sent a witness statement to the SRA stating she was in contact with staff even when outside the office. She stated that in June or July 2015 she had asked Mr L to help with supervision on Wills and probate. She stated that Mr L's dealing with the matter was "negligible". The Respondent did not comment on the attendance notes other than implying they were genuine stating that fee earners normally dictated them for typing and the firm did not keep the electronic copies.

40. On 28 April 2017, the Respondent stated that when she received the Section 44B Notice from the SRA (which was sent on 16 March 2016), she had asked ES to "tidy up all of notes" on the file and make sure her attendance notes needed to be typed up. She stated that when ES left the firm shortly after, the Respondent did not see any attendance notes on the file so she created the attendance notes herself. The Respondent stated:

> "52. I accept that I assumed on the back of the earlier conversation with [Mr L] that [ES] sought advice from [Mr L] and may not have adhered to it.
>
> 53. On these erroneous premise [sic] proceeded to dictate these attendances notes [sic] between [Mr L] and [ES] ..... [I] did not speak to [Mr L] about these attendance notes....
>
> 57..... I genuinely believed that [ES] would have been advised by [Mr L] and was confident of the same being the reason I did not even consult [Mr L] before putting these notes on the file."

41. The Respondent stated that she was:

> ".....very remorseful for this action and invite you to consider that this action was not deliberate but rather an honest and erroneous belief that this would have taken place."

Witnesses

42. The following witnesses gave evidence:

- The Respondent, Bina Maistry

Findings of Fact and Law

43. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

44. **Allegation 1.1: On 27 August 2015 the Respondent misled a Judge during a hearing. She led the Judge to believe that she was a barrister, and did not correct his misapprehension. In doing so the Respondent was in breach of the following:**

1.1.1 Principle 1 of the SRA Principles 2011 ("the Principles"), in that she did not uphold the rule of law and the proper administration of justice;

1.1.2 Principle 2 of the Principles, in that she did not act with integrity;

1.1.3 Principle 6 of the Principles, in that she did not behave in a way that maintained the trust of the public.

The Respondent also failed to achieve Outcome 5.1 of the SRA Conduct of Conduct 2011, in that she knowingly or recklessly misled the Court. It was also alleged that the Respondent had acted dishonestly.

44.1 Mr Bullock took the Tribunal through the transcript of the court hearing on 27 August 2015. He submitted that the comments made by the Judge during the course of that hearing made it clear that he thought the Respondent was a barrister who had been instructed by the firm. The responses from the Respondent did not correct the Judge's misapprehension, indeed Mr Bullock submitted she had encouraged the mistake by implication and had thereby misled him.

44.2 Mr Bullock submitted the Respondent had appeared before the Judge as an advocate. She knew the Judge had been critical about the manner in which the litigation had been conducted, and in particular of the behaviour of the Respondent's client, as he verbalised this. He stated:

> "Is anybody taking this seriously from the defendant's point of view?"
> ....the scattering of the mother's ashes is being held up in a most disgraceful way by that dispute seems to me to reflect very badly and at the moment it reflects badly upon your client .....
>
> .... Which no doubt reflects, I would've thought, pretty badly on him (the Respondent's client], whatever the rights and wrongs of the property dispute."

44.3 Mr Bullock submitted the Respondent had placed herself as a barrister to avoid criticism in that regard. The Judge, when addressing the Respondent referred to "your clerk", "your instructions from whom?" and stated:

> "You're the messenger not the .....
>
> ..... and I apologise for being short with you .....
>
> ..... Mrs Maistry, you mustn't take anything that I've said as being ....
>
> ..... it's one of the functions of counsel I'm afraid to .....
>
> ..... be the only target which can be ....."

44.4 Mr Bullock referred the Tribunal to the test of dishonesty set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords. Firstly the Tribunal was required to ascertain the actual state of the Respondent's knowledge or belief as to the facts. Having done so, the Tribunal had to consider whether the Respondent's conduct was dishonest by the standards of ordinary decent people.

44.5 In relation to acting with a lack of integrity, Mr Bullock submitted the Tribunal had to consider whether the Respondent had lacked soundness, rectitude and a steady adherence to an ethical code.

44.6 The Respondent gave evidence before the Tribunal. She stated she had been in India until about 22 August 2015 and had not returned to the office until 26 August 2015, the day before the hearing. She stated she had not known about the hearing until the evening before, as ES had been trying to enter into a Consent Order and it was only after 7pm that she had informed the Respondent that the matter had not been agreed so court attendance would be required.

44.7 The Respondent said that she went to the High Court and it was only when she arrived there at about 9.30am that she was told that matter had been transferred to the Mayors and City of London Court in Guildhall. The Respondent stated that she immediately made her way to the Guildhall Court and when she arrived at the court there, the courtroom was empty apart from the Claimants' representative who informed her she was too late and a costs order had been made against her client.

44.8 The Respondent said that the Usher also informed her that the hearing was over at which point she asked the Usher if she could address the Judge. The Respondent said that the Usher gave her a slip to complete and stated he would speak to the Judge. The Respondent stated that she completed the slip and gave her designation as Solicitor Advocate. She said that she had qualified as a Solicitor Advocate in 2006 and always gave this as her designation, as well as giving the name of her firm. After the Usher had spoken to the judge, he informed the Respondent that the Judge had agreed to see her briefly. The Respondent stated that she had subsequently tried to obtain the slip she had completed from the Guildhall Court but was informed that slips were not retained.

44.9 The Respondent accepted that, having considered the transcript, it appeared that the Judge thought she was a barrister. The Respondent stated that initially she was not paying much attention to this, as her mind was on the costs order which had been made against her clients. She stated she had been alarmed as she knew that her clients would not be happy about this. She also stated that she was concerned a costs order had been made against her clients without any consideration of their means statement as not all of the documents had been before the Judge.

44.10 The Respondent stated that when she entered the court she was very nervous. It was after 11am, the Judge was very frustrated and the Respondent knew it was unprofessional for her to have arrived so late. The Respondent stated that she was panicking and concerned that it may have seemed impertinent of her to ask the Judge to see her.

44.11 The Respondent stated that she had used the words "my instructions were ...." because she would always say those words. She said that this was the terminology that she always used although she realised now that she should have said "I was told by [ES] to attend".

44.12 The Respondent also provided the Tribunal with details of her personal circumstances during the summer of 2015 and the reasons for her going to India.

44.13 On cross-examination, the Respondent said that she thought the Judge would have read the slip that she had handed to the Usher and would have known she was a Solicitor Advocate. She said that the hearing was due to take only 10 minutes and the Judge had been frustrated that he had had to give her another 10 minutes to address him. She said that she had told the Judge that she had been instructed rather belatedly because the parties were trying to settle the case until 6.30pm the previous evening. The Respondent submitted that a barrister would not be receiving instructions so late. She had not therefore perpetuated the Judge's misapprehension.

44.14 The Respondent stated that she had been trying to explain to the Judge that the bundle had been delivered by ES, but said that she was allowed very little time to speak. She denied she had failed to correct the Judge to deflect criticism away from herself.

44.15 Mr Treverton-Jones QC, on behalf of the Respondent, submitted the Respondent had picked up this case at the last minute and arrived at the Court late after the matter had been considered by the Judge. She did not know what had been decided or said in her absence and was worried. Mr Treverton-Jones did not criticise the Judge but pointed out to the Tribunal that he had interrupted the Respondent constantly throughout her submissions, indeed he apologised for being short with her.

44.16 Mr Treverton-Jones accepted that advocates were under a duty not to mislead the court, but they were not under a duty to be frank with the court as they may be aware of adverse information about their client which they would not have to disclose. In this case the Respondent was immediately on the back foot as the Judge's first question to her was:

> "....why weren't you here at 10 o'clock? This case was listed at 10 o'clock in this court ...."

44.17 Mr Treverton-Jones accepted the Respondent could have said things differently but he stated that the Respondent was the in-house advocate who had not had much to do with this file before that day. Mr Treverton-Jones accepted the Judge had formed the view that the Respondent was a barrister but he submitted the Respondent had not positively misled the Court. Her error had been an omission by not confirming she was actually a solicitor. Mr Treverton-Jones submitted it was not professional misconduct to behave in this way at this sort of hearing. He reminded the Tribunal that when the Judge had given his full Judgment, his criticism had not been strident and there was no evidence that he had complained to the Solicitors Regulation Authority ("SRA").

44.18 In relation to the issue of dishonesty, Mr Treverton-Jones referred the Tribunal to the character references provided and submitted that a person who misled the court without intending to do so was not dishonest. He submitted the allegation was not made out.

44.19 The Tribunal considered carefully all the character references which were complimentary and spoke highly of the Respondent. The Tribunal noted that some of the references were from clients and some were from employees.

44.20 The Tribunal considered the evidence it had heard from the Respondent. Although the Tribunal found that the Respondent was articulate, it did not find her to be a credible witness. She had been evasive at times, gave contradictory answers and had not answered all the questions put to her directly. She had a tendency to give long convoluted answers without actually answering the question she had been asked directly. The Tribunal found some of her answers not credible. An example of this was that the Respondent said that she had not known about the hearing until the evening before and stated that there were no emails on the file. However, the Tribunal had been provided with emails dated 16 and 17 August 2015 that the Respondent had sent to ES while the Respondent was in India, giving ES instructions

on what she needed to do on the case to prepare it for a hearing. These emails must have existed for ES to have been able to provide them to the SRA.

44.21 The Tribunal considered carefully the transcript of the Court hearing and the exchanges that had taken place between the Respondent and the Judge, His Honour Judge Collender QC, which were as follows:

> "**Mrs Maistry**: ... My instructions were that this matter has been listed in the Royal Courts of Justice. When I attended the Royal Courts of Justice, I called the solicitors to ask them to inform the court that I am making my way here.....
>
> **His Honour Judge Collender QC**: But your clerk must have looked at the list yesterday?
>
> **Mrs Maistry**: Your Honour, I have been instructed rather belatedly because the parties were trying until 6:30 in the evening last night.....
>
> ..... My client knew that the matter had been listed. Your Honour, however I didn't know that the matter was listed in this court. My instructions were to attend.....
>
> **His Honour Judge Collender QC**: Yes but your instructions from whom?
>
> **Mrs Maistry**: From the solicitor in this case, were to attend .....
>
> .....
>
> **His Honour Judge Collender QC**: Right, it seems to me that you're probably the only person against whom they shouldn't be any blame.....
> ..... Did you not see that order yesterday?
>
> **Mrs Maistry**: No, that order was omitted from my bundle, Your Honour.....
>
> .....
>
> **His Honour Judge Collender QC**: You're the messenger not the .....
>
> **Mrs Maistry**: But I have to say Your Honour.....
>
> **His Honour Judge Collender QC**: ... and I apologise for being rather short with you.....
>
> **Mrs Maistry**: Indeed, But, Your Honour, what I'm .....
>
> **His Honour Judge Collender QC**: But what are we going to do today?
>
> **Mrs Maistry**: What I'm trying to say on behalf of the defendant is they haven't ignored Your Honour's order, or the previous order made by the court.....

.....

His Honour Judge Collender QC: Mrs Maistry, you mustn't take anything that I've said as being.....

Mrs Maistry: Oh no, I haven't.

His Honour Judge Collender QC: Anyway, it's one of the functions of counsel I'm afraid to.....

Mrs Maistry: I know, Your Honour.

His Honour Judge Collender QC: ....be the only target which can be.....

Mrs Maistry: Your Honour, I'm not taking it personally. I'm very grateful."

44.22 The Tribunal was satisfied that the Respondent had used a number of phrases that a solicitor was unlikely to use such as "I have been instructed rather belatedly" and "I called the solicitors". These were words that would normally be used by a barrister when referring to solicitors who had instructed him/her. Moreover, His Honour Judge Collender QC made specific reference to "your clerk", "your instructions from whom", "you're the messenger" and "it's one of the functions of counsel". The Respondent instead of correcting the Honourable Judge positively encouraged his misapprehension with her responses. She used the words "from the solicitor in this case" despite the fact that she was the solicitor in the case, as ES was a paralegal. In particular, towards the end of the exchange, when the Honourable Judge referred to one of the functions of counsel being a target, the Respondent, instead of explaining that she was not a barrister, simply stated "I'm not taking it personally", thereby suggesting she was indeed counsel.

44.23 The Tribunal was also mindful of His Honour Judge Collender QC's comments at the subsequent hearing on the same case on 4 December 2015 at which time he made specific reference to the Respondent's behaviour. He stated:

> "... There is an exchange in a transcript provided to me of the earlier hearing before me which demonstrates to me that I was not wholly given the facts in relation to the late attendance before me of Mrs Maistry. At that hearing she put herself forward as an independent advocate; instructed by solicitors; it now appears that she is part of, or a partner of the solicitor's firm instructed by [the Defendants]. It is somewhat strange that she told me that she had to phone, from the Royal Courts where she had gone before she attended me late, to that firm of solicitors to find out that the matter was listed in this court, when there is clear evidence that an assistant, a paralegal working for her, had been informed of the location of the court beforehand."

44.24 This was a clear indication from the Honourable Judge that he believed the Respondent had not informed him of her true title.

44.25 Although the Respondent had stated she had completed a slip which she handed to the Usher with her designation given as Solicitor Advocate, this slip was not recovered and it was entirely possible that it had not reached the Honourable Judge at all. In any event, notwithstanding what may have been written on that slip, the Respondent had not made it clear during her exchanges with the Honourable Judge that she was a solicitor and not a barrister when it was patently clear from the comments made by the Honourable Judge that he believed her to be a barrister.

44.26 The Tribunal rejected the argument that advocates were not under a duty to be frank with the Court, particularly in these circumstances. The Tribunal accepted that the Respondent had been told to attend Court at the last minute by ES, she had gone to the wrong court, a costs order had been made against her client and she had found herself before an irate Judge which may well have made her nervous appearing before him. However, the Tribunal was also satisfied that the Respondent had deliberately tried to distance herself from her own firm, and had externalised herself from it in order to avoid criticism from the Honourable Judge.

44.27 The Tribunal considered it was plainly clear from the exchanges what the Honourable Judge was thinking and although the Respondent had been given a number of opportunities to correct his impression, she failed to do so. The Respondent had misled the Honourable Judge by commission as well as omission as, due to some of the remarks she had made, she had expressly suggested there was a third party relationship between herself and the firm.

44.28 The Tribunal concluded that on 27 August 2015 the Respondent had misled a Judge during a hearing by allowing the Judge to believe she was a barrister and not correcting his misapprehension. The Tribunal was satisfied that in doing so, the Respondent, who was an officer of the Court and who therefore owed a duty to the Court, had failed to uphold the rule of law and the proper administration of justice. Allowing the Honourable Judge to believe she was a barrister when she was not demonstrated a lack of steady adherence to an ethical code. The Respondent had acted with a lack of integrity. The Tribunal was satisfied that members of the public would expect a solicitor to be open and frank with the Court about their title. The Respondent had failed to do this and had therefore failed to behave in a way that maintained the trust the public placed in her or in the provision of legal services. The Tribunal found the Respondent had breached Principles 1, 2 and 6 of the SRA Principles 2011.

44.29 The Respondent had been given a number of opportunities to explain the correct position to the Honourable Judge but she had failed to do so. The Tribunal had found that it was patently clear what the Honourable Judge believed from the comments made but the Respondent had taken no steps to make her true position known. She had knowingly misled the Court and had therefore also breached Outcome 5.1 of the SRA Code of Conduct 2011.

44.30 The Tribunal then considered whether the Respondent had acted dishonestly. The Respondent knew she was a Solicitor Advocate at her own firm. She knew she employed staff, including the paralegal who had conduct of this particular file. The Respondent knew there was no third party involvement outside the firm. Moreover, the Respondent was an experienced solicitor who had appeared in Court for many

years and would know full well the terminology used by different advocates. The Tribunal was satisfied that by stating "My instructions were to attend.....from the solicitor in this case" the Respondent had deliberately implied she was a barrister when she was not thereby distancing herself from her firm, allowing the Honourable Judge to believe she was a barrister, in order to avoid criticism from him. The Tribunal was further satisfied that such conduct would be regarded as dishonest by the standards of ordinary decent people.

44.31 The Tribunal found the Respondent had acted dishonestly and found Allegation 1.1 proved in full.

45. **Allegation 1.2: On 28 September 2015, the Respondent sent a misleading email to a solicitor. She said that at the hearing she had been fresh to the case, and the fee earner dealing with it was a member of staff who had not spoken to anyone else. The Respondent had been supervising the member of staff at least at some time during August. In doing so the Respondent was in breach of the following:**

1.2.1 Principle 2 of the Principles, in that she did not act with integrity;

1.2.2 Principle 6 of the Principles, in that she did not behave in a way that maintained the trust of the public.

It was also alleged that the Respondent had acted dishonestly.

45.1 Mr Bullock informed the Tribunal that a Civil Evidence Act Notice had been served on the Respondent on 1 May 2018 and no Counter Notice had been filed. He therefore relied upon the witness statements in the bundle before the Tribunal.

45.2 Mr Bullock submitted M & P had expressed some concern in a letter to the Respondent's firm dated 18 September 2015 about the conduct of the Respondent during the Court hearing on 27 August 2015. In their letter, they raised the issue of the Respondent giving the Judge the impression that she was a barrister when she was not.

45.3 Mr Bullock drew the Tribunal's attention to an email dated 28 September 2015 from the Respondent to M & P in which she had stated:

> "On this day in question as the case was not mine and [ES] thought that the matter may proceed to court .....
>
> .....
>
> I almost invariably do not act as a fee earner and only briefed for hearings as and when the fee earners of the firm require an advocate. The fee earning work, as you have noted in this case, was always undertaken by [ES].....
>
> .....
>
> 2. You also erroneously allege that I introduce myself as counsel to the Judge; this is yet again vehemently denied.

> I informed the clerk who came out of the court room that I was advocate for the Defendants .....
>
> ..... I firstly apologised to the Judge for the lateness and explained that I was instructed at eleventh hour [sic] and did not receive the court order .....
>
> .... I vehemently contest your Allegations that I introduced myself as counsel, an allegation concocted purely to take advantage in these proceedings.
>
> Can you also explain on what basis you alleged I was familiar with the case when you have known from the outset that [ES] was the fee earner on this matter and never had any dealings with me or any other fee earners of this firm."

45.4 Mr Bullock submitted that the Respondent's assertion that she was not familiar with the case and did not act as a fee earner was clearly untrue as the Tribunal had been taken to emails dated 16 and 17 August 2015 from the Respondent to ES, sent while the Respondent was in India, advising ES on the action to be taken in this case.

45.5 The Respondent in her evidence stated that her email of 28 September 2015 to M & P was her attempt to explain to them that the case had originally started with another firm of solicitors, and M & P had only been instructed in July/August, shortly before the hearing. However, they had sent letters and made numerous telephone calls to ES. The Respondent stated she was trying to explain that she was not familiar with the facts of the case as she had not read the emails.

45.6 On cross-examination, the Respondent stated that in her email of 28 September 2015 to M & P, she was trying to explain that she was not as familiar with the case as ES, as she had received the papers at the last minute. The Respondent denied saying she had never had any dealings with the case but submitted she was asking M & P why they thought she was familiar with the case.

45.7 Mr Treverton-Jones, on behalf of the Respondent, submitted that the penultimate paragraph contained within the e-mail dated 28 September 2015 contained a typographical error. He submitted that the word "you" was missing so that the final paragraph should state:

> "Can you also explain on what basis you alleged that I was familiar with the case when you have known from the outset that [ES] was the fee earner on this matter and *you* never had any dealings with me or any other fee earners of this firm."

45.8 Mr Treverton-Jones submitted that once the word "you" was inserted, this paragraph made much better sense and was a true representation, as M & P had never had any dealings with the Respondent over this case. Mr Treverton-Jones submitted the Respondent had not been misleading M & P or acting dishonestly.

45.9 The Tribunal considered carefully the contents of the email dated 28 September 2015 sent by the Respondent to M & P. That email was a contemporaneous record and, in the Tribunal's view, made perfect sense without inserting the word "you" as

suggested by Mr Treverton-Jones. In particular, the Tribunal noted that the tone of that email was to assert that conduct of the file lay with ES and deflect any criticism from the Respondent. The penultimate paragraph of that email maintained the tone of the earlier part of the email. Without the insertion of the word "you", the Respondent was clearly asserting that ES was the fee earner on this matter and ES had never had any dealings with the Respondent or any other fee earner of the firm. This assertion in itself was untrue as the Tribunal had been provided with emails from the Respondent to ES sent on 16 and 17 August 2015 giving clear guidance to ES on what needed to be done to prepare the matter for the hearing. Indeed, one of those emails contained amendments to a draft order.

45.10 The Tribunal was satisfied that the Respondent had sent a misleading email to a solicitor on 28 September 2015 as alleged. The Respondent was not fresh to the case at the hearing on 27 August 2015 and it was not true that ES had not spoken to her or been supervised by the Respondent for at least some of the time during August 2015 as the Respondent had given advice to ES prior to that hearing in the said emails.

45.11 The Tribunal was satisfied that the Respondent had acted with a lack of integrity by sending a misleading email to a solicitor and she had also behaved in a way that did not maintain the trust the public placed in her or in the legal profession. The Tribunal found the Respondent had breached Principles 2 and 6 of the SRA Principles 2011.

45.12 In relation to the matter of dishonesty, the Tribunal had already found that the Respondent had been involved with this case at a greater level than she had asserted in her email of 28 September 2015. She had had significant involvement having advised ES on 16 August 2015 on the content of a witness statement, advising ES to exhibit particular letters and the Respondent had stated in that email that she needed to see the application notice and the draft order. The Respondent had also sent an email to ES on 17 August 2015 amending a draft order that had been sent to the Respondent for approval. This showed without any doubt that the Respondent's assertions that she was not familiar with this case were untrue. The Tribunal was satisfied that making these false assertions in an email to a solicitor on 28 September 2015 would be regarded as dishonest by the standards of ordinary decent people.

45.13 The Tribunal found Allegation 1.2 proved including the allegation of dishonesty.

46. **Allegation 1.3: In April 2016 and February 2017, the Respondent attempted to mislead the SRA. She sent a set of attendance notes that she had drafted, but which, on the face of them, the junior fee earner had drafted, and which recorded supervision by another member of staff which had not taken place. In so doing the Respondent was in breach of the following:**

1.3.1 Principle 2 of the Principles, in that she did not act with integrity;

1.3.2 Principle 6 of the Principles, in that she did not behave in a way that maintained the trust of the public.

1.3.3 Principle 7 of the Principles, in that she did not comply with her legal and regulatory duties.

The Respondent also failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011, in that she did not co-operate fully with the SRA. It was also alleged that the Respondent had acted dishonestly.

46.1 Mr Bullock referred the Tribunal to ten attendance notes that had been provided by the Respondent to the SRA dated from 10 June 2015 to 26 August 2015 which purported to show the supervision of ES by Mr L. Mr Bullock submitted these were not generic attendance notes but recorded specific discussions on specific dates. He submitted they contained a degree of particularity on what was discussed and recorded what steps needed to be taken. They were effectively minutes of what was said and advice that had been given.

46.2 Mr Bullock submitted these attendance notes went beyond a mere record and must have required some thought and taken time to prepare. He submitted this was significant because they supported the Respondent's contention that ES was being supervised by Mr L rather than being supervised by the Respondent. Mr Bullock submitted that some notes suggested the need for ES to ensure the Respondent was properly prepared for the hearing on 27 August 2015 which supported the Respondent's contentions in relation to the other allegations.

46.3 Mr Bullock reminded the Tribunal that the Respondent had accepted she created these attendance notes after receipt of the Section 44B Notice. Indeed in her 'Explanations of Conduct' document, the Respondent confirmed that after ES had left the firm, the Respondent saw there were no attendance notes on the file. The Respondent had stated that when she was unable to contact ES, she dictated the attendance notes herself, on the basis that Mr L must have supervised ES.

46.4 Mr Bullock submitted that explanation did not stand scrutiny. The attendance notes contained specific advice and referred to precise dates. That was quite different to recording supervision overall. Mr L had confirmed he had not written any of the notes and he was not in the office on those dates. Whilst there was an issue about whether ES was supervised by the Respondent or Mr L, Mr Bullock submitted the Tribunal did not need to resolve that issue. However, the Tribunal could find, on the basis of the e-mails provided, that the Respondent's involvement went beyond a review of the documents.

46.5 The Respondent in her evidence admitted she had created the attendance notes and provided the Tribunal with some background to her prior dealings with the regulator. She stated that in 2007 her firm had been subject to a forensic investigation by the SRA after an anonymous complaint. In 2009 there had been another forensic investigation which had led to an appearance before the Tribunal where the Respondent had been found to have failed to properly supervise an employee dealing with conveyancing matters.

46.6 The Respondent stated that life became difficult after this as some other employees left the firm due to the Tribunal's Judgment and she had lost clients as well. The Respondent stated that she applied for Lexcel accreditation with the Law Society to improve the quality standard of her firm. The Respondent stated that this was approved and she then appointed an auditor who initially was content with the files he reviewed but subsequently stated he could not approve the audit and told the

Respondent to discuss the matter with the Law Society. The Respondent stated that she was told that the SRA had advised the Law Society to curtail her Lexcel accreditation.

46.7 The Respondent stated she challenged that decision at the High Court which took about 8-12 months. The High Court deferred the decision and eventually it was agreed that her firm's Lexcel accreditation could continue. The Respondent stated that she paid another auditor to approve the audit as she was trying to improve the quality of her practice.

46.8 A year later the Respondent stated that she applied to obtain a conveyancing accreditation but that was also curtailed and she spent another 8 months trying to overturn that. The Respondent stated that the SRA also curtailed her authorisation to employ trainee solicitors. She had successfully appealed that decision.

46.9 The Respondent stated that against this background, the Section 44B Notice was served on her and she had thought she would come before the Tribunal again on allegations that she had failed to supervise ES. The Respondent stated that the emails dated from 13 August 2015 to 17 August 2015 which had passed between her and ES were not on the file and she believed they had been printed by ES so that ES could show the SRA that the Respondent had been supervising her.

46.10 The Respondent stated that before she went to India she made arrangements with Mr L to assist her, as her partner was on maternity leave. The Respondent stated that whilst she was in India she had received hundreds of emails from the firm, all of which she had responded to. She stated that when she picked up this particular file on her return from India, there were no emails on the file. The Respondent stated that she had spoken to Mr L and he confirmed he had spoken to ES. The Respondent stated that having received this assurance, she had created the attendance notes thinking that what was contained within those notes were the discussions between Mr L and ES as the emails ES had sent to the Respondent contained draft witness statements and completed applications. The Respondent stated that she thought ES would have spoken to Mr L about these.

46.11 The Respondent stated that she had panicked believing she would be persecuted again by the SRA and that she had created the attendance notes on the basis that she knew/believed ES had spoken to Mr L. She stated she had been trying to show that there was a supervision structure in place. The Respondent stated Mr L was a solicitor who had qualified in around 2007. She stated that ES was a certified registered paralegal who had more than five years' experience in litigation, probate, housing and judicial review cases.

46.12 On cross-examination, the Respondent confirmed she had created the attendance notes because she was concerned that the SRA would take action against her if the file was viewed in its original state. She stated that she had tried to contact ES to verify the matter but had been unable to speak to her. The Respondent confirmed that all the documents that were available on the firm's computer system were on the file and confirmed that ES had drafted "elaborate" statements and applications on the case.

46.13 The Respondent accepted on cross-examination that she knew she had not spoken to ES or Mr L but submitted that she truly believed they had had discussions together as this was the first case where ES had dealt with an injunction. The Respondent accepted that without speaking to ES or Mr L she could not know what had been discussed between them. She stated that she had based the attendance notes on the content of the file and on her assumption of what Mr L would have said.

46.14 The Respondent initially stated she wasn't sure if she could speak to Mr L after the Section 44B Notice had been served but then she subsequently stated that she did speak to Mr L who confirmed he had spoken to ES. The Respondent stated that Mr L informed her they had had a general conversation but the date of this conversation was not discussed.

46.15 The Respondent accepted on cross-examination that she did not know whether discussions had taken place between ES and Mr L on any of the specific dates given on the attendance notes. However she asserted that what she had recorded on the attendance notes was what she believed was likely to have been said by Mr L as he was an experienced solicitor. The Respondent accepted with hindsight that it had been ethically wrong for her, as a solicitor, to create file notes but submitted she had been trying to avoid persecution by the SRA which she had experienced for some three years.

46.16 Mr Treverton-Jones, on behalf of the Respondent, accepted that the Respondent had acted with a lack of integrity in relation to this allegation. However, he submitted this did not cross into dishonesty and the Tribunal had to assess what the Respondent thought at the material time. Mr Treverton-Jones submitted that a person who misled without intending to mislead was not dishonest.

46.17 Mr Treverton-Jones submitted that the Respondent's history was important. These notes had been created after a Section 44B Notice had been served on the Respondent against a very trying background. She had been going through difficult personal circumstances during the summer of 2015, and had a regulatory history. Over 3 to 4 years the Respondent had had extremely unpleasant dealings with her regulator and genuinely felt that she was being persecuted. She had created the attendance notes forming the view that the regulator had already taken action against her for lack of supervision and she believed she was recording what had actually happened. Mr Treverton-Jones submitted the Respondent had not acted dishonestly.

46.18 The Tribunal considered carefully the attendance notes which the Respondent admitted she had drafted. The Tribunal noted that ES had stated during her interview with the Forensic Investigation Officers on 29 September 2016 that she had never discussed this case with Mr L. Furthermore, Mr L had also confirmed in his witness statement dated 15 January 2017 that he did not know anything about this particular case and that as ES did not work in the property department of the firm, his encounter with her was so brief that he could not even recall what had been discussed. Mr L was subsequently shown redacted copies of the various attendance notes and he confirmed in a subsequent witness statement dated 3 April 2017 that he had not been at the firm on several of those dates and that he had not provided the supervision as alleged.

46.19 The Tribunal considered the actual content of the various attendance notes dated from 10 June 2015 to 26 August 2015. A number of those notes were quite specific in their content referring to detailed discussions between Mr L and ES. Examples were as follows:

- 10 June 2015 – "[Mr L] informed ES that the Will file need to be obtained and ES already requested the same form archive. Client was advised that once the Will file is been obtained then a draft letter can be produced [sic]"

- 14 July 2015 – "ES discussed with [Mr L]. - Check for statement from Halifax - Cremation matter ashes traditionally back in Punjab - Estate will pay for the amount and they should not affect the client's share as it is an expense that the decease wanted to incur as traditionally it is imperative for the son to scatter the ashes as per the mother's wishes……[sic]"

- 4 August 2015 – "[Mr L] confirmed that a letter need to be sent to the other side solicitors urgently informing them of the incident and telling them not to harass or pester our client …….[sic]"

- 5 August 2015 – "ES discussed with [Mr L] and confirmed that an application need to be made for an adjournment and client's application notice and client statement needs to be drafted - ES already familiar with these procedures as already acted on several similar matters - ES has no documents either from client or from other side. (missing docs)"

- 6 August 2015 – "ES discussed with [Mr L]: told that need to ask for rest of docs should have enclosed WS/statement of C; notes for trial, what discussed with the court etc….."

- 25 August 2015 – "ES conf with [Mr L] re court matters and advise to clients, clients then advised accordingly. Matters discussed and advised given to client – 1. Adjournment. 2. Client was told that the papers received from Thursday the 11.08.15 but still not all the papers was received. 3. client was advised of the CPR breach of the procedures, fact that they failed to served the papers for injunction…..[sic]"

46.20 The Tribunal concluded having read the various attendance notes that they were quite contrived and the Respondent could not have reasonably believed these discussions had taken place on those dates. If the Respondent had genuinely been concerned that notes of supervision were not on the file, the Tribunal would have expected her to have spoken to ES and Mr L and provide them with draft copies of any attendance notes she had prepared for them to check and approve. As it transpired, the Respondent had no contact with either ES or Mr L and the Tribunal concluded that her explanation was not credible. The Tribunal was satisfied that the Respondent had been trying to prove supervision had taken place and this was with a view to blaming somebody else for her own shortcomings.

46.21 It was quite clear to the Tribunal that the attendance notes drafted by the Respondent were false, they were purported to have been drafted by ES and recorded supervision by Mr L which had not taken place. The Tribunal was satisfied that the Respondent

by sending these false attendance notes to the SRA in April 2016 and February 2017 had attempted to mislead the SRA. The Tribunal was further satisfied that in providing false attendance notes to the SRA the Respondent had acted with a lack of integrity as she had failed to adhere to an ethical code. She had also behaved in a way that did not maintain the trust the public placed in her or in the legal profession and she had failed to comply with her legal and regulatory duties. The Tribunal found the Respondent had breached Principles 2, 6 and 7 of the SRA Principles 2011.

46.22 The Respondent had also failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011 as her sending false attendance notes to the regulator was a failure to cooperate fully with the SRA.

46.23 The Tribunal then considered whether the Respondent had acted dishonestly. The Tribunal had already found that the Respondent knew supervision had not taken place on the dates alleged in the attendance notes, and she had no basis for assuming the conversations documented in those attendance notes were true. Notwithstanding this, she had created a number of false attendance notes to give the impression that supervision had taken place on the dates alleged, and she had then sent them to her regulator in an attempt to persuade the regulator that the contents were an accurate depiction of events when they were not. The Tribunal was satisfied that this was conduct that would be regarded as dishonest by the standards of ordinary decent people who would expect a solicitor to behave in an open and frank manner with the regulatory body .

46.24 The Tribunal found Allegation 1.3 proved including the allegation of dishonesty.

Previous Disciplinary Matters

47. The Respondent had appeared before the Tribunal previously on 7 March 2011.

Mitigation

48. Mr Treverton-Jones noted the Tribunal had found the Respondent had acted dishonestly on three separate occasions. In light of that, he accepted that this was not a case where exceptional circumstances could apply and he made no submissions to that effect accordingly. The Tribunal had already heard evidence about the Respondent's personal circumstances during the summer of 2015 when she gave her evidence.

Sanction

49. The Tribunal had considered carefully the Respondent's evidence, submissions and documents. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

50. The Tribunal firstly considered the Respondent's culpability. She was an experienced solicitor having been admitted in 2005. The motivation for the Respondent's conduct was firstly to deflect any criticism against her personally when she attended before the Honourable Judge on 27 August 2015. Her motivation when sending the email to

M & P on 28 September 2015 was to try and assert ES was the only fee earner dealing with the case prior to the hearing and to distance herself from having had any involvement with the case prior to the night before the hearing on 27 August 2015. Finally, her motivation when sending the false attendance notes to the regulator was to avoid any further regulatory action and to give a false impression regarding the supervision arrangements concerning ES.

51. In relation to the hearing on 27 August 2015, whilst the Respondent's initial responses to the comments of the Honourable Judge may have been spontaneous, it was quite apparent from the transcript of that hearing that as the hearing progressed, the belief of the Honourable Judge that the Respondent was a barrister was not correct. However, the Respondent realising the Honourable Judge did not consider her to be a solicitor, took no steps to correct his misapprehension. To that extent, her conduct was planned in that she realised that continuing the charade would remove her from a position where she could be severely criticised.

52. In the latter two incidents, the Respondent's actions were planned as the email dated 28 September 2015 had been written in response to a letter from M & P dated 18 September 2015 so the Respondent had had time to think about her response.

53. In relation to the false attendance notes, the Tribunal accepted that these would have required some thought as to content, and time for drafting which indicated they were also planned. The Respondent's own evidence was that she had drafted the attendance notes due to a fear of persecution by the SRA. This further demonstrated that she had given thought to her response to the Section 44B Notice. Regardless of a fear of the regulator, there could be no excuse for deliberately attempting to mislead one's regulatory body.

54. The Tribunal then considered the harm caused by the Respondent's conduct. The Respondent had caused harm to the reputation of the legal profession. She had allowed a Judge to believe that she was a barrister when she was not, she had misled another firm of solicitors and she had attempted to mislead her regulator. She had sought to place the blame on ES for the criticism from the Judge and distance herself from the conduct of the file when corresponding with M & P. She had sought to implicate both ES and Mr L in her assertions to the regulator. The Tribunal concluded that the level of harm caused was high and it could have been reasonably foreseen.

55. The Tribunal then considered the aggravating factors in this case and identified those as follows:

- The Respondent had acted dishonestly on three separate occasions
- Her conduct had been deliberate, calculated and repeated over a period of time
- She had attempted to conceal the true position regarding the supervision of ES from her regulator by the creation of false attendance notes designed to imply that supervision was taking place when it was not

- The Respondent ought reasonably to have known that her conduct was in material breach of her obligations to protect the public and the reputation of the legal profession

- The Respondent had appeared before the Tribunal previously in March 2011 when she was fined £2,000 and ordered to pay costs of £10,000 relating to a failure to exercise appropriate supervision over unqualified staff and failure to ensure material facts were disclosed to mortgagee clients.

56. The Tribunal then considered the mitigating factors and identified those as follows:

- There were a number of good character references

- The Respondent had made limited admissions in relation to allegation 1.3

- She had accepted the facts of the case.

57. As the Respondent had acted dishonestly on three separate occasions, the Tribunal concluded that to make no order, or order a Reprimand, a Fine or a Restriction Order would not be sufficient to mark the seriousness of the conduct in this case. It was difficult to formulate conditions that could address dishonest conduct. The Tribunal also took into account that this was the Respondent's second appearance before the Tribunal which made it more serious.

58. The Respondent had dishonestly misled a Judge during a hearing, she had dishonestly misled another solicitor in correspondence and she had dishonestly attempted to mislead her own regulator. The Tribunal concluded, having heard evidence from the Respondent and finding her not credible, that she had a pre-disposition to not tell the truth, she would seek to blame others for errors and she would try to put a gloss on situations that caused her difficulty. The Tribunal concluded that failing to tell the truth was a casualty of that process when it worked in her favour. The Tribunal concluded the Respondent could not be trusted and that she was a risk to the public. In light of this a Suspension was insufficient to protect the public or the reputation of the legal profession.

59. The Tribunal was mindful of the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll."

60. The Tribunal was satisfied, and indeed Mr Treverton-Jones accepted, that there were no exceptional circumstances in this case. To allow the Respondent to remain a member of the profession would undermine public confidence in it. The Tribunal was satisfied that the appropriate and proportionate sanction in this case, to protect the public and maintain public confidence in the reputation of the profession, was to remove the Respondent from the Roll of Solicitors.

61. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

62. Mr Bullock requested an Order for the Applicant's costs in the total sum of £4,500. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs.

63. Mr Treverton-Jones confirmed, on the Respondent's behalf, that the costs were not opposed but also stated they were not accepted. He stated he had not taken detailed instructions concerning the Respondent's Means but accepted that no Statement of Means had been provided by the Respondent. He reminded the Tribunal that if the Respondent's livelihood was to be removed, she would not be able to earn an income and he therefore requested any order for costs should not be enforced without leave of the Tribunal.

64. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable, indeed whilst they were not accepted by the Respondent, they were not opposed either. Accordingly, the Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £4,500.

65. In relation to enforcement of those costs, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

66. In this case the Respondent had not provided any Statement of Means or any documentary evidence of her income, expenditure, capital or assets despite the Tribunal's Standard Directions requiring her to do so. In the absence of such information, it was difficult for the Tribunal to take a view of her financial circumstances.

67. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. However, in this case, it was possible that the Respondent could gain some form of alternative employment, given her age. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

68. The Tribunal Ordered that the Respondent, BINA MAISTRY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,500.00.

Dated this 26th day of November 2018
On behalf of the Tribunal

E. Nally
Chairman