SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11757-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GAVIN DOWELL Respondent

Before:

Mr R. Nicholas (in the chair)
Mrs C. Evans
Mrs L. Barnett

Date of Hearing: 27 June 2018

Appearances

Natasha Tahta, Counsel of QEB Hollis Whiteman, 1-2 Laurence Poutney Hill, London, EC4R OEU instructed by Alastair Willcox, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

   a. By virtue of his conviction in the Crown Court at Gloucester, heard at the Crown Court at Taunton, on 8 June 2016 on indictment of wounding/inflicting grievous bodily harm, the Respondent:

      1.1.1 Failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011; and/or

      1.1.2 Failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and/or

      1.1.3 Failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011; and/or

      1.1.4 Failed to report his conviction to the Applicant, and therefore failed to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and cooperative manner in breach of Principle 7 of the SRA Principles 2011.

   b. The Respondent fabricated and/or backdated an email dated 23 February 2016 which falsely represented that he had informed the other side in a litigation matter of an upcoming hearing date and in doing so he:

      1.2.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or

      1.2.2 Failed to act in the best interests of each client in breach of Principle 4 of the SRA Principles 2011; and/or

      1.2.3 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

      It was alleged the Respondent had acted dishonestly.

   c. The Respondent exhibited the email dated 23 February 2016 to his witness statement (containing a statement of truth) in Court proceedings so as to mislead the Court. In doing so he:

      1.3.1 Failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011; and/or

      1.3.2 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or

1.3.3 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011; and/or

1.3.4 Failed to achieve Outcome 5.1 of the SRA Principles, namely; you do not attempt to deceive or knowingly or recklessly mislead the court.

It was also alleged the Respondent had acted dishonestly.

Documents

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

- Application dated 30 November 2017 together with attached Rule 5 Statement and all exhibits
- Applicant's Schedules of Costs dated 28 November 2017 and 19 June 2018
- Applicant's Chronology
- Letter dated 12 February 2018 from I J Beim & Associates Ltd to the Applicant together with attached Witness Statement of Stephen Williams (Process Server) dated 6 February 2018
- Letter dated 19 June 2018 from the Applicant to the Respondent
- Email correspondence from the Applicant to the Respondent dated 9 February 2018, 8 May 2018, 14 May 2018 and 17 May 2018
- Email from the Respondent to the Applicant dated 6 May 2018

Service

3. Ms Tahta, on behalf of the Applicant, submitted the Respondent had been properly served with details of these proceedings and the substantive hearing date. She referred the Tribunal to a letter dated 12 June 2017 from the Applicant to the Respondent, providing details of the proposed allegations and requesting his response. This had been sent to the Respondent at his registered address by Special Delivery and had been confirmed as delivered on 13 June 2017. Ms Tahta also referred the Tribunal to a telephone attendance note dated 18 August 2017 which recorded the details of a telephone call between the Solicitors Regulation Authority ("SRA") and the Respondent in which the Respondent stated he was no longer living at his registered address and had not received the SRA's correspondence. He provided his current address but stated he did not want to be involved as he was no longer practising and did not intend to do so again.

4. Ms Tahta confirmed a further copy of the letter dated 12 June 2017 was sent by the Applicant to the Respondent on 18 August 2017 to the address he had provided requesting a response by 25 August 2017. The Respondent did not reply to that letter.

5. Ms Tahta stated the Rule 5 Statement was issued on 1 December 2017 and sent to the Respondent with Standard Directions dated 4 December 2017 but these were returned to the Tribunal on 4 January 2018. As a result of this, further Standard Directions were issued dated 4 January 2018 which confirmed, as did the earlier Standard Directions, that the date of the substantive hearing was 27 June 2018. The Applicant arranged for a process server to personally serve the Respondent with these and other documents. The Tribunal was also referred to the witness statement of Stephen Williams dated 6 February 2018 in which he confirmed the Respondent had been personally served on 2 February 2018 at his new business address, with various documents including the Rule 5 Statement and the Standard Directions. Mr Williams had confirmed in his witness statement that the Respondent had advised him he was currently of no permanent fixed abode.

6. Ms Tahta submitted the Respondent had been served as required under Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). She also submitted that the Respondent could apply for a rehearing under Rule 19 of the SDPR if the Tribunal proceeded in his absence.

The Tribunal's Decision

7. The Tribunal, having carefully considered all the documents provided and the witness statement of the process server, Mr Williams, dated 6 February 2018 was satisfied that the Respondent had been served with details of these proceedings and of the final hearing date in accordance with the SDPR.

Proceeding in Absence

8. Ms Tahta reminded the Tribunal that an Order had been made by the Tribunal on 13 February 2018 for substituted service, such that the Respondent could be served with any further documents at his new business address. On that date the Tribunal had also made further directions that the Respondent serve his Answer and any documents he wished to rely upon by 16 March 2018. On 28 March 2018 there was a non-compliance court before a deputy clerk who directed the Respondent to file and serve his Answer and documents by 9 April 2018. The Respondent failed to comply and on 20 April 2018 the Tribunal gave him a final opportunity to comply by 4 May 2018, and confirmed that if he failed to do so he would not be permitted to rely on his Answer or documents without the permission of the Tribunal.

9. Ms Tahta referred the Tribunal to an email from the Respondent to the Applicant dated 6 May 2018. He had stated in this email that he accepted and agreed the circumstances which had given rise to the conviction and that the conviction rendered him unfit to remain admitted. The Respondent confirmed in his email that he had ceased working in the law within 24 hours of his conviction and had not worked in the law since that time nor did he intend to do so again. Ms Tahta confirmed there had been no further correspondence from the Respondent even though the Applicant had sent further emails to him on 8 May 2018, 14 May 2018 and 17 May 2018.

10. Ms Tahta referred the Tribunal to the cases of R v Jones [2012] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162 which set out the criteria to be applied when considering whether to proceed in a respondent's absence. She reminded the Tribunal

again that the Respondent could apply for a rehearing under Rule 19 of the SDPR if the hearing continued without him.

The Tribunal's Decision

11. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent had not engaged with the Tribunal in these proceedings despite clearly being aware of them. He had indicated on a number of occasions that he did not wish to be involved. In his most recent email to the Applicant dated 6 May 2018 he had stated:

> "I accept and agree that the circumstances giving rise to the GBH conviction and the conviction itself render me wholly unfit to remained [sic] admitted and seek resolution by way of strike off (whether by agreed outcome or otherwise) as soon as ever possible. There is no need to take up further valuable resource with a substantive assessment of the matter….."

12. The Tribunal was satisfied that these were serious allegations involving a conviction and allegations of dishonesty which needed to be dealt with expeditiously. They related to events that had taken place in 2016. It was in the public interest that matters should be concluded expeditiously. The Respondent had not applied for an adjournment and indeed had indicated he had no intention of engaging with the proceedings. The Tribunal was satisfied that he had voluntarily absented himself and it was very unlikely he would attend a future hearing should the matter be adjourned. The Tribunal determined it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence, and that matters should be concluded without any further delay.

Factual Background

13. The Respondent was born in 1966 and admitted to the Roll on 15 May 1991.

14. At the material time, the Respondent was working at Harrison Clark Rickerbys Solicitors ("HCR") on a self employed basis through a company called GDO Consultancy Ltd. GDO Consultancy Ltd had supplied the Respondent to HCR on a consultancy basis between 15 December 2014 and 29 July 2016.

15. The Respondent did not hold a current practising certificate.

Allegation 1.1

16. On 8 June 2016, in the Crown Court at Gloucester, heard at the Crown Court at Taunton, the Respondent, following his own confession, was convicted on indictment of wounding/inflicting grievous bodily harm.

17. The reason for the conviction was that the Respondent had head-butted a fellow coach during a children's rugby match.

18. On 12 July 2016, the Respondent was sentenced to 24 months imprisonment, suspended for 24 months, 300 hours of unpaid work and was ordered to pay £10,000 compensation at £1,000 per month.

19. The Respondent failed to advise the SRA of his conviction.

Allegations 1.2 and 1.3

20. On 16 September 2016, HCR submitted a report of a material breach to the SRA concerning the Respondent's conduct whilst he was working at that firm.

21. Following the Respondent's departure from HCR in July 2016, his files were transferred to alternative fee earners. Following the review of a litigation file on which the Respondent had acted for the Claimant, it appeared that an email, which was purportedly sent to the Defendants dated 23 February 2016 informing them of a hearing date, had not in fact been sent.

22. HCR conducted a review of the Respondent's emails and the IT system, including restoring the Respondent's emails to the system from a backup. HCR confirmed that a copy of the email could not be located and there was no trace of the email having been sent.

23. The Respondent had exhibited the email dated 23 February 2016 in his witness statement containing a signed statement of truth. This witness statement was submitted to the Court to support the Respondent's assertion that he had informed the Defendants of an upcoming hearing, which they had failed to attend. The witness statement also supported the Respondent's request for the Court to dismiss the Defendants' application to set aside the Order made in their absence at that hearing which included payment of the Claimant's costs.

Witnesses

24. The following witnesses gave evidence:

- Elizabeth Beatty
- Christopher Stenson

Findings of Fact and Law

25. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of the Applicant. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

26. **Allegation 1.1: By virtue of his conviction in the Crown Court at Gloucester, heard at the Crown Court at Taunton, on 8 June 2016 on indictment of wounding/inflicting grievous bodily harm, the Respondent:**

1.1.1 Failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011; and/or

1.1.2 Failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and/or

1.1.3 Failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011; and/or

1.1.4 Failed to report his conviction to the Applicant, and therefore failed to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and cooperative manner in breach of Principle 7 of the SRA Principles 2011.

26.1 Ms Tahta referred the Tribunal to a Certificate of Conviction from the Gloucester Crown Court dated 14 May 2018 which confirmed the Respondent's conviction. She submitted the Respondent had been a coach at a rugby club in Bristol and at the time of the incident which led to his conviction, he had been a linesman during a rugby match. Ms Tahta submitted there had been a fracas between the Respondent's son and another boy and the Respondent remonstrated with the referee. Mr S intervened in an attempt to try and calm the situation down but the Respondent transferred his anger to Mr S by deliberately head-butting him. Ms Tahta submitted witnesses had stated the Respondent was red in the face when he head-butted Mr S and that the incident took place in front of children including those of the Respondent and Mr S.

26.2 Ms Tahta submitted that Mr S was seriously injured, his bone was protruding through his nose and he was bleeding heavily. Mr S also had a badly swollen left eye. He passed out at the scene and was subsequently diagnosed with a broken nose which took six weeks to heal, and a detached retina for which he required an operation some six weeks later. Ms Tahta submitted that by May 2015 Mr S had only recovered 10% vision in his left eye and was likely to recover at best 40% of the vision. The Tribunal was referred to Mr S's victim impact statement which had been produced in the criminal proceedings. In this Mr S made reference to his struggle to sleep, his anxiety when in a crowd and the loss of confidence he had suffered over the two years of his life after the incident which he described as destroying his life. Mr S gave details of the severe impact that the incident had had on him.

26.3 Ms Tahta informed the Tribunal that the Respondent did not report the conviction to the SRA and it came to the SRA's knowledge as a result of reports in the press.

26.4 The only information from the Respondent before the Tribunal was his email dated 6 May 2018 to the Applicant in which he had stated:

> "I accept and agree that the circumstances giving rise to the GBH conviction and the conviction itself render me wholly unfit to remained [sic] admitted …. There is no need to take up further valuable resource with a substantive assessment of the matter….."

26.5 The Tribunal had before it a Certificate of Conviction from the Crown Court at Gloucester dated 14 May 2018 which confirmed that on 8 June 2016, the Respondent had been convicted upon his own confession, on indictment, of "wound/inflicting

grievous bodily harm". The Certificate also confirmed that on 12 July 2016 the Respondent had been sentenced to 24 months imprisonment suspended for 24 months. He was also ordered to carry out unpaid work for 300 hours before 11 July 2017 and pay compensation of £10,000 to Mr S at a rate of £1,000 per month.

26.6 The remarks of the Sentencing Judge confirmed the Respondent had committed the offence in temper and that one of the witnesses described it as a very deliberate and premeditated act of violence. The Sentencing Judge made reference to Mr S's impact statement and stated the incident had been "life-changing" for him.

26.7 The Tribunal was satisfied that in light of the Respondent's conviction, he had failed to uphold the rule of law and the proper administration of justice. Causing a deliberate act of violence in the circumstances set out in the various witness statements and in the Sentencing Judge's remarks indicated the Respondent lacked soundness, rectitude and a steady adherence to an ethical code. As a result he had failed to act with integrity. The Tribunal's attention had been drawn to copies of newspaper articles publicising the Respondent's conviction. These referred to his profession as a solicitor. His conduct had taken place during a rugby match in front of children and he had behaved in a way that was completely unacceptable for a solicitor. The Tribunal was satisfied that his conduct had not maintained the trust the public placed in him or in the provision of legal services.

26.8 The Tribunal had been informed that the Respondent had not reported the conviction to his regulator. This was in breach of Principle 7 as he had not complied with his legal and regulatory obligations.

26.9 The Tribunal found Allegation 1.1 proved.

27. **Allegation 1.2: The Respondent fabricated and/or backdated an email dated 23 February 2016 which falsely represented that he had informed the other side in a litigation matter of an upcoming hearing date and in doing so he:**

1.2.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or

1.2.2 Failed to act in the best interests of each client in breach of Principle 4 of the SRA Principles 2011; and/or

1.2.3 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

It was alleged the Respondent had acted dishonestly.

Allegation 1.3: The Respondent exhibited the email dated 23 February 2016 to his witness statement (containing a statement of truth) in Court proceedings so as to mislead the Court. In doing so he:

1.3.1 Failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011; and/or

1.3.2 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or

1.3.3 Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011; and/or

1.3.4 Failed to achieve Outcome 5.1 of the SRA Principles, namely; you do not attempt to deceive or knowingly or recklessly mislead the court.

It was also alleged the Respondent had acted dishonestly.

27.1 Ms Tahta provided the Tribunal with some background information concerning the litigation in which the Respondent had acted for the Claimant. The Defendants had been representing themselves in a dispute which concerned a blocked road. The Claimant was seeking an injunction to remove the blockage. A hearing had taken place on 25 February 2016, which the Defendants did not attend, and at which the injunction was granted.

27.2 Ms Tahta submitted the Respondent had fabricated or backdated an email to one of the Defendants in order to make it appear that he had informed the Defendants of the hearing date on 25 February 2016. In the body of his email purportedly dated 23 February 2016, the Respondent had referred to a "case management conference which is due to take place tomorrow". However, Ms Tahta pointed out that the hearing was not "tomorrow" but in fact on 25 February 2016.

27.3 Ms Tahta submitted none of the Respondent's emails sent after 23 February 2016 had been deleted or removed. She submitted he had in fact fabricated this particular email to support his witness statement to the Court dated 22 July 2016 in order to prevent the Defendants from setting aside the Order made by the Court in their absence at an earlier hearing on 25 February 2016.

27.4 Ms Tahta referred the Tribunal to the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 in relation to the test to be applied when considering dishonesty.

27.5 The Tribunal heard evidence from Ms Beatty, who was a Partner at HCR. She confirmed the nature of the litigation in her witness statement and the matters that had given rise to the Respondent filing a witness statement dated 22 July 2016 with the Court, exhibiting the email to one of the Defendants, Ms L, dated 23 February 2016.

27.6 In response to questions from the Tribunal, Ms Beatty confirmed HCR had attempted several times to contact the Respondent after he had left the firm but he had not responded. She stated the Respondent had had no further contact with HCR following his departure from the firm and indeed, had posted back the mobile phone given to him by HCR through a colleague's letterbox.

27.7 The Tribunal then heard evidence from Mr Stenson, who was a senior member of the IT Department at HCR. He confirmed that on 9 September 2016, he had been asked whether it would be possible to check whether the Respondent had sent an email to

one of the Defendants, Ms L, at 13:07 on 23 February 2016 ("the email"). Mr Stenson stated in his witness statement that due to the time that had elapsed, he was unable to search the logs on the email server which would have given a definitive answer. However, he ran a restoration of the backup tapes of the Respondent's emails from 28 February 2016 to search for the email. Mr Stenson confirmed that he could not find the email and confirmed he had checked the Respondent's Sent Items folder and his Deleted Items folder. He also stated that it appeared the Respondent never deleted his Sent Items, or emptied the Deleted Items folder. He therefore concluded that it was unlikely the Respondent had sent the email.

27.8 Mr Stenson stated in his witness statement that he could not rule out the possibility that the email may have been deleted before the backup was run. He also stated that it would have been possible for the Respondent to forward to himself an email he had sent to Ms F on 24 February 2016 at 17:07 (whose name was almost identical to Miss L save for the letter F), then change the details of the recipient, the time, the date, and then send it to himself. He could then use the genuine email sent to Ms F on 24 February 2016 at 17:07 to create the fabricated and backdated email which appeared to have been sent to Ms L on 23 February 2016 at 13:07.

27.9 Mr Stenson stated in his witness statement that it would have been very easy for the Respondent to click "forward" on the email and edit the details of the recipient, the date and the time, and remove "FW" from the subject line. The Respondent would not have needed to send the email and indeed, Mr Stenson could find no evidence that it had been sent. Mr Stenson also confirmed that there was no "tag" in the subject line of the email, whereas there was a "tag" on the email sent to Ms F which was copied from his Sent Items folder. The "tag" was added by HCR's case management system and allowed automatic filing of emails into the system. Mr Stenson confirmed that the email purported to have been sent on 23 February 2016 at 13:07 was not present as a document on the system.

27.10 In his evidence to the Tribunal, Mr Stenson confirmed that the only difference between the two emails sent to Ms F and allegedly to Ms L were the recipient, date and time and the missing tag on the email to Ms L. He also confirmed that if the email had actually been sent to Ms L, the Respondent would need to have deleted it from his Sent Items folder, then from his Deleted Items folder, and then from the Recovery items. He submitted he considered it was extremely unlikely that this had happened as the Respondent had never previously deleted emails.

27.11 In response to questions from the Tribunal, Mr Stenson confirmed he could not say 100% that the email had been sent or deleted, but he was pretty sure it had not. He considered it was very unlikely that the Respondent would have deleted the email in several stages and the fact that the email did not appear on HCR's case management system, or on the backup at the end of that month supported the fact that it was unlikely to have been sent. Mr Stenson confirmed that the backup was done at the end of the month and therefore the email would have had to have been deleted within 3 or 4 days of it being sent. If that had been the case, Mr Stenson stated that it would have been impossible for the Respondent to produce a copy of the email in July 2016 and exhibited it to his witness statement dated 22 July 2016. He stated that if the email had been genuine, then the Respondent would have had to retrieve that email

within the small window before deleting it, before backup was performed at the end of the month.

27.12 In his email of 8 May 2018 to the Applicant, the Respondent did not address Allegations 1.2 or 1.3. During his telephone call with the SRA dated 18 August 2017, before the proceedings had been issued, he had stated he did not want to be involved in these matters and have to pay lots of costs.

27.13 The Tribunal found both Ms Beatty and Mr Stenson to be credible, straightforward witnesses and accepted their evidence. The Tribunal considered carefully the two emails it had been referred to dated 23 February 2016 and 24 February 2016. They had both been sent to what appeared could have been the same person, one of the Defendants in the litigation, except that in the email dated 23 February 2016 her surname was spelt with an L, but in the email dated 24 February 2016, her surname was spelt with a F. It seemed that the Respondent may have sent a genuine email to one of the Defendants (Ms L but spelt Ms F) on 24 February 2016, but then had used that email to fabricate and/or back date that email to 23 February 2016 to possibly the same person (Ms L).

27.14 Having considered the documents and the oral evidence it had heard, the Tribunal concluded the Respondent had indeed fabricated and/or backdated the email purportedly dated 23 February 2016 to Ms L, claiming to inform her of an upcoming hearing date. If that email had been genuine, it would not have referred to a hearing "tomorrow" when the actual hearing was 2 days away on 25 February 2018 and nor would it have been completely identical, save for the recipient, date and time, to the email to Ms F dated 24 February 2016. It was particularly pertinent that both emails contained exactly the same spelling mistake in the sentence:

> "The Court will also give directions for the procedural management of the caser [sic] through to trial …."

27.15 The Tribunal was also satisfied that the email would have appeared on HCR's case management system, and on the backup records which were done at the end of February 2016, a few days after the email had been written had it been genuine. The Tribunal could not see how the Respondent could have exhibited the email to his witness statement dated 22 July 2016, many months after the backup which was done at the end of February 2016, when it was not included in that backup, or on the file or on the case management system. It was not plausible that he could have taken the time to delete that email from 3 different places within the short time from 23 February 2016 to the end of February 2016 when the backup had been done, especially as the Respondent had never previously deleted items from either his Sent Items or Deleted Items folders and he had subsequently exhibited it to his witness statement in July 2016.

27.16 The Tribunal concluded the Respondent had fabricated and/or backdated the email to Ms L dated 23 February 2016, and he had then subsequently exhibited it to his witness statement dated 22 July 2016 so as to mislead the Court.

27.17 The Tribunal was satisfied that by fabricating and/or backdating the email dated 23 February 2016 and then subsequently attaching it to his witness statement dated 22 July 2016 which was used in Court, and thereby misled the Court as to the true position, the Respondent had failed to show soundness, rectitude and a steady adherence to an ethical code. He had therefore acted with a lack of integrity. Solicitors were expected to act in a straightforward and truthful manner at all times and failure to do so was conduct which did not maintain the trust the public placed in him or in the provision of legal services. Furthermore submitting a misleading witness statement to a Court was a failure to uphold the rule of law and the proper administration of justice and it was also a breach of Outcome 5.1 of the SRA Principles. The Tribunal was satisfied the Respondent had attempted to deceive, or knowingly or recklessly mislead the Court. He had breached Principles 1, 2, 6 and Outcome 5.1 of the SRA Principles 2011.

27.18 By fabricating and/or backdating an email claiming to inform the opposing party of a forthcoming hearing when this was not a true reflection of the correct communications between the parties, the Respondent had failed to act in the best interests of his client. He had therefore breached Principle 4 of the SRA Principles 2011.

27.19 The Tribunal then considered whether the Respondent had acted dishonestly. The Tribunal applied the test 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.

27.20 The Tribunal was satisfied that the Respondent knew or believed when he had written the email of 23 February 2016 to Ms L that he had not sent that email on that date to Ms L informing her of the forthcoming hearing. This was evident from striking similarities between the two emails the Tribunal had been referred to, one dated 23 February 2016 to Ms L and the other dated 24 February 2016 to Ms F both containing the reference to the hearing date being "tomorrow" when it was 2 days away from the email dated 23 February 2016. Both contained the same typographical error and it was clear that one had been fabricated from the other. The Tribunal's conclusions were also supported by the evidence of Mr Stenson who confirmed the email of 23 February 2016 could not be found anywhere at HCR including on the backup record that was made a few days after the purported email was sent. The backup records included the email of 24 February 2016 which would have been written after the email of 23 February 2016 had it been genuine.

27.21 The Tribunal was satisfied that fabricating and/or backdating an email and then exhibiting it to a witness statement, which contained a Statement of Truth thereby misleading the Court, was conduct that would be regarded as dishonest by the standards of ordinary decent people. The Tribunal found Allegations 1.2 and 1.3 both proved including the allegations of dishonesty.

Previous Disciplinary Matters

28. None.

Mitigation

29. The only mitigation before the Tribunal was that contained in the email from the Respondent to the Applicant dated 6 May 2018. In that he stated he had ceased working in the law within 24 hours of his conviction and he had not worked in the law since then. He stated:

> "…there are no circumstances whatsoever in which i will seek to work in the law ever again…"

30. The Respondent also stated in his email:

> "I accept and agree that the circumstances giving rise to the GBH conviction and the conviction itself render me unfit to remained [sic] admitted and seek resolution by way of strike off ……"

Sanction

31. The Tribunal had considered carefully the Respondent's email dated 6 May 2018 and his earlier communications with the SRA. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

32. The Tribunal firstly considered the Respondent's culpability. Witnesses to the incident which led to the Respondent's conviction had described his conduct as "deliberate" and "a very deliberate, premeditated act of violence". In relation to the fabricated/backdated email dated 23 February 2016 on which the Respondent had relied in his witness statement to the Court, the Tribunal was satisfied that this was planned. The Respondent's motivation in misleading the court had been to ensure the Defendants' applications were not successful. The Tribunal concluded the Respondent had had direct control over the circumstances giving rise to the misconduct in both the conviction and the litigation. It took into account that he was an experienced solicitor having qualified in 1991. The Tribunal assessed the Respondent's culpability as high.

33. The Tribunal then considered the harm caused by the Respondent's conduct. There had been a great deal of direct harm caused to Mr S who had sustained injuries as a result of the Respondent's violent behaviour. The Tribunal had considered Ms S's witness statements given to the police which were contained within the papers. This confirmed the harm caused to Mr S had been immense. Indeed the Sentencing Judge described the effect on Mr S to be "life changing". Mr S had lost vision in his left eye which it was likely he would not fully recover. He had suffered financially as he had been unable to work for some six weeks. The incident had had a tremendous effect on Mr S who had suffered, and continued to suffer, serious psychological symptoms as a result. The incident had taken place before many children at the rugby match, including the Respondent's own sons and Mr S's son and it was subsequently widely reported in the press. Harm had been caused to the children, particularly the sons who had witnessed the incident. One of the witness statements described the sons as being

"distraught". In relation to this incident, the Tribunal assessed the level of harm as high and concluded that the extent of harm caused by the Respondent's conduct could reasonably have been foreseen.

34. The Tribunal also considered the harm caused by the Respondent submitting a witness statement to the Court containing the false/fabricated email dated 23 February 2016. Harm had been caused to both the Claimant and the Defendants in the litigation as the Court had been misled about the true position. The Tribunal had no doubt that harm had also been caused to the reputation of the profession. The Tribunal assessed the level of harm by this dishonest conduct to be high.

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

- The Respondent had a conviction for a very serious criminal offence and had failed to notify his regulator of this;
- His violent conduct had taken place when he was in a position of trust as a coach and acting linesman during a rugby match, in front of many children including his and Mr S's own sons;
- The Respondent had acted dishonestly on two occasions, first in fabricating and/or backdating the email, and then by attaching it to his witness statement which was sent to the Court;
- Although the Respondent had informed the SRA in his email dated 6 May 2018 that he had not worked in the law since his conviction in June 2016, this was clearly not true as he had signed the witness statement containing the fabricated/backdated email that was submitted to the Court on 22 July 2016, after the date of his conviction;
- His conduct had been deliberate, calculated and, in relation to the dishonesty, repeated on two occasions;
- The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession;
- The Tribunal had already found that the Respondent's conduct had impacted significantly on Mr S in a very detrimental way.

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

- The Respondent had been a solicitor for approximately 27 years with a previously unblemished record;
- He had accepted the facts of the conviction in the limited communication he had had with the SRA.

37. The Tribunal also took into account the comments of the Sentencing Judge who had stated:

> "In my judgement any expressions of regret on your part are more concerned about your own position than concern for your victim."

This indicated that the Respondent had not shown genuine remorse at the sentencing hearing.

38. The Tribunal considered carefully each of the sanctions available to it. The Tribunal concluded that it would not be appropriate to make no order, or order a Reprimand or a Fine as none of these were sufficient to reflect the seriousness of the Respondent's conduct which involved a serious criminal conviction and dishonesty on two separate occasions. The Tribunal was also satisfied that it was not appropriate to impose a Restriction Order as it was difficult to envisage conditions that could address violent conduct and dishonest conduct. Nor would this reflect the seriousness of the misconduct.

39. The Tribunal then considered a Suspension. The Respondent had failed to engage with these proceedings and as such the Tribunal did not have confidence that his conduct would not be repeated. In addition the Respondent had caused immense harm to Mr S who was likely to suffer from his injuries for many years and may never fully recover. The Tribunal concluded that a Suspension was not a sufficient sanction in this case. The Respondent was a risk to the public and the reputation of the profession which would not be protected with a Suspension.

40. 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"

41. The Tribunal could not identify any exceptional circumstances in this case. Even absent dishonesty, the Respondent's conduct was sufficiently serious to have merited the ultimate sanction in this case. Taking all of the circumstances into account, the Tribunal concluded that the appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors. This was necessary to protect the public, the reputation of the profession, and maintain confidence in the profession. The Tribunal Ordered the Respondent be Struck Off the Roll of Solicitors.

Costs

42. Ms Tahta requested an Order for the Applicant's costs in the total sum of £9,102.00 and provided the Tribunal with a breakdown of those costs.

43. Ms Tahta provided the Tribunal with a copy of a letter dated 19 June 2018 which had been sent to the Respondent by the Applicant and drew the Respondent's attention to the case of SRA v Davies & McGlinchey [2011] EWHC 232 (Admin). The letter had also attached a Personal Financial Information Questionnaire for the Respondent to

complete. Ms Tahta informed the Tribunal that he had failed to return the questionnaire or provide any financial information.

44. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £9,102.00.

45. In relation to enforcement of those costs, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey 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."

46. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal noted from the papers before it that it appeared the Respondent had been declared bankrupt on 25 October 2016. However, it was likely he would have been discharged from that bankruptcy a year later.

47. The Tribunal was also 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 the costs. In this case the Respondent had clearly been able to find alternative employment as documents had been served on him at his new place of employment. It was therefore feasible that he would find alternative employment and could pay the costs.

Statement of Full Order

48. The Tribunal Ordered that the Respondent, GAVIN DOWELL, 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 £9,102.00.

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

R. Nicholas
Chairman