SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No.11952-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL WILLIAM FREEMAN Respondent

Before:

Mr G. Sydenham (in the chair)
Ms A. E. Banks
Mr S. Howe

Date of Hearing: 4 and 5 September 2019

Appearances

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

Jonathan Goodwin, Solicitor-Advocate of Jonathan Goodwin Solicitor-Advocate Ltd, 69 Ridgewood Drive, Pensby, Wirral CH61 8RF for the Respondent.

JUDGMENT

Allegations

1. The Allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that whilst an employee of Proskauer Rose (UK) LLP ("the Firm") he:

1.1 From an unknown date in 2016 until 20 March 2018, the Respondent failed to inform the firm that he had not attended the seminars or the examination session for the Certificate of Proficiency in Insolvency ("CPI") and that he had not attended the CPI examination on 1 December 2016 for which the firm had paid for tuition, examination and professional student membership fees. The Respondent thereby breached any, or all, of:

a) Principle 2 of the SRA Principles 2011 ("the Principles");
b) Principle 6 of the Principles.

1.2 On numerous occasions between January 2017 and 20 March 2018, the Respondent represented to senior colleagues at the firm, his employer, that he had attended the CPI course and had both entered for and passed the CPI examination for which the firm had paid for tuition, examination and professional student membership fees. The Respondent thereby breached any, or all, of:

a) Principle 2 of the Principles;
b) Principle 6 of the Principles.

1.3 From around 23 February 2018 to 28 February 2018, the Respondent produced a professional biography for external and internal marketing purposes knowing that it contained false and/or misleading information about his skills and experience and that, if published, the biography would mislead the public as to his skills and expertise. The Respondent thereby breached any, or all, of:

a) Principle 2 of the Principles;
b) Principle 6 of the Principles;
c) Outcome 8.1 of the SRA Code of Conduct 2011 ("the Code");
d) Outcome 8.4 of the Code.

2. Allegations 1.1 to 1.3 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

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

- Notice of Application dated 16 April 2019
- Rule 5 Statement and Exhibit KD1 dated 16 April 2019
- Respondent's Answer to the Rule 5 Statement dated 12 June 2019
- Applicant's Schedule of Costs dated 28 August 2019

Preliminary Matter

4. Mr Bullock applied to amend allegation 1.1. The allegation as originally drafted stated that the Respondent had failed the CPI examination. In his Answer the Respondent alleged that allegation 1.1 was factually incorrect as the Respondent had not taken the exam so could not have failed the exam. It was the Applicant's position that the matter was clearly set out in the narrative of the Rule 5 Statement which referred to the Respondent failing to sit, and therefore not passing the CPI exam.

5. It was submitted that the Applicant's case against the Respondent was clear. This was a serious allegation which alleged that the Respondent's conduct was lacking in integrity and was aggravated by dishonesty. To refuse the application to amend was prejudicial to the public interest. If, which was not accepted, there was any prejudice to the Respondent in allowing the amendment, this could be cured by affording the Respondent the opportunity to provide instructions.

6. Mr Goodwin opposed the application. By making the application to amend, it was evident that the Applicant recognised that the allegation was incorrectly pleaded. It was of crucial importance that allegations were considered on their precise wording. Given that it was the Applicant's submission that the allegation was serious, it was all the more important that the wording of the allegation was correct. The application to amend did not relate to a simple technical correction, but was an application to correct a fundamental error; the allegation in its original form could not succeed. The amendment would, in essence, change the nature of the allegation the Respondent faced.

The Tribunal's Decision

7. The Tribunal considered that having been registered to take the exam, and having then failed to attend the exam, the Respondent had indeed failed the exam. By virtue of not passing the exam, he had indeed failed it. Whether this was because he did not achieve the pass mark, or had achieved no mark at all, was irrelevant. Accordingly, it was not the case that allegation 1.1, as originally drafted, was factually incorrect and thus incapable of being proved. The nature of the case faced by the Respondent was clear and was put beyond doubt in the body of the Rule 5 Statement. In the circumstances, the Tribunal did not find that the amendment sought was a fundamental amendment in the way in which the Applicant put its case. Given those findings, and balancing the Respondent's interests with the public interest, it was in the interests of justice to allow the amendment. Accordingly the application to amend was granted. The allegation faced by the Respondent was that detailed in paragraph 1.1 above.

Factual Background

8. The Respondent was born in 1987 and was admitted to the Roll of Solicitors in August 2014. He applied to join the Insolvency Professional Association ("IPA") on 10 February 2016 as a student member.

9. The Respondent joined the Firm as a Paralegal in May 2012 and commenced his training contract with the Firm in January 2013. He remained with the Firm after qualification and worked in both the Private Credit Group ("PCG") and Restructuring Group ("RG") teams. The work in the PCG team was largely non-contentious. The work in the RG team was contentious insolvency and restructuring work. As a result of working across the two teams, the Respondent was working for several individuals.

10. The Respondent agreed with MF, (one of his supervising partners), that he would complete the CPI examination, having expressed an interest in sitting the CPI examination during his appraisal in 2012 when he first joined the firm. The CPI course fees exceeded the Respondent's annual training budget, however the Firm agreed to pay the course fees in full. The Respondent commenced the course in January 2016 and was due to sit the exam in June 2016.

11. In June 2016, the Respondent told MF that he had not been informed of the date of examination. Further enquiries revealed that he had not been properly registered for the examination. BPP, the course provider, suggested that he could sit the exam in December 2016. The Respondent retained access to all the available learning materials and tutorial sessions. The Respondent did not sit the exam. In an email dated 1 March 2018 to PB of the Firm, the Respondent explained that he struggled to manage his workload and the requirements of the CPI course. Further, as he had missed preparation and revision sessions, he had been unable to prepare for the exam and thus decided not to attend.

12. In January 2017, and at the end of a meeting with MF, MF asked the Respondent if he had passed the CPI exam. The Respondent told him that he had. The Respondent was asked by MF on a number of other occasions if he had passed the exam. On each occasion the Respondent confirmed that he had.

13. Following a request by MF for the team to update their biographies, the Respondent sent a draft profile to MF. That profile did not include any reference to the date the Respondent passed the CPI exam. MF asked the Respondent to amend the profile to include the date that he had passed the CPI exam. On 23 February 2018, the Respondent submitted the updated profile, which included the amendment to state that he had passed the CPI exam, to SB of the Firm. On 28 February, the Respondent emailed SB and provided her with a further amended profile that did not include any reference to the CPI exam. He did not copy MF into this further email.

14. In February 2018, MF became concerned as to whether the Respondent had, in fact, passed the CPI exam. Following enquiries made, he was informed that the Respondent was not recorded as having passed the exam. MF met with PB on 23 February 2018, he explained his concerns. It was agreed that PB would take further steps, including asking the Respondent to provide a copy of his CPI certificate.

15. PB telephoned the IPA on 26 February 2018 and was informed that whilst someone with the Respondent's surname was due to sit the exam in December 2016, there was no record of that person attending. On the same date, PB informed MF and MK (the Head of the London office) of the position. It was agreed that an attempt would be made to see if the Respondent had evidence of his attainment in case there had been an administrative error. PB asked the Respondent to provide a copy of the CPI

certificate. The Respondent explained that it was at home, but as there were re-decoration works taking place, it may not be easy to access it.

16. When no copy of the certificate was received from him, PB emailed the Respondent. The Respondent explained that due to pressure of work he had been unable to obtain the certificate, but that he would attempt to do so in the course of the following week. On 27 February 2018, PB informed MF that the Respondent had not provided a copy of his certificate. It was agreed that if he failed to provide the certificate, the Respondent would be asked to obtain a replacement from the IPA.

17. On 28 February 2018, PB attended the Respondent's office and asked him to produce the certificate. The Respondent explained that it was at his ex-fiancée's house and therefore it would be very difficult for him to retrieve it. PB instructed the Respondent to obtain a replacement certificate from the IPA. PB told the Respondent that she would check the correct way to apply for a replacement certificate. She immediately returned to her office and managed to locate a working link to the IPA website. She then telephoned the Respondent and began to talk him through how to navigate the site. The Respondent suddenly interrupted her and stated that he had to take an urgent call from a client and needed to terminate the telephone call.

18. Approximately 10 minutes later, the Respondent attended PB's office. He explained that he had failed the CPI examination because he had "messed up" on a particular essay question, providing detail as regards the question. PB relayed this information to MF and MK.

19. On 28 February 2018, the decision was made to suspend the Respondent pending an internal investigation. On 1 March 2018, the Respondent met with PB and was told by her that he was suspended from his employment and that an investigation into his conduct under his contract of employment would be commenced. The Respondent was provided with a letter dated 1 March 2018, in which he was warned that due to the gravity of the allegations, if misconduct was proven, it could lead to his summary dismissal on the grounds of gross misconduct.

20. MK instructed VM, who was independent of the processes and enquiries undertaken, to conduct the investigation. VM requested statements from the Respondent, MF and PB. In an email to PB dated 1 March 2018, the Respondent explained that he had not sat the exam as he did not feel confident in his ability to pass it. Following VM's report, the Respondent was invited to a disciplinary meeting. That meeting, which took place on 10 April 2018, was chaired by RG (who had had no previous involvement with the process). On 20 April 2018, RG wrote to the Respondent and informed him that his employment was being summarily terminated. On 26 April 2018, the Respondent emailed RG, exercising his right to appeal the decision by way of a detailed letter. On 10 May 2018, the Respondent met with MK. On 18 May 2018, MK wrote to the Respondent and confirmed the original decision to summarily dismiss him.

Witnesses

- Michael Freeman – Respondent

21. The written and oral evidence of the witness is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

22. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Dishonesty

23. The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

24. When considering dishonesty the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people. When considering dishonesty, the Tribunal had regard to the references supplied on the Respondent's behalf.

Integrity

25. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession".

26. **Allegation 1.1 - From an unknown date in 2016 until 20 March 2018, the Respondent failed to inform the firm that he had not attended the seminars or the examination session for the CPI and that he had not attended the CPI examination on 1 December 2016 for which the firm had paid for tuition, examination and professional student membership fees. The Respondent thereby breached any, or all, of: (a) Principle 2 of the Principles; (b) Principle 6 of the Principles.**

The Applicant's Case

26.1 Mr Bullock submitted that there was no factual dispute between the parties, and the Applicant's presentation of the facts (as detailed above) was derived from the Respondent's correspondence with the Firm and other contemporaneous documents that were not in dispute. The Respondent accepted that he had not attended all the seminars and had not attended the exam. It was not disputed that the firm had paid the necessary fees. It was submitted that:

- to mislead your employer as to whether you have attended seminars for a course for which they are paying;
- to mislead your employer as to whether you have sat an examination for which they are paying;
- to state you need time away from the office for one purpose, particularly where the employer is paying for the activity, and then to take that time without completing the accompanying activity; and
- to mislead your employer and wider colleagues as to your qualifications, particularly over such a long period of time

was conduct that members of the public would consider to be unacceptable from a solicitor. In so doing, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6.

26.2 That such conduct was lacking in integrity in breach of Principle 2 was plain. The Respondent had repeatedly misrepresented his position to the firm and had only admitted to his conduct when he was left with no alternative.

The Respondent's Case

26.3 The Respondent admitted allegation 1.1, including that he had breached Principles 2 and 6.

The Tribunal's Findings

26.4 The Tribunal found allegation 1.1 proved beyond reasonable doubt on the facts and evidence. The Tribunal considered the Respondent's admission to be properly made. For the avoidance of doubt, the Tribunal would have found that allegation proved in its original form. As detailed above, the Tribunal considered that in failing to attend the exam, the Respondent had indeed failed the exam.

27. **Allegation 1.2 - On numerous occasions between January 2017 and 20 March 2018, the Respondent repeatedly represented to senior colleagues at the firm, his employer, that he had attended the CPI course and had both entered for and passed the CPI examination for which the firm had paid for tuition, examination and professional student membership fees. The Respondent thereby breached any, or all, of: (a) Principle 2 of the Principles; (b) Principle 6 of the Principles.**

The Applicant's Case

27.1 Mr Bullock submitted that on at least five occasions, the Respondent informed MF that he had sat and/or passed the CPI exam:

- On 8 December 2016, during his 2016 Year-End Review with MF there was reference to the Respondent having sat the CPI exam
- In January 2017 having been asked by MF if he had passed the exam, the Respondent confirmed that he had;
- On 30 March 2017, MF emailed the Respondent asking if he had the results of the exam. The Respondent replied "… all good (can't remember exact results as they are buried in filing cabinet at home)." MF replied "So you passed? Well done!"
- In June 2017 there was reference to the Respondent having sat the CPI exam in his mid-year review;
- On 23 February 2018, following a request from MF, the Respondent amended his biography to include a reference to his having passed the CPI exam.

27.2 Mr Bullock submitted that any criticism of the Applicant in not knowing exact dates was mis-placed as the Respondent had always accepted that he informed MF on more than one occasion that he had sat and/or passed the CPI exam. Further, the Respondent was unable to recall on what dates those conversations had taken place. This was not a case, it was submitted, where the full particulars of the dates and times of the conversations were required.

27.3 Accordingly, in misleading his employer into believing that he had sat an exam and achieved a qualification which he had not, the Respondent's conduct was in breach of Principles 2 and 6 of the Principles. Solicitors acting with integrity and in accordance with their obligation to maintain the trust placed in them and in the provision of legal services would not mislead their employer as the Respondent had done.

The Respondent's Case

27.4 The Respondent admitted allegation 1.2. In his Answer the Respondent referred to his self-report to the SRA of 23 March 2018 in which he stated, amongst other things:

> "I have set out the details below but wish to make clear that I have never made the misrepresentations to any other person outside of the firm. (e.g. clients, other law firms). It was solely in relation to my employment and I very much

regret the poor judgement I made at the time ... I cannot recall the exact timing but I believe it may have been as late as January 2017 that a partner at Proskauer, who was my line manager enquired as to the CPI exam (he was not aware of the precise date I would have sat it). Initially I gave no response but, when asked again, I said that I had done it. I believe the reason why I made such a poor judgement was fear of admitting failure, that I would get into trouble at work, and because he had assumed that I had done it. Nothing more was said on the matter (other than passing remarks) until later in the year. When asked again, about it by the same partner I felt that I couldn't now say that I didn't sit the exam because of my poor judgement earlier in the year in that I had misled him. Not to lessen the severity of the statement I made to him, I must emphasise that these were conversations between the partner and myself and at no time did I refer to the CPI with clients or ever hold myself out as having the CPI qualification to anyone outside of the firm ..."

27.5 In his response to the Applicant's EWW letter the Respondent stated, amongst other things:

"On the day that the exam came round in December 2017, I did not feel confident in my ability to pass it. I had missed a number of sessions and the mock exam due to pressure of work and because I was working long hours I found it difficult to give the course the dedication it needed. I therefore did not attempt to take the exam. Looking back, I believe I had a fear of falling. At the time I was not asked by anybody in the office if I had taken the exam and I did not mention it. I believe in or around January 2017, MF asked me about the CPI exam. In that moment and not expecting the question at that time, I said I had done it. I had no intention of being dishonest. It was a moment of panic and fear of the consequences of admitting my failure to him. Whilst I didn't express this very well at the time of my disciplinary, I expressed in my appeal letter how I felt in my working environment and believe this was the driving factor for me acting out of character. I was also under a lot of pressure at the time working on a number of transactions. That work pressure was also having a serious impact on my relationship with my fiancée due to long working hours and the expectation that I was to always be on call. Our relationship had begun to materially deteriorate in December 2016 leading to our eventual separation in September 2017 (although we were effectively separated by July/August 2017). Having told MF I had taken the exam around January 2017, it wasn't until about a year later or certainly several months I believe, that he asked me again whether I had taken it. I recall that MF asked on a couple more occasions with multiple months in between each time. Having already said that I had taken it, I couldn't find a way to tell him what had happened. I do recall him asking where the certificate evidencing that I had passed the CPI exam was (the "CPI Certificate") was and I had responded saying "at home somewhere". [PB] (Director of Professional and Administrative Resources) also asked me and I made excuses about where the CPI Certificate was for the same reasons that I had made excuses with MF. In February 2018 MF asked me to update my web bio. I did this and deliberately did not make any reference to the CPI. MF then insisted that I put the CPI onto my bio. This was at or around the time [PB] had also asked me about the CPI Certificate. Having got myself into the situation I was faced with, again I

panicked and didn't know how to deal with it. I Included the CPI in the bio and sent this to MF but then when I submitted it to [SB] (for uploading onto the website) and my US colleagues I removed the CPI reference. This was a few days after the version sent to MF. I knew that I had to deal with the situation I was faced with but never intended to allow the wider firm (except [PB] who was investigating on behalf of MF), clients or the public to think I had obtained the CPI.

The Tribunal's Findings

27.6 The Tribunal found allegation 1.2 proved beyond reasonable doubt on the facts and the evidence. The Tribunal considered the Respondent's admission to be properly made.

28. **Allegation 1.3 - From around 23 February 2018 to 28 February 2018, the Respondent produced a professional biography for external and internal marketing purposes knowing that it contained false and/or misleading information about his skills and experience and that, if published, the biography would mislead the public as to his skills and expertise. The Respondent thereby breached any, or all, of: (a) Principle 2 of the Principles; (b) Principle 6 of the Principles; (c) Outcome 8.1 of the Code; (d) Outcome 8.4 of the Code.**

The Applicant's Case

28.1 Towards the end of 2017, on an unknown date, MF contacted all his team members and asked them to draft updates to their biographies for the firm's website. This was chased by MF by an email to the Respondent on 22 February 2018. A draft profile was submitted by the Respondent to MF on 23 February 2018. MF noted that it did not include a reference to the date that the Respondent had passed the CPI examination and accordingly MF asked for the amendment to be made by the Respondent.

28.2 On 23 February 2018, the Respondent made the amendment to say that he had passed the CPI examination and submitted it to (SB), who was based in the firm's Marketing Team and who was tasked with sharing this information with colleagues in the USA.

28.3 On 28 February 2018, the Respondent emailed SB and provided her with a further amended profile which specifically excluded the reference to the CPI examination. MF was not copied into this exchange and did not appear to have been aware of this email until the investigation began into the Respondent's conduct under his contract of employment.

28.4 The Respondent in his EWW stated that where he reviewed pitches and in his own networking, he did not purport to have the CPI examination. It was submitted that if the Tribunal accepted the Respondent's statement, the Respondent could not affirm completely that no client or third-party referrer received this erroneous information from another source, innocently repeating the Respondent's untruthful assertion of having passed the CPI examination. This was particularly the case when his team colleagues genuinely believed he had passed the CPI examination until the investigation into his credentials was commenced by the firm.

28.5 Mr Bullock submitted that MF was left deliberately with the impression that the Respondent had included CPI examination the firm's website. It was notable that the final change to the Respondent's professional profile did not include MF on the recipients list and he only made these changes with SB after he had cleared the erroneous entry with MF.

28.6 Such conduct was clearly in breach of Principles 2 and 6. Further, the Respondent failed to achieve Outcome 8.1 as the biography that included his CPI examination pass was misleading and likely to diminish the trust placed in him and in the provision of legal services. In addition the Respondent failed to achieve Outcome 8.4 as the biography that included his CPI examination pass contained information about him that was not appropriate.

The Respondent's Case

28.7 The Respondent admitted allegation 1.3 save that he denied failing to achieve Outcome 8.4. Whilst the Respondent accepted that he drafted a biography that was not accurate, he did so at the request of MF, and as a consequence of his previous misrepresentation as regards having passed the CPI examination. However, it was important to note that the biography containing the inaccurate information was not published.

28.8 In a letter to the Applicant from the Firm dated 4 March 2019, the Firm stated (amongst other things):

> "[The Respondent] did not receive an increment to his salary, a bonus payment or any tangible benefit as a result of the Firm believing that he bad passed the CPI examination in December 2016. There was no firm-wide or London office announcement of [his] exam success. There was no mention of [the Respondent's] exam success circulating to the wider client base as part of an office or firm-wide initiative (or otherwise) ... We have reviewed all pitches for work between 1 January 2017 [and] 28 February 2018. None of those materials contain any mention of [the Respondent] being in receipt of the CPI qualification ... [The Respondent] did offer to compensate the firm for the expenditure made in respect of the CPI course ... We did not take him up on this offer."

The Tribunal's Findings

28.9 The Tribunal considered whether the Respondent had failed to achieve Outcome 8.4 as alleged. Outcome 8.4 required the following:

> "Clients and the public have appropriate information about you, your firm and how you are regulated"

28.10 The Tribunal found that it was not the case that the public had sight of the incorrect biography. It was clear from the Firm's letter of 4 March 2019 that this incorrect information was not in the public domain. The fact that it might have been published was not sufficient for the Respondent to have failed to achieve the Outcome. The Applicant was required to show that the incorrect biography was published or

otherwise provided to the public and clients to establish this failure. It had failed to do so. Accordingly, the Tribunal did not find that the Respondent had failed to achieve Outcome 8.4.

28.11 The Tribunal found allegation 1.3 proved beyond reasonable doubt save that it did not find a failure to achieve Outcome 8.4. Accordingly, the allegation of failing to achieve Outcome 8.4 was dismissed. The Tribunal found the Respondent's admission to be properly made.

29. **Dishonesty**

The Applicant's Case

29.1 Mr Bullock submitted that in considering dishonesty, the Tribunal first had to establish the Respondent's state of mind as to the facts.

29.2 As regards allegation 1.1, it was stated that:

- The Respondent knew he had not taken the exam for which his employer had paid;
- He knew his employer was expecting him to sit the exam;
- He knew the Firm had paid for the exam and course as it was of benefit both to him and to the Firm;
- He knew there was a disparity of information between the Firm and himself – he knew that he had not taken the exam, the Firm did not and he knew that the Firm did not know this.

29.3 As regards allegation 1.2 it was stated that in addition to those matters detailed for allegation 1.1:

- The Respondent knew that he informed MF on at least 5 occasions that he had sat and/or passed the exam when he knew this was untrue;
- The Respondent knew that these conversations were in a formal business context.

29.4 As regards allegation 1.3, it was stated that in addition to the matters detailed for allegations 1.1 and 1.2:

- The Respondent knew that he was preparing an outward facing document which was intended to be deployed to clients. Whilst it was accepted that the document was not so deployed, this did not detract from his state of knowledge or belief.

29.5 Mr Bullock submitted that fundamentally, the Respondent had lied to his employers. Ordinary and decent people would consider that it was dishonest not to tell your employer that you had failed to take an exam the employer had paid for in the knowledge that the employer believed you had taken the exam. They would also consider it to be dishonest to lie to your employer, telling them that you had taken and

passed an exam that you knew you had not taken or passed. Further, ordinary and decent people would consider it dishonest to produce a document which referred to your having achieved a qualification which you knew you have not achieved.

29.6 The Tribunal was referred to paragraph 113 of SRA v James, MacGregor and Naylor [2018] EWHC 3058 (Admin) which stated:

> "...pressure of work or extreme working conditions whilst obviously relevant, by way of mitigation, to the assessment which the SDT has to make in determining the appropriate sanction, cannot either alone or in conjunction with stress or depression, amount to exceptional circumstances. Pressure of work or of working conditions cannot ever justify dishonesty by a solicitor, the point being made by Rupert Jackson LJ in Wingate and Evans/Malins at [164]. The same point was being made in Farrimond, particularly by Sir Brian Leveson P, albeit in a case of serious criminal misconduct rather than dishonesty. It may be that pressure of work or an aggressive, uncaring workplace could excuse carelessness by a solicitor or a lapse of concentration or making a mistake, but dishonesty of any kind is a completely different and more serious matter, involving conscious and deliberate wrongdoing, whether it is stealing from the client account or telling lies to the client (as in two of these cases) or assisting some else in a fraud (as in MacGregor). It does not seem to me that this point is altered by the fact that, in at least one of these cases, James, the pressure on the respondent was caused in large part by a culture in the firm which was toxic and uncaring. That may provide an explanation for her dishonesty having occurred, but it cannot excuse it and, therefore, cannot amount to exceptional circumstances justifying a lesser sanction."

29.7 Mr Bullock submitted that whilst this was a consideration of whether stress and psychological issues justified a lesser sanction, it was clear that if such circumstances did not amount to exceptional circumstances, then they could not provide a defence to the substantive charge of dishonesty. The matters detailed by the Respondent as regards the culture of the Firm and his relationship with MF were not accepted, however those matters detailed by the Respondent did not provide a defence to the allegation of dishonesty. It was accepted that the Respondent was working very long hours; this was expected in an international law firm. Mr Bullock directed the Tribunal to a number of emails between the Respondent and MF which, it was submitted, did not support the Respondent's version of the relationship he had with MF.

29.8 It was further submitted that the Respondent had accepted that his conduct was dishonest. On 20 April 2018 (after the Respondent had made his self-report to the SRA and therefore at a time when the Respondent was aware that professional conduct matters were being considered) RG notified the Respondent of the outcome of the internal disciplinary hearing.

29.9 That letter stated (amongst other things):

> "...In my view, these findings show a series of actions on your part that involved dishonesty. The series of dishonest acts involved a combination of:

a. actively and knowingly misleading others within the Firm (through actively stating that you had passed the CPI exam and then stating you had failed the exam when you had not in fact even taken it); and

b giving the impression you had passed the CPI exam and failing to actively disclose you had not taken it;

In addition, you had multiple opportunities voluntarily and spontaneously to admit your failure to take the relevant exam. However, you failed to do so until you knew it was inevitable that the Firm was about to find out the true position. Your failure to self-disclose compound the seriousness of the issue.

Honesty and integrity are fundamental to the role of solicitor both in terms of how we deal with each other internally and with our clients. Your conduct has exhibited a fundamental lack of honesty and integrity. As solicitors and as a Firm, we must take very seriously anything that breaches these core requirements and expectations. My view is the dishonesty is of a seriousness that can be reasonably said to undermine the trust and confidence between you and the Firm. In addition, your dishonesty has compromised fundamentally and harmed beyond repair your relationship with key lawyers in the London office, including those with whom you work closely.

Given the above, my view is that your dishonest conduct constituted gross misconduct."

29.10 The Respondent appealed by way of a letter dated 26 April 2018. It was submitted that using terminology in his appeal such as "original dishonesty" and "ongoing conduct" was significant; the Respondent adopted the dishonesty findings. Nowhere in his appeal did the Respondent suggest that his conduct was not dishonest; his mitigation related to stress and working hours. His appeal letter, it was submitted, was instructive as to his state of knowledge and belief. There could be no doubt that the Respondent was dishonest.

The Respondent's Case

29.11 The Respondent denied dishonesty. Mr Goodwin submitted that the proper test for the consideration of dishonesty was that set down in Ivey. Mr Bullock's reference to James was misplaced as that case considered sanction following findings of dishonesty.

29.12 It was important that the Tribunal ascertain the Respondent's state of mind. In his self-report to the SRA, the Respondent explained why he felt he could not relay the position to MF. The Respondent's description of his heavy workload was supported by documentation produced by the Firm.

29.13 The Respondent referred to the language and behaviour of MF. The Respondent, in his letter of 1 October 2018 explained:

> "MF often spoken to me in an aggressive tone and raised voice. On certain occasions it was clear that there was no real intent behind the raised voice, however, it was very clear when statements were made that they were made in a serious manner. Statements such as "fuck off up the corridor and become a Lego Lawyer Lego law" were made in a very serious manner. On another occasion (for which I cannot remember the specific time but it would have been during 2017) MF, when discussing with me my work for the PCG and how he did not want me doing their work over his, stated again (raised voice and aggressive) that if I didn't like the points he was making "I could fuck off and cry to HR about it but would never work for him again". Again as outlined in my appeal this made it very difficult to talk to anyone outside of the RG and I believe made it very difficult for me to talk to him."

29.14 In a letter dated 29 January 2019 from the Applicant, MF was asked to address this point:

> "Please confirm if you at any point during your working relationship used the phrase to Michael Freeman of: "If you don't like it, you can fuck off up the corridor and be a Lego lawyer" or iterations, variations, or phraseology to that net effect. I do not recall specifically saying that."

He responded:

> "We have been a team for 11 years now (with [the Respondent] having worked with us for eight years) and we have been through some extremely challenging times including the sudden death of my partner and the co-head of our group, [HM], and the collapse of our previous firm … which resulted in the whole team losing their jobs and having to move elsewhere as a group. Given this history it is only healthy and natural that we are able to have open and frank discussions and occasionally we all swear. I am no exception. Neither [the Respondent] (nor anyone else) has ever complained about the tone of my voice and how we discuss matters either on a day-to-day basis or even when we are working on intense and challenging transactions. Since the inception of our group there has been an emphasis for all lawyers to avoid overly formulaic or tick-box approach to the way our restructuring group practices. Within the team this was occasionally referred to as "Lego law" reflecting the need to avoid a "processor-like" and overly simplistic and formulaic approach. This was a term which was used over the last 11 years of our group and there was never any complaint made by [the Respondent] or any other member of the team."

29.15 Mr Goodwin submitted that MF had not sought to deny the environment or the use of the language described by the Respondent. The Respondent, in his response to the EWW letter had expressed regret. His conduct was borne out of his fear of admitting failure. He had gained no benefit and had caused no real harm. The only harm was that of the Firm's paying of the course fees. The Respondent had offered to reimburse the Firm; that offer had not been accepted.

29.16 The Tribunal was referred to the references of Referees A and B which went to the issue of the Respondent's credibility and propensity to be dishonest. The Respondent was of impeccable character (other than those matters he had admitted). The Tribunal should be reluctant, in light of evidence and the surrounding circumstances, to find dishonesty proved.

29.17 As regards the allegations, allegation 1.1 related to an omission. If the Respondent genuinely held the view that he did not need to inform the Firm of his failure to take the exam, this was determinative of the allegation of dishonesty. It was accepted, in relation to allegation 1.2, that the Respondent made representations to MF which were inaccurate and misleading. Those representations were made in circumstances which the Respondent now realised were a huge error of judgement, and in breach of Principle 2. If the Tribunal accepted the Respondent's reasons for the misrepresentation, this went to his knowledge and belief. As regards allegation 1.3, the Respondent had no dishonest intent. He amended the inaccurate draft, which was not published.

29.18 The Tribunal was referred to paragraph 9 of the Tribunal's Judgment in SRA v Easthope (Case No. 11847-2018):

> "The Tribunal considered carefully whether it was in the interests of justice to allow the allegation of dishonesty to be withdrawn. The allegation were regarded as serious due to the Respondent's clear departure from the Principles. However the Applicant had considered the overall circumstances carefully. There had been no financial advantage to anyone and no client had been disadvantaged. The Respondent had recorded what actually occurred on the files, albeit in an inappropriate way. The Applicant had accepted that this was simply a case of putting the file in the order it should have been. The Tribunal agreed that the admissions made met the seriousness of the case set out. The Respondent had not been dishonest but had displayed a lack of integrity by not being entirely truthful."

29.19 Mr Goodwin submitted that the Respondent's conduct could not be described any differently that of Mr Easthope. Mr Goodwin submitted that for the reasons detailed above, the Tribunal should not find the allegations of dishonesty proved against the Respondent.

The Tribunal's Findings

29.30 The Tribunal agreed that the Ivey test was a two stage test. It firstly had to ascertain the Respondent's actual state of knowledge or belief as to the facts. Having established that, it would then determine whether ordinary and decent people considered the Respondent's conduct to have been dishonest.

29.31 The Respondent confirmed during his oral evidence that:

- The Firm had paid for the course;
- There was no reason for him to think that the Firm considered that he had not sat the exam; he knew that the Firm thought he had sat the exam;

- He knew that MF thought he held the CPI qualification;
- He knew it was important to the Firm that he held the qualification;
- He had told MF he held the qualification on more than one occasion;
- Following being prompted by MF, he had amended his web biography to include the CPI examination pass when he knew he had not passed the exam. He had omitted MF from the email chain when he provided a further amended version that did not refer to the CPI examination the omission of the qualification would mean that he "would have to explain".

29.32 It was clear from the Respondent's evidence that he knew that he had not taken and passed the exam. He failed to tell his employer this, despite knowing that they believed he had taken the exam. He told MF on more than one occasion that he had passed the exam, knowing that he had not. Further, he told PB that he had passed the exam, knowing that he had not. He made a number of excuses as to why he could not produce the certificate evidencing his pass. When on 28 February 2018 he informed PB that he had not passed the exam, he initially told her that he had messed up on a topic that he had been unable to revise for. This was untrue, and the Respondent knew this to be the case.

29.33 In the belief that the Respondent had passed the exam, he was asked by MF to amend his web biography. Knowing that he did not hold the qualification, the Respondent amended his web biography to include that he had passed the CPI examination. The Respondent knew that this was untrue. He shortly thereafter re-amended the biography to show the correct information, but did not copy MF in so that MF would be unaware that he had removed the reference to the CPI examination.

29.34 None of this evidence was disputed by the Respondent. In cross-examination the Respondent accepted that it was wrong to lie to one's employer. He stated that when considering dishonesty, a person's circumstances ought to be taken into account and in his circumstances, his conduct was not dishonest.

29.35 The Tribunal considered that notwithstanding his circumstances, the Respondent knew that he did not take and pass the exam and knew that he did not hold the qualification. Ordinary and decent people, it was determined, would consider that it was dishonest not to tell your employer that you had not taken an exam when you knew that your employer thought that you had. They would also consider it was dishonest to tell your colleagues that you had taken and passed the exam when you knew that you had not. Further, stating that you had achieved a qualification in your biography when you had not, would be considered by ordinary and decent people to be dishonest.

29.36 The Tribunal considered the matter of Easthope to which it had been directed by the Respondent. The Tribunal found that the cases were not analogous. In that matter the issue of dishonesty was not considered by the Tribunal as it had been withdrawn. Further, that matter related to documents and their fabrication. There were no similarities between the facts in that case and the instant matter; the facts in that matter were wholly different to the issues to be determined in this case.

29.37 As regards the submissions on James, whilst it was accepted that that matter was dealing with sanction following findings of dishonesty, the matters under consideration in that case as regards working environments were analogous to the representations made in this case. The Tribunal considered that if such matters were not sufficient mitigation, then still less were such matters a defence to an allegation of dishonesty.

29.38 Given the Tribunal's findings of fact, it found beyond reasonable doubt that the Respondent's conduct was dishonest as alleged in relation to allegations 1.1, 1.2 and 1.3.

Previous Disciplinary Matters

30. None.

Mitigation

31. Mr Goodwin submitted that this was a case in which there were exceptional circumstances and that as such, striking the Respondent from the Roll would be disproportionate. The Tribunal was referred to paragraph 13 of the Judgment of Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin, which stated:

> "It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury. That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see Salisbury. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or other a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others.

32. Mr Goodwin referred the Tribunal to paragraphs 102 and 103 of James et al:

> "102. Of course, Ms Morris QC is right that what can be considered in an evaluation of whether exceptional circumstances exist is not limited to the matters emphasised in Sharma and Imran but can and will include matters of personal mitigation including mental health issues and workplace pressures …
>
> 103. Inevitably, an assessment of the nature and extent of the dishonesty and the degree of culpability will involve an examination of what Ms Morris QC termed the "mind set" of the respondent, including whether the respondent is suffering from mental health issues and the workplace environment, as part of the overall balancing exercise. However, where the SDT has concluded that, notwithstanding any mental health issues or work or workplace related pressures, the respondent's misconduct was dishonest, the weight to be

attached to those mental health and working environment issues in assessing the appropriate sanction will inevitably be less than is to be attached to other aspects of the dishonesty found, such as the length of time for which it was perpetrated, whether it was repeated and the harm which it caused, all of which must be of more significance."

33. It was clear from the authorities, that whilst a strike off might invariably be the sanction imposed when dishonesty was found, such a sanction was not mandatory. The Tribunal should take into account the nature and the extent of the Respondent's dishonesty. The dishonesty found at allegation 1.1 related to an omission by the Respondent. As regards allegation 1.2, at its highest there were perhaps four occasions on when the Respondent stated that he had obtained the CPI qualification. This could be seen as momentary as opposed to an extended period. As regards allegation 1.3, the Respondent corrected the representation of his own volition. No clients had been affected and the Respondent had sought to repay the Firm for its expenditure on the course. The Firm had rejected that offer. Further, this had been an internal matter and was only in the public domain as a result of the Applicant's prosecution. The impact of the Respondent's conduct on the reputation of the profession was significantly limited.

34. Mr Goodwin submitted that in all the circumstances, there were other sanctions available to the Tribunal which could adequately protect the public and the reputation of the profession.

Sanction

35. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

36. The Tribunal considered that the Respondent's conduct was motivated by his desire to retain his job and maintain the favourable view of his colleagues and bosses. It was clear from the documentation that those who supervised the Respondent held his abilities in high regard and considered that he was good at his job. The Tribunal accepted that the Respondent's initial dishonest conduct had been spontaneous. However, thereafter he did nothing to correct that misrepresentation and on numerous occasions continued to assert that he had taken and passed the exam both to MF and then to PB. Further, when asked to produce the certificate, the Respondent persisted in reinforcing his misrepresentation by providing reasons for his inability to produce the same. The Respondent was only truthful about his situation when he had no option but to tell the truth. Even when he did inform PB that he had failed the exam, he gave the distinct impression that he had not passed due to the difficulty of the paper – a paper that he had not seen as he had not attended the exam. The Respondent had breached the trust placed in him by his employer and had irreparably damaged his employer/employee relationship. He was in direct control and fully responsible for his conduct. Whilst he was a relatively inexperienced lawyer, he was experienced enough to understand the importance of being truthful about his exam

result. The Tribunal considered that the Respondent was wholly and solely culpable for his conduct.

37. The Respondent had caused harm to the Firm. The Firm was forced to undertake an internal investigation into the Respondent's conduct, and whilst he had offered to reimburse the Firm, it had lost out financially in the payment for the course. Further, the Firm had been giving him work based on its belief that the Respondent was competent to undertake such work and give the correct advice based on matters he would have learnt on the course. The Tribunal accepted that no client had been misled by the Respondent's conduct. However, this did not reduce the seriousness of the Respondent's conduct. The Tribunal found Mr Goodwin's submission that this matter was only in the public domain as a result of the Applicant's prosecution to be unattractive. The fact that members of the public were unaware of the Respondent's misconduct until the hearing did not mitigate or reduce the serious nature of his misconduct. As was stated by Coulson J in Sharma:

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

38. The Tribunal found the Respondent's conduct to have been aggravated by his proven dishonesty, which he knew was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. Whilst initially spontaneous, it was thereafter deliberate, calculated and repeated. As detailed above, the Respondent had numerous opportunities to inform his employers of his situation. Instead, he perpetuated his dishonesty on at least five further occasions, both orally and in writing, to both MF and PB. His dishonest conduct continued over a period of time. The Tribunal did not accept Mr Goodwin's submission that the Respondent's dishonest conduct could be seen as momentary. The Respondent had sought to conceal his conduct, both by referring to his inability to produce the certificate due to his domestic circumstances and also by discussing the difficult nature of the paper, when he knew that he had not attended the exam.

39. In mitigation, the Tribunal found that the Respondent had offered to reimburse the Firm so that it suffered no financial loss. He voluntarily notified the SRA of his conduct following the report from the Firm. He had displayed genuine insight into his conduct as regards breaching the Principles. His admissions as regards the facts had been open and frank and made at an early stage.

40. The Tribunal considered that the lesser sanctions such as No Order, a Reprimand, a Fine and Restrictions on practice did not reflect the seriousness of the Respondent's misconduct. The Tribunal did not consider that a suspension adequately reflected the seriousness of the Respondent's misconduct; his misconduct was at the highest level. The Tribunal had found dishonesty proved in relation to all matters. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "....Lapses from the required standard (of complete integrity, probity and trustworthiness)....may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no

matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

41. The Tribunal considered that the protection of the public and the reputation of the profession required that the Respondent be struck off the Roll of Solicitors.

42. The Tribunal then considered whether, as had been submitted, this was a case that fell into the residual category of cases referred to in Sharma. The Tribunal had regard to the relevant caselaw. The issue of a toxic working environment and pressure of work had been specifically considered in James et al. The Court found in that case that pressure of work or of working conditions could not ever justify dishonesty by a solicitor. The Respondent's dishonesty had involved conscious and deliberate wrongdoing. Even if, which was not accepted, the Respondent was working in a toxic and uncaring environment, it did not excuse his dishonesty and did not amount to exceptional circumstances. Having determined that there were no exceptional circumstances justifying a lesser sanction, the Tribunal found that the appropriate and proportionate sanction was to strike the Respondent from the Roll.

Costs

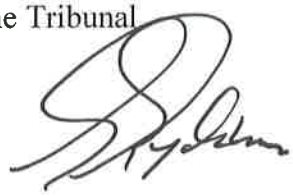
43. Mr Bullock applied for costs in the sum of £9,423.00. Mr Goodwin submitted that the costs were not disputed.

44. The Tribunal considered the costs claimed to be reasonable and appropriate and ordered costs in the sum claimed.

Statement of Full Order

45. The Tribunal Ordered that the Respondent, MICHAEL WILLIAM FREEMAN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,423.00.

Dated this 1st day of October 2019
On behalf of the Tribunal



G. Sydenham
Chairman