

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11986-2019

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANGELINA MARY RIGBY

Respondent

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Before:

Mr W. Ellerton (in the chair)

Mr A. N. Spooner

Mr S. Hill

Date of Hearing: 3-5 December 2019

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**Appearances**

Edward Levey counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Susanna Heley, solicitor of RadcliffesLeBrasseur, 85 Fleet Street, EC4Y 1AE, for the Respondent.

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**JUDGMENT**

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## Allegations

1. It is alleged against the Respondent that, while in practice as a member of Geldards LLP (“the Firm”):
  - 1.1 On a date unknown in July 2017 she caused a costs budget prepared for the purposes of litigation (“the costs budget”) to be back dated to make it appear that it had been prepared on 30 June 2017. She thereby breached any or all of:
    - 1.1.1 Principle 2 SRA Principles 2011 (“the Principles”);
    - 1.1.2 Principle 6 of the SRA Principles.
  - 1.2 On or about 14 July 2017 she caused a letter which was sent to her opponent in litigation enclosing the costs budget to be back dated so as to make it appear that it had been sent on 30 June 2017. She thereby breached Principles 2 and 6 of the Principles.
  - 1.3 On or about 14 July 2017 she caused a letter which was sent to the court enclosing the costs budget to be backdated so as to make it appear that it had been sent on 30 June 2017. She thereby breached any or all of:
    - 1.3.1 Principle 2 of the Principles; and
    - 1.3.2 Principle 6 of the Principles.
  - 1.4 On or about 17 July 2017 she filed an application with the Cardiff County Court supported by a statement of truth which contained untruthful and / or misleading statements as to the date of creation of the letters the subject of the allegations made at paragraphs 1.2 and 1.3 which she knew were untruthful and / or misleading. She thereby breached any or all of:
    - 1.4.1 Principle 1 of the Principles;
    - 1.4.2 Principle 2 of the Principles; and
    - 1.4.3 Principle 6 of the Principles.
  - 1.5 On or about 17 August 2017 she made untruthful and/or misleading statements to her employer concerning:
    - (a) The date upon which she received the Costs Estimate the subject of the allegation made at paragraph 1.1; and/or
    - (b) The date that that document was served and filed at Court,
 which she knew were untruthful and/or misleading. She thereby breached any or all of:
    - 1.5.1 Principle 2 of the Principles;
    - 1.5.2 Principle 6 of the Principles; and
    - 1.5.3 Principle 8 of the Principles.

- 1.6 On or about 30 August 2017 she made a Witness Statement for the purposes of proceedings before the Cardiff County Court in which she stated the letters the subject of the allegations made at paragraphs 1.2 and 1.3 had been sent to the court and her opponent in litigation by no later than 30 June 2017 when she knew that this was not the case. She thereby breached any or all of:
- 1.6.1 Principle 1 of the Principles;
  - 1.6.2 Principle 2 of the Principles; and
  - 1.6.3 Principle 6 of the Principles.
2. In addition, all the allegations set out above are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

## **Documents**

### Applicant

- Application and Rule 5 Statement with exhibit "AJB1" dated 16 July 2019
- Schedules of Costs dated 16 July 2019 and 29 November 2019
- Witness statement of Richard Esney dated 24 October 2019
- Witness statement of Jane Elizabeth Griffiths dated 8 November 2019
- Witness statement of Benjamin Trevor Johnson dated 5 November 2019

### Respondent

- Respondent's Answer dated 16 July 2019
- Witness statement of Angelina Mary Rigby with exhibits "AR1; AR2 and AR3" dated 8 November 2019

## **Factual Background**

3. The Respondent was admitted to the Roll on 1 September 1993. Between 1 July 2011 and 31 July 2017, she was a non-member partner in the Firm, and was based in the Firm's Cardiff office, where she practised in the field of personal injury litigation. She was head of the Firm's Clinical Negligence Department. The Respondent left the Firm on 31 July 2017 in order to take up alternative employment.
4. At the date of the hearing the Respondent held a current Practising Certificate free of conditions.
5. In the course of her employment with the Firm, the Firm was retained by Client One to bring clinical negligence proceedings against the defendant, Hospital A, in relation to the death of a patient. Hospital A was represented in those proceedings by Weightmans Solicitors.

## Overview

6. The matters which form the basis of the allegations were reported to the Applicant on 16 August 2017 by Mr Johnson, COLP of the Firm, with respect to his concerns that, in the course of the Client One/Hospital A litigation, the Respondent had made an application to court for relief from sanctions on behalf of Client One and had falsified evidence to the court in support of that application.
7. The Firm alleged that Cardiff County Court had listed Client One's claim for a Case Management Conference on 1 August 2017 and that this had required a costs budget to be filed and served by 11 July 2017.
8. The Costs Draftsman, Ms Alison Simmons, of Alto Legal Services, prepared the costs budget which was filed late at the court and served late on the defendant which necessitated an application by the Respondent to the court for relief from sanction.
9. The application for relief from sanction was made in an Application Notice prepared by the Respondent and supported by a Statement of Truth in which she stated that the costs budget had been filed and served by DX on 30 June 2017 but had not been received at the defendant's office.
10. The Firm considered the date of 30 June 2017 to be anomalous because:
  - 10.1 The Firm had no record of the Client Matter file relating to Client One ("the Client Matter file") being sent to Ms Simmons prior to 14 July 2017 or receiving any copy of the costs budget from Ms Simmons prior to 17 July 2017.
  - 10.2 The only records which the Firm had of the letters showing evidence of the filing and service of the Costs budget on 30 June 2017 were created on its case management system on 14 July 2017 and modified on 17 July 2017 (by different secretaries).
  - 10.3 The electronic data attached to the costs budget received from the Costs Draftsman indicated that it was last modified on 16 July 2017.
  - 10.4 There was a timecard entry on the Client Matter file recording time worked by the Respondent on a review of the Costs budget on 30 June 2017, however, the timecard had been printed on 17 July 2017 and was not logged to the Firm's time recording system.
  - 10.5 Following the receipt of this information, Mr Esney, an Investigation Officer of the SRA commenced an inspection of the books of account and other documents of the Firm at its Cardiff office on 22 March 2018 and in the course of that inspection Mr Esney obtained a copy of an Investigation Report ("the Investigation Report") which the COLP had prepared concerning the Respondent's conduct in relation to the claim being brought by Client One.
  - 10.6 During the course of his investigation Mr Esney interviewed the Respondent.

- 10.7 Mr Esney later prepared his report dated 18 June 2018 which in summary confirmed that he had identified evidence that the costs budget had been prepared after 30 June 2017. It also recorded an admission by the Respondent that the file had not been sent to the Costs Draftsman for costing until 14 July 2017.

### Witnesses

11. 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, made notes of the oral evidence, and referred to the transcript of the hearing. 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.
12. **Benjamin Trevor Johnson** (*read*) confirmed that the Respondent had been a non-member Partner in the Firm and she had left the Firm on 31 July 2017.
13. On 14 August 2017, in his capacity as COLP he was notified by Donna Makin, Head of the Injury Dispute Resolution Team in Cardiff, and Spencer Collier, a partner in that Team specialising in Clinical Negligence, that they had identified concerns in relation to a clinical negligence matter of which the Respondent previously had conduct. The essence of those concerns was as to whether she had been untruthful in a witness statement filed in support of an application for relief from sanction arising from her failure to serve a costs budget in time in a clinical negligence claim. The relevant costs budget was supposed to have been filed and served by 11 July 2017, however it had not been received by the defendant by that date.
14. Mr Johnson conducted an initial investigation of the Firm's electronic records which revealed evidence suggesting that the Respondent had made an application to the court for relief from sanction and supplied falsified evidence to the Court in support of that application. In consequence, Mr Johnson reported the matter to the SRA on a precautionary basis on 16 August 2017.
15. Subsequently, Mr Johnson continued his internal investigation into the Respondent's actions and this culminated in a final Investigation Report which he produced on 22 November 2017. The report summarised the steps he undertook to investigate whether the Respondent had made an untrue statement in her witness statement concerning the date upon which costs budget had been served and filed.
16. **Richard Esney** gave sworn evidence. He confirmed the accuracy of his report dated 18 June 2018.
17. Mr Esney confirmed the background to his investigation namely that on 16 August 2017 the SRA received a report from the Firm prepared by Mr Johnson, the Firm's COLP. The report had raised concerns in relation to the conduct of a clinical negligence matter by the Respondent in relation to the preparation of a costs budget on a claim brought by Client One against Hospital A. The concerns were identified by the firm when conduct of the file was passed to a new fee earner following the Respondent's departure from the Firm.

18. The Firm's review of the file identified a costs budget dated 30 June 2017 and the Firm was concerned that the file contained no information commensurate with the preparation of the costs budget on or before that date. The costs budget was prepared by Ms Alison Simmons of Alto Legal Services (Alto). The file also contained letters dated 30 June 2017 serving the costs budget on the defendant's solicitors and filing it at Cardiff County Court.
19. The firm undertook an internal investigation of the matter and produced an investigation report. The firm's investigation report included the following information:

*BigHand digital dictation*

20. The Firm used a digital dictation system whereby an audio file was created by a fee earner to be accessed by a secretary. The Firm reviewed the digital files on/around 30 June 2017 and 14-17 July 2017. The Firm provided these digital files to Mr Esney who then listened to the recordings.
21. The recording on 30 June 2017 did not relate to the filing or service of a costs budget on the Client One matter. The audio files created during the period 14-17 July 2017 included letters to the court and the defendant's solicitors, regarding the filing and serving of the costs budget. The contents of the audio recording files were identical to the contents of the letters dated 30 June 2017.

*Outlook calendar entry*

22. The Firm's report stated that a central diary was utilised to record critical dates. In relation to this matter the Firm identified two entries of relevance:
- (a) An entry dated 14 July 2017 (created on 15 May 2017) stating "*Send file to Ali to update Costs budget and prepare the costs budget report with Defen*"
  - (b) An entry dated 6 July 2017 (created on 14 July 2017) stating "*serve costs budget [Client One]*".
23. The Firm's report recorded the fact that the second entry (dated 6 July 2017) appeared to be a "*backdated entry inconsistent with the other entries or correspondence on the file*". Mr Esney raised this with the Respondent during interview on 4 May 2018 and the Respondent told him that "*any entry on the 14 should have related to the budget discussion report*"

*Emails*

24. The Firm's investigation identified relevant emails to and from the Respondent. On 14 July 2017 the Respondent received an email from Ms Mackay of the defendant's solicitors stating "*I do not appear to have received the claimant's cost budget but please advise if I have overlooked anything*".

25. On the same day the Respondent forwarded the email to her secretary and to Ms Ali Simmons. In forwarding the email the Respondent said *“The file is being sent to Ali today. Please get it ready”*.
26. The Respondent responded to Ms Mackay by an email dated 17 July 2017 and stated *“it is apparent it may not have reached your desk, but please check with your facilities dept”*. The email also sought Ms Mackay’s agreement to relief from sanctions. The Respondent referred to making an application *“explaining it didn’t reach you for some reason?”* Mr Esney discussed this email with the Respondent during interview and she told him that the email was referring to the preparation of an updated costs budget and costs budget discussion report.

*Firm’s engagement with the Respondent and Ms Simmons.*

27. The Firm emailed the Respondent on 17 August 2017 seeking her comments with respect to the preparation of the costs budget and she stated the following:
  - (a) *“clearly Ali had the file in order to prepare the budget in advance of 30 June”*.
  - (b) Letters were routinely prepared in advance and then *“re-dated”*.
28. The Firm emailed Ms Ali Simmons on 17 August 2017. The email requested the following specific information:
  - (a) When, how and by whom were Alto instructed.
  - (b) When, how and to whom was the costs budget (dated 30 June 2017) delivered.
  - (c) How many costs budgets had been prepared in the Client One matter.
  - (d) When was an invoice dated 30 June 2017 processed/sent to the Firm.
29. Ms Simmons responded on 22 August 2017 and stated the following:
  - (a) She did not have a letter enclosing the files so assumed the files were delivered under cover of a compliment slip.
  - (b) *“I don’t have an updated Budget but it is likely that I said it would not be necessary...”*
  - (c) In relation to the invoice *“they sometimes go out on the same day but more likely or not it would have been processed later.”*
30. The Firm’s Investigation Report identified that Ms Simmons did not respond to the direct question relating to the delivery of the costs budget.

Review of the Client One matter

31. Mr Esney reviewed the client file and related information, including the documents provided by the firm as part of their investigation. The client file included a Court Order which required the filing of a costs budget 21 days in advance of the case management hearing. The case management conference was listed for August 2017 and as such the deadline for filing and service of the costs budget was 11 July 2017.
32. The client file included a costs budget, dated 30 June 2017 which was signed by the Respondent. The client file also included an application to court for relief from sanction. Mr Esney understood that such an application would be required where there had been a procedural error in litigation and the application, prepared by the Respondent referred to the fact the costs budget had been served on the defendant on 30 June 2017. The application also stated *“the Claimant was of the belief that the same had been appropriately served and received.”* The application included a statement of truth that the applicant *“believes that the facts stated in this section (and any continuation sheets) are true.”* The application was signed by the Respondent.
33. Additionally, the Respondent was required to file a witness statement in relation to the non-receipt of the costs budget. Mr Esney obtained a copy of the Respondent’s statement from Cardiff County Court, dated 30 August 2017. The statement said the following:
  - (a) *“One possible explanation for the default...was that the letters with the budget had not been put in the DX tray by the secretary...”*
  - (b) *“The cost budget was received, prior to my annual leave “(30/6/17 to 10/7/17)*
  - (c) *“I recall checking the budget, signing the letters and expecting that they had left the building on 30th June 2017.”*
34. The statement included a statement of truth which stated *“I believe the facts stated in this witness statement are true”*. The statement was signed by the Respondent and dated 30 August 2017.

Alto Legal Services Limited (Alto)

35. Alto are a firm of costs lawyers. Ms Alison Simmons of Alto was engaged by the Respondent to prepare the Costs budget.
36. On 5 April 2018 Mr Esney emailed Ms Simmons seeking information about the costs budget. Mr Esney’s request included the following:
  - (a) The date and method that she was instructed to prepare a cost budget in the Client One matter.
  - (b) Confirmation of the number of costs budgets prepared in the Client One matter.
  - (c) Confirmation of the date the costs budget (dated 30 June 2017) was prepared.

- (d) Copies of various invoices rendered during June/July 2017.
37. On 13 April 2018 Ms Simmons responded and stated that the costs budget was prepared “*around the middle to end of June*”. She was unable to confirm the date she was instructed to prepare the costs budget. Ms Simmons provided copies of invoices rendered which showed the following position:
- Invoice number 9295, dated 10 July 2017  
 Invoice number 9296, dated 10 July 2017  
 Invoice number 9297, dated 14 July 2017  
*Invoice number 9298, dated 30 June 2017*  
 Invoice number 9299, dated 18 July 2017  
 Invoice number 9300, dated 18 July 2017  
 Invoice number 9301, dated 18 July 2017  
 Invoice number 9302, dated 18 July 2017  
 Invoice number 9303, dated 24 July 2017
38. It appeared to Mr Esney that the invoice relating to the Client One matter (dated 30 June 2017) was inconsistent with the numbering/date of the other invoices.
39. On 8 May 2018 Mr Esney received a telephone call from Ms Simmons. During the conversation Ms Simmons said the following:
- (a) “*this will be a really difficult conversation*” and “*I have to do this*”.
- (b) She had prepared the costs budget and dated it 30 June 2017. She prepared this document during July 2017 but was unable to be specific about the date.
- (c) No updated costs budget had been prepared in relation to the Client One matter. The only cost budget prepared was that dated 30 June 2017.
- (d) The Respondent had told her that she (*the Respondent*) would lose her home and career if the costs budget was not filed.
- (e) Ms Simmons said she felt “*pressured*” to prepare the costs budget. She did not include any items in the budget which post-dated 30 June 2017.
- (f) She had not known what the Respondent was going to do with the costs budget but was under the impression she was going to make an application for relief from sanction. She did not know that the Respondent was going to assert that the costs budget had been filed in time.
- (g) She said that she was “*probably going to lose a very good friend*” as a result of contacting Mr Esney and that she would tell the Respondent that she had spoken to Mr Esney.

*Interview with the Respondent*

40. Mr Esney interviewed the Respondent on 4 May 2018. During which the Respondent said the following:

- (a) The costs budget sent to the Court and the defendant's solicitors Weightmans was prepared on or before 30 June 2017.
  - (b) Mr Esney referred to an email from Weightmans to the Respondent stating that the costs budget had not been received. The Respondent forwarded that email to Ms Simmons and a secretary and stated "*the file is being sent to Ali today. Please get it ready. I'll be in shortly*". The Respondent said that email referred to the preparation of the costs budget discussion report as opposed to the Costs budget.
  - (c) The Respondent said that she would use the term "cost budget" to include an updated costs budget or costs budget discussion report.
  - (d) She was unable to explain why a secretary had told Mr Esney that she had been asked to backdate a letter.
41. During the interview Mr Esney played an audio recording of the Respondent's dictation. The recording referred to the preparation of a letter to the court and to Weightmans. Both letters referred to a "costs budget".
42. The Firm provided Mr Esney with a copy of the log which identified the recording as having been created on 14 July 2017 and the entries were identified as:
- (a) "Letter to Court enclosing costs budget..."
  - (b) "Letter to Weightmans\_serving\_cost\_budget..."
43. Mr Esney asked the Respondent for her comments on the recording and she replied "*honestly, I genuinely think it was the updated budget.*"
44. During the interview the Respondent agreed with the contention that it was never acceptable to backdate a letter.
45. On 8 May 2018 Mr Esney spoke with Ms Ali Simmons. Ms Simmons confirmed that she did not prepare the costs budget on/before the 30 June 2017. Following that conversation Mr Esney received an email from the Respondent. The email stated the following:
- (a) "*I appreciate Ali Simmons has today confirmed that the budget was prepared for the relief from sanction application.*"
  - (b) "*As explained in interview I would have been in a state of panic on and after 14 July as this is the first ever issue of apparent non-compliance and I was worried that it might affect my new job*"
  - (c) "*I admit that it appears the first time the file was sent to Ali was 14 July.*"
  - (d) "*This was a sad error of judgement arising from a state of panic*"
  - (e) "*I admit the allegations*".

46. Later on 8 May 2018 Mr Esney received an email from the Respondent in which she set out how her relationship with the Firm had deteriorated and the Respondent referred to the position as having become “*acrimonious*”. She stated that “[*the Firm*] appear to have launched a systematic attack on my integrity and reputation.”

Evidence of secretaries

47. The Firm’s internal investigation referred to the evidence of two secretaries who stated the following:
- (a) One of the secretaries recalled typing a letter serving and filing the costs budget on 14 July 2017.
  - (b) The other secretary recalled that she had been asked to amend the date of the letters from 14 July 2017 to 30 June 2017.
  - (c) Neither secretary recalled the file having been sent to Ms Ali Simmons to prepare the costs budget.
48. On 25 April 2018 Mr Esney interviewed Ms Jane Griffiths (*Mr Esney accepted in cross-examination that he had mistakenly referred to this witness as Jane George when in fact her name was Jane Griffiths*). Ms Griffiths was one of a number of secretaries working for the Respondent.

Interview with Ms Jane Griffiths

49. The interview took place on 25 April 2018. Ms Griffiths is a secretary at the Firm and one of a number of secretaries that worked for the Respondent. During interview Ms Griffiths said the following:
- (a) The Respondent had asked her to change the date of a letter on the Client One matter. The initial letter was already on the system.
  - (b) She did not recall the date of the letter but believed the Respondent told her to change the date to 30 June 2017.
  - (c) She believed the letter was to be sent to Weightmans.
  - (d) She said that the Respondent had returned from holiday and had asked another secretary to amend a letter for her. The other secretary was busy so Ms Griffiths offered to make the amendments.
  - (e) The Respondent stood behind her while she brought the letter up on screen. She then amended the date on the letter before printing and giving the Respondent a copy of the letter.
50. Mr Esney asked the Respondent for her comments on this during her interview on 4 May 2018. The Respondent said “*I don’t know*” and “*I would have asked them to backdate a letter if it had been created and it needed the date changed to the date it went.*”

51. In his evidence Mr Esney said that he had relied upon the Firm's internal investigation in the preparation of his report and he had been assisted by relevant documents provided to him by the Firm. He was aware that the relationship between the Firm and the Respondent had broken down.
52. It was put to him by Ms Heley that his investigation had relied too heavily on the Firm's internal investigation and that he had not followed up on matters which he should have done.
53. Mr Esney had listened to the digital dictation files and seen the physical interactive log of the files and the selected entries he wanted to listen to. He did not listen to all the audio files on the log. He said he had not searched the Firm's backup system to check whether e-mails had been destroyed.
54. Mr Esney accepted that he had made no enquiries regarding the meta-data of the costs budget.
55. It was put to Mr Esney by Ms Heley on the Respondent's behalf that the material relating to the costs budget of 30 June 2017 could have been mis-filed and he accepted that he had not asked the Firm questions regarding its system of using dummy files whilst original files were out of the office with the Costs Draftsman. Mr Esney accepted that he had not asked questions of the Firm regarding files which had been logged out as being with the Costs Draftsman but which had not been returned to the Firm or least shown on the log as not having been returned.
56. Mr Esney accepted that he had made no enquiries regarding the Firm's time recording system and potential problems in finalising time entries on the system or when or in what circumstances time entries could be lost.
57. Mr Esney accepted that he had misnamed Jane Griffiths in his report as Jane George.
58. Mr Esney accepted that he had not inspected the file held by the Cardiff County Court to establish what documents it contained and he had not investigated or established the reasons for which the County Court had allowed the Respondent's application for relief from sanction.
59. Mr Esney accepted that he had never met Ms Simmons and not taken a witness statement from her but said that once he had received the call from Ms Simmons on 8 May 2017 and the Respondent's subsequent e-mail to him apparently making admissions he had not wanted to prolong the investigation further.
60. **Jane Griffiths** gave sworn evidence and confirmed the accuracy of her statement dated 8 November 2019.
61. Ms Griffiths confirmed that she was employed as a Secretary by the Firm and had worked there since 23 March 2015. At the relevant time, Ms Griffiths worked within the Clinical Negligence Team at the firm's Head Office in Cardiff.

62. Ms Griffiths confirmed that she was one of three secretaries who had worked for the Respondent. Ms Griffiths had been a full time secretary and the two others, Debbie and Angie, had job shared. Ms Griffiths confirmed that neither Debbie nor Angie had been asked to give evidence.
63. Ms Griffiths recalled that in July 2017 the Respondent had returned from holiday and had asked one of Ms Griffiths' colleagues, another secretary, to amend a letter for her. The other secretary was busy, so Ms Griffiths offered to assist and make the amendments.
64. Ms Griffiths recalled that the initial letter was already prepared and saved on to the system. The Respondent stood behind Ms Griffiths whilst Ms Griffiths opened the document on screen. Ms Griffiths did not recall the original date of the letter, but she believed the Respondent asked her to amend the date to 30 June 2017.
65. Ms Griffiths thought the Respondent's request was unusual but she did what was asked of her and amended the date on the letter before saving the amended letter on the system and then printing and providing the Respondent with copies of the letter.
66. Ms Griffiths explained the Firm's use of dummy files which were made up when the original files were out of the office with the Costs Draftsman: correspondence which came in during the time the original file was with the Costs Draftsman would be added to the dummy file and then physically transferred to the original file when it returned.
67. Ms Griffiths did not think it possible that a file would not be returned from the Costs Draftsman but accepted that the log which showed the date when files were sent out and returned could sometimes be forgotten to be completed so it would look like files had not been returned.
68. Ms Griffiths said that at the relevant time the Firm was running at least three electronic case management systems: Imanage; Elite and Clinical Connexx. This had caused confusion. Clinical Connexx had proved inadequate for the purpose and was later phased out. Ms Griffiths said that there had been scope for error with the potential for letters and documents to be electronically misfiled.
69. Ms Griffiths said that the Respondent had not been IT literate and had not understood the IT systems and it had not been unusual for the Respondent to stand over Ms Griffiths whilst she typed a document dictated to her by the Respondent.
70. **The Respondent** gave sworn evidence. The Respondent accepted that she caused documents to be sent out bearing incorrect dates. She denied that she did so with any dishonest intent.
71. The Respondent was aware of a deadline in relation to the Client One matter following receipt of a Court Order listing a case management hearing for 1 August 2017. Costs budgets (in the form of Precedent H) were due to be filed and served by 11 July 2017. Budget Discussion Reports (in the form of Precedent R) had to be filed 7 days before the hearing, by 25 July 2017. The Precedent R could not be

prepared until after budgets had been exchanged as it was essentially a commentary on the opponent's budget.

72. Ali Simmonds of Alto was one of the Costs Draftsman the Respondent instructed (there were 2 other firms used by the Firm) and it was the Respondent's usual practice to instruct the same external Costs Draftsman for all budget related work upon receiving an order requiring a budget to be filed. The file may then have been sent back and forth between the Costs Draftsman and the firm to enable the costs draftsman to carry out work at each step of the process. There would not necessarily be a formal record of the file being sent out or received as multiple files were often sent at once and files may have been sent with just a compliments slip.
73. There were 3 secretaries in the team at the Firm who worked predominantly on the Respondent's cases. Not all of them worked full time. There were differing working styles as between secretaries as would be expected. As the Respondent had worked closely with the Costs Draftsman, Ms Ali Simmons, in respect of many cases, there was an element of informality in the relationship. On receipt of a hearing for a Costs and Case Management Conference (CCMC) the Respondent (or a secretary on her instruction) would diarise the hearing date in the Respondent's diary and invite Ms Simmonds via the same outlook calendar invitation, so that the hearing was also in her diary. The Respondent would also diarise to comply with the deadline for service of the budget and expect Ms Simmons to do likewise.
74. On average it would take 7-10 days for a costs budget to be produced. The physical files would be sent to prepare the budget, with a time print out, usually in the DX and a dummy paper file would be kept at the office. Usually a formal letter of instruction would accompany the files sent for costing or preparation of the budget, if secretarial capacity allowed, but there were occasions when the files would be sent without a covering letter if there was a backlog with typing. There was a white board where the secretaries were meant to mark the dates files were sent out for costing, but it was not always up to date and was subject to human error. The Respondent said that it was not unusual for documents to be misfiled.
75. It was possible that the file would have been received back from the costs draftsman with only a draft hard copy budget attached for signature such that there would be no cover letter from the Costs Draftsman. It was also possible that there would be no evidence on the Firm's electronic or paper files of the costs budget having been prepared if a copy of the budget had not been retained after filing and service or if the hard copy budget had been misplaced on another paper file. It did not automatically follow that, because the budget could not be found, no budget had been prepared.
76. It was the Respondent's consistent view that she did not know what happened in this particular case given the passage of time and the confusion which had arisen from the various ways in which this matter had been put to her, initially by the Firm, later by the court and finally by the Applicant. The Respondent said she had no active memory of the events in this case.
77. The Respondent did recall that she was out of the office on annual leave from 1 to 7 July 2017. At the time, she was working her notice and her relationship with her former firm had begun to deteriorate. Upon her return from annual leave, the

Respondent had just 15 working days left on her notice during which time she continued to manage her workload and worked to arrange the handover of her files before she left the firm for her new role.

78. The Respondent believed that she had left her files in good order before going away on leave. It was her usual practice to dictate letters early in readiness for standard procedural steps and to file any documents in advance of relevant deadlines. She was unable to say what happened on this file in June due to the passage of time, and had no recollection of the events and did not have access to the full file or the papers from it.
79. With respect to the Client One matter the Respondent said that she had not had sight of the file since July 2017 but recalled she had sent an email to Weightmans (possibly on 12 July 2017) asking them to engage in preparation of the budget discussion report. (Precedent R) This could only take place after budgets (Precedent H) had been served, the deadline for which the Respondent believed would have been 11 July 2017.
80. However, Weightmans told the Respondent by email on 14 July 2017 that they had not received the costs budget. When Weightmans notified the Respondent that they had not received the budget the Respondent asked that they check their office and she made the same investigations with her files and the Firm's post room.
81. The Respondent believed that she had returned the Client One file to Ms Simmonds on Friday 14 July 2017 so that she could ensure the budget discussion report (Precedent R) was not delayed, whilst the office was searched. The file was sent recorded delivery to Ms Simmonds to ensure there was no issue with documents not being received, as on occasion DX and post was mixed up leading to papers not being received. The Respondent believed that the files would have been received on the Saturday morning (15 July 2017) by Ms Simmonds and signed for.
82. The Respondent said that she had no e-mail contact with Ms Simmonds over the weekend and did not meet with Ms Simmons who lived at least two hours away from Cardiff by car and there was no possibility that she could have received the costs budget by post or email by 9:29 a.m. on Monday 17 July 2017: the time at which she sent a copy of the costs budget to the defendant by e-mail.
83. The Respondent believed that the only explanation for her sending a copy of the costs budget on Monday morning was that a hard copy of the costs budget which had been created on 30 June had been located during the search of the office and that she had scanned it in on to the system on Monday morning. The Respondent said that this would have been consistent with her email to Ms Simmonds of 10:36 that morning asking for a better copy of the costs budget as the hard copy the Respondent had located had not printed well.
84. The Respondent denied that this was implausible and disagreed with the Applicant's contention that the only explanation for sending a copy of the costs budget to Weightmans on the morning of Monday 17 July was that Ali Simmons had drafted the costs budget, for the first time, over the weekend, and had backdated it to the 30 June and had then sent it to the Respondent at some time before 9:29 on 17 July.

85. The Respondent said that once the costs budget had been found and a copy sent to Weightmans the Respondent prepared a relief from sanction application. In evidence, the Respondent said that she had been unclear on the rules relating to deemed service and had prepared the application for relief from sanction as a protective measure.
86. The Respondent admitted having letters recreated for the file after the date she thought they had been sent as it was her intention that the file should reflect what she believed had been the correct position i.e. that the costs budget and letters and had been prepared on 30 June 2017.
87. Whilst she denied attempting to mislead anyone the Respondent accepted that this had been the wrong thing to do and only did so because she had believed that the costs budget had been served.
88. The Respondent could not recall specific interactions with Ms Simmons after the Respondent had left the Firm, only that Ms Simmons initially maintained she had not backdated the costs budget.
89. It was only after the Respondent sought permission to speak with Ms Simmons following the Respondent's interview with Mr Esney on 1 May 2018 that Ms Simmons told the Respondent that the costs budget was prepared in July 2017 and backdated by her.
90. In the face of her own lack of memory and Ms Simmons' claims, the Respondent said that she had panicked and had immediately accepted Ms Simmons' assertions. To her regret, she did not revisit the file or test Ms Simmons' assertion.
91. Upon conducting a proper analysis of the evidence, the Respondent became more certain that Ms Simmons had been mistaken in her recollection and admission. The Respondent was aware that Ms Simmons had been suffering from personal problems at the relevant time and she may have simply persuaded herself that there was a problem here when no such problem had existed.

### **Findings of Fact and Law**

92. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
93. **Allegation 1.1 - On a date unknown in July 2017 she caused a costs budget prepared for the purposes of litigation ("the costs budget") to be back dated so as to make it appear that it had been prepared on 30 June 2017. She thereby breached any or all of Principle 2 SRA Principles 2011; and Principle 6 of the SRA Principles 2011.**

### The Applicant's Case

- 93.1 In the course of his inspection, Mr Esney, obtained a copy of the costs budget purportedly dated 30 June 2017 to which, Mr Johnson, COLP of the Firm had referred

in his email of 16 August 2017. The document was described as the “costs budget of the Claimant dated 30 June 2017” on its first page and bore a statement of truth dated 30 June 2017 on its penultimate page in the following terms “*This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation.*”

- 93.2 The Statement of Truth was known to have been backdated because the Firm’s internal investigation and report identified that the Firm’s Central Diary (which was maintained in Outlook) contained an entry dated 14 July 2017 stating “*Send file to Ali to update costs budget and prepare the costs budget report with Defen (sic)*”
- 93.3 The Internal Report also identified emails passing between the Respondent and Weightmans and the Respondent and her secretary which confirmed that Weightmans had not received the costs budget as at 14 July 2017; and that the Respondent gave instructions to her secretary to send out the Client Matter file in relation to Client One on that date.
- 93.4 In the course of a telephone conversation with Mr Esney on 8 May 2018 Ms Simmons confirmed that she had prepared the costs budget during July 2017 but backdated it to 30 June 2017 on the Respondent’s instructions. Following this conversation, at 13.50 the same day, the Respondent sent an email to Mr Esney in which she admitted that “*...the first time the file was sent to Ali was 14 July...*”
- 93.5 If the file was not sent to the Costs Draftsman until 14 July 2017 then Ms Simmons could not have completed the costs budget by 30 June 2017. The Statement of Truth was signed and the Respondent admitted to Mr Esney that the signature it bore was hers.
- 93.6 Given that the Respondent knew that she had asked her secretary to send out the file on 14 July 2017, she must necessarily have known that the date of 30 June 2017 which the costs schedule bore was incorrect. In any case, it was submitted that it was inconceivable that a solicitor would inadvertently mis-date a document so that it bore a date which was two weeks before the actual date of its signature.
- 93.7 The Applicant submitted that the Respondent’s conduct amounted to the following:

*Breach of Principle 2 of the Principles*

- 93.8 By backdating the costs budget to 30 June 2017, the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one’s own profession.
- 93.9 Mr Levey for the Applicant submitted that the ethical standards of the solicitor’s profession require that any document emanating from a solicitor’s office should be strictly accurate in all regards and should not contain any statements which are known by the author to be untrue or misleading and by doing in this case the Respondent had breached Principle 2 of the Principles.

*Breach of Principle 6 of the Principles*

93.10 It was submitted that the conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintained the trust placed by the public in the Respondent and in the provision of legal services. The public trust solicitors to be truthful in the course of all their professional dealings and public confidence in the Respondent in solicitors and in the provision of legal services is therefore likely to be undermined if they back date documents. She therefore breached Principle 6 of the Principles.

*Dishonesty (pleaded in Allegation 2 but applicable to the Respondent's alleged conduct in Allegations 1.1 to 1.6)*

93.11 Mr Levey relied on the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos (2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

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

93.12 Mr Levey submitted that at the time that the Respondent backdated each of the documents, and made each of the false statements, which are the subject of the present allegations, she knew or believed the following matters:

- That the documents which she had backdated could not have existed on the date on which they were purportedly created.
- That the false statements which she made were untrue.
- That she was acting in her capacity as a trusted professional, a solicitor and an officer of the court, when she backdated those documents and made those false statements.
- That others (the court, Weightmans and the Firm as her employer) would trust her to be truthful (and, therefore, not create documents which were on their face untruthful as to the date of their creation).
- That the court and Weightmans would rely upon the truthfulness when deciding how to respond to the application for relief from sanction which she had submitted upon behalf of Client One.

- That she owed a fiduciary duty to her fellow partners in the Firm which required her to be truthful with them about matters relevant to its business. The fact that she had failed to comply with the deadline for filing the costs budget was such a matter.
- That the costs budget, the Application Notice and her Witness Statement were all supported by a Statement of Truth and that she would be liable to be committed for contempt of court if she made a false statement in a document verified by a statement of truth without an honest belief in its truth. In those circumstances the Respondent was dishonest by the standards of ordinary decent people.

### The Respondent's Case

- 93.13 The Respondent accepted that she did not deal appropriately with the issue when it arose on 14 July 2017 but denied that her actions were lacking in integrity or that she had behaved in a way that had diminished the trust the public had in her and in the provision of legal services. The Respondent denied that she had been dishonest.
- 93.14 There was no conclusive evidence to suggest that the Respondent's belief that the costs budget had been filed and served on 30 June 2017 was anything other than genuine (if possibly mistaken).
- 93.15 The Respondent accepted the Applicant's contention that the whole case flowed from whether or not the costs budget was in place as at 30 June 2017 and the Respondent submitted that she had genuinely believed that a costs budget had been filed and served on 30 June 2017.
- 93.16 The Respondent did not know where the signed statement sent at 9:29am on 17 July 2017 originated from other than it must have been found that morning. Accordingly, she was unable to state when the costs budget was in fact signed and could not state whether that occurred on 30 June 2017 or at a later date.
- 93.17 There was no explanation from the Applicant as to how the costs budget which was emailed out on 17 July 2017 came into the Respondent's hands and this left open the possibility that a hard copy had been found on a dummy file.
- 93.18 The Respondent pointed to a number of deficiencies in the Applicant's evidence:
- 93.19 There had been no direct evidence from Ms Simmons and no attempt by the Applicant to obtain her metadata. There had been no evidence from the two other secretaries 'Angie' or 'Deb' or from Donna Makins who had identified the purported anomalies, and no evidence from the Firm's IT manager who apparently ran the reports.
- 93.20 Further, due to his absence from the proceedings it had not been possible to cross examine the COLP, Mr Johnson, whose actual evidence it was submitted was not direct evidence but was in fact little more than hearsay and opinion.
- 93.21 Ms Heley on the Respondent's behalf submitted that, contrary to the Applicant's submissions, Mr Johnson had not explained where the reports had come from; who had prepared them; the search parameters and whether other files with similar

numbers were checked for relevant details. Also it was of note that Mr Johnson had not disclosed in his report details of the dispute between the Firm and the Respondent.

- 93.22 Ms Heley further submitted that the Applicant had not checked the court file in relation to the costs budget of 30 June 2017 or the outcome of the Respondent's application for relief from sanction, which, in the event was granted by the court.
- 93.23 Ms Heley contended that none of the faults infecting the Firm's internal investigation were remedied by the Applicant. Whilst Mr Esney had taken some limited steps to verify the documents received from the Firm (except for the metadata of the costs budget) he had made no independent enquiries of his own and did not assess the weaknesses of the Firm's filing systems. The evidence of Ms Griffiths indicated the Firm's filing systems were far from cohesive with a number of electronic systems being run in duplicate and an unknown number of dummy files in existence. Further, Ms Esney had had such limited contact with Ms Griffiths that he did not get her name right in his report or when he gave evidence.

### The Tribunal's Findings

- 93.24 The Tribunal carefully considered the evidence in relation to Allegation 1.1. The Tribunal reminded itself that the burden of proving the allegation rested entirely with the Applicant which was required to prove its case to the requisite standard, namely beyond reasonable doubt.
- 93.25 The Tribunal considered that the Applicant had prepared its case in a poor way and the state of the evidence it had produced was unsatisfactory: there were significant evidential gaps which could not be filled.
- 93.26 The report prepared by Mr Esney for the SRA had been perfunctory and he had relied far too heavily on the Firm's internal investigation at the expense of making his own independent and deeper enquiries. Mr Esney had concluded his investigation prematurely after he had received the call from Ms Simmons on 8 May 2018 and the later call from the Respondent in which she appeared to make admissions.
- 93.27 The Tribunal noted the deficiencies in the Applicant's case as set out by the Respondent and the contention that the Applicant had relied essentially on untested hearsay evidence. The Tribunal further noted that the Firm's COLP, Mr Johnson, was not called to give evidence and was therefore not available to answer questions on the Firm's internal investigation, its methodology and conclusions.
- 93.28 The Tribunal observed that there were no witness statements from the Respondent's two other secretaries 'Angie' and 'Deb' and these potentially important witnesses were not called to give evidence.
- 93.29 Ms Simmons had also been a potentially crucial witness yet she too had not been called to give evidence and it was clear that she had never been asked to provide a witness statement. The Tribunal considered that Ms Simmons' sworn evidence may have been definitive on the issue.

- 93.30 Further, Mr Esney never sought to examine the court file to see what it would reveal and had not questioned anyone from Weightmans, the defendant's solicitor.
- 93.31 When set against the identified deficiencies in the Applicant's evidence the Respondent's explanation did not appear to be inherently implausible. The Tribunal found the Respondent to be a credible witness who was thorough and meticulous and appeared to be very knowledgeable of court procedure.
- 93.32 The Tribunal placed no significant weight on the Respondent's alleged admissions to Mr Esney on 8 May 2018 which came at a time when she had been panicked by Ms Simmons' disclosure to the Respondent that she, Simmons, had made admissions. When the Respondent had calmed herself she returned to her former and thereafter consistent belief that the costs budget had been served on 30 June 2017.
- 93.33 The Tribunal considered Jane Griffiths to have been a very credible witness who shed valuable light on the Firm's filing system in which there had been a number of electronic case management systems in use which had not connected with each other.
- 93.34 Ms Griffiths had also given evidence of the extensive use of dummy files and systems in which files were logged in and out of the office but which had not been kept up to date. In essence, the Firm's filing system had been one of potential fallibility and one in which documents, including the costs budget, may have gone astray.
- 93.35 In the light of the above evidential gaps in the Applicant's case, the Tribunal could not be sure, beyond reasonable doubt, that the factual basis of the allegation was proved. The alleged breaches of the Principles therefore fell away as did the allegation of dishonesty.
- 93.36 Allegation 1.1 was not proved.
94. **Allegation 1.2 - On or about 14 July 2017 the Respondent caused a letter which was sent to her opponent in litigation enclosing the Costs budget to be back dated so as to make it appear that it had been sent on 30 June 2017. She thereby breached Principles 2 and 6 of the Principles.**

**Allegation 1.3 - On or about 14 July 2017 the Respondent caused a letter which was sent to the Court enclosing the Costs budget to be backdated so as to make it appear that it had been sent on 30 June 2017. She thereby breached any or all of Principles 2 and 6 of the Principles.**

### The Applicant's Case

#### Allegation 1.2

- 94.1 . The Applicant alleged that in the course of the Firm's review of the file relating to Client One, it found a copy of the letter from the Respondent to Weightmans serving the costs budget on that file and bearing the date 30 June 2017. This letter was handed by the Firm to Mr Esney.

- 94.2 The Applicant alleged that since the costs budget could not have been created until after 14 July 2017 that letter must also (necessarily) have been backdated. Mr Esney reviewed the audio files for the Firm's digital dictation system which confirmed that the recording on 30 June 2017 did not relate to the service of a costs budget on the matter of Client One.
- 94.3 The audio files created during the period 14-17 July 2017 included a letter sent by the Respondent to her opponent. The Firm produced a copy of the log relating to those audio files to Mr Esney. This contained an entry "*Letter to Court enclosing Cost Budget...*" dated 14 July 2017.
- 94.4 During the investigation, Mr Esney interviewed Jane Griffiths, a secretary employed by the Firm who confirmed that she had backdated a letter to Weightmans on the matter of Client One to 30 June 2017 on the Respondent's instructions.

### Allegation 1.3

- 94.5 The Applicant submitted that the Firm also found a copy of the letter which was sent to the court enclosing the costs budget on the Client One matter file. That letter also bore the date 30 June 2017. The letter was in the same terms as that sent to Weightmans.
- 94.6 It was again alleged that since the costs budget could not have been created until after 14 July 2017 that letter must also (necessarily) have been created after that date. This was confirmed by Mr Esney's review of both the audio files for the digital dictation system operated by the Firm and the log relating to those files showed that the recording on 30 June 2017 did not relate to the filing of a Costs budget on the matter of Client One.
- 94.7 The Applicant submitted that the Respondent's conduct in Allegations 1.2 and 1.3 amounted to the following:

### *Breach of Principle 2 of the Principles*

- 94.8 By backdating the letters sent to Weightmans and to the court to make it appear that it had been sent on 30 June 2017, the Respondent failed to act with integrity. Mr Levey submitted that the ethical standards of the solicitor's profession require that any document emanating from a solicitor's office should be strictly accurate in all regards and should not contain any statements which are known by the author to be untrue or misleading and by doing so in this case the Respondent had breached Principle 2 of the Principles.

### *Breach of Principle 6 of the Principles*

- 94.9 It was submitted that the conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintained the trust placed by the public in the Respondent and in the provision of legal services. The public trust solicitors to be truthful in the course of all their professional dealings and public confidence in the Respondent in solicitors and in the provision of legal services is

therefore likely to be undermined if they back date documents. She therefore breached Principle 6 of the Principles.

### *Dishonesty*

94.10 See paragraph 100.11 above for the Applicant's allegation with respect to dishonesty.

### The Respondent's Case

94.11 The Respondent accepted that the letters created on 14 July 2017 were backdated to 30 June 2017 and that it had been inappropriate and misguided of the Respondent to do so.

94.12 The Respondent therefore admitted a breach of Principle 6 in relation to Allegations 1.2 and 1.3.

94.13 The Respondent denied that her actions lacked integrity in the circumstances of this case and for the reasons set out in her evidence.

94.14 The Respondent also denied that she had been dishonest.

### The Tribunal's Findings

94.15 The Tribunal found the factual basis of the allegations 1.2 and 1.3 proved to the requisite standard, namely beyond reasonable doubt, and that the admission by the Respondent to breaches of Principle 6 of the Principles on both allegations had been properly made.

94.16 With respect to breaches of Principle 2 in allegations 1.2 and 1.3 the Tribunal noted that the Respondent admitted that the letters had been dictated by the Respondent on 17 July 2017 and backdated to 30 June 2017 in circumstances where she had believed the costs budget had been prepared and served. The letters were therefore not 'true copies' but had been recreated by the Respondent and were therefore different to the letters which may have been sent out on 30 June 2017.

94.17 The Tribunal considered that solicitors should not send out letters which are recreated and purport to be a letter from the date stated as this was a practice which was bound to lead to misunderstanding and could also be very misleading.

94.18 The Tribunal considered carefully the judgment in Wingate & Evans and the test for integrity contained therein that integrity connotes adherence to the ethical standards of one's own profession.

94.19 By backdating the letters Weightmans and the court to 30 June 2017, the Tribunal found that the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. The ethical standards of the solicitor's profession require that any document emanating from a solicitor's office should be strictly accurate in all regards and should not contain any statements which are known by the author to be untrue or misleading.

94.20 The Tribunal found proved to the requisite standard, namely beyond reasonable doubt that the Respondent had therefore breached Principle 2 of the Principles with respect to Allegations 1.2 and 1.3.

94.21 Allegations 1.2 and 1.3 were found proved beyond reasonable doubt.

The Tribunal's Findings on dishonesty with respect to Allegations 1.2 and 1.3 (as set out in Allegation 2)

94.22 Having found the factual matrix proved in Allegations 1. 2 and 1.3 proved the Tribunal next considered whether the Respondent had acted dishonestly. In accordance with the test set out in Ivey v Genting Casinos the Tribunal ascertained the Respondent's actual state of knowledge or belief as to the facts. The Tribunal accepted that the Respondent had held a genuine belief that the letters had existed on 30 June 2017 and that her actions had been simply to recreate the letters.

94.23 Having established the Respondent's state of knowledge the Tribunal considered whether the Respondent's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. In the light of its factual findings and its conclusions in relation to the Respondent's knowledge the Tribunal was sure that the Respondent had not been dishonest by the standards of ordinary decent people and that her actions had not been a deliberate and dishonest intention to deceive.

94.24 Dishonesty in relation to Allegations 1.2 and 1.3 was not proved beyond reasonable doubt.

95. **Allegation 1.4 - On or about 17 July 2017 the Respondent filed an application with the Cardiff County Court supported by a statement of truth which contained untruthful and/or misleading statements as to the date of creation of the letters the subject of the allegations (set out above) which she knew were untruthful and/or misleading. The Respondent thereby breached any or all of Principles 1, 2 and Principle 6 of the Principles**

The Applicant's Case

95.1 In the course of his review of the Client Matter file relating to Client One, Mr Esney located an Application Notice dated 17 July 2017 in which the following application was made to the Cardiff County Court upon behalf of Client One:

*"The Claimant hereby seeks a relief from sanction in relation to service of the cost budget and pursuant to CPR 3.9 and 3.8 and CPR 3.14."*

95.2 That Application Notice, which the Respondent signed with a statement of truth contained the following statement:

*"..Attached are the copy letters in relation to service and the email exchange in relation to enquiries made with both the Defendant's Solicitors and Instructing Solicitors office in relation to the receipt or otherwise of the costs budget.."*

*“...This Application has been made promptly upon discovery that the Defendants had not received the costs budget (their email received 14 July 2017) despite correspondence having been sent to the Defendants on 12 July 2017 following the letter serving on 30 June 2017 asking them to engage in the costs budget discussion report, clearly signifying that the Claimant was of the belief that the same had been appropriately served and received...”*

95.3 This statement was false, in that no letter serving the costs budget had been sent on 30 June 2017 and was apt to mislead both the court and Weightmans into believing that the Respondent had made all reasonable endeavours to effect service within time when she had not. Furthermore, the Respondent must have known that that statement was false at the time that she made it.

95.4 The Application Notice was a document addressed to the court which set out the basis upon which Client One was seeking relief from the sanction which flowed from the Respondent’s failure to comply with the directions of the Court.

95.5 The Applicant submitted that the Respondent’s conduct in Allegations 1.4 amounted to the following:

*Breach of Principle 1 of the Principles*

95.6 Principle 1 of the Principles states that a solicitor must uphold the rule of law and the proper administration of justice. The Applicant alleged that the making of statements known to be false and misleading in such a document necessarily interfered with the proper administration of justice.

*Breach of Principle 2 of the Principles*

95.7 In Wingate & Evans it was specifically said that recklessly, but not dishonestly, allowing the court to be misled amounted to a lack of integrity on the part of a solicitor.

95.8 The Applicant submitted that if a solicitor who recklessly, but inadvertently, misleads the Court acts without integrity then so must a solicitor, such as the Respondent, who does so deliberately and in full knowledge of the facts and matters about which the misleading statement is made.

*Breach of Principle 6 of the Principles*

95.9 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintained the trust placed by the public in her and in the provision of legal services. The public trusts solicitors to be truthful in the professional dealings and this expectation extends to their dealings with the courts. The trust the public placed in the Respondent, in solicitors and in the provision of legal services was therefore likely to be undermined if they submitted to the court documents which were backdated.

*Dishonesty*

95.10 See paragraph 100.11 above for the Applicant's allegation with respect to dishonesty.

The Respondent's case

95.11 This allegation was denied in its entirety. At the time the Respondent filed the application, the Respondent had believed its contents to be true and accurate to the best of her information and belief.

95.12 The Respondent accepted that she should not have relied on recreated letters and should have explained to the court that the letters were believed to have been sent but had been lost.

95.13 The Respondent had not acted with dishonesty.

The Tribunal's Findings

95.14 The Tribunal noted that in accordance with its findings in relation to Allegation 1.1 the Applicant had not proved beyond reasonable doubt that the costs budget and letters had not been in existence on 30 June 2017.

95.15 However, the Tribunal found that the Respondent had attached the recreated letters to the Application Notice lodged on 17 July 2017 in which she referred to the letters as copies of the original letters: the Respondent had then signed the statement of truth.

95.16 The Tribunal observed that it was the Respondent's own case that she had knowingly recreated the letters which may have been in existence on 30 June 2017 and that the letters sent to Weightmans and the court on 17 June 2017 were not copies of the originals but in fact recreations which may have been different to the original letters.

95.17 The Tribunal found proved to the requisite standard, namely beyond reasonable doubt, that the Respondent had breached Principle 1 of the Principles. A solicitor must uphold the rule of law and the proper administration of justice and by making of statements known to be false and misleading in a document to the court and with a signed statement of truth was apt to mislead and interfere with the proper administration of justice.

95.18 The Tribunal next considered whether the Respondent had lacked integrity. The Tribunal applied the test for integrity set out in Wingate & Evans.

95.19 The Tribunal concluded that the Respondent had been fully aware that the Application Notice had not had attached with it copy letters. The Respondent had included recreated letters and had not made this fact known to the court, and again, this had the potential to mislead the court.

95.20 The Tribunal was sure beyond reasonable doubt that in doing so the Respondent had lacked integrity and had therefore breached Principle 2 of the Principles.

- 95.21 The Tribunal also found that the conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintained the trust placed by the public in her and in the provision of legal services. The public trusts solicitors to be truthful in the professional dealings and this expectation extends to their dealings with the courts. The trust the public placed in the Respondent, in solicitors and in the provision of legal services was therefore likely to be undermined if they submitted to the court documents which were backdated.
- 95.22 The Tribunal was sure beyond reasonable doubt that in doing so the Respondent had breached Principle 6 of the Principles.
- 95.23 Accordingly, Allegation 1.4 was proved.

The Tribunal's Finding on dishonesty with respect to Allegations 1.4 (as set out in Allegation 2)

- 95.24 Having found the factual matrix proved in Allegations 1.4 proved the Tribunal next considered whether the Respondent had acted dishonestly. In accordance with the test set out in Ivey v Genting Casinos the Tribunal ascertained the Respondent's actual state of knowledge or belief as to the facts.
- 95.25 The Tribunal found that the Respondent had stated in the Application Notice that she was attaching copy letters:
- "..Attached are the copy letters in relation to service and the email exchange in relation to enquiries made with both the Defendant's Solicitors and Instructing Solicitors office in relation to the receipt or otherwise of the costs budget.."*
- 95.26 The Tribunal was satisfied that upon the Respondent's own admissions she had been aware that these were not copy letters but instead recreated letters and that she had not brought this fact to the attention of the court. The Respondent had signed a declaration on the Application Notice stating that she believed the contents to be true. The Respondent could not have held a genuine belief that the letters were copy letters of those which may have been served and filed on 30 June 2017.
- 95.27 Having established the Respondent's state of knowledge the Tribunal considered whether the Respondent's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. In the light of its factual findings and its conclusions in relation to the Respondent's knowledge the Tribunal was sure that the Respondent had been dishonest by the standards of ordinary decent people.
- 95.28 The Respondent had signed a declaration of truth stating that the attached letters were copies of the originals however by attaching letters which had been recreated after the event the Respondent had presented misleading documents to the court which had the potential to mislead a Judge and the defendant. These were actions which the Respondent should have known would be considered dishonest by ordinary decent people.
- 95.29 Dishonesty in relation to Allegation 1 was proved beyond reasonable doubt.

96. **Allegation 1.5 - On or about 17 August 2017 the Respondent made untruthful and/or misleading statements to her employer concerning the date upon which she received the Costs Estimate the subject of the allegation made at paragraph 1.1; and/or the date that that document was served and filed at Court which she knew were untruthful and/or misleading. She thereby breached any or all of Principles 2, 6 and Principle 8 of the Principles.**

The Applicant's Case

- 96.1 On 17 August 2017, Donna Makin, a partner in the Corporate risk and Insurance Department of the Firm emailed the Respondent to request clarification with regard to a number of queries which had arisen in relation to the costs budget following an internal review of the Client Matter file relating to Client One. One of those queries was as follows:

*“There is an email from you to Ali Simmonds at Alto dated 14 July 2017 attaching a letter in which you ask her to prepare an ‘updated’ budget - there is no sign on the file of an updated budget, only the budget dated 30 June 2017. It appears that this was the first occasion on which the file was sent to Alto for costing. Please clarify the position.”*

- 96.2 The Respondent replied to that email the same day. In her reply she said the following:

*“..I would routinely prepare letters in advance, which may have then been re-dated when sent, or not sent at all if not required. I imagine I was being cautious anticipating any update which may been required in advance of BDR - clearly Ali had the file in order to prepare the budget in advance of 30 June...”*

- 96.3 The Applicant alleged that since the Client Matter file in relation to Client One had not been sent to Ms. Simmonds until 14 July 2017, this statement was necessarily false. Furthermore, as was apparent from her discussions with Mr Esney on 8 May 2018, the Respondent knew that this was the case.

- 96.4 The Applicant submitted that the Respondent's conduct in Allegations 1.5 amounted to the following:

*Breach of Principle 2 of the Principles*

- 96.5 A solicitor of integrity does not knowingly make untruthful statements to their partners in response to a request for an explanation as to the manner they have conducted a Client Matter file. Partners stand in a fiduciary relationship with each other such that they should be honest and frank with each other about the manner they each conduct their practice. In any case, a solicitor of integrity, acting in accordance with the high ethical standards of solicitors would not be deceitful in their dealings with others with whom they are in professional practice. It was alleged that the Respondent had therefore breached Principle 2 of the Principles

*Breach of Principle 6 of the Principles*

96.6 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. The public trusts solicitors to be truthful in the professional dealings and this expectation extends to their dealings with those with whom they enter into practice. The trust they placed in the Respondent, in solicitors and in the provision of legal services was therefore likely to be undermined if they were knowingly untruthful to their partners. It was therefore alleged that the Respondent had breached Principle 6 of the Principles.

*Breach of Principle 8 of the Principles*

96.7 In order to carry out their role in their business effectively and in accordance with proper governance and sound financial and risk management principles any solicitor should report promptly and accurately any circumstance which might lead to a potential claim against the firm, including a claim arising from a failure to comply with directions of the court. They would not therefore make statements to their partners which had the effect of concealing a failure to send a file for costing in time to ensure compliance with a direction or the filing of Costs budgets. It was alleged therefore that the Respondent had breached Principle 8 of the Principles.

*Dishonesty*

96.8 See paragraph 100.11 above for the Applicant's allegation with respect to dishonesty.

The Respondent's Case

96.9 The Respondent denied the allegation in its entirety. The email of 17 August 2017 had clearly stated that the Respondent was unable to comment without the file and her response contained speculation and assumption rather than making statements. The Respondent asserted that whilst the email of 17 August 2017 was plainly not helpful to the Firm it did not found the allegation brought by the Applicant.

The Tribunal's Findings

96.10 The Tribunal found with respect to Allegation 1.1 that the Applicant could not prove to the requisite standard, namely beyond reasonable doubt that the costs budget had not been created on 30 June 2017. It therefore followed that the contents of the Respondent's replies to the Firm could not be disproved.

96.11 In the light of the evidential gaps in the Applicant's case, identified in Allegation 1.1, the Tribunal could not be sure, beyond reasonable doubt, that the factual basis of Allegation 1.5 was proved. The alleged breaches of the Principles therefore fell away as did the allegation of dishonesty. Allegation 1.5 was not proved.

97. **Allegation 1.6 - On or about 30 August 2017 the Respondent made a Witness Statement for the purposes of proceedings before the Cardiff County Court in which she stated the letters the subject of Allegations 1.2 and 1.3 had been sent to the Court and her opponent in litigation by no later than 30 June 2017 when she**

**knew that this was not the case. She thereby breached any or all of Principles 1, 2 and 6 of the Principles.**

97.1 The Applicant stated that Mr Esney had also located the witness statement made by the Respondent in support of the relief from sanction application. The purpose of that witness statement was to address concerns which had been raised by Weightmans with respect to “anomalies” in the correspondence concerning Client One.

97.2 The Applicant alleged that the witness statement contained the following further false statements:

*“The costs budget was received, prior to my annual leave (I can not assist the court with the exact date - and do not know if [the Firm’s]’ post room log in returned files / documents received at that office?). I cannot assist with the date the original instructions was sent. There may not have been a formal letter of instruction ... I will have checked the budget and asked for letters to be done to serve and file. That must have been on 29 or 30 June 2017. I do recall being relieved on 30 June that a deadline had been met, prior to my going on a week’s leave.”*

97.3 Since instructions to prepare the costs budget had not been sent to Ms Simmons until 14 July 2017 the statement that the costs budget had been received on 29 or 30 June, prior to the Respondent going on a week’s annual leave, was necessarily untrue.

*“One possible explanation for the default (speculation only on my part though) was that the letters with the budget had not been put in the DX tray by the secretary and had instead gone into Royal mail post tray. That may have happened in the Department or by admin staff in the post room. I would expect Royal mail to return any undelivered items, and do not know if that has occurred?”*

97.4 The Applicant alleged that the “...default...” to which the Respondent referred in this passage was her default in complying with effective service of the costs budget. However, since the costs budget was not available for service until after 14 July 2017 (when she had returned from holiday) this possible explanation as to how the default had come to happen was also necessarily untrue.

*“Whilst not seeking to criticise. [The Firm] themselves are aware that the current system could be improved upon and are addressing that with the testing of a new firm wide case management system. All I can add is that I recall checking the budget, signing the letters and expecting that they had left the building on 30 June 2017”*

97.5 The Applicant alleged that since the earlier statement that the costs budget had been received on 29 or 30 June, prior to the Respondent going on a week’s annual leave, was untrue this statement was also necessarily untrue.

97.6 Mr Levey submitted that the Respondent must have known that these various statements were false for the same reason that she must have known the untruthful and

misleading statements contained in the Application Notice dated 17 August 2017 were false.

97.7 The Applicant submitted that the Respondent's conduct in Allegations 1.6 amounted to a breach of Principles 1, 2 and 6 for the reasons set out in Allegation 1.4.

#### *Dishonesty*

97.8 See paragraph 100.11 above for the Applicant's allegation with respect to dishonesty.

#### The Respondent's Case

97.9 The Respondent denied filing a witness statement which was untrue. At the time the Respondent filed the witness statement, she believed its contents to be true and accurate to the best of her information and belief although she accepted that she may have been mistaken in some respects.

97.10 The Respondent asserted that she was not provided with access to all relevant information when making her statement; in particular she did not have access to the full client records and original emails.

#### The Tribunal's Findings

97.11 The Tribunal found for the same reasons it gave with respect to its findings on Allegation 1.1 that the Applicant could not prove to the requisite standard, namely beyond reasonable doubt, that letters had not been prepared prior to 17 July 2017. It therefore followed that the contents of the Respondent's replies to the Firm could not be disproved.

97.12 In the light of the evidential gaps in the Applicant's case, identified in Allegation 1.1, the Tribunal could not be sure, beyond reasonable doubt, that the factual basis of Allegation 1.6 was proved. The alleged breaches of the Principles therefore fell away as did the allegation of dishonesty.

97.13 Allegation 1.6 was not proved.

#### **Previous Disciplinary Matters**

98. There were no previous Tribunal findings.

#### **Mitigation**

99. Ms Heley submitted that the Respondent had made admissions to those matters which she accepted she could have handled better. However, Ms Heley submitted that the Applicant had not proved the vast majority of its case against the Respondent and that the Applicant had not proved to the requisite standard that the costs budget had not been in existence on 30 June 2017. The Applicant's investigation had been wholly unsatisfactory.

100. Whilst the Tribunal had found dishonesty this had been proved on a very narrow basis with respect to letters which the Respondent had called 'copy' letters but which had in fact been recreated letters.
101. Ms Heley explained that the Respondent had acted in misguided good faith in the circumstances in which she had found herself and there had never been any intention by the Respondent to mislead the court.
102. The Respondent had rushed to complete and lodge with the court the application for relief from sanction: this was a type of application with which the Respondent had not been familiar and such dishonesty which had been found by the Tribunal was consistent with a 'moment of madness' and it fell into the very small residual category of cases in which exceptional circumstances could be identified. Ms Heley urged the Tribunal to consider that in such circumstances striking off was not appropriate in the Respondent's case.
103. Ms Heley told the Tribunal that the Respondent had had a long career to date marked by good service to others and the Tribunal was referred to positive character references provided on the Respondent's behalf attesting to her competence, integrity and honesty. Ms Heley urged the Tribunal to weigh the Respondent's past exemplary conduct and behaviour against the activities of one day in which the Respondent had taken a misguided course of action.

### **Sanction**

104. The Tribunal referred to its Guidance Note on Sanctions (November 2019) when considering sanction. The Tribunal was mindful of the three stages when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.
105. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.
106. In assessing culpability, the Tribunal found that the motivation for the Respondent was an attempt to recreate letters which she believed had existed. This desire had manifested in more serious form in Allegation 1.4 where dishonesty had been proved in which the Respondent had signed the declaration of truth in the Application Notice sent to the court indicating that the attached letters were copies of the lost originals when in fact the letters had been recreated by the Respondent. The Respondent's motivation had therefore been to enhance the prospect of the court granting her client relief from sanction.
107. The misconduct was not spontaneous and had required planning and thought. The Tribunal did not consider that the Respondent had been in a position of trust but she had been a very experienced solicitor and should have known better. The Tribunal assessed the Respondent's culpability as high.

108. The Tribunal considered that whilst there was no evidence that the Respondent's client was prejudiced the harm caused to the reputation of the profession by the misconduct was entirely foreseeable as the Respondent's actions had had the potential to mislead the court.
109. The court would trust the Respondent to be truthful and to not create documents which were on their face untruthful as to the date of their creation and that the court and her opponent would rely upon the truthfulness when deciding how to respond to the application for relief from sanction.
110. The Tribunal assessed the harm caused as high.
111. The Tribunal then considered aggravating factors. The Tribunal had found that the Respondent had acted dishonestly and her actions had been deliberate and calculated albeit it had taken place over a short period of time. The Respondent had attempted to conceal her wrongdoing. The Respondent ought to have known that her conduct in lodging misleading documents with the court was a material breach of the Respondent's obligations to protect the public and the reputation of the legal profession.
112. The Tribunal also considered mitigating factors. It was noted that the Respondent's misconduct was a single episode in an otherwise unblemished record and that the Respondent had produced positive testimonials which spoke about her professionalism and integrity.
113. There was some evidence that the Respondent had demonstrated a level of insight and that she had made some admissions to the allegations.
114. However, the overall seriousness of the misconduct was high: it could not be otherwise given the dishonesty finding. In addition, there were findings that the Respondent had lacked integrity and failed to uphold public trust in the provision of legal services in various different ways.
115. As the Respondent had been found to have been dishonest, the Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll.
116. The Tribunal considered that misleading the court is an extremely serious matter and whilst the Respondent may have been under some pressure at the relevant time this had not been a moment of madness as suggested by Ms Heley. There was no evidence before the Tribunal that the Respondent had been suffering from a physical or psychological illness which would have affected her judgment.
117. The Respondent had had 26 years' experience in the profession and she ought to have known the duties she owed to the court of complete integrity, probity and trustworthiness. The Respondent had had a chance to reflect on her position and set matters right in her later statement to the court dated 30 August 2017. In that statement the Respondent could have explained that the letters attached to the earlier Notice Application had not been copies but had in fact been recreated letters. The

Respondent failed to take this opportunity and thereby avert the risk of the court being misled.

118. The Tribunal also noted that the Respondent had never entirely accepted that she had been responsible for the preparation of the recreated letters and that had sought to transfer the blame to the Firm's secretaries.
119. Having found that the Respondent had acted dishonestly, and in view of the other serious findings made against her, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

*“to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth”.*

120. The Tribunal determined that the findings against the Respondent, including dishonesty, required that the appropriate sanction was strike off from the Roll.

### **Costs**

121. The Applicant applied for its costs in the sum of £26,445.84.
122. Ms Heley observed that the bulk of the costs, £17,500 + VAT had been accrued by the fees of Mr Levey and that until a week before the hearing she had believed that the Applicant would be represented by in-house counsel for the SRA. The instruction of Mr Levey had increased the costs unnecessarily.
123. Ms Heley asked the Tribunal to reduce the costs which appeared to have been inflated by Mr Levey's last minute instruction and for a reduction on the basis that a significant proportion of the allegations against the Respondent had not borne the weight of the evidence brought by the Applicant and had been found not proved by the Tribunal.
124. Further, Ms Heley questioned the sum charged for the Forensic Investigation (£5,014.24) which had been deficient and had failed to probe for evidence with sufficient rigour and thoroughness.
125. Mr Levey contended that there was no basis for the Tribunal to reduce the level of costs claimed by the Applicant and that the Tribunal were not to speculate as to why the decision had been taken not to use in-house counsel for the hearing. However, Mr Levey submitted that it had been reasonable and proportionate for the Applicant to instruct external counsel because this had been a difficult and complicated case and the level of his fees was commensurate to his level of call and the complexity of the case. His fees were not excessive.
126. Mr Levey also submitted that this had been a three day hearing in which the Tribunal had found some allegations proved to the requisite standard and others not so proved. The issue of dishonesty which had related to all the allegations had been hotly contested and the Respondent had been represented by very experienced counsel.

The Tribunal's Findings on Costs

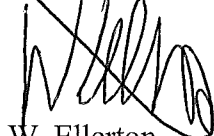
127. The Tribunal had heard the case over three days and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.
128. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate in all the circumstances of this case.
129. The Tribunal commented that the Forensic Investigation had been sloppy and for the reasons the Tribunal had earlier stated the Applicant's investigation had left large evidential gaps in its case. The Tribunal reduced the costs of the Forensic Investigation to £2,500.
130. The Tribunal considered that whilst the case had been properly brought by the Applicant and well presented at the hearing it had not been particularly complex and did not justify the full fee claimed by Mr Levey which was not proportionate to the level of complexity.
131. The case had in reality raised a very narrow point and the difficulties had been generated by the poor way in which the evidence had been gathered by the Applicant. The Tribunal noted that the afternoon of the first day of the hearing had been wasted as the Applicant had not arranged for their witness Ms Griffiths to attend until the following day. This oversight had had the effect of increasing the length of the hearing.
132. The Tribunal noted that the Respondent had been afforded the opportunity to provide evidence as to her means but had not done so and the Tribunal had no information before it regarding her means.
133. The Tribunal considered that it was appropriate for the Applicant to recover a proportion of its costs and assessed that it was reasonable and proportionate for the Respondent to pay the costs of and incidental to this application and enquiry in the sum of £ 12,250.00.

**Statement of Full Order**

134. The Tribunal Ordered that the Respondent, Angelina Mary Rigby, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,250.00.

Dated this 6<sup>th</sup> day of January 2020

On behalf of the Tribunal



W. Ellerton  
Chairman

**JUDGMENT FILED WITH THE LAW SOCIETY**

**07 JAN 2020**