

# **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11987-2019

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

RODNEY PATRICK WILLIAM ETHERINGTON

Respondent

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Before:

Mrs A. Kellett (in the chair)

Ms A. E. Banks

Mr P. Hurley

Date of Hearing: 1 November 2019

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## **Appearances**

There were no appearances as the matter was dealt with on the papers.

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## **JUDGMENT ON AN AGREED OUTCOME**

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## **Allegations**

1. The allegations against the Respondent, were that:-
  - 1.1 On 31 May 2018 he made a statement in an email to a residuary beneficiary, Mr DG, concerning an application to the Court in relation to his mother's estate, namely, "...as yet there is no progress to report but as soon as I hear back from the Court, I will let you know", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.
  - 1.2 On 12 June 2018 he made a statement in a telephone conversation with a residuary beneficiary, Mr DG, concerning an application to the Court in relation to his mother's estate, namely, "Again I say that I will let him know when we hear from the Court", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.
  - 1.3 On 20 June 2018 he made a statement in an email to a residuary beneficiary, Mr LG, concerning an application to the Court in relation to his mother's estate, namely, "I have not heard back from (sic) the Court yet, as soon as I have the sealed application notices then I will serve them on all parties and comply with any directions the Court may give", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.
  - 1.4 On 28 June 2018 he made a statement in an email to a residuary beneficiary, Mr DG, concerning an application to the Court in relation to his mother's estate, namely, "I have to be in the Court tomorrow afternoon on another matter so while I am there, I will try to make progress with our application", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.
  - 1.5 On 2 July 2018, the Respondent sent an email to his secretary, Ms DN instructing her to telephone a residuary beneficiary, Mr DG, and inform him that:

"I have spoken with the Court and they tell me that we can expect the papers back in the next couple of days";

"I don't know whether that means they have made an Order/given directions or listed it for a hearing date but we should know this week"; and

"...depending on the information from the Court we can decide this week on the action to be taken",

when he knew that such statements were untrue and/or misleading as no application had been submitted to the Court. In doing so, the Respondent breached all or any of Principles 2 and 6 of the SRA Principles 2011.

2. Dishonesty was alleged in relation to allegations 1.1, 1.2, 1.3, 1.4 and 1.5, but dishonesty was not an essential ingredient to prove those allegations.

### **Factual Background**

3. The Respondent, was admitted to the Roll of Solicitors on 15 February 2007. At all material times he was a Director of O'Neill Richmonds Law Firm Limited ("the firm") of 1-2 Lansdowne Terrace East, Gosforth, Newcastle-upon-Tyne, Tyne and Wear, NE3 1HL. The Respondent had joined the firm on 5 October 2015 as an Associate Solicitor and was appointed as a Director on 29 March 2016. The Respondent ceased to be a Director of the firm on 24 October 2018 and left the firm on 5 April 2019.
4. At the time of the hearing the Respondent had a current practising certificate for 2018/19 free from conditions.

### **Application for the matter to be resolved by way of Agreed Outcome**

5. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome ("SAF") annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions. In the SAF the Respondent admitted all the Allegations in full. The proposed sanction was that the Respondent be struck-off the Roll.

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

6. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
7. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made. The Respondent had clearly misled residuary beneficiaries on repeated occasions. The deception had become more elaborate, to the extent that he had recounted conversations with Court staff that could never have occurred. This would evidently be considered dishonest by the standards of ordinary decent people.
8. The Tribunal considered the Guidance Note on Sanctions (December 2018). It was clear that a reprimand, fine or suspension would not be sufficient to protect the reputation of the profession or to protect the public. The only appropriate sanction was therefore a strike-off. The Tribunal considered whether any exceptional circumstances applied, such that would justify a lesser sanction. The Respondent had not advanced any such circumstances and the Tribunal did not identify any from its own reading of the material. It was regrettable that the Respondent had chosen to behave in such a way given that he had a previously unblemished career. However in the absence of any exceptional circumstances, the reputation of the profession and the protection of the public required that he be struck-off the Roll.

**Costs**

9. The parties had agreed that the Respondent pay costs in the sum of £2,800. The Tribunal saw no reason to interfere with that and duly ordered that he pay costs in that sum.

**Statement of Full Order**

10. The Tribunal Ordered that the Respondent, RODNEY PATRICK WILLIAM ETHERINGTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,800.00.

Dated this 15<sup>th</sup> day of November 2019

On behalf of the Tribunal



A. Kellett  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**

**21 NOV 2019**



IN THE MATTER OF THE SOLICITORS ACT 1974

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY

Applicant

AND

RODNEY PATRICK WILLIAM ETHERINGTON

Respondent

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STATEMENT OF AGREED FACTS, ADMISSIONS AND PROPOSED OUTCOME

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1. By its application dated 16 July 2019, and the statement made pursuant to Rule 5(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rule 5 Statement") which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making allegations of misconduct against Rodney Patrick William Etherington ("the Respondent").

**The Allegations**

2. The allegations against the Respondent, made by the SRA in the Rule 5 Statement are that:

**Allegation 1.1** - On 31 May 2018 he made a statement in an email to a residuary beneficiary, Mr DG, concerning an application to the Court in relation to his mother's estate, namely, "... as yet there is no progress to report but as soon as I hear back from the Court, I will let you know", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.

**Allegation 1.2** - On 12 June 2018 he made a statement in a telephone conversation with a residuary beneficiary, Mr DG, concerning an application to the Court in relation to his mother's estate, namely, "Again I say that I will let him know when we hear from the Court", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.

**Allegation 1.3** - On 20 June 2018 he made a statement in an email to a residuary beneficiary, Mr LG, concerning an application to the Court in relation to his mother's estate, namely, "I have not heard back from (sic) the Court yet, as soon as I have the sealed application notices then I will serve them on all parties and comply with any directions the Court may give", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.

**Allegation 1.4** - On 28 June 2018 he made a statement in an email to a residuary beneficiary, Mr DG, concerning an application to the Court in relation to his mother's estate, namely, "I have to be in the Court tomorrow afternoon on another matter so while I am there, I will try to make progress with our application", which was misleading as no application had been submitted to the Court, and in doing so, he breached all or any of Principles 2 and 6 of the SRA Principles 2011.

**Allegation 1.5** - On 2 July 2018, the Respondent sent an email to his secretary, Ms DN instructing her to telephone a residuary beneficiary, Mr DG, and inform him that: "I have spoken with the Court and they tell me that we can expect the papers back in the next couple of days";  
"I don't know whether that means they have made an Order/given directions or listed it for a hearing date but we should know this week"; and  
".....depending on the information from the Court we can decide this week on the action to be taken",  
when he knew that such statements were untrue and/or misleading as no application had been submitted to the Court. In doing so, the Respondent breached all or any of Principles 2 and 6 of the SRA Principles 2011.

3. In addition, dishonesty is alleged with respect to allegations 1.1, 1.2, 1.3, 1.4 and 1.5 in the Rule 5 Statement.

### **Admissions**

4. The Respondent admits all the allegations set out in paragraph 2 above (Allegations 1.1 – 1.5 of the Rule 5 Statement) in their entirety, and the aggravating feature of dishonesty attached to each and every allegation.

### **Agreed Facts**

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out in paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent.

- 5.1. The Respondent, who was born on 1973, was admitted to the Roll of Solicitors on 15 February 2007.

- 5.2. At all material times the Respondent was a Director of O'Neill Richmonds Law Firm Limited ("the firm") of 1-2 Lansdowne Terrace East, Gosforth, Newcastle-upon-Tyne, Tyne and Wear, NE3 1HL.
- 5.3. The Respondent joined the firm on 5 October 2015 as an Associate Solicitor and was appointed as a Director on 29 March 2016. The Respondent ceased to be a Director of the firm on 24 October 2018 and left the firm on 5 April 2019.
- 5.4. The Respondent has a current practising certificate for 2018/19 subject to the following conditions:
- 5.4.1. The Respondent is not to act as a manager or owner of an authorised body; and
- 5.4.2. Subject to condition 5.4.1, the Respondent may act as a solicitor, only as an employee where the role has first been approved by the SRA.
- 5.5. On 26 July 2018, the SRA received a report from Ms Christine Lowes, the Compliance Officer for Legal Practice of the firm, reporting that the Respondent had misled a beneficiary, Mr DG, in connection with Mrs EG's estate, in that Mr DG was led to believe by the Respondent that the Court application had been submitted on or around 31 May 2018 when in fact the application had not been submitted.
- 5.6. The SRA subsequently conducted an investigation into the Respondent's conduct, and examined the client matter file. During the period from 31 May 2018 to 2 July 2018, the Respondent provided Mr DG and Mr LG, two of the residuary beneficiaries of Mrs EG's estate, with misleading information about the progression of a Court application. The matters leading to the misconduct are set out in detail below.

*Allegations 1.1 – 1.5 of the Rule 5 Statement: Making untrue and/or misleading statements*

- 5.7. The firm had taken over the administration of the estate of Mrs EG (deceased) in October 2015. Mr John O'Neill, a Director and Senior Partner of the firm, was appointed the Administrator by virtue of a Court Order from Newcastle-upon-Tyne District Probate Registry dated 1 October 2015.
- 5.8. Under the terms of Mrs EG's Will dated 1 February 2011, the Executors held the residue of Mrs EG's estate in four equal shares for the benefit of:
- Mrs EG's son, Mr DG,
  - Her other son, Mr LG,
  - Her daughter, Mrs LM, and
  - Mrs LM's daughter, Mrs JH.
- 5.9. The original Executors under Mrs EG's Will were her son, Mr DG and her daughter, Mrs LM.
- 5.10. There were difficulties in the administration of the estate (including several aborted sales of the estate property) and a dispute arose between the Executors. Mr



DG and Mrs LM had each appointed their own solicitors before the firm took over the administration of the estate. Mr John O'Neill of the firm was appointed as an independent professional Administrator in place of both the original Executors when the Executors were unable to reach agreement as to how the administration of the estate should proceed.

5.11. The Respondent, the firm's head of the private client department, was asked by the firm to deal with the administration of the estate on Mr John O'Neill's appointment by the Court as Administrator of the estate. The Respondent had day to day conduct of the administration of the estate work within the firm with Mr John O'Neill also dealing with the property related matters. The Respondent sent letters of engagement with the firm's terms of business to all four residuary beneficiaries, Mr LG, Mrs JH, Mrs LM and Mr DG, dated 25 November 2015 and 7 December 2015.

5.12. The beneficiaries of Mrs EG's estate disagreed over the manner in which the estate assets (principally the deceased's home) should be dealt with and, after informing and consulting with the beneficiaries, the firm decided it was appropriate to make an application to the Court pursuant to Part 64 of the Civil Procedure Rules. In the Respondent's letter to each of the four residuary beneficiaries of 11 May 2018, the Respondent stated that "In the current circumstances however, we no longer wish to continue to act in the administration of the estate, or, will do so only with clear directions from the Court". He invited each of the beneficiaries to make representations on various issues concerning Mrs EG's estate including whether they wanted a replacement Administrator to be appointed, and, if so, the identity of the replacement Administrator.

5.13. The firm, on behalf of the Administrator, sought directions as to who should administer Mrs EG's estate and how the Administrator of the estate should proceed with the administration of the estate and/or the sale of the estate property. The Claim Form to the Chancery Division of Newcastle-upon-Tyne District Registry sought Directions on the following terms:

"Owing to a dispute between the beneficiaries of the estate and the Administrator of the estate, the Claimant seeks directions from the Court pursuant to Part 64 of the Civil Procedure Rules as to:

- a) The sale of the bungalow at *[Address redacted]* as a stand alone property;
- b) The strategy regarding the marketing and sale of the potential development plots at *[the Property]*;
- c) The Administrator's obligations for ongoing consultation with the beneficiaries;
- d) Whether the Claimant should be removed as Administrator of the estate and, if so, who should be appointed in his place; and
- e) Such further directions as the Court may see fit for the efficient administration of the estate".

5.14. The Respondent made a witness statement dated 5 July 2018 in support of the Claim Form.

- 5.15. On 14 May 2018, Mr LG telephoned the Respondent. The Respondent stated during that telephone conversation that “..... it will take a while to put the application together ....”.
- 5.16. On 21 May 2018, Mr DG telephoned the Respondent, asking why it was necessary for the Administrator to make an application to Court seeking directions. The Respondent stated during that telephone conversation that *“I say that practically there is no purpose to be served by a meeting, i (sic) would be better served making a start on the application and putting together with documentation. It is going to be extensive and I have already explained to him why we feel we had to take this course of action”*.
- 5.17. In an email of 31 May 2018 from the Respondent to Mr DG at 22:08, the Respondent advised Mr DG as follows:
- “I just wanted to let you know that as yet there is no progress to report but as soon as I hear back from the Court, I will let you know”*.
- 5.18. This statement implied that the Respondent had made progress in respect of the Court application and was misleading because anyone reading the statement, including Mr DG, would be misled into believing that such an application had been submitted to the Court when, in fact, it had not.
- 5.19. In response to the Respondent’s email of 31 May 2018, Mr DG stated in his email to the Respondent dated 1 June 2018 at 10:45 that, *“Are you able to advise me when the Court will be able to come back with a decision or give me an indication if this is likely to take days, weeks or months?”*
- 5.20. In the Respondent’s telephone note dated 1 June 2018, he recorded the contents of his telephone conversation with Mr DG on 1 June 2018. This followed Mr DG’s email to the Respondent earlier that day. The Respondent stated *“I have explained to him [Mr DG] that I will progress the application as quickly as I can, that the Court have discretions as to how they will deal with matters either making a decision on the papers or listing it for hearing and giving whatever directions they consider appropriate. We will simply have to wait and see how matters progress and what timescale that may be”*.
- 5.21. In the Respondent’s telephone note dated 12 June 2018, he recorded the contents of his telephone conversation with Mr DG on 12 June 2018. In relation to seeking directions from the Court, the Respondent stated that, *“Again I say that I will let him know when we hear from the Court”*.
- 5.22. This statement was misleading because anyone reading the statement, including Mr DG, would be misled into believing that such an application had been submitted to the Court when, in fact, it had not.
- 5.23. In an email from Mr LG to the Respondent dated 20 June 2018 at 12:28, Mr LG asked what was happening with regards to the Court application. In response, the Respondent stated in his email to Mr LG of 21 June 2018 at 8:57 that *“I have not heard back form (sic) the Court yet, as soon as I have the sealed application notices*



*then I will serve them on all parties and comply with any directions the Court may give”.*

5.24. This statement implied that progress had been made in respect of the Court application and was misleading because anyone reading the statement, would be misled into believing that such an application had been submitted to the Court when, in fact, it had not.

5.25. In an email from the Respondent to Mr DG on 28 June 2018 at 06:55, the Respondent said:

*“I have to be in the Court tomorrow on another matter so while I am there, I will try to make progress with our application”.*

5.26. This statement was misleading because anyone reading the statement, including Mr DG, would be misled into believing that such an application had been submitted to the Court when, in fact, it had not.

5.27. In the Respondent’s telephone note dated 28 June 2018, he recorded the contents of his telephone conversation with the Chancery Issue Section of the Court on 28 June 2018. The note states, *“I had just about completed the witness statement and all that will be left for Dorothy [his secretary] is to type everything up and the copying to be done. On that basis I asked the Court how long it will take to get the paperwork issued and back to us for service. He tells me that it would only be a matter of a couple of days for them to process, I confirmed the fee with them too so things could be ready to go as they were typed up”.*

5.28. On 2 July 2018 at 15:09, the Respondent sent an email to his secretary, Ms DN. A message had been passed on from the firm’s receptionist on the same day for the Respondent to return Mr DG’s call. In the Respondent’s email of 2 July 2018, the Respondent asked Ms DN to phone Mr DG and inform him that:

*“1. I have spoken with the Court and they tell me that we can expect the papers back in the next couple of days.*

*2. I don’t know whether that means they have made an Order/given directions or listed it for a hearing date but we should know this week.*

*3. For the sake of a few more days please do not take any steps with regard to the garden – depending on the information from the Court we can decide this week on the action to be taken”.*

5.29. These statements which the Respondent instructed his secretary to pass on to Mr DG were untrue and/or misleading because, although the Respondent had spoken to the Court on 28 June 2018 to enquire about timescales and the appropriate fee when the application was issued, the Court was unable to seal and return the papers and/or make any Order/give any Directions in the timescales stated by the Respondent as no Court application/Claim Form had as yet been lodged with the Court.

5.30. In the Respondent’s telephone note dated 4 July 2018, he recorded the contents of his telephone conversation with Mr DG on 4 July 2018. In relation to carrying out gardening work at the deceased’s property, the Respondent stated, *“I had explained to him before that I did not want to take any steps until the court had decided how things were to progress .....*”.

- 5.31. On the client matter file is a copy letter from the Respondent to The Court Manager of Newcastle County Court dated 5 July 2018 (with the Respondent's contact details and reference) enclosing Claim Form N208 Part 8 together with the firm's cheque of £528.00 and supporting evidence. The Court was requested to issue the Claim Form. The content of the Claim Form (undated) is summarised in paragraph 5.13 above. The Respondent's witness statement in support of the Claim Form, as referred to in paragraph 5.14 above, was dated 5 July 2018.
- 5.32. On 9 July 2018, Mr DG sent an email to Mr John O'Neill (the Administrator of the Mrs EG's estate), during the Respondent's absence on holiday, asking for the case number of the proceedings so he could find out information from the Court himself about the application. He also enquired who would be dealing with the case during the Respondent's annual leave.
- 5.33. The Notice of Issue from the Chancery Division of Newcastle-upon-Tyne District Registry sealed on 10 July 2018 states that the Claim Form was issued on 10 July 2018.
- 5.34. Mr John O'Neill replied to Mr DG's email of 9 July 2018 on 10 July 2018 saying that they had spoken to the Court that morning and that a caseworker had advised that a claim number would be allocated to the case in a few of days.
- 5.35. Mr DG responded to Mr John O'Neill on 11 July 2018 asking for further details of the proceedings and Court application. This was provided by Ms DN (the Respondent's secretary) in an email to Mr DG dated 12 July 2018.
- 5.36. On 15 July 2018, Mr DG sent Mr O'Neill an email stating that the Respondent had misled him in emails and phone calls regarding the progress of the court application. Mr DG queried how the Court only received the application on 9 July 2018.
- 5.37. On 16 July 2018, Mr DG emailed Mr O'Neill again stating that he had spoken to the Court and that they had confirmed that they had not received any paperwork through from the firm until 10 July 2018. Mr DG requested for confirmation of when the application was sent to the Court and an explanation for the delay in making the application. He further asked why he had been led to believe that the application had been with the Court over the last few weeks and they were responsible for any delay.
- 5.38. On 23 July 2018, the Respondent attended a fact-finding meeting with Directors of the firm. The Respondent was informed that Mr DG had emailed Mr O'Neill in his absence seeking an explanation as to why the Court had informed him that the Respondent had lodged the application for directions with the Court on 6 July 2018, when the Respondent had led Mr DG to believe that he had lodged the papers more than six weeks earlier. In this meeting, the Respondent admitted to misleading Mr DG regarding the timing of the submission of documents to the Court. The Respondent accepted that the Court application had not been submitted when he had told Mr DG that it had. He stated that he *"knew that the Court application on Mrs EG had not gone in when he had told Mr DG it had; he had been foolish not to raise the problem; his hope had been that he would get the case through given time"*.



- 5.39. The firm lodged the application/Claim Form with the Court on Friday 6 July or Monday 9 July 2018, and the Court issued it on Tuesday 10 July 2018. The Respondent failed to correct the residuary beneficiaries' misunderstanding that he had lodged such a Court application/Claim form in May 2018 (or the latest June 2018) and Mr DG was not advised of the true status of the proceedings until July 2018.
- 5.40. A solicitor of integrity would respond to enquiries from residuary beneficiaries about the progress of a Court application concerning their mother's estate with absolute frankness and candour. They would scrupulously avoid making objectively false or misleading statements in professional correspondence, especially in circumstances where, as here, it is reasonable to expect that the beneficiaries (and other third parties) may rely on the statements in question, as the marketing of the estate property for sale was suspended pending the Court's decision on how the deceased's property should be marketed. If they were in any uncertainty as to the current position on the file or how long the application would take to prepare they would check the client file, make the appropriate enquiries and/or transfer the file to the litigation department, but under no circumstances would they knowingly mislead the beneficiaries about the progress of a Court application.
- 5.41. By making false and/or misleading statements in professional correspondence and sending that to two residuary beneficiaries and directing his secretary to pass on such false and/or misleading information to a residuary beneficiary, the Respondent acted without integrity. The Respondent therefore breached Principle 2 of the SRA Principles 2011.
- 5.42. The conduct alleged also amounted to a failure by the Respondent to behave in a way that maintains the trust placed in him and in the provision of legal services by the public. Members of the public expect that solicitors will scrupulously avoid making false or misleading statements in their professional correspondence. They do not expect solicitors to make objectively false or misleading statements. The Respondent therefore breached Principle 6 of the SRA Principles 2011.

#### *Dishonesty*

- 5.43. The Respondent's actions in respect of allegations 1.1, 1.2, 1.3, 1.4 and 1.5 of the Rule 5 Statement were dishonest in accordance with the test for dishonesty laid down in **Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67**: 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.
- 5.44. The Respondent acted dishonestly by the standards of ordinary decent people by making the statements he did to two residuary beneficiaries on 31 May, 12 June, 20 June and 28 June 2018 and to his secretary (with instructions to give information to the beneficiary) on 2 July 2018.



5.45. The Respondent accepts making the statements to the beneficiaries in paragraph 2 above (allegations 1.1 – 1.5 of the Rule 5 Statement) was dishonest.

5.46. A letter seeking an explanation with warning (“the EWW letter”) was sent to the Respondent by Fieldfisher LLP acting on behalf of the SRA on 22 October 2018 asking him to answer various allegations in relation to the Respondent knowingly providing misleading information as to the progress of the Court application to Mr DG (including via his secretary) on his mother’s estate.

5.47. The response to the EWW with enclosures was submitted on 5 November 2018 by Ms Susanna Heley of RadcliffesLeBrasseur on behalf of the Respondent. The Respondent accepted, in general terms, the summary of facts set out in the EWW letter. In relation to the specific allegations, the Respondent made various admissions.

5.48. The Respondent made some general comments in RadcliffesLeBrasseur’s letter of 5 November 2018 in response to the EWW letter of 22 October 2018, which are summarised as follows:

5.48.1. The estate of Mrs EG (deceased) had a long and contentious history. The original executors and beneficiaries were unable to co-operate with each other.

5.48.2. The Respondent is a private client lawyer and is not a litigation specialist. Whilst he considered that he did have the requisite knowledge to make an application to the Court for directions on behalf of Mr John O’Neill, he now recognises, with the benefit of hindsight, that he was out of his depth on this particular case which was more contentious and difficult than was consistent with his previous experience.

5.48.3. The Respondent says that he underestimated the amount of time it would take to prepare and submit the application to the Court. The application was more involved than the Respondent had expected. The statement ran to 17 pages with 388 pages of exhibits.

5.48.4. The Respondent felt it difficult to challenge Mr DG and explain to him that it was taking longer than anticipated to finalise the application. The Respondent found himself embarrassed and unable to correct the position when asked by Mr DG for an update on the Court Application. He fully accepts that his actions in giving information on the progress of the matter were wrong.

5.48.5. The Respondent says that he made immediate admissions when members of the firm asked him about the matter, and he offered his apologies. He does not dispute any of the matters recorded in the firm’s note of the meeting on 23 July 2018 with his Directors relating to this client matter.

5.49. On 12 February 2019, an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

### **The Respondent’s Mitigation**

6. The following mitigation is put forward by the Respondent for the breaches admitted above, but is not agreed or endorsed by the SRA:

- 6.1. There have been no previous disciplinary matters relating to the Respondent before the Solicitors Disciplinary Tribunal and he has not been the subject of a disciplinary finding by the SRA.
  - 6.2. He made admissions to his misconduct at an early stage to both the firm as his employer and the SRA as his regulator. He has co-operated with the SRA in the course of its investigation.
  - 6.3. The Respondent has also shown insight into the seriousness of his misconduct by accepting that he should be subject to the usual penalty in cases involving dishonesty.
  - 6.4. The Respondent was asked to take over conduct of the client matter of the administration of the estate of Mrs EG (deceased) which had a long and contentious history. The original executors and beneficiaries were unable to co-operate with each other, and the Respondent found it difficult to challenge Mr DG and explain to him that it was taking longer than anticipated to finalise the Court Application.
  - 6.5. The Respondent received no financial gain for his misconduct. His actions were to buy time in an effort to submit the Court Application in relation to Mrs EG's estate as soon as possible.
7. However, the Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any Order other than that he be Struck off the Roll.

### **Proposed Sanction**

8. It is therefore proposed that the Respondent should be Struck off the Roll of Solicitors.
9. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £2,800.00.

### **Explanation as to why such an Order would be in accordance with the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions (6<sup>th</sup> Edition)**

10. The Respondent accepts that the seriousness of his admitted misconduct is such that neither a reprimand, a fine or being suspended from practice would be a sufficient sanction.
11. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanctions" (6<sup>th</sup> Edition, December 2018), at paragraph 51, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).*"



12. In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

*“(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...”*

*(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*

*(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others...”*

13. The Respondent dishonestly made false and/or misleading statements in professional correspondence and sent that to two residuary beneficiaries and directed his secretary to pass on such false and/or misleading information to a residuary beneficiary over a period from 31 May 2018 to 2 July 2018.

14. The following factors aggravate the seriousness of the Respondent’s misconduct:

14.1. It involved material breaches of obligations to protect the public and reputation of the legal profession.

14.2. It involved the Respondent acting dishonestly on five occasions (in relation to allegations 1.1 – 1.5 of the Rule 5 Statement).

14.3. Several false and/or misleading statements were made by the Respondent to two residuary beneficiaries and to his secretary (to pass on to one of the beneficiaries) on a number occasions from May to July 2018 demonstrating a course of dishonest conduct over a few weeks.

14.4. The Respondent had direct control over the circumstances and was a solicitor of 11 years experience and head of the private client department of the firm at the material time. His culpability was therefore high.

15. The public expects solicitors to act with integrity and behave in a way that maintains the trust the public places in them. The most serious misconduct involves dishonesty. A finding that an allegation of dishonesty has been proved will almost invariably lead to a Striking Off.

16. There are no exceptional circumstances and this case does not fall into the small residual category of cases where a Strike Off would be disproportionate.

17. The Respondent accepts that the protection of the public and the protection of the reputation of the profession justifies him being Struck off the Roll of Solicitors.

18. The SRA and the Respondent submit to the Tribunal that the following outcome is consistent with the seriousness of the matters admitted and that a fair and proportionate sanction in accordance with the Tribunal's Guidance Note on Sanctions:

- 18.1. An Order that the Respondent be Struck off the Roll of Solicitors; and
- 18.2. A further Order that the Respondent do pay the SRA's costs of £2,800.00.

Name: Pauline Lavender  
Position: Legal Adviser  
On behalf of the Applicant, the Solicitors Regulation Authority

Name: Susanna Heley//  
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for and on behalf of Rodney Patrick William Etherington

Dated this 31<sup>st</sup> day of October 2019