SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12040-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHELLE LOUISE CRAVEN Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr G. Sydenham
Mrs N. Chavda

Date of Hearing: 22 to 24 July 2020

Appearances

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

The Respondent represented herself

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Applicant were set out in a Rule 12 Statement dated 4 December 2019 and were that:

1.1 From February to May 2018, the Respondent added time to a file recording system for work that she had not done. The Respondent included descriptions for the work, which made it look as if she had carried out, or would carry out, the work. The Respondent thereby:

- Breached Principle 2 of the SRA Principles 2011 ("the Principles"), in that her actions lacked integrity;
- Breached Principle 6, in that her actions did not uphold the trust the public ought to have had in her or the profession.
- Failed to achieve outcome 1.1 of the SRA Code of Conduct 2011 ("the Code"), in that she did not treat her clients fairly.

1.2 In 2018, the Respondent allowed the firm at which she worked to send several invoices charging for work that she had not done. The Respondent included descriptions for the work, which made it look as if she had carried out, or would carry out, the work. The Respondent thereby breached the following:

- Principle 2, in that her actions lacked integrity;
- Principle 4, in that she did not act in the best interests of her clients;
- Principle 5, in that she did not provide a proper standard of service; and
- Principle 6, in that her actions did not uphold the trust the public ought to have had in her or the profession.

2. It was alleged that the Respondent was dishonest in both allegations, but submitted that dishonesty was not an essential ingredient to prove them.

Documents

3. The Tribunal considered all of the documents in the case which comprised an electronic trial bundle containing:

Applicant

- The originating Application, Rule 12 Statement and exhibits
- A report dated 1 August 2018
- Witness statement of Lesley Sullivan dated 5 March 2020
- Civil Evidence Act Notice dated 10 March 2020
- Statement of costs for hearing dated 14 July 2020
- Copies of various authorities relied upon
- Statement of costs dated 14 July 2020
- Various documents (27 pages, including four letters of client engagement, a handwritten note and the original report to the Applicant) submitted during the hearing in response to questions from the Tribunal Panel

Respondent

- Respondent's Answer dated 27 January 2020 with exhibits
- Respondent's witness statement dated 4 March 2020
- Statements of means dated 4 March and 24 June 2020 with supporting documents
- Skeleton argument dated 17 July 2020
- Five character references
- A 'Request for Notebooks' document dated 11 March 2020

Preliminary Matters

4. Whilst the Respondent was a trainee solicitor at the time of the relevant events, and she did not practise as a solicitor after she completed her training, the Tribunal's jurisdiction to deal with the matter was confirmed in Re a Solicitor (Ofosuhene) CA 21 February 1997 (unreported).

5. In advance of the hearing the Respondent had requested a copy of any relevant time recording and billing guidance. This was not amongst the material disclosed by the Applicant and before the Tribunal at the start of the hearing. At the beginning of the second day of the hearing Mr Bullock informed the Tribunal that he had been provided with a copy of such a guide (which had not previously been in the Applicant's possession). The Respondent objected to the inclusion of the document, partly on the basis that she stated that she said she had previously been told that such a document did not exist and partly because the document which had come to light was undated and so of limited assistance. The Tribunal determined that on the basis of the uncertainty over the document's provenance, the fact it was not central to the Applicant's case and given the Respondent's objection to its introduction very late in the day, it should not be admitted into evidence.

Factual Background

6. The Respondent was admitted to the Roll on 16 July 2018. From 1 January 2017 to 6 July 2018 she was a trainee at MLP Law Limited ("the Firm").

7. The Respondent's final seat as a trainee at the Firm was in the Wills, Trust, and Probate team ("the Team"). The Respondent's time was billable and she therefore made time entries on files. At the end of each month, the Firm sent out a bill, based on the time recordings. The Respondent included time on a number of invoices for work which she had not done.

8. In July 2018, the Firm had concerns that the Respondent had billed for work on the wrong file. On 25 July 2018, the Firm held a meeting with the Respondent. The Respondent was said to have admitted that she had billed for work which had not been done, but that she intended to do the work later the same day. In the light of the Respondent's admissions, the Firm reviewed the Respondent's billing time on three other matters, and identified further concerns. The allegations brought by the Applicant concerned time entries and bills for three of these client files.

9. On 15 August 2018 the Firm terminated the Respondent's employment for gross misconduct. The Firm reversed various invoices and reimbursed its clients. The Respondent has not practised as a solicitor since qualifying.

Witnesses

10. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. 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. The following witnesses gave oral evidence:

- Ms Lesley Joanne Sullivan, former partner at the Firm and head of its Wills, Trusts and Probate team; and
- The Respondent.

Findings of Fact and Law

11. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings. In other words, the Applicant was required to prove the allegations on the balance of probabilities (that the conduct and breaches alleged were more likely than not to have occurred). 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.

12. **Allegation 1.1: From February to May 2018, the Respondent added time to a file recording system for work that she had not done. The Respondent included descriptions for the work, which made it look as if she had carried out, or would carry out, the work. The Respondent thereby:**

- **Breached Principle 2, in that her actions lacked integrity;**
- **Breached Principle 6, in that her actions did not uphold the trust the public ought to have had in her or the profession.**
- **Failed to achieve outcome 1.1 of the Code, in that she did not treat her clients fairly.**

Allegation 1.2: In 2018, the Respondent allowed the firm at which she worked to send several invoices charging for work that she had not done. The Respondent included descriptions for the work, which made it look as if she had carried out, or would carry out, the work. The Respondent thereby breached the following:

- **Principle 2, in that her actions lacked integrity;**
- **Principle 4, in that she did not act in the best interests of her clients;**
- **Principle 5, in that she did not provide a proper standard of service; and**
- **Principle 6, in that her actions did not uphold the trust the public ought to have had in her or the profession.**

It was alleged that the Respondent's conduct was dishonest in both allegations.

The Applicant's Case

12.1 The two allegations were in essence that the Respondent had claimed time for work not done (allegation 1.1) and that this led to bills being raised with misleading descriptions for work not done (allegation 1.2). The alleged breaches in allegation 1.2 were said to flow from the same alleged facts as those relied upon in allegation 1.1. The allegations related to nine occasions in the final seat of the Respondent's training contract with the Firm when she entered time on the Firm's case management system for work not done on three client files (relating to the estates of GW, HR and LG). Mr Bullock, for the Applicant, directed the Tribunal to the Respondent's Answer in which she admitted that time was added, and subsequently billed, for work not completed.

12.2 Given that the addition of the time for work not completed was not in dispute, the details are not set out here other than to note that the total time involved was 20.2 hours which equated to total charges of £2,991.50. The time entries were described by Mr Bullock as "false" and having "infected" six client bills. The descriptions of time entered into the case management system by the Respondent were described in the Rule 12 Statement as mostly generic descriptions of reviewing accounts or dealing with correspondence.

12.3 In a letter sent to the Applicant on 1 March 2019, the Respondent stated that "the culture and methodology in [the Wills, Trusts, and Probate] team was that you could bill for work you intended to do" and that advanced billing was "part of the culture". The Applicant denied that the Firm had a practice of billing work in advance of the work being done, except in very rare circumstances, where fee-earners would record time before scheduled meetings which took place before the Firm sent out (or handed over) the final bill.

12.4 The procedure for billing in the Team was said to be that the Respondent would print out the time ledger, then review and circle any time that she thought the Firm should not bill (for example because there was duplication of work), and once she had done this, the Respondent went through the ledger with a solicitor. Ms Sullivan gave evidence that she had no reason to doubt the time entries made by the Respondent and in her oral evidence said that she "took it as a given" that the recorded time reflected work that had been done. In response to a question from the Tribunal Ms Sullivan stated that the Respondent had not had any specific training on bills within the Team and that trainees would pick up the practices over time through being closely involved with the work.

12.5 It was accepted that in one instance the Respondent had told her supervisor that she had included work not yet completed that would be completed the following day. In these circumstances, where the work would have been finished before the Firm had sent any bill to its client, the Respondent's senior colleague had said that the word "anticipated" did not need to be added in the time description. It was also accepted that Ms Sullivan had sent an email to the Respondent on 18 May 2018 in which she asked whether the Respondent had posted her time for the coming Monday before completing the relevant bill. This was described by Mr Bullock as being an

uncontroversial practice of preparing a final bill ahead of a final meeting with a client and including time for that final meeting (to avoid a further bill being needed for the final meeting at which final estate accounts were presented). Ms Sullivan's evidence was that there was no wider instruction to bill for work not yet complete. Ms Sullivan stated that this was a very rare practice and in her oral evidence stated that she condoned "a unit of time" (a unit generally equating to six minutes) being added for this purpose. Ms Sullivan's written witness statement had referred to "a few units" and in response to a question from the Tribunal she clarified that "no more than a few" units of time would be involved.

12.6 The Applicant's case was that the Respondent did not do the work claimed on the nine time ledgers, and did not ask to write the time off against the six invoices in the following months. The Applicant relied upon the Respondent's admission of those foundational facts. By way of an example of the explanation put forward, the Respondent had stated:

> "I accept that I billed time which I thought I would complete at or shortly after the date of the bill, but unfortunately the pressure I was put under was just too much to get everything done on time."

12.7 The concerns were said to have come to light in a meeting between Ms Sullivan and RE, a solicitor within the team, on 24 July 2018. Thereafter the Managing Partner of the Firm, and joint executor with Ms Sullivan, took prompt action to ensure that client money was returned on the case under discussion. On the following day, the Respondent stated that she had also billed for letters which had not been completed on a separate file, but had stated that they would be completed that day. When asked by Ms Sullivan if there were any other files where this had happened the Respondent had said there were none.

12.8 A subsequent review of client files led to further concerns being identified and ultimately to a disciplinary process. By letter dated 15 August 2018 the Respondent was dismissed without notice from the Firm for gross misconduct. The Applicant did not rely on the Firm's reasons for dismissal, but did rely on the admissions recorded in the dismissal letter as having been made by the Respondent during the hearing. Mr Bullock stated that whilst the Respondent did not accept certain aspects of the letter, she did not challenge the fact that during the hearing (and at other times) she had admitted billing for work not done. The essence of the Respondent's appeal against her dismissal was that the she had recorded time in anticipation of completing work with the knowledge and approval of others and therefore the sanction of dismissal was disproportionate.

12.9 Mr Bullock referred the Tribunal to the case of Wingate v SRA [2018] EWCA Civ 366 which sets out the test for conduct lacking integrity (Principle 2). Mr Bullock submitted that a solicitor of integrity is truthful in dealings with clients, their employer and others to whom professional responsibilities are owed. It was submitted that the Respondent made statements she knew to be false, in her time records, and that she had accepted in her correspondence with the Applicant that she had included time for work that she had not undertaken. Even if the Respondent had genuinely envisaged completing the work, that did not alter the acknowledged fact that the time ledger included time and descriptions for work which had not been done. The

Applicant submitted that a solicitor who suggests work has been done where that is not the case is not abiding by the ethical standards of the profession (as required by Principle 2) and that the public would be concerned and trust in the provision of legal services would thereby be undermined (Principle 6). Such time recording practices meant that the Firm was led to believe the Respondent had done the work in question and ultimately meant that clients paid for work which had not been completed. Such conduct was submitted to be incompatible with the requirement set out in Bolton v The Law Society [1994] 1 WLR 512 that any solicitor should be trusted to the ends of the earth.

12.10 Even if the Respondent's case that she was acting with the instruction and/or knowledge of colleagues was accepted, this was said to be no answer to the alleged breaches of Principles 2 and 6. A solicitor should not simply do what they are told and must refuse if told to do something wrong. Mr Bullock submitted that it should have been obvious to anyone that making false time recording entries was not the right thing to do. In any event, as set out above, it was denied there was any such instruction or culture. Ms Sullivan gave evidence to that effect and described the very limited circumstances in which any exception may be made. Moreover, Mr Bullock submitted that the Respondent's account was not plausible. There was no evidence of credit notes being issued to clients for work not completed which would be inevitable if the recording of anticipated work was a widespread practice as the Respondent claimed. Further, if the culture was as the Respondent described then the conduct of Ms Sullivan when she became aware of issues on one file on 24 July 2018 made little sense. Ms Sullivan promptly conducted a review of other files and took steps leading to the refunding of client monies and ultimately to disciplinary action against the Respondent.

12.11 Ms Sullivan also gave evidence that she had had numerous discussions with the Respondent about her workload when the Respondent had said she was struggling and that she, and other members of the team, had taken work from the Respondent. At one point Ms Sullivan had decided that nothing new would be allocated to the Respondent until she had caught up. Ms Sullivan did not accept that the Respondent's workload was ever excessive or that she was unsupported.

12.12 Mr Bullock stated that the only specific examples the Respondent had provided in support of her contention that others knew of her practice of anticipated time recording were in the context of final meetings with clients. In contrast, the time records and bills with which the allegations were concerned involved repeatedly allocating time to updating and balancing estate accounts (which on the face of the records indicated that the Respondent had in some cases repeatedly recorded time in anticipation of completing the same piece of work). In other words, the Applicant alleged that the Respondent had included a further time record (leading to a subsequent bill) at the end of the next accounting period, again anticipating doing the same work which had not been completed since the last time record or bill. It was the Applicant's case that some of the work for which time was recorded and bills were issued (and paid) was never completed, not just that it was completed after the time record and bill had been generated. It was alleged that the Respondent had had nearly two months in which to correct the situation for the most recent bills, and nearly five months for the oldest bill.

12.13 It was further alleged in the Rule 12 Statement that having "basically ensured that her clients paid for services she had not provided" the Respondent had failed to achieve Outcome 1.1 of the Code. This mandatory outcome applying to all solicitors requires that clients be treated fairly.

12.14 There was submitted to be nothing in the Respondent's contention that she anticipated the bills would be scrutinised by senior colleagues; the allegations were based on the narrative time entries by the Respondent being misleading in that nothing indicated the entries were made in anticipation. It was submitted that billing clients a higher sum than that which they ought to have paid was self-evidently not in their best interests; they should only pay for work that was done. On that basis it was submitted that the Respondent had breached Principle 4. Similarly, it was submitted that billing the clients a higher sum than that which they ought to have paid was self-evidently not providing a proper standard of service; clients were entitled to accurate billing and not bills including time for work they did not need to pay for. On that basis it was submitted that the Respondent had breached Principle 5.

Dishonesty

12.15 It was alleged that the Respondent's actions were dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67: The Tribunal was referred in particular to paragraph [74] of this case. Mr Bullock submitted that this case provided authority for the proposition that it was not critical that the Respondent did not think she had acted dishonestly.

12.16 The state of the Respondent's knowledge and belief was central to the determination that the Tribunal had to make. It was submitted that:

- The Respondent knew she was making time recording entries which were factually untrue at the time she made them. In other words, she knew that she had not done the work she entered on the system;
- She knew that her employer would rely on her time records in due course when bills were generated;
- She knew that her relationship with her employer was one of trust and confidence;
- She may have believed or intended that the work would be completed. However, she knew that she was busy, stressed and struggling at work. Accordingly, she knew there was a real risk that she may not be able to follow through on that intention;
- She knew that if she was not able to complete the work she had entered on the time record then given the way the billing processed worked her employer would be unjustly enriched to the detriment of beneficiaries under the relevant wills; and
- She was aware of the duties owed to the executors of the estates.

In these circumstances it was submitted that ordinary decent people would regard the Respondent's conduct as dishonest.

The Respondent's Case

12.17 The Respondent had denied all of the allegations in her Answer. During the hearing she made three admissions which she said followed further reflection. In relation to allegation 1.1, she accepted that her conduct had not treated clients fairly and that she had failed to achieve Outcome 1.1 of the Code. In relation to allegation 1.2 she accepted that her admitted conduct had not been in her clients' best interests and had not amounted to a proper standard of service (in breach of Principles 4 and 5 respectively). She continued to deny the alleged breaches of Principles 2 and 6 in respect of both allegations.

12.18 At the outset of her case the Respondent stated that she had lived and breathed the case for the previous two years and that she had a very clear recollect of events. The Respondent accepted adding time to a file recording system for work that she had not yet done. She denied including descriptions for work to "make it look as if she had carried out or would carry out the work" as alleged. Her evidence was that she always intended to do the work, but she admitted that she did not complete all of the work in question for various reasons including what she described as an excessive workload.

12.19 The Respondent responded to the specific allegations made about the three files highlighted by the Applicant. In the case of the GW file, the Respondent accepted that work included in time entries for 30 April 2018 had not been done at that date. Her evidence was that she fully intended to complete this work shortly afterwards.

12.20 In the context of the HR file, the Respondent made reference to staffing changes within the Team. In the Rule 12 Statement the Applicant had given an example of time worth £754 being allocated to this particular estate file for "chasing outstanding information required, drafting IHT205 and Oath, drafting letters of update to residuary beneficiaries, preparing letters to all legatees and updating and balancing the estate accounts". The Respondent accepted that this time was recorded with the intention that she would be in a position to complete the work shortly thereafter. In the meantime, another solicitor, LW, joined the team. A senior colleague, RE, transferred the file to LW and upon reviewing the file, LW offered to assist the Respondent in ensuring the file was up to date (as a result of which LW drafted the IHT205 form and the Oath mentioned in the time narrative). The Respondent's evidence was that LW's time for completing this work was not charged for in the following invoice and the end result was that the relevant work was therefore charged to the client at the Respondent's lower trainee rate.

12.21 The Respondent accepted the dates and descriptions of the invoices raised in relation to the third estate file relied upon by the Applicant (LG). She described this as a complicated matter which she was required to handle with little help despite this involving issues that the Respondent's senior colleague, RE, who provided supervision on the case, said that she had not dealt with herself. The Respondent accepted that the work on this file was not always carried out before the invoice date to the full extent of the time recording description. Her evidence was that she had difficulties in trying to balance the estate accounts and finalise matters with

outstanding shares and that despite raising issues about her workload in her supervision meetings, nothing was done at the time to help her. The Respondent accepted in her evidence that Ms Sullivan subsequently took steps to reduce her workload, but the Respondent's case was that this was after the relevant events.

12.22 A major element of the Respondent's case was that her actions were consistent with the culture and practice in the team. She stated that having initially denied that billing for work in advance was a practice condoned by the Firm it was subsequently conceded that this was an occasional practice. The Respondent's evidence was that responsibility for the billing process in the Team was "offloaded" on to her rather than remaining with senior colleagues who had conduct of the files. She stated that she had been told by RE to record anticipated time, something that the Respondent said she had challenged. The Respondent stated that she had included the word "anticipated" in such a time entry for work not completed, but had been advised by RE to remove this distinction on the basis it would cause confusion. The Respondent also stated in her evidence that Ms Sullivan had provided instructions about billing for work in advance of its completion. The Respondent highlighted one specific email in which Ms Sullivan had asked ahead of a client meeting whether the time for that meeting had been included on the bill.

12.23 The Respondent stated that she was always clear, open and honest about the situation on the files on which she worked. She gave an account of being left to deal with matters alone and nothing being done in response to her repeated requests for help. She stated that in retrospect she was not coping at the time and now believed that she had been suffering from work-related anxiety and stress. The Respondent stated that Ms Sullivan had commented on her appearance deteriorating and that the Respondent had explained to her that she was struggling. She said that she did the best she could in the circumstances but it was too much for her as an unqualified trainee. She described wanting to do a thorough job and perceiving that she was in a situation where she was unable to do so. Her evidence was that if she felt she did not have enough time to complete a task, she would reschedule it rather than rush through it. The workload was particularly problematic in the Respondent's view after the Firm merged with another firm in summer 2017 resulting in a large influx of work to the Team at a time when a qualified solicitor had recently left the Team.

12.24 The Respondent's evidence was that her intention to complete the work was evidenced by her online calendar entries and her handwritten daily plan records (to which she no longer had access despite having requested them). These documents recorded the work she intended to do and had completed on each day. She described those plans as constantly changing because of the new matters and tasks assigned throughout the week.

12.25 The Respondent stated that her some of her planned work slipped despite her working long hours. She stated that there was no motive or personal benefit for her in allowing this situation to happen. She accepted it should not have happened and said that she had learnt from her mistakes. She expressed her remorse for what happened but maintained she had never recorded time falsely as alleged. She had recorded time for tasks she fully intended to carry out promptly, in a way she considered to be consistent with practice within the team.

12.26 The Respondent agreed that at a meeting on 24 July 2018 the issue of time billed but not completed on one file was discussed by RE and Ms Sullivan and that she was then called into their meeting. The Respondent stated that on the following day she was taken out for lunch by RE, something she said in evidence had not previously happened, and was told that she should not record time for work not completed as she may "get into a muddle". The Respondent's evidence was this was contrary to what RE had previously instructed and advised.

12.27 The Respondent denied "inventing" time entries and that, as a trainee solicitor, she was in a position of responsibility over the issuing of bills by the Firm. She did not have conduct of any of the three files in question. She had sought to include a description to clearly distinguish work which was anticipated and yet to be completed, but her case was that she was instructed by a senior colleague not to do this. The Respondent's evidence was that her involvement with bills in other teams in which she had trained was much more limited and she had not encountered the concept of anticipatory time recording elsewhere. She said in her oral evidence that she had understood that her time entries and actions were reviewed by senior colleagues. In answer to a question from Mr Bullock she stated that she would have expected those senior colleagues with conduct of the files in question to be aware when work had not been completed by the time it was billed based on their file reviews. She also stated that she had not appreciated at the time that the potential acceptability of the practice depended on how much time was involved.

12.28 Had the Respondent had any concerns at the time about the anticipatory charging she said she had been told was acceptable, the Respondent's evidence was that she would have reported the practice. The Respondent denied that she had acted without integrity in breach of Principle 2. She described herself of a person of utmost integrity. She also denied breaching Principle 6 (failing to uphold the public trust placed in her and the provision of legal services) on the basis that she was open and honest about her time recording practices and the fact that work was not completed promptly as intended was attributable to the factors summarised above. As noted above, during the hearing the Respondent accepted that in relation to allegation 1.1 her conduct in recording time for work not completed amounted to a breach of Outcome 1.1 of the Code on the basis it did not treat her clients fairly.

12.29 In relation to allegation 1.2, the Respondent admitted breaching Principle 4 (acting in the client's best interests) but stated that she did, or in some cases fully intended to do, the relevant work with the effect that the clients would pay her lower trainee fees rather than the solicitor charge out rate. She also admitted breaching Principle 5 (providing a proper standard of service) with regards to her time recording but stated that she always endeavoured to provide clients with a proper service.

Response to allegation of dishonesty

12.30 The Respondent denied that she had been dishonest. She had been open and honest about the situation and her actions at all times. Dishonesty was denied on the same basis as the alleged breaches of Principle 2 and 6 in allegations 1.1 and 1.2.

12.31 In addition, the Respondent referred the Tribunal to five character references in support of her submission that she had no propensity for dishonest conduct and, on the contrary, her professionalism, honesty and dedication were stressed. Four of the character references were from individuals who had worked with the Respondent at the Firm and one was from her current employer. She submitted that she was a person of honesty and integrity.

The Tribunal's Decision

12.32 The time entries themselves and the bills which were subsequently generated were not in dispute between the parties. The Respondent admitted that there were instances where she recorded time for work she had not done, where the narrative description did not make that clear and where bills were raised and paid. The Respondent had admitted that she had breached Outcome 1.1 of the Code (the obligation to treat clients fairly) in relation to the three cases relied upon by the Applicant. The Tribunal considered that this admission was reasonable and properly made and found the breach of Outcome 1.1 of the Code to be proved on the balance of probabilities.

12.33 Time recording practice differed in the Wills, Trusts and Probate team from the other teams within the Firm where the Respondent had spent seats of her training contract. The Respondent's evidence, which was not challenged, was that there had been no concept of anticipatory time in other teams and her role with regards to the creation of bills had been more limited. The Respondent was not the primary lawyer with conduct of any of the cases with which the allegations were concerned. The Tribunal noted the evidence from Ms Sullivan that there was little challenge of the time recorded by the Respondent.

12.34 Ms Sullivan led the Wills, Trusts and Probate team. The Tribunal considered that Ms Sullivan gave straightforward, detailed and truthful evidence. She stated that she had few of her own files and confirmed the Respondent's account that the Team had a very significant influx of work following a merger in the summer of 2017. Ms Sullivan described anticipated billing as being limited to certain very specific circumstances but acknowledged that it did sometimes occur. In her written witness statement Ms Sullivan had described "a few units" of anticipated time being acceptable whereas in her initial oral evidence (before she clarified the point) she referred to "a unit". The Tribunal did not consider that it had been demonstrated that the limits of what was acceptable in terms of anticipated billing had been clearly conveyed to the Respondent. The Tribunal accepted the submission from Mr Bullock that recording a very small amount of time to include a final meeting with a client, for the client's convenience, may itself be unremarkable. Having said which, the Tribunal also accepted the uncontroversial and vitally important principle that a client must only be charged for work completed. Circumstances in which an inexperienced trainee solicitor, albeit one in the final seat of her training contract, was exposed to the concept of anticipated time recording for the first time and had a more extensive role in the billing process than she had previously undertaken, and where the small team was extremely busy, were apt for difficulties to arise.

12.35 The Tribunal found the Respondent to be a compelling and truthful witness. She made concessions where warranted and the Tribunal found her account of her actions and beliefs at the relevant time to be credible. Her approach to the Tribunal proceedings

displayed the attention to detail she referred to in her evidence and this was a trait that her character references also emphasised. The documentation she submitted in support of her Statement of Means was amongst the most detailed the Tribunal could recall from any Respondent. In this context the Tribunal found the Respondent's account of how she came to procrastinate on tasks she could not complete when extremely busy and how she failed to complete them as intended to be credible. Ms Sullivan gave evidence about steps she had taken to reduce the Respondent's workload in response to her requests for help and Ms Sullivan did not consider the Respondent's workload to be excessive. However, the Respondent's account of feeling overwhelmed was corroborated by Ms Sullivan's concern for her wellbeing and was accepted by the Tribunal. The Tribunal accepted the Respondent's evidence that she had genuinely intended to complete the work that she had recorded in anticipation.

12.36 On certain key points there was no evidence presented by the Applicant rebutting the Respondent's account. It was not contested that at the relevant time the Team was extremely busy and the Respondent began work early in the morning. The Respondent's account that there was no systematic training on time recording or billing within the team was not challenged. Such training as there was happened 'on the job' through supervision. Whilst the report made to the Applicant by the Firm stated that its policies had been breached by the Respondent, no documentation had been produced to substantiate this assertion.

12.37 More significantly, the Respondent's evidence was that prior to the examples with which the allegations were concerned, a senior colleague RE had told her that it was acceptable to record what the Respondent stated RE had called "anticipated time". The Respondent's evidence was that RE had stated that this was acceptable on the basis that the team was particularly busy. On the Respondent's account RE had told the Respondent to remove the descriptor "anticipated" from the time ledger on the basis this would cause confusion. No evidence to the contrary was proffered and the Tribunal accepted the Respondent's account. The Tribunal found that the Respondent had been told that recording time for anticipated work was, to some extent, permissible within the team.

12.38 Again, no challenge was made the Respondent's evidence that she was taken out to lunch by RE on 25 July 2018 (the day after the issues on the first file came to light) for the first time. No challenge was made to the Respondent's account that during lunch RE had resiled from her previous comments and said that the Respondent should not bill for future work as she would "get into a muddle". The Tribunal accepted the Respondent's account. The Tribunal had no direct evidence on what may have caused this change. The Tribunal did not infer that there was any improper motive; the events described by the Respondent were entirely consistent with RE and Ms Sullivan being genuinely surprised and concerned about the nature and extent of the anticipated billing that the Respondent had undertaken. The Tribunal accepted Mr Bullock's submission that Ms Sullivan's subsequent actions, and the Firm's disciplinary action, suggested that this was the case. The Tribunal shared this concern about the time recording and billing on the three files relied upon by the Applicant, and as stated above had found to the requisite standard that the clients in those cases were not treated fairly.

12.39 However, allegations 1.1 and 1.2 both also involved alleged breaches of Principles 2 and 6 of the Principles. These relate to acting without integrity (Principle 2) and failing to maintain the trust placed by the public in the Respondent and in the provision of legal services (Principle 6). The well-known case of Wingate to which the Tribunal was referred established that integrity connotes adherence to the ethical standards of one's own profession. The Tribunal was not persuaded that it had been proved that the Respondent had failed to adhere to the relevant ethical standards. Anticipated billing was to some, disputed, extent a minor feature of the Team's time recording practice. The Respondent's uncontested evidence was that she had been told by a senior colleague that given the team was busy she could record anticipated time, but should not identify it as such on the time ledger. The Tribunal accepted that Respondent genuinely intended to complete the work but had not done so due to feeling overwhelmed. It was thus not accurate to describe the time as "invented" as did the Rule 12 Statement. The Respondent was a trainee who had not been provided with systematic training in the strict limits outlined in Ms Sullivan's evidence of when and to what extent anticipated billing may be tolerated. The Respondent's account and explanation of her conduct had been consistent from when she was first challenged by the Firm. Whilst the Tribunal did not condone the Respondent's time recording practices which gave rise to the allegations, and considered that the most likely cause was miscommunication within the team, the Tribunal did not consider that assessed in context the Respondent's conduct amounted to a failure to adhere to the ethical standards of the profession. The Respondent's conduct fell below the standards expected, but for the reasons summarised above did not amount to conduct lacking integrity. Accordingly, the alleged breaches of Principle 2 in allegations 1.1 and 1.2 were both found not proved on the balance of probabilities.

12.40 For essentially the same reasons, the Tribunal did not find that the Respondent had failed to uphold the trust the public placed in her and in the provision of legal services (Principle 6). Once the context was understood, a conscientious trainee solicitor who had failed to complete work as she had intended, who had had no issues with time recording in previous seats, and for whom problems had arisen in a particularly busy period in a small team in which some limited and poorly defined degree of anticipated billing was tolerated, was not conduct which would offend Principle 6 or undermine public trust.

12.41 The Respondent had admitted that her actions breached Principles 4 and 5. These Principles relate to acting in the client's best interests and providing a proper standard of service. As stated above, even allowing for the full context of the Respondent's admitted conduct in recording time for work which had not been completed, the fact that bills were thereby generated and paid by clients was not acceptable. The time narrative descriptions used by the Respondent gave no indication that the work had not been completed. It was manifestly not in any client's interests to pay for work which had not been completed and such conduct could not amount to a proper standard of service. The Tribunal considered that the admissions were properly made and the Tribunal found the breaches of Principles 4 and 5 in allegation 1.2 to be proved to the requisite standard.

The Tribunal's Decision on the allegation of Dishonesty

12.42 The Tribunal accepted the summary of the test for dishonesty provided by the Applicant. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey and accordingly the Tribunal adopted the following approach:

- firstly, the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

12.43 The Tribunal had found that the Respondent had recorded time for work not completed and had described it in such a way that it was not clear it had not been completed. As set out above, the Tribunal had accepted that the Respondent genuinely believed that due to the workload within the team she was entitled, to some extent, to record time for work intended to be completed in the near future. This was on the basis of comments made by a senior colleague RE, and to a lesser extent by the Respondent failing to appreciate the very limited circumstances described by Ms Sullivan in which such billing was acceptable. A lack of training contributed to this belief. The Tribunal had found that the Respondent had genuinely intended to complete the work in question. She was a diligent but inexperienced individual who had been overwhelmed by the circumstances she described. Ms Sullivan's evidence corroborated the Respondent's account that she had been struggling personally at the relevant time.

12.44 The documentary evidence showed that the Respondent's account of her actions had been consistent since she was first challenged. The Tribunal accepted the Respondent's submissions and did not consider that the admitted serious shortcomings in her conduct would be regarded as dishonest by ordinary decent people.

Previous Disciplinary Matters

13. There were no previous Tribunal findings.

Mitigation

14. To a large degree, the Respondent's mitigation was included within her submission as to why her admitted breaches of Principles 4 and 5 and Outcome 1.1 of the Code did not offend Principles 2 and 6. The context of her conduct and her belief at the time was advanced as mitigation.

15. The Respondent had made admissions to three of the alleged breaches during the hearing. The misconduct involved three specific files. The Respondent stated that she had cooperated with the Applicant and the proceedings throughout.

16. The Respondent stated that following her dismissal from the Firm she had made the decision to register with the Applicant on a non-practising basis until she had put her case forward in these proceedings. She stated that early on in the proceedings she had spent savings on legal fees but had later represented herself in order to save costs. She had submitted detailed evidence of financial means and invited the Tribunal to take this into account when considering sanction and any costs award.

17. The Respondent apologised for her conduct and was stated she was confident there was no prospect of any similar conduct in the future. She said she was grateful for the opportunity to practise as a solicitor and hoped to be an asset to the profession for many years.

Sanction

18. The Tribunal referred to its Guidance Note on Sanctions (November 2019) when considering sanction. 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.

19. In assessing culpability, the Tribunal found that there had been no particular motivation for the Respondent's misconduct and that her intention had been to complete the work she had recorded. There had been no element of gain on her part. The conduct could not be described as spontaneous; the time recording, and subsequent billing, was planned. The Tribunal had found, however, that the Respondent had genuinely, albeit wrongly, considered the practice of anticipatory billing as she practised it to be acceptable. Given the context of the misconduct, the Tribunal did not consider that there had been any breach of trust. The Tribunal had found that it had not been established that the guidance on time recording practices was sufficiently clear. At the time of the conduct, the Respondent had limited experience, being in the final seat of her training contract. Despite the context of the misconduct, described above, the Respondent nevertheless retained responsibility for her reaction to the circumstances in which she found herself. The Respondent did not mislead the regulator. The Tribunal considered that overall her culpability was low.

20. Assessing harm, the Tribunal considered that given the Respondent believed she was entitled to record time in the way she did, and considered that she had been told to do so. On that basis, she could not have foreseen that her actions would cause harm. With hindsight she had recognised the harm and potential harm caused by such practices and in particular by including anticipatory work within bills, and had apologised for this. Given her experience and her genuine belief at the time, the Tribunal assessed the harm caused as low.

21. The Tribunal did not consider that any aggravating features, such as the examples set out in the Sanctions Guidance, applied to the Respondent's conduct.

22. In mitigation, as a trainee the Respondent was guided by senior colleagues. She displayed insight that the Tribunal considered to be genuine. She had elected to work as a non-practising solicitor until the proceedings were concluded which the Tribunal considered to be to her considerable credit. She had cooperated with the Applicant's investigation. The proved misconduct was essentially one mistake, which had been

repeated nine times within a relatively short period at a time when the Respondent was struggling to cope. The Tribunal considered that the mitigation presented had considerable force.

23. Having assessed the seriousness of the misconduct, the Tribunal assessed the appropriate sanction, beginning with the least serious option. The Respondent's conduct had cost her her employment, and had had a continuing financial impact on her since her dismissal in August 2018. She had spent two years as a result of these events in a non-practising role. The Tribunal had assessed the Respondent's culpability as low, and whilst the admitted misconduct was serious, she had presented considerable mitigation. In all the circumstances set out in the Tribunal's decision above, the Tribunal considered that any further sanction would be disproportionate. The Tribunal determined that it would impose no sanction and made no order.

Costs

24. The Applicant's schedule of costs amounted to £6,567. Of this, £600 was said to relate to the investigation of the allegations rather than the proceedings. Mr Bullock submitted that given the witness evidence available to it the Applicant had been correct to proceed with the Principle 2 and 6 allegations even though they had been found not proved. There had been no prior indication of the admissions made by the Respondent during the hearing and the factual matrix underpinning the proved allegations was the same as that for those which were not proved. The Applicant had had to prepare for the hearing on the basis that it would be fully contested. The Tribunal had found the alleged facts proved, but not all of the alleged breaches. Mr Bullock submitted that some discount may be appropriate based on the fact that the hearing was likely to have been shorter had it only related to those matters found proved. Some discount was generally given where allegations had not been found proved. Mr Bullock submitted that the case was not one where the position described in Baxendale-Walker v The Law Society [2007] EWCA Civ 233 applied and so the question of costs against the Applicant did not arise. Mr Bullock invited the Tribunal to discount the figure on the schedule of costs by an amount equivalent to 7 hours to reflect the fact that the hearing could have been shorter, and also to reflect the fact that dishonesty had not been proved.

25. The Respondent had provided detailed evidence of financial means and she invited the Tribunal to take this into account. She submitted that very little investigation had been required as the Applicant had relied on the Firm's report. She submitted that had the unsuccessful Principles 2 and 6 and dishonesty allegations not been brought then the costs would have been significantly lower. The Respondent stated that she had taken the majority of her annual leave to prepare her own case and asked that the Tribunal take this into account.

26. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal accepted the submission from Mr Bullock that a reduction equivalent to 7 hours (which at the applicable hourly rate was £910) was appropriate to reflect the fact that the hearing had been extended by a day by those matters not found proved. The Tribunal also considered that the fact that the most serious allegations, of dishonesty and breach of Principles 2 and 6, had been found not proved should be reflected in a further discount to the costs awarded. These

serious alleged breaches, which applied to both allegations 1.1 and 1.2 inevitably increased the amount of documentation and the complexity of the pleadings which had affected the costs incurred. Whilst her formal admissions had been made late, the Respondent's account of her actions had remained consistent from when first challenged by the Firm to the final Tribunal hearing. The Tribunal considered that it had been reasonable for the Applicant to bring the proceedings including the unsuccessful allegations on the basis of the witness evidence it had available and the critical importance of probity with regards to charging. The Respondent had used her annual leave in order to prepare for the hearing at which she had been largely successful. In all the circumstances the Tribunal determined that the appropriate costs figure to award to the Applicant was £4,000.

27. The Respondent had presented extensive and compelling evidence of her currently limited means. The Tribunal accordingly determined that a discount of 25% should be applied to the costs which had been assessed. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £3,000.

Statement of Full Order

28. The Tribunal made NO ORDER in respect of the allegations admitted and found proved.

The Tribunal ORDERED that the Respondent, MICHELLE LOUISE CRAVEN, solicitor, do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

Dated this 18th day of September 2020
On behalf of the Tribunal

J C Chesterton
Chair