SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12046-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DEIAN WYN BENJAMIN Respondent

Before:

Mr B. Forde (in the chair)
Miss H. Dobson
Dr P. Iyer

Date of Hearing: 29 April 2020

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made by the Applicant against the Respondent were that:

1.1 Between 2 October 2018 and 24 October 2018, he provided misleading statements to Freeths LLP that counsel was instructed to represent SJHL at the mediation on the matter of EMcG v SJHL and would be attending the mediation on 24 October 2018 when he knew that was not true because counsel had not been instructed to represent SJHL at the mediation, thereby breaching all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

1.2 Between 2 October 2018 and 24 October 2018, he provided misleading statements to the mediator that counsel was instructed to represent SJHL at the mediation on the matter of EMCG v SJHL and would be attending the mediation on 24 October 2018 when he knew that was not true because counsel had not been instructed to represent SJHL at the mediation, thereby breaching all or alternatively any of Principles 2 and 6 of the Principles.

1.3 On 24 October 2018, he informed the mediator that counsel could not attend the mediation on the matter of EMCG v SJHL due to a family emergency when he knew that was not true because counsel had not been instructed to represent SJHL at the mediation, thereby breaching all or alternatively any of Principles 2 and 6 of the Principles.

2. In addition, allegations 1.1, 1.2 and 1.3 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but not as an essential ingredient in proving the allegations.

Documents

3. The Tribunal had before it the following documents:-

- Application and Rule 12 Statement dated 10 January 2020
- Standard Directions dated 15 January 2020
- Respondent's Answer dated 13 February 2020
- Statement of Agreed Facts and Proposed Outcome dated 21 April 2020

Factual Background

4. The Respondent was admitted to the Roll of Solicitors in July 2008. At the date of the application he held a practising certificate free from conditions. At the time of the alleged misconduct, he was working as a senior associate in the litigation department at RDP Law Limited. On 28 November 2018, the Applicant received a report in respect of alleged misconduct.

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 annexed to this

Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

6. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (the balance of probabilities). 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 noted that the Respondent was legally represented when submitting his Answer dated 13 February 2020 in which he admitted the allegation of dishonesty. The Tribunal reviewed all the material before it and was satisfied to the requisite standard that the Respondent's admissions were properly made.

8. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Respondent had admitted making misleading statements and the aggravating factor of dishonesty. He had an otherwise unblemished disciplinary record, made early admissions and maintained that he did not gain by the misleading statements or cause prejudice to others. The Respondent provided context for the statements he had made and invited the Tribunal to take this into account. He described taking a 'feigned' position of strength to bolster his client's position. His submissions in mitigation made clear he admitted the allegation of dishonesty reluctantly. The parties did not invite the Tribunal to find that "exceptional circumstances" within the meaning of SRA v Sharma [2010] EWHC 2022 (Admin) and SRA v James et al [2018] EWHC 3058 (Admin) existed. The Tribunal considered that in the light of the admitted conduct the proposed sanction of strike off was appropriate, proportionate and in accordance with the Sanctions Guidance. Having determined that the proposed sanction was appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

9. Within the Statement of Agreed Facts and Proposed Outcome document the Respondent requested guidance about the process for re-admission to the Roll of Solicitors and possible restrictions which could be placed on him in the future were he to be re-admitted. Guidance on applications for restoration to the roll is provided in the Guidance Note on Other Powers of the Tribunal (November 2019) which is available on the Tribunal's website. Guidance on potential restrictions on practice is provided in the Sanctions Guidance which is also available on the Tribunal's website. The Tribunal is unable to offer more specific guidance at this stage; as set out in the Guidance Note on Other Powers of the Tribunal, the Tribunal's function when considering an application for restoration is to determine whether the applicant has established at that time that they are a fit and proper person to have their name restored to the Roll.

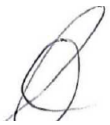
Costs

10. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £2,500. The Respondent made submissions about his ability to pay the agreed costs. The Tribunal considered that any arrangement as to the terms of payment of the agreed costs was a matter to be resolved between the parties. In all of the circumstances, the Tribunal considered the costs application to be appropriate and proportionate, and made the order in the agreed amount.

Statement of Full Order

11. The Tribunal ORDERED that the Respondent, DEIAN WYN BENJAMIN, 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 £2,500.00.

Dated this 12th day of May 2020
On behalf of the Tribunal



B. Forde
Chair

Case No: 12046-2020

IN THE MATTER OF THE SOLICITORS ACT 1974
and
IN THE MATTER OF DEIAN WYN BENJAMIN (A SOLICITOR)
BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DEIAN WYN BENJAMIN

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 10 January 2020, and the statement made pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making three allegations of misconduct against Mr Benjamin.

2. The allegations against Mr Benjamin made by the SRA within that statement were that he:

   2.1 Between 2 October 2018 and 24 October 2018, provided misleading statements to Freeths LLP that counsel was instructed to represent SJHL at the mediation on the matter of EMcG v SJHL and would be attending the mediation on 24 October 2018 when he knew that was not true because counsel had not been instructed to represent SJHL at the mediation, thereby breaching all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

   2.2 Between 2 October 2018 and 24 October 2018, provided misleading statements to the mediator that counsel was instructed to represent SJHL at the mediation on the matter of

EMcG v SJHL and would be attending the mediation on 24 October 2018 when he knew that was not true because counsel had not been instructed to represent SJHL at the mediation, thereby breaching all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

2.3 On 24 October 2018, informed the mediator that counsel could not attend the mediation on the matter of EMcG v SJHL due to a family emergency when he knew that was not true because counsel had not been instructed to represent SJHL at the mediation, thereby breaching all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

3. In addition, dishonesty was alleged as an aggravating factor with respect to each of these allegations.

4. Mr Benjamin reluctantly admits each of these allegations. Mr Benjamin, in light of the current rules, also reluctantly admits the aggravating feature of dishonesty attached to each allegation.

Agreed Facts

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

5.1 Mr Benjamin was admitted to the Roll of Solicitors on 15 July 2008. He currently holds a practising certificate free from conditions.

5.2 He presently resides in Cardiff.

5.3 At the time of the alleged misconduct, Mr Benjamin was working as a senior associate in the litigation department at RDP Law Limited, the address of which is: Wentwood House, Langstone Business Village, Newport, South Wales, NP18 2HJ. Mr Benjamin is no longer an employee of RDP Law and is currently unemployed and seeking employment opportunities in light of the current action.

5.4 On 28 November 2018, the SRA received a report from Mr Mark Arthur Keeley, a partner and the Head of the Private Litigation Team at Freeths Solicitors LLP ("Freeths LLP"), in respect of alleged misconduct on the part of Mr Benjamin.

5.5 It was attached to an e-mail from Mr Gregg Parkin, a Legal Assistant at Freeths LLP, dated 28 November 2018 and timed at 15:10.

5.6 Mr Parkin's e-mail was copied to Mr Charles Powell, Head of Risk & Compliance at Freeths LLP, and Mr Keeley. The e-mail also attached the enclosures to the report.

(i) The report itself can be summarised as follows.

(ii) It stated that Mr Benjamin was instructed by SJHL and that Freeths LLP were instructed by EMcG.

(iii) It stated that the matter concerned a dispute which had arisen "in connection with the termination of" EMcG's contract with SJHL.

(iv) "The matter has been explored in pre-action protocol correspondence and before proceedings were issued, both parties agreed to use mediation as a form of ADR in an attempt to resolve the dispute at an early stage," it confirmed.

(v) It referred to a mediation which had taken place at Freeth LLP's Birmingham Offices on Wednesday 24 October 2018. The mediator had been Mr David Harris and he had been "appointed by both parties to oversee the mediation."

(vi) Mr Benjamin had conduct of the case, on behalf of SJHL, at the firm.

(vii) Mr Keeley said that, in advance of the mediation, "Freeths made enquiries with RDP Law Limited and Mr Benjamin to establish who would be attending the mediation" and that, in a Position Statement dated 17 October 2018 and drafted by Mr Benjamin in readiness for the mediation, Mr Benjamin had stated that he would be attending the mediation with Ms Rebecca Page of Counsel.

(viii) Mr Keeley made the point that "the Position Statement was provided to Freeths and the mediator by e-mail from Mr Benjamin on 17 October 2018." Further, in the covering e-mail to which the Position Statement was attached, Mr Benjamin had said once more that he would be attending the mediation for his client, together with counsel.

(ix) Mr Keeley goes on to say, "Freeths were concerned that there would be no representative of S…J…H…L…at the mediation" and so he raised that issue with Mr Benjamin and with the mediator. In response, Mr Benjamin had said once again that he would be attending the mediation with counsel and had also stated that neither he nor counsel had any dietary requirements.

(x) Mr Keeley indicates in his report that he and his client "were encouraged by the fact that Counsel was instructed to attend the mediation" and that that had caused them "to proceed with the mediation process."

(xi) On the morning of the mediation, Mr Keeley goes on to say, "…in contrast to the assurances given prior to the mediation, Mr Benjamin attended the mediation alone, without Counsel. He stated to the mediator that Counsel had been instructed to

attend at the mediation but had pulled put at short notice as a result of a "family emergency.""

(xii) Freeths LLP subsequently made enquiries of Ms Page's Clerk at Maitland Chambers who informed them that Ms Page had previously been instructed by RDP Law Limited but that she had not been instructed to attend at the mediation on 24 October 2018. Moreover, "the mediation on 24 October was not entered into her diary and in fact…she was on holiday from Friday 19 October and was scheduled to be away over the entire period of the mediation."

(xiii) Mr Keeley went on to aver that he was concerned that Mr Benjamin had "deliberately attempted to mislead the mediator, Freeths and E…McG in respect of the attendance of Counsel at the mediation."

(xiv) Mr Keeley stated that "Freeths and E…McG were induced to proceed with the mediation by Mr Benjamin's misrepresentations/dishonesty" and that they would not have proceeded with the mediation had they been told beforehand that counsel would not be attending on behalf of SJHL. As a consequence, EMcG had incurred costs "in excess of c. £8,000 plus VAT in connection with the mediation" and made the point that those costs would not have been incurred had Mr Benjamin told the truth about counsel's attendance at the mediation.

(xv) Mr Keeley said that Freeths LLP were concerned that what was set out in its report to the SRA amounted "to a matter which could constitute serious misconduct (i.e. dishonesty) and which could therefore constitute a breach of Principles 2 and 6 of the Code of Conduct."

(xvi) Mr Keeley said that Freeths LLP had entered into correspondence with the firm about the matters set out in its report.

(xvii) He said that the firm had chosen not to report the matter to the SRA itself. Therefore, given the concerns that Freeths LLP had about Mr Benjamin's conduct amounting to a breach of Principles 2 and 6 of the SRA Principles 2011, it was making the report itself in accordance with its reporting obligations as set out in Outcome 10.4 of the SRA Code of Conduct 2011.

(xviii) Whilst reluctantly conceding the above facts, Mr Benjamin is of the view Freeths, their client and their fee earners have appeared to over-exaggerate the importance of the mediation. Freeths and their client could have withdrawn from the mediation at any point or indeed, postponed the mediation if the attendance of Counsel acting for S…J…H….L was as imperative as they now allege within their evidence.

Allegations 1.1, 1.2 and 1.3

5.7 Mr Benjamin was instructed by SJHL in connection with a civil dispute which had arisen with EMcG following the termination of her contract.

5.8 At the time of the mediation appointment, proceedings had not been issued. In an effort to avoid such proceedings being issued, the parties engaged in ADR in order to possibly narrow the issues in dispute or to consider a possible settlement of the issues in dispute.

5.9 A mediation was scheduled to take place at the Birmingham Offices of Freeths LLP on Wednesday 24 October 2018. The mediator was Mr David Harris, from ADR Group.

5.10 In advance of 24 October 2018, the parties exchanged correspondence as to the arrangements for the day.

5.11 On 13 September 2018, Freeths LLP wrote to the firm asking for the names of those who would be attending the mediation on behalf of SJHL and also whether those attending had any dietary requirements.

5.12 Mr Benjamin replied on the same day, by way of an e-mail timed at 16:55. In the fourth paragraph of his e-mail he said, "We shall provide you with details of attendees in due course along with any dietary requirements. Considering the mediation is not due to take place for another six weeks, we cannot see why such information is required immediately."

5.13 On 17 October 2018, Mr Benjamin sent an e-mail to Mr Keeley and Mr Parkin at Freeths LLP. The e-mail is timed at 10:16. The first paragraph of it reads,

> "Further to emails sent on Monday 15th October 2018, our client's counsel requires additional time to finalise the position statement and for our client to approve the same." He went on to suggest an extension of the time by which Position Statements were to be exchanged on 17 October 2018 from midday to "on or before 4.00pm."

5.14 It will be noted from a letter from Mr James Davies (the Managing Director of RDP Law Limited), dated 13 February 2019 that:

> "Counsel (Ms R. Page) was retained by our client/this firm on a separate litigious matter to which the claim in question was, essentially, a smaller, "satellite" claim. Although Counsel would have been aware of the identity of the claimant (who was

relevant to the main claim) she was not specifically retained or instructed in respect of this particular matter."

5.15 The next development in the matter was that, shortly after sending the e-mail at 10:16, Mr Benjamin e-mailed his client department at 10:35.

5.16 In the penultimate paragraph of his e-mail, he explained that intentionally misleading Freeths LLP about the attendance of counsel at the mediation was a litigation tactic. He states, "I have suggested that Counsel will be attending the mediation. To save costs, I shall be conducting the mediation myself and will update Robert and you during the day. I do not propose that Counsel is required for the mediation, but this will be perceived by the other side as being a matter which is being considered seriously and the threats of future litigation and/or counterclaims are real."

5.17 Following that, at 16:09 on 17 October 2018, Mr Benjamin e-mailed the mediator, Mr Harris, attaching a copy of his client's Position Statement. In the third paragraph of his e-mail he stated, "Our Deian Benjamin will attend the mediation on behalf of our client along with Counsel. Instructions will be provided and indeed obtained as the mediation progresses." Paragraph 42 of the Position Statement (attached to the e-mail referred above) reads, "In attendance for (sic) at the mediation will be Mr Deian Benjamin of RDP Law and Rebecca Page, counsel for the Proposed Defendant."

5.18 On 22 October 2018, at 10:54, Mr Parkin e-mailed Mr Benjamin referring to the attendance of counsel at the mediation and requesting confirmation from Mr Benjamin as to whether anybody else would attend the mediation. Mr Parkin made it clear in his e-mail that he was requesting that confirmation for security purposes. He also asked whether those who would be attending had any dietary requirements. Mr Parkin concluded his e-mail by stating, "We are concerned as to how you intend to take instructions if there is to be no representative of your client in attendance at the mediation. We fully reserve our position in that regard."

5.19 Mr Benjamin replied the following morning, at 06:47. The content of his e-mail can be summarised as follows:

- He said, "We confirm counsel and our fee earner will attend the mediation with prior instructions and also updated instructions being provided by phone and email where necessary…"

- As to the non-attendance at the mediation of representatives from his client department, the Respondent offered the following explanation,

"For the record, our client is currently in the final stages of appointing a new chief executive. As the other directors and 'A' shareholders have a busy medical practice, they have provided detailed instructions as well as being available by phone to discuss matters further as they progress during the day."

- "Neither counsel nor Mr Benjamin have any dietary requirements," he confirmed.

- The mediation went ahead on 24 October 2018 and in his witness statement Mr Keeley explains: "Contrary to the various assurances provided…on the day of the mediation, Mr Benjamin attended the mediation alone, without Counsel, Rebecca Page."

5.20 Mr Keeley goes on to say that he did not speak to Mr Benjamin directly on the day of the mediation and that it was the mediator who told him that Ms Page had been unable to attend the mediation due to a "family emergency." He states that he did find this "rather surprising" but that he had "no option but to take this information at face value." Mr Benjamin states that if Freeths' client was insistent on counsel being in attendance, Freeths and their client had the option to postpone the mediation appointment to another date when counsel could have attended or indeed, could have refused to engage in any discussions on the day. Freeths and their client chose to continue with the ADR appointment, which Mr Benjamin submits is contrary to the stated position of Freeths and their representatives in their evidence. Put simply, the choice was with Freeths and their client whether to proceed with the mediation or not. They chose to proceed with such an appointment, which unfortunately resulted in no settlement.

5.21 Mr Keeley reports that, following the mediation, he asked Mr Parkin "to make contact with Rebecca Page's clerk at Maitland Chambers, Oliver Thorpe."

5.22 Mr Parkin duly made enquiries of Maitland Chambers. The details of a telephone call he had with Mr Thorpe at Maitland Chambers can be summarised as follows:

- The reason for his call was to enquire as to whether Ms Page had been instructed to attend the mediation.

- Mr Parkin briefly set out the events leading up to his telephoning Mr Thorpe and asked Mr Thorpe whether it was correct that Ms Page has been unable to attend the mediation due to "personal circumstances."

- Having checked Ms Page's diary, Mr Thorpe confirmed to Mr Parkin that there was nothing in Ms Page's diary which suggested that she had been due to attend the mediation on 24 October 2018. Mr Thorpe also stated that Ms Page had been on annual leave since Friday 19 October 2019 and was on leave at the time of Mr Parkin's call to Maitland Chambers.

- Mr Parkin explained that Freeths LLP had been told "that Rebecca would be attending the mediation and that…(they)…had concerns following her non-attendance at the mediation that she had never been instructed to attend the mediation."

- Mr Thorpe confirmed to Mr Parkin that Ms Page was instructed by RDP Solicitors but that she had "…not been instructed to attend the mediation on 24 October 2018 as it was not in her diary."

5.23 On the same day, Mr Keeley responded to an e-mail from Mr Harris. The last sentence of his response reads, "For the avoidance of doubt, could you just confirm the reason given for the non-attendance of Rebecca Page yesterday?" Mr Harris replied on the same day, at 11:34, to say "The reason given was family emergency."

5.24 Mrs Kim Castro, Investigation Officer at the SRA, also made her own enquiries of Maitland Chambers in a letter dated 18 January 2019. Mr Stewart Thompson, Chambers Director, replied in a letter dated 29 January 2019.

5.25 On 26 October 2018, Mr Keeley wrote to the firm, setting out the concerns he had in relation to what had taken place. In his letter, Mr Keeley referred to Outcome 10.4 of the SRA Code of Conduct 2011, which required firms and individuals to report matters of serious misconduct to the SRA.

5.26 Ms Sioned Thomas, the then COLP of the firm, replied to Mr Keeley's letter on 9 November 2018. In the second paragraph of her letter she said as follows,

> "Having investigated this I am not of the view that a self-referral to the SRA in these circumstances is merited, although this is a matter that we will be dealing with internally."

5.27 Having reviewed Ms Thomas's response, Mr Keeley sent a further letter on 14 November 2018. In the second paragraph of his letter he said to Ms Thomas,

> "Can you please provide us with your explanation as to how Mr Benjamin's conduct is not in breach of principles 2 and 6 of the Code of Conduct so that we can consider this when making the decision as to whether this firm has an obligation to report the misconduct under O(10.4)?"

5.28 Ms Thomas responded to Mr Keeley by way of a letter dated 21 November 2018. reads as follows:

"Dear Mr Keeley

Re: Deian Benjamin

As I indicated in my previous letter, I have investigated the matter and I am not of the view that this incident is of sufficient seriousness to merit a self-report to the SRA.

Please be assured, though, that it is being treated with complete seriousness by us as a practice and we are dealing with it internally.

I'd like to thank you, again, for bringing this to my attention.

Yours sincerely

Sioned Thomas."

5.29 Ms Thomas eventually reported the matter to the SRA on 31 January 2019. She sent further documents on 7 February 2019.

5.30 On 4 April 2019, Mrs Castro sent Mr Benjamin an e-mail, to which she attached an Explanation With Warning letter ("the EWW letter"). In her letter, she set out a number of breaches of the SRA Code of Conduct 2011 which she had identified.

5.31 Mr Benjamin replied by way of a letter dated 16 May 2019, attaching it to an e-mail of the same date and timed at 15:46.

5.32 On 28 June 2019, an Authorised Officer in the SRA's Legal and Enforcement Department made a decision to refer Mr Benjamin's conduct to the Solicitors Disciplinary Tribunal.

Mitigation

6. The following mitigation and mitigating circumstances, which are not endorsed by the SRA, is put forward by Mr Benjamin.

By way of mitigation, I wish to submit and inform the Tribunal that:

- I did not make any personal or financial gain from the actions referred to above;
- There was no loss, harm or prejudice caused to the parties involved in this matter as a result of the actions mentioned above. Furthermore, the actions above have not caused any harm, prejudice or loss to the wider public;

- The incident took place *before* any Court proceedings were issued and the wider public would never have become aware of such issues until the current proceedings were instigated against me. The incident took place pre-proceedings and in the context of inter-party discussions and negotiations. As such, I submit the effect and impact of my actions would have been minimal at the time the incident took place;
- As no proceedings had been issued, I submit I did not mislead the Court with my actions.
- Admittedly, my actions were rash, were an isolated incident, foolish and wholly uncharacteristic of me and my professional position and experience. I have and will continue to regret such actions and will forever regret making such comments which have and will continue to affect me and my professional career for the rest of my life. Forbearance and compassion from the SDT by taking my unblemished professional history and indeed the detrimental impact such actions will have on my career, professional life, family and friendships would be appreciated in such circumstances. The current Covid-19 pandemic and the foreseeable economic hardship anticipated by such an outbreak will also affect my ability to seek alternative employment and will more than likely result in significant personal hardship for my wife and I as a result. Considering the foreseeable amount of unemployment likely due to this pandemic, compassion from the SDT in respect of my position would be appreciated.
- I confirm I have never been subject to any investigation or indeed any referral to the SRA in respect of my work as a solicitor in my unblemished career as a solicitor to date. Furthermore, I have never had any formal complaint referred to the SRA or indeed to the Legal Ombudsman in respect of my work as a litigation solicitor during my career. In this respect, I believe I have an unblemished and clear record. I would further add I have never been subject to a formal complaint regarding my work or my handling of client matters in my career. In this respect, I would implore the SDT to take this into consideration as part of my mitigating circumstances.
- I further confirm that I have not been placed in a position where I have had the need to self-report to the SRA in respect of my conduct or any alleged breach of the Code of Conduct or any of the SRA's rules and regulations.
- I remind the Tribunal I made an early admission in respect of my error of judgment and wish to express my utmost sincerity and apologies to the SRA, the SDT, my former employers and to all parties involved in this unfortunate matter. The effect of my actions have been catastrophic and wish to express my unreserved apologies for such actions.
- Whilst I concede that the issues set out above are serious, the impact of the actions were, in my view, limited in their nature, especially when considering the stage the matter was at when the incident arose. I submit that neither party suffered any prejudice, harm or indeed, detrimental loss as a result of my actions. I also feel that the solicitors for EMcG, Freeths, have sought to over exaggerate and compound the alleged inmpact on their client and their

firm unnecessarily in order to take full advantage of my error of judgment by trying to possibly obtain some form of a satisfactory outcome for their client or have me/my former employer removed from the matter by making such a reference to my former employer and the SRA in respect of this matter. I confirm I was removed as the fee earner from the matter immediately. My former employers had the resources and staff to carry on acting for the client and to defend the position in light of the subsequent court action Freeths commenced for their client some months after the mediation appointment. Unfortunately, S…J…H…L (i.e. my former client) has since entered into administration due to its financial position. It appears that in light of such a development, EMcG may not recover any sums from the Company in administration possibly due to its significant debts and liabilities. In my view, neither party to the claim will be deemed to be successful in such circumstances and I personally will have suffered greatly for my actions.

- Whilst I concede that I erroneously and wrongfully referred to counsel's attendance at the mediation to give the impression of some added credibility to my former client's case, which has since transpired to be to my own personal detriment, I believe that this matter has been vastly overexaggerated by Freeths as is set out in their witness evidence. Wrongfully, I thought that by stating counsel would be in attendance at the proposed mediation appointment, this would provide some form of perceived advantage for my former client or would certainly show that my former client was confident in its position and defence of the threatened claim or that they felt their defence to such threatened action was strong. I simply wished to act in a way which would strengthen my former client's position, by adding some form of credibility to my former client's position and to portray my client's position in a much stronger position than it may have been. I concede, that my client's position was weak and sought to provide an element of strength to the claimant and her solicitors in the way I was asked to defend the position by my former client. In fact, as it transpired, I understand from subsequent advice sought the case against my client was relatively weak, a point which I had previously informed the directors of the Company, but their desire was to defend their position and the instructions provided, contrary to the advice I gave to them on the facts, were to make life difficult for the claimant and allow her to incur costs and to pursue her claim. I therefore erroneously stated Counsel would be in attendance at the mediation to show my former clients were confident in their defence and would seek to defend their position and threatened claim from the claimant robustly.
- Crucially, I also wanted to demonstrate that my former clients would entertain a compromise and possible settlement of the issues in dispute, by demonstrating that the threatened actions would be defended with the view of seeking the best possible terms for my former client. As Freeths had sought to significantly increase their client's demands as part of their draft particulars of claim (i.e. increase the claim from the original letter before claim by nearly 50%) at the last minute, I wished to show a robust response would be taken

to such greed and action by Freeths and their client. I simply wished to engage in the mediation on the basis of the documents which had been served at the time the mediation was agreed, i.e. the letter before claim and inter-partes correspondence, not the draft particulars of claim which had been served and which increased the claim significantly and which rendered the letter before action and demands for payment to be nugatory. I merely wanted to show that such action and unreasonable demands made by Freeths and their client had been identified and would be robustly defended. Freeths and their client, in my view, failed to comply with the Pre-action conduct and indeed, failed to engage in the mediation in the spirit and co-operation I had envisaged at the time the appointment was proposed and agreed. I believe the Tribunal should be aware of such conduct and the underhand way Freeths acted, rather than simply accept what is stated in the evidence submitted against me.

- In my views to my former client, I suggested that ADR would be advantageous in that at least the parties could understand their respective positions better and indeed consider possible settlement offers which could be made to avoid such litigation and costs to be incurred. My view was that settling at the pre-proceedings stage would be far less costly for all involved than to have matters issued and be subject to significant further Cost. Incidentally, I have since been made aware Freeths sought to recover legal costs for the entire matter which was nearly double the issued amount claimed by their client for this matter. I wish to draw the Tribunal's attention to such unreasonable and disproportionate conduct, something I believe Freeths, on behalf of their client, have sought to maximise their position and that of their client on the back of my error of judgment. No doubt, such conduct and costs will be assessed by the Court should matter progress following the lifting of any insolvency moratorium. In short, Freeths, have sought to capitalise on my errors and have sought to maximise their client's position to recover sums whilst 'points scoring' against me in light of my error. This, to me is exemplified in the exaggeration of the effect the error had in the witness statements provided by Freeths as part of this matter. In my view, such a stance is at odds with the way Freeths conducted themselves at the mediation.
- I would further add the mediation appointment proceeded as was arranged. Freeths and their client had the opportunity to either postpone, cancel or indeed re-arrange the appointment but chose not to do either of these options available to them. Whilst I note the position Freeths state that having Counsel for my former client in attendance was important, if not imperative, their position in allowing the mediation to proceed should, in my view, have been different knowing that Counsel was not in attendance for my former client. The impact of my actions in such circumstances, therefore should be questionable in such circumstances and would invite to Tribunal to take this into account when considering the papers and my mitigation.

- In respect of the appointment, I was in receipt of instructions from my former client to provide EMcG with a significant settlement offer, provided that certain concessions were made by the Claimant and her representatives based on the draft particulars of claim they had previously sent to my former employers in the run up to the appointment. Had the Claimant made such concessions, a significant part of her subsequent claim issued at Court would have been paid, together with her legal costs, which would have been modest at that time of the mediation appointment. Unfortunately, as EMcG and her solicitors refused to make such concessions or indeed actively engage in the ADR discussions to the extent of narrowing issues in dispute the appointment was unsuccessful, court proceedings were issued and the claim was subsequently pursued at significant further cost, which, in light of the position with my former client, may never be recovered. Such sums, based on the insolvency practitioner's report for S. J. H L are unlikely to be recovered. Had Freeths and EMcG's desire to genuinely attempt settlement, along with her solicitors advising her on the potential likely costs she would incur with court action and the risks with such a claim, there may well have been a different outcome to this matter. As it stands, EMcG will have incurred significant costs and may not recover such costs.
- I accept my actions in mis-informing Freeths and the mediator of counsel's attendance at the mediation were both incorrect and totally out of character and should never have been represented to Freeths or their client. For this, I am truly sorry, as I have previously expressed in submissions to the SRA. My legal career will, in effect, be over due to my error, which, whilst wrong, has not had the effect and impact as is alleged within the evidence submitted by Freeths.
- My actions, in hindsight, I concede, were unprofessional and misleading. I would further add that such actions were possibly some form of a 'feigned arrogance' on my part, which in part stemmed from my former client's approach to the matter and the way they wished for the matter to be handled, as set out above. I accept such conduct as being inappropriate and unnecessary and I should not have allowed such conduct to take place. I emphasise that all I wanted to do, was simply act in the best interests of my client, by acting in accordance with the instructions I had been provided. In hindsight and with afterthought, something I did not use at the time, such actions were not the best options and approach for the client. I raised such issues previously with my former client's board of directors, but my advice was not accepted and instructions were provided to pursue with defending and making the proposed claimant incur cost and pursue the matter in the way which she did. In this respect, I should have simply refused to engage in such conduct but felt pressured from my former employer's directors to keep my client happy and to ensure future work could be provided by the client to the practice. As a small practice, having such work was important for the overall success of the practice and would also ensure the future of the

practice. In doing so, my approach was wholly inappropriate, and I will live to regret such an approach for the rest of my life.

- I remind the Tribunal that the mediation appointment was conducted on a 'Without Prejudice' basis with a view of either narrowing the issues in dispute or possibly settling the matter without incurring further cost for all sides. My former client certainly gave me instructions to seek a settlement if concessions could be made by Freeths and their client. The mediation was therefore, in my view, conducted in good faith and from my former client's position, with a clear strategy and approach with a possible settlement offer to be made to resolve the issues in dispute. Furthermore, I would remind the Tribunal that following the mediation appointment, Freeths and their client did not pursue their additional claim for a redundancy payment in the absence of an employment contract, which they had amended just before the mediation appointment, therefore, the issues in dispute had certainly been narrowed as part of the appointment which took place. This, to me, demonstrates some value was achieved during the appointment which took place. Furthermore, the mediation and costs of the mediator had been fixed to £750 plus VAT per party. The costs allegedly incurred by Freeths in such circumstances are, in my view, disproportionate and excessive to say the least.
- If the solicitors acting for EMcG were concerned with the absence of counsel at the mediation (as they now state in their evidence), they could have refused to engage in such a mediation appointment, postponed the mediation, arranged such an appointment for another day or could have advised that such an appointment should not proceed without a representative of my former client or indeed counsel being in attendance at such an appointment. There was no suggestion, contrary to the evidence, that such a position was contemplated by Freeths and their client. This to me demonstrates their potential vindictive nature to cause maximum hurt and loss for me personally by seeking to capitalise on my error of judgment. Why they chose to continue with such an appointment when they felt counsel's attendance was so important has not been explained.
- I sought to strengthen my former client's position to show that the position was stronger than what it may have been on the evidence. The claim, was, and possibly continues to be, a valid one against my former client, but they had instructed me to defend matters and allow the claimant to incur cost in pursuing such her claim.
- By stating counsel would attend the mediation, there was a 'feigned' perception of strength in my former client's position and defence to the threatened claim. Furthermore, my former client and I could have decided to refuse to mediate due to the fact the draft particulars of claim which were sent were amended a few days before the mediation was agreed. My former client did not refuse to mediate but could have certainly done so. Their intention was to explore all possible settlement options, despite the changes and unreasonable stance taken by EMcG and Freeths. I understand such amendments were not incorporated into

their subsequent claim filed at Court, which possibly indicates an intention to seek a larger settlement from my former client by mediation, or at least, build enough scope for a settlement to appear to be reasonable, without too many concessions being made by EMcG.

- By proposing and agreeing to mediation, I believed I was fulfilling my former client's instructions to seek to narrow the issues, potentially negotiate a settlement and avoid unnecessary costs of litigation. With hindsight, the best approach could have been to refuse to mediate due to EMcG's amended position and draft claim but with the risks that Costs could be levied against my former client for taking such a stance to ADR at the pre-proceedings stage. Such conduct appears to have been deliberate to inflate the proposed claim and its value, in order to achieve a settlement which ensured little was lost by the concessions which could have been made as part of the mediation appointment.
- EMcG and her representatives amended their previously stated position shortly before the mediation appointment. Rather than withdraw from such a process, I erroneously sought to seek some form of negotiating advantage for the mediation, considering that my former client's position was potentially weakened by the last-minute amendments made;
- I admit, foolishly, I did not act robustly towards my client, by compromising my own position in favour of my client and the instructions provided by a director of my former employer who, at the time, acted as a shadow director at the business of my former client.
- Shortly before the position statements were exchanged, I had lost two close members of my family within a matter of weeks. Being an only child who has also lost both parents at a relatively young age, such a loss was harder for me to take than I cared to admit. My mental health and position may have been affected by such losses, something I was unwilling to admit at the time, and may have hindered or certainly clouded my thought process and approach to work during such a difficult time.
- I concede my actions in this matter were totally out of character. My conduct has never been questioned or referred to the SRA in the years I practised as a solicitor. I also have an unblemished record in respect of my conduct, and I have never been subject to any formal complaint or reprimand during my legal career. In this respect, I feel that I was 'used' by my former client in a vindictive way to extract some form of revenge on her for failures and misgivings my former client allowed itself to enter into with the claimant and other members of her family. I admit that despite noticing such issues, I should have stood up to my client and should have refused to engage in such conduct
- Furthermore, one of the directors of RDP Law, was, at the time, a 'shadow director' of SJHL, which subsequently resulted in him taking a place on the board of directors at SJHL. As a director of my former employer, I could have, and indeed, should have been able to freely give my unencumbered views on the matter. I was not allowed to seek instructions from other directors other than . This curtailed my ability to

advise the client in the way which would normally be expected in a client/solicitor relationship. The approach my former client wished to take was contrary to what I had advise and was also contrary to my training and experience of handling such matters. However, as instructions were provided by a director of my former employer and also a person who advised and subsequently became a director of SJHL, to my own detriment, I did not question or challenge such an approach in the way I should have done, possibly out of respect to and his position as being a director of my former employer. Foolishly, I allowed myself to be part of their approach and failed to stand firm against such action, contrary to my experience and training as a solicitor.

- I would further add had been provided a copy of the draft position statement ahead of the proposed exchange of such documents and could have advised me to remove any reference to counsel from such a position statement. This lack of scrutiny by the client's representative and person who provided instructions to me from my client and indeed lack of scrutiny and assistance from an experienced practitioner and a person in authority at my former employer should have been identified and indeed actioned with the removal of such reference to counsel within the mediation position statement.

I further submit that such issues, had there perhaps been more adequate and robust supervision and guidance given by a senior member of staff on the draft document provided on the 3rd October 2018, could potentially have averted such issues from arising and the approach which was subsequently taken from ever taking place. My former employers knew of the position in draft documents before these were exchanged but failed to identify such issues or indeed correct or adequately supervise me in such circumstances.

I have been disciplined not only by my former employers, but now suffer the ultimate sanction of being removed from the roll of solicitors for actions which I concede, were inappropriate, unprofessional and totally out of character. I made no personal or financial gain as a result of my actions. In fact, the opposite is true. I will now suffer significant financial hardship, public humiliation, the loss of a career to which I have dedicated years of study and money in achieving, together with the humiliation I bring to my family, former employers and all associated with me personally. Whilst I concede my actions were incorrect and indeed misleading, I feel some other form of punishment, rather than striking me off from the Roll of Solicitors, could have been entertained.

I further submit I failed in my duty to take clear and sufficient instructions from my client, who, with the benefit of hindsight, should have attended the mediation appointment with me, rather than be contactable by phone. On such evidence, I believe I was set up to fail not only by my client, but possibly by experienced individuals who should have known that the approach in the

draft position statement was unsustainable and incorrect, contrary to the SRA's rules and code of conduct. The mistakes I made were my own but could have easily been rectified had the draft documents been considered and with correct supervision provided especially from experienced individuals who knew the position on the matter and could have identified my errors and position in the draft documents which I had prepared.

I now understand from public records that my former client has since entered into administration, with a moratorium in place preventing the court claim being pursued whilst such an administration is dealt with. Inevitably, both parties to this litigation will have incurred significant and possibly unrecoverable costs. I will have also lost my livelihood and career as a result of my uncharacteristic actions.

During the retainer, obtaining instructions from the client proved difficult, if not impossible. I concede I should have used my better judgment and withdraw from the ADR process rather than place my own personal position and career at risk as is now the case. In addition, I should have also refused to act for the client but was under pressure to do so from my previous employers, being a small practice and being under pressure to generate income, preserve jobs and maintain client satisfaction. This was exacerbated by the fact a director of my former employer was a shadow director and then became an appointed director of my former client. The position was most unsatisfactory and compromised me as a solicitor and individual in such circumstances in my view.

I further believe there was a lack of supervision, guidance and the best approach by the client and key members of staff at my former employer who, to my own detriment, I believed knew how best to deal with the matter. I concede I did not question such an approach and naively and foolishly allowed myself to be unduly and incorrectly influenced by my former client and its directors, acting through the director of my former employer and their favoured approach to inflict loss on the claimant by allowing her to incur cost and engage in further litigation unnecessarily. For this, I will regret such action for the rest of my life.

The draft claim, which was provided to my former employer, was subsequently amended last minute by Freeths before the proposed mediation appointment. The draft claim was, to all extent, a credible claim, but my former client wished to simply allow matters to proceed and allow the claimant to incur costs and that they defend the matter, possibly settling at a later date or potentially when an insolvency event took place, which would prevent the claimant from recovering any sums or costs from the company in administration. This, in the vindictive nature of the instructions I was provided and based on meetings with key members at my former client,

was what the client wanted and that the proposed claimant suffered financially and was made to fight for any sums which she had hoped to recover.

I made an early admission of my error and as a result, have had to relinquish my legal career over what was an error of judgment and, in my view, not a dishonest act as is alleged. I concede that I misled EMcG, Freeths and the mediator and concede that I should be punished for misleading the parties in the way I did, Whilst the rules on such matters deem such conduct to be dishonest, the outcome of this matter and the loss of a young solicitor's career, I believe, is draconian. My wrongdoing and punishment do not match the impact such actions had on this matter in my view. Had I made a significant financial or personal gain from my actions, I concede this would be severe and a striking off order would be an appropriate sanction in such circumstances. However, as stated above, this was not the case in this matter. The rules, in my view, do not allow any flexibility and discretion to be applied when comparing the wrongdoing and the effect of such actions. Whilst I concede the SRA must set rules for compliance, there should also be flexibility and discretion applied to such matters. I have fully complied with all requests for information and have conceded my errors from the outset of this matter.

My health has suffered significantly since this event, I am on prescribed mediation and anti-depressants and will be for the foreseeable future. I have resigned from my position with my former employer and am unable to find any alternative work and will suffer significant hardship as a result. In short, I have lost everything due to an error of judgment and an isolated incident which had limit effect and which, in my view, has been vastly over-exaggerated by Freeths and their client. If the issues they describe in evidence were so important for them and their client, they could have refused to engage in the mediation appointment rather than allow the appointment to proceed.

I note the costs the SRA seek from me in respect of this mater. As the SRA wish to remove me from the roll of solicitors, I currently have no income to pay any of the costs the SRA have incurred in this matter. I also have credit card debts, a mortgage (jointly with my wife) as well as living costs to pay and which I will not be able to afford. It may be inevitable that my wife and I may have to sell our current property. Furthermore, with the current Covid-19 pandemic, I am unable to find alternative work and will suffer significant hardship for what appears to be a significant and lengthy time. However, whilst I note the costs, I agree to pay such costs, even if these are to be paid over a period of time due to the current situation.

I wish to reiterate that I made no personal or financial gain from my actions, but I do concede I misled another member of the profession and a mediator by my actions. In light of the position and the rules, I found myself in a position where I had no other option other than to concede

such actions were dishonest, as I simply do not have the funds or financial resources to challenge such an assertion made against me. I am also aware of other member of the profession who have made personal gains from improper acts and who continue to practice, which, when considering the issues I now face, is extremely unfair and inconsistent.

My actions were an isolated incident, which had, in my view, minimal impact on the overall claim I dealt with. Neither my former employer nor my former client were prejudiced with such actions and the fact this matter will now be made public when such issues were dealt with on a 'without prejudice' basis will no doubt affect my former employer and former client significantly, let alone my own career and position.

The effects of my actions will (and has already) had a catastrophic impact on my personal, professional and family life. The fact this was an isolated incident and grave error of judgment is something I have and will forever regret. I fully and unreservedly accept my behaviour and conduct to fall below what is deemed acceptable conduct expected of a solicitor within the legal profession. I would ask the SDT to note my early admission and acceptance of such conduct falling below the standards expected of a solicitor and to take this into account when considering the impact of my foolish and uncharacteristic actions. In this respect, I unreservedly apologise for my actions.

I would further submit despite my actions, the overall trust of the public within the profession has not been damaged. No criminal offence has been committed and for such a trivial, yet foolish action on my part, the draconian punishment of removing me from the roll of solicitors is, in my view, an extremely harsh punishment in such circumstances. Had I carried out an act which would have damaged the public's perception of the profession or committed a crime or benefitted from such actions, I would fully understand the need to punish such wrongdoing and behaviour. However, this has not been the case. In fact, I stand to lose far more and will continue to suffer in future due to my uncharacteristic actions.

I therefore implore the SRA and the SDT to show compassion towards me and my position, by considering these points in mitigation. I have no money to seek legal advice on my position and would also ask the SDT to provide guidance and assistance for me on when I could potentially apply for re-admission to the Roll of Solicitors, the application process to apply for re-admission to the Roll, as well as be lenient on the imposition of any future restrictions on me should I wish to apply for re-admission to the Roll of Solicitors. I am aware having seen previous decisions from the SDT that such guidance has been provided to people in my situation.

Whilst I appreciate the position and the findings made against me, I reluctantly do not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal making any order other than I be struck off the Roll.

Penalty proposed

7. It is therefore proposed that Mr Benjamin should be struck off the Roll of Solicitors.

8. With respect to costs, it is further agreed that Mr Benjamin should pay the SRA's costs of this matter fixed and agreed in the sum of £2,500.

9. Mr Benjamin wishes to inform the Tribunal that with the proposed Order made that he be struck off the Roll, he is no longer employed by RDP Law, having resigned from his position. Mr Benjamin is currently seeking alternative employment opportunities, but has been hampered with the current Covid-19 pandemic in this regard. Mr Benjamin has made an early admission to the allegations and agrees to the principle of the costs incurred in this matter. Mr Benjamin prefers to bring this unfortunate matter to an early and amicable conclusion than incur any further costs and delays associated with a hearing, hence his position on agreeing to this Proposed Outcome.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance.

10. Mr Benjamin has (in his view, reluctantly) admitted dishonesty in light of the current rules. He concedes he misled the parties in respect of the matter he dealt with but the impact of his actions were minimal. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, 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)).*"

11. 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…"

12. At the time Mr Benjamin represented to Freeths LLP that his client had instructed counsel to represent them at the mediation and that counsel would be attending the mediation, he knew that counsel was not instructed to represent SJHL at the mediation and would not be attending the mediation to represent SJHL. Therefore, what he represented to Freeths LLP was untrue and his conduct in that regard, according to the current rules, was dishonest.

13. At the time Mr Benjamin represented to the mediator that his client had instructed counsel to represent them at the mediation and that counsel would be attending the mediation, he knew that counsel was not instructed to represent SJHL at the mediation and would not be attending the mediation to represent SJHL. Therefore, what he represented to the mediator was untrue and his conduct in that regard, according to the current rules, was dishonest.

14. At the time Mr Benjamin told the mediator on 24 October 2018 that the mediator could not attend due to a family emergency, he knew that was untrue because counsel had not been instructed to represent SJHL at the mediation in the first place.

15. Mr Benjamin had a number of opportunities to reflect on and to concede to his actions. He has made an early admission once such matters had been reported. It is the SRA's case that these were serious acts of dishonesty. Mr Benjamin reluctantly agrees to such a view in light of the current rules. Accordingly, the fair and proportionate penalty in this case is for Mr Benjamin to be struck off the Roll of Solicitors.

16. Due to financial limitations, Mr Benjamin respectfully asks the SDT to provide guidance, as has previously been made by the Tribunal in previous decisions, in respect of any application for re-admission to the Roll of Solicitors as well as limit any possible restrictions it may place on him in respect of any application he may wish to make for re-admission to the Roll in future.

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Alastair Henry John Willcox, Senior Legal Adviser, upon behalf of the SRA

21 April, 2020.

Approved electronically pursuant to a representation from Alastair Willcox on the 6th April 2020.

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Deian Wyn Benjamin