SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12058-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KIRNA DEVI MADHAS Respondent

Before:

Mr R. Nicholas (in the chair)
Mr A. N. Spooner
Mrs N. Chavda

Date of Hearing: 24-25 August 2020

Appearances

Charlotte Watts, Barrister of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent are that, while in practice as a Solicitor and Director at MHK Solicitors Limited (previously known as GSD Law Limited and together referred to as "the Firm"), and in the course of or after acting in litigation before the County Court, she:

1.1 On dates from February 2011 onwards, while acting for one or more clients on matters in respect of which After the Event (ATE) Insurance was in place for the benefit of clients, or was held out to clients as being in place, failed promptly or at all to notify ATE insurers, or cause ATE insurers to be notified, of advice from counsel to the effect that the claims were not more likely than not to succeed, and in doing so breached all or any of Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and, where such conduct occurred on or before 5 October 2011, Rules 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("Code of Conduct 2007");

1.2 On dates from February 2011 onwards, failed to notify one or more clients, or cause such clients to be notified, of adverse costs orders in litigation to which those clients were parties, and in doing so breached all or any of Principles, 4, 5 and 6 of the Principles and, where such conduct occurred on or before 5 October 2011, Rules 1.04, 1.05 and 1.06 of the Code of Conduct 2007;

1.3 On dates from April 2016 onwards, failed to comply promptly or at all with compensation awards made against the Firm by the Legal Services Ombudsman (LeO) and in doing so breached all or any of Principles 6 and 7 of the Principles;

1.4 Between April 2011 and October 2011, submitted, or caused or allowed the submission of, costs schedules which:

1.4.1 claimed for sums not recoverable from clients under Conditional Fee Arrangements; and/or

1.4.2 claimed for sums in excess of what could reasonably be charged for the services actually provided; and/or

1.4.3 contained false representations as to the costs incurred or services provided and in doing so breached all or any of Principles 2, 4 and 6 of the Principles and Outcome O(5.1) of the SRA Code of Conduct 2011;

1.5 During the course of Court proceedings heard on 7 and 8 May 2014 and 8 September 2014, produced to the Court, or caused or allowed to be produced to the Court, a document which was known by the Respondent to be capable of misleading the Court, and in doing so breached all or any of Principles 2 and 6 of the Principles and Outcome O(5.1) of the SRA Code of Conduct 2011.

1.6 Between 2015 and 2018, failed to provide client files promptly or at all when requested by:

1.6.1 clients, and by reason of such failure breached Principle 5 of the Principles;

1.6.2 the SRA, and by reason of such failure breached Principle 7 of the Principles .

1.7 On or about 26 February 2018, when submitting a proposal form to a PII insurer, made material non-disclosures which were misleading as to the Firm's regulatory history, and in doing so breached all or any of Principles 2, 6 and 8 of the Principles;

2. In addition, the Respondent's conduct as set out at all or any of 1.4, 1.5 and 1.7 was dishonest and/or reckless but dishonesty and/or recklessness are not necessary ingredients to any of those allegations being found proved.

Documents

Applicant

- Application dated 25 February 2020
- Rule 12 Statement and Exhibits , A,B,C dated 28 February 2020
- Witness Statement and Exhibit of Jonathan Williams dated 14 May 2020
- Material relating to service
- Costs at Issue dated 28 February 2019
- Schedule of Costs dated 17 August 2020

Respondent

- A report entitled 'A Legal and Forensic Analysis of a Costs Assessment Fraud and an Insurance Fraud Committed by Mr Jonathan Williams of Williams Associates, Costs Lawyers and Costs Draftsmen' dated 5 September 2018

Preliminary Matters

3. The Respondent did not attend the hearing and was not represented. The Respondent had not applied to adjourn or vacate the hearing. It was noted that the Respondent had not filed and served an Answer and had not engaged in the proceedings.

4. Service of Proceedings

4.1 The Tribunal was concerned to ensure that the Respondent had been correctly served and was aware of the hearing date.

4.2 Ms Watts, for the Applicant, submitted that the Respondent had been correctly served with the proceedings under Rule 13(5) the Solicitors Disciplinary Procedure Rules 2019 ("SDPR 2019") and there was evidence that the Respondent was on notice of the listed hearing.

4.3 The Rule 12 Statement in this matter was dated 28 February 2020. Standard Directions were issued by the Tribunal dated 3 March 2020, which required the Respondent to file at the Tribunal and serve on every other party an Answer to the Rule 12 Statement and all documents on which she intended to rely at the substantive hearing by 4.30pm on Wednesday 1 April 2020.

4.4 No Answer or other documents were served by the Respondent and the matter was listed for non-compliance before a deputy clerk of the Tribunal on 16 April 2020. The Respondent did not attend that hearing and further directions were made allowing the Respondent additional time to file her Answer and any documents by 6 May 2020 and listing the matter for a Case Management Hearing on 20 May 2020 should the Respondent fail to comply.

4.5 The matter was next listed for Case Management Hearing ("CMH") before the Tribunal on 20 May 2020. At that hearing the Tribunal was informed that the Respondent had not filed any Answer and had not engaged with the proceedings. Documents had been sent from the Applicant to the Respondent by first class post on 9 March 2020 and by email on 2 April 2020 but there had been no response.

4.6 Additionally Capsticks had instructed a tracing a tracing agent to locate the Respondent. The tracing agent ascertained that the Respondent was living at an address in Scotland and a letter attaching the proceedings documents was sent to her at that address and informing her of the date and time of the substantive hearing. Again, there was no response from the Respondent.

4.7 The tracing agent carried out a further investigation and this time located the Respondent as residing at an address in Bradford and on 26 July 2020 at 08:45 hours the enquiry agent attended at the Bradford address and personally served the Respondent with a Letter from Capsticks dated 13 July 2020, Application, Rule 12 Statement, Rule 12 Statement Exhibits, Witness Statement of Costs Lawyer Jonathan Williams and Directions and Orders after the Respondent freely admitted her identity to the enquiry agent who later prepared a statement of service.

4.8 Subsequently to service being effected at the Bradford address Capsticks sent further correspondence to the Respondent at that address attaching the draft index to the bundle and later sent her information on how to access the password protected material. There was no response from the Respondent.

4.9 Further, by e-mails to the Respondent from the Tribunal and Capsticks the Respondent was notified that the hearing would be held remotely and sent information as to how to access the remote hearing. There was no response from the Respondent.

The Tribunal's Decision

4.10 The Tribunal considered with care the submissions made by Ms Watts and the evidentiary material with respect to service and later contact with the Respondent made by the Applicant to which its attention had been drawn

4.11 The Tribunal was satisfied that the Respondent had been correctly served with the proceedings under Rule 13(5) SDPR 2009 and was also satisfied that there was sufficient evidence to demonstrate that the Respondent was aware of the substantive hearing which was due to take place between 24 and 28 August 2020.

4.12 Having established that the Respondent had been properly served the Tribunal next considered whether the hearing should be adjourned, and if not adjourned, whether the hearing should continue in the absence of the Respondent.

5. Adjournment

5.1 Ms Watts submitted that it was clear the Respondent had been aware of the date of the hearing and there was evidence before the Tribunal that the Respondent had been served correctly with the proceedings and notified of the date of the hearing. There had been no engagement from the Respondent and no application from her to adjourn the substantive hearing.

The Tribunal's Decision

5.2 The Tribunal referred to its current Policy/Practice Note on Adjournments which sets out the principles to be applied in consideration of such applications and Ms Watts' submissions.

5.3 The Tribunal noted that Rule 23 SDPR set out, amongst other things, that an application for an adjournment of the hearing must be supported by documentary evidence of the need for the adjournment and that an application for an adjournment should be made in the prescribed form indicating the full reasons as to why an adjournment was being sought e.g. medical reports; and state whether the other party to the proceedings supported or opposed the application for an adjournment. The Tribunal would be reluctant to agree to an adjournment unless the request was supported by both parties or, if it was not, the reasons appeared to the Tribunal to be justifiable because not to grant an adjournment would result in injustice to the person seeking the adjournment.

5.4 In this case the Respondent, who, the Tribunal was satisfied was aware of the proceedings, had made no application to adjourn and there was nothing before the Tribunal to consider on this point. The Tribunal decided not to adjourn the hearing as there was no evidence for it to reasonably do so.

6. Application to proceed in absence

6.1 Ms Watts next applied for the substantive hearing to proceed in the Respondent's absence and relied upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the Respondent's behaviour in absenting himself from the hearing;
- Whether an adjournment would resolve the Respondent's absence;
- The likely length of any such adjournment;
- Whether the Respondent had voluntarily absented himself from the proceedings and the disadvantage to the Respondent in not being able to present her case.

6.2 It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

6.3 In Ms Watts' submission the Tribunal had evidence that the Respondent had been correctly served and that she was aware of the hearing date but that she had voluntarily absented herself.

The Tribunal's Decision

6.4 The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution.

6.5 The Tribunal considered the factors set out in Jones and Adeogba in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal noted that the Respondent had been served with notice of the hearing under Rule 13(5) SDPR 2019 and the Tribunal had the power under Rule 36 SDPR 2019, if satisfied service had been effected, to hear and determine the application in the Respondent's absence.

6.6 The Tribunal considered the Respondent had been correctly served and was aware of the date of the proceedings and that an adjournment would not resolve her absence. The Respondent had a duty to engage but had not done so and there was nothing to suggest that she would attend a hearing on a future date. There was no evidence that she had medical issues preventing her from attending and the Tribunal concluded that the Respondent had voluntarily absented herself.

6.7 The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved allegations of dishonesty and related to events that had taken place as far back as 2011. A significant period of time had elapsed since then and it was therefore in the public interest that this case should be concluded expeditiously and without further delay.

6.8 Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in the Respondent's absence.

Factual Background

7. The Respondent was a solicitor having been admitted to the Roll on 1 June 2004. She was the sole Director in the Firm, where she practised in personal injury claims.

8. On 22 August 2019 the SRA decided to intervene into the Respondent's practice, and her Practising Certificate was suspended. That suspension remained in effect.

9. The Firm is a limited company with a registered office at 3 Lisbon Square, Leeds, LS1 4LY. It is now named MHK (Leeds) Limited, having changed its name on 3 December 2019.

10. During the course of its investigation, the SRA's Forensic Investigation Officer (FIO) Joanna Wright examined the files relating to claims advanced by the Firm on behalf of six clients and she prepared a report setting out the conduct and findings of the investigation.

Witnesses

11. The following gave evidence:

- Joanna Wright (FIO)
- Jonathan Williams (costs lawyer)
- Brooke Newsome (client A)
- Judith Wilson (client C)
- Angela Ashton (client E)

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

Findings of Fact and Law

13. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Overview

14. In each case examined by Ms Wright the Respondent was identified, in correspondence sent to clients, as the supervisor of the case, or conducted the case, or stated in correspondence to clients that she had reviewed their files.

15. In each case examined, Ms Wright identified concerns about the steps taken by the Firm and actual or potential detriment to clients' best interests as a result. The concerns were as follows:

- that advice had been obtained by the Firm from counsel to the effect that claims had a poor prospect of success, but delayed in, or failed entirely to, notify clients or After The Event (ATE) insurance providers of such advice. This failure arose in a context in which it was a condition of ATE insurance that insurers be notified of such advice, and in which ATE insurers had a discretion to withdraw cover (including insurance against inter partes costs liability) where such advice had been received. As a result, clients were not informed, before deciding to pursue claims to trial, of the potential costs liability arising from doing so;

- Where claims were pursued to trial and were unsuccessful, as a result of the withdrawal of ATE cover (or the refusal of insurers to provide cover, having not been informed of the full facts of the case), adverse costs orders were made against clients;

- Clients were not informed by the Firm of such adverse costs orders, and so became aware of them only when pursued for payment by the successful defendants to claims.

16. In each of the four files of the FI report:

- There was no record on the file of the ATE insurer having been notified of the advice from counsel.

- An adverse costs order was made by the Court following either discontinuance of the claim or the claim being dismissed after a trial.
- Clients were not notified promptly by the Firm of adverse costs orders being made.

Client A matter

17. Ms Newsome confirmed that her evidence contained in her statement was true to best of her knowledge and belief.

18. Ms Newsome had instructed the Firm in relation to a motorcycle accident which occurred in 2011. She instructed the Firm following a referral by a claims management company, Claims 500 and her instructions were set out in a letter to the Firm. That letter recorded that the Respondent "*is the Solicitor and Supervisor for your claim*" and "*is the principal solicitor with overall responsibility for supervising your claim*".

19. The letter stated further provided that "*having reviewed the circumstances of the case, I consider compensation of the injuries and associated expenses and losses, should be sought from Bradford City Council…*" and "*On the basis of the evidence we currently have available, our view is that your case has a reasonable prospect of success. We will, of course, inform you if any evidence is obtained which in our view alters our view as to the prospect of being successful with this case.*"

20. Ms Newsome also produced a Conditional Fee Agreement (CFA) and a copy of an ATE policy containing the provisions set out above. In addition, the "Key Facts" document provided to her stated that the policy provided "*an indemnity for your opponent's costs, that the court has ordered you to pay…*".

21. Ms Newsome recalled receipt of letters:

- In November 2013 (letter dated 18 November 2013) stating that the Firm was "*chasing Counsel in relation to the Advice*" and requesting details of witnesses. The letter gave no indication that Counsel's advice had previously been received;

- in May 2014 (letter dated 23 May 2014) confirming that proceedings had been issued and describing how the matter would proceed to trial. The letter gave no indication that advice had previously been provided to the effect that the claim was unlikely to succeed, and expressly stated that any inter partes costs liability "*would be met under the terms of the Insurance Policy we took out for you at the time of entering the Conditional Fee Agreement*". The Firm's matter file contained no indication that the ATE insurer's approval had been obtained for the issuing of proceedings;

- in February 2015 (letter dated 24 February 2015) with instructions as to attendance at the trial listed for 3 March 2015. That letter stated that the claim had a below 50% prospect of success and warned of the possibility of the defendants being entitled to recover their costs. However, that letter also stated, contrary to the advice previously provided (in the letter dated 23 May 2014) that "*we are unable to confirm at this point in time whether or not* (ATE insurers) *will be in a position to confirm they will meet the Defendant's legal costs as their decision will be based on the findings at Court*." The letter proposed measures "*to try to minimise the potential costs liability*".

22. The file provided to the FIO by the Firm included a letter dated 25 September 2013 which advised Ms Newsome that Counsel had provided "*negative*" advice and that the file was being passed to the correspondent's manager. Ms Newsome had no recollection of receiving this letter.

23. The file provided by the Firm to the FIO included a brief emailed advice from counsel dated 28 August 2013 stating that the claim had "*little prospect of success*".

24. Ms Newsome recalled receiving a further letter from the Firm in February 2015 (letter of 24 February 2015) indicating a low prospect of success and recommending settlement and she recalled subsequently, on around 27 February 2015, being advised by telephone by the case holder at the Firm, and agreeing, to discontinue the claim.

25. The file provided to the FIO by the Firm included telephone attendance notes recording attempts to discontinue the claim with little or no costs liability. An attendance note dated 27 February 2015 recorded an offer to discontinue without any order for costs being rejected and a counter proposal being made whereby the Defendant would accept costs of £5,830.

26. The Firm's file included a letter from the Firm to the Court dated 27 February 2015 discontinuing the claim. The file contained no record that the consent of the ATE insurer was sought prior to discontinuance, as was required.

27. Ms Newsome said that she was not informed by the Firm either that a costs order could be made against her or that such an order had been made. She subsequently received correspondence from the Defendant's costs lawyers enclosing a letter to the Firm recording that they had been incorrectly informed by the Firm that it was no longer on the record and enclosing a default costs certificate. Ms Newsome was found to be liable to meet inter partes costs of £6,265.

28. The Firm's file contained no correspondence with the ATE insurer about the conduct of the matter prior to 12 February 2015, shortly before the trial and 18 months after receiving negative advice from counsel as to the merits of the claim. However, in correspondence with the LeO, the Firm produced copies of several letters purportedly sent to the ATE insurer after the discontinuance of Ms Newsome's claim. In correspondence with Ms Newsome the insurer indicated that they were not aware that proceedings had been issued or of the outcome.

Client B matter

29. Client B instructed the Firm in relation to an injury he suffered in 2011 when he tripped over a pothole and injured his ankle.

30. Client B contacted Claim 500 who told him that his claim for personal injury would be on a "no win, no fee" basis and that insurance would be taken out to ensure that there was no financial cost in the event that the claim was not successful.

31. Client B was sent a letter dated 7 January 2011 confirming his instructions to the Firm. That letter recorded that the Respondent "*is the principal solicitor with overall responsibility for supervising your claim*".

32. The letter further provided that "*having reviewed the circumstances of the case, I consider compensation of the injuries and associated expenses and losses, should be sought from Wolverhampton City Council…*" and "*On the basis of the evidence that we currently have available, our view is that your case may have a reasonable prospect of success. We will, of course, inform you if any evidence is obtained which in our view alters our view as to the prospect of being successful with this case.*"

33. Client B also produced a CFA and a copy of an ATE policy which contained the provisions similar to those in Ms Newsome's matter and which are set out in more detail below.

34. Client B was sent a letter dated 13 January 2015 from the Respondent, informing him that his trial was to take place on 19 February 2015. Client B also produced a second letter dated 13 January 2015 from AC of the Firm setting out that he was of the view that Client B's claim now had a considerably less than 50% chance of success at trial and that, because of this, the ATE insurer had confirmed that they were not prepared to continue funding his claim. Client B said that he did not receive this letter or any

other contact from the Firm in relation to his claim having less than 50% chance of success and if he had he would not have proceeded with his claim.

35. Client B's claim was dismissed at trial. About four months after the trial date, Client B received an enforcement notice from the Marston Group Ltd following a High Court writ being issued due to non-payment of the costs awarded to the defendant following his unsuccessful claim.

36. Client B raised a complaint with the Firm on 28 June 2015 Client B asked GSD law for his client file, but this was never provided to him.

Client C matter

37. Ms Wilson confirmed that her evidence contained in her statement was true to best of her knowledge and belief.

38. Ms Wilson instructed the Firm in relation to an injury she suffered in 2012 following a motorcycle accident in which she rode pillion on her partner's motorcycle. Ms Wilson contacted Claim 500 who told her that her claim for personal injury would be on a "no win, no fee" basis and that insurance would be taken out to ensure that there was no financial cost in the event that the claim was not successful.

39. Ms Wilson was sent a letter dated 24 April 2012 confirming her instructions to the Firm. That letter set out that the Respondent "*is the principal solicitor with overall responsibility for supervising your claim*". The letter further provided that "*having reviewed the circumstances of the case, I consider compensation of the injuries and associated expenses and losses, should be sought from the Council…*" and "*On the basis of the evidence that we currently have available, our view is that your case may have a reasonable prospect of success. We will, of course, inform you if any evidence is obtained which in our view alters our view as to the prospect of being successful with this case.*"

40. On or around 22 April 2013, Ms Wilson received a letter from the Firm suggesting that she put in a claim against her partner's insurers. On 3 June 2013 she e-mailed the Firm to say that she did not agree that partial liability lay with her partner and that she did not want to claim on his insurance. On 9 June 2013 Ms Wilson e-mailed the Firm to say that she had decided to discontinue her claim as she did not accept that her partner should accept liability. The Firm informed her that if she discontinued her claim she would be liable for costs, so she felt she had no option but to continue with it.

41. Ms Wilson received a letter dated 22 October 2013 from the Firm advising that the barrister had asked for CCTV footage. She received a further letter dated 26 November 2014 stating that following a review of CCTV footage they would seek the advice of a barrister on the likely prospects of her claim. She received a letter dated 20 April 2015 informing her that the Firm was going to issue proceedings. Under the heading "*costs*" the letter stated:

> "Should your claim not succeed the Defendant would be entitled to ask the Court to order that you pay the Defendant's own legal costs. Of course, you

> [will] only be potentially responsible for the costs of the Defendant if the claim was to fail or the claim was to be abandoned. Should you have any such liability then this would be met under the terms of the Insurance Policy we took out for you at the time of entering the Conditional Fee Agreement."

42. On 13 May 2016, Kennedys, who acted for the Defendant, made an offer to the Firm to accept £2,500 as a contribution to their costs on the basis that Ms Wilson's case was discontinued. Ms Wilson said that she was not told about this offer.

43. At trial, the Defendant (represented by Kennedys) accepted £2,000 in settlement of their costs and the case was discontinued. Ms Wilson's claim was successful against the second Defendant. On 6 July 2016, Kennedys wrote to the Firm to say that they had not been paid the £2,000 costs order which was due to be paid on 30 June 2016. Ms Wilson did not receive this letter and was not told about it by the Firm.

44. On 23 September 2016, the Firm wrote to her enclosing the cheque from the second Defendant's solicitors and indicating that her case had concluded. There was no mention of the outstanding order for costs.

45. On 2 November 2016, Ms Wilson received a High Court Enforcement Order for £3,156.87 which she eventually paid by credit card because she did receive a meaningful response from the Firm. Ms Wilson had repeated visits from the County Court appointed bailiffs and when she contacted the Firm, they ignored her phone calls. When she finally spoke to AC of GSD Law he told her not to pay the bailiff and she described his attitude as "blasé".

46. On 2 February 2017, she wrote a letter of complaint to the Firm and on 13 February 2017, the Respondent wrote to her requesting 28 days to make enquiries with the ATE insurer. On 10 April 2017, the Respondent requested another 42 days to get a copy of Ms Wilson's file to send to the ATE. Ms Wilson did not receive a response from the Firm and she submitted a complaint to the LeO.

Client D matter

47. Client D suffered an injury as a result of a pothole in 2012. He approached Claims 500 who referred him to the Firm. Client D was sent a letter dated 5 April 2012 setting out the steps the Firm would take in relation to his claim.

48. He was sent a further letter dated 12 November 2013 from the Respondent informing him that she has taken over the conduct of his claim.

49. Client D recalled a telephone conversation with the Respondent in which she explained his claim would not be successful. He also recalled being told that, unless he went against the advice to discontinue the claim, any costs would be covered by the Firm. Client D produced a letter dated 14 April 2015 informing him that, following a discussion and his instructions, his claim had been discontinued. The letter explained that as a gesture of goodwill, the Firm would pay the Defendant's legal costs.

50. Client D later received a letter dated 17 February 2017 from DWF LLP stating that they acted for Solihull Metropolitan Borough Council in recovering a debt of £4,002.80 and enclosed a Court Order. Client D contacted the Firm and recalled being told that there had been a problem "*with their insurance company going broke*". Client D received a further letter from DWF LLP dated 21 March 2017 saying that they had obtained an Interim Charging Order on his property.

51. Client D wrote to the Respondent on 24 March 2017 outlining his complaint and asking the Firm to pay the costs. He received a response from the Firm on 3 April 2017 saying they would investigate. Client D received a Final Charging Order from DWP LLP and a letter stating that they had been in touch with the Firm. .

52. Client D made a complaint to the LeO.

Client E Matter

53. Ms Ashton confirmed that her evidence contained in her statement was true to best of her knowledge and belief.

54. Ms Ashton instructed the Firm in 2012 after sustaining an injury falling into a hole in a road and she was sent a letter dated 29 April 2014 from the Respondent saying that the Firm was waiting for her comments on the Defendant's defence and informing her that they had filed the Directions Questionnaire with the Court and were awaiting the Notice of Allocation and Directions.

55. Ms Ashton recalled telephoning the Firm around February 2015 for an update on her case and was told that her claim had gone to trial and that she had lost her case.

56. She said that she was not informed of the trial date or the outcome of her case.

57. In July 2017, Ms Ashton received a Notice of Enforcement. It was issued on 12 July 2017 and stated that she had not paid money that she owed to Sheffield City Council. The total amount including interest and fees was £9,582.39.

58. Ms Ashton instructed a solicitor to review her personal injury file. Despite numerous requests, the Firm did not provide her file and her solicitor contacted the Defendant's solicitor who said that the trial had been listed for 15 January 2015, however, they had received a notice of discontinuance from the Firm dated 13 January 2015.

59. Ms Ashton complained to the Firm on 1 November 2017 and to the LeO on 29 January 2018.

60. **Allegation 1.1 – failure to notify ATE insurers**

The Applicant's Case

60.1 It was a condition of the ATE cover arranged by the Firm for each of the clients identified above that the ATE insurer be notified of advice to the effect that the claim had low prospects of success. The insurance policy entered into with the insurer by clients expressly provided that the policy could be terminated if the insurer concluded

that the insured was not more likely than not to succeed. The policy further provided that that if a claim was discontinued immediately after termination of the policy by the insurer then inter partes costs liabilities would be met.

60.2 The Respondent was identified to clients as the person responsible for supervision and oversight of each of the claims.

60.3 In respect of the claim of Ms Newsome (Client A), the Firm was aware of advice from counsel to the effect that the claim was not more likely than not to succeed. The Firm failed to notify ATE insurers. In doing so, they prevented ATE insurers from exercising the discretion to terminate the policy, which would have offered Client A the protection of cover in respect of inter partes costs in the event of prompt discontinuance of the claim.

60.4 By reason of the failures to communicate adequately, or at all, with ATE insurers and discontinuing claims without such communication and long after receipt of advice as to the low prospects of success of the claim, Ms Newsome was avoidably exposed to liabilities for inter partes costs, in circumstances where she had been advised that such costs were indemnified.

60.5 The FI Report identified four matters on which advice was received to the effect that the claims had poor prospects of success (Client A, Client D, Client F and Client G). In another case of Client B, counsel advised the Firm to obtain an expert opinion from a highways engineer. There was no evidence in the file of an engineer's report having been obtained

60.6 In each case, an ATE policy was entered with Alpha Insurance A/S. The terms of that policy included the following wording:

> "2.2 Exclusions and limitations
>
> This policy excludes and the Insurer shall not be liable for any:
>
> 2.2.1 Absence of the insurer's prior consent
>
> Opponent's costs or disbursements where
>
> a) the legal action is abandoned, discontinued or settled in the opponent's favour without the insurer's prior written consent; or
>
> b) the insurer's prior written consent is not obtained before proceedings are issued;
>
> or
>
> c)the insurer's prior written consent is not obtained before rejecting an opponent's offer to settle the legal action.
>
> 4.6 Co-operation

4.6.1 The insured hereby gives irrevocable instructions to the appointed solicitor:

a) to provide the insurer with full and prompt co-operation to include providing such information as is requested by the insurer from time to time;

b) to notify the insurer if the insured is no longer more likely than not to succeed in the legal action, assuming that it is determined at trial (including the prospects of any judgment and/or costs in the insured's favour being successfully recovered);

4.6.2 The insured must comply with court orders and the Civil Procedure Rules and in all respects conduct the legal action in a reasonable manner in order to minimise costs.

4.13 Termination

…

4.13.2 If the Insured fails to observe all the terms and conditions under this policy, the Insurer may terminate this policy. The Insurer will not be liable for any claim under this policy.

4.13.3 If it is assessed that the Insured is no longer more likely than not to succeed in the legal action, assuming that it is determined at trial (including the prospects of any judgment and/or costs in the insured's favour being successfully recovered), the insurer may terminate this policy immediately.

4.13.4 In the event of termination in accordance with 4.13.3 if the insured immediately discontinues the legal action the insurer will pay, subject to the policy terms, conditions, limitations and exclusions, the disbursements and opponent's costs incurred up to the date of termination. If the insured does not immediately discontinue then the insurer shall not be liable for any claim under this policy and the premium shall become payable by the insured…

60.7 As is set out above, the ATE insurance cover also provided at clause 2.2.1 (b) that the insurer would not be liable under the policy if the insurer's prior written consent was not obtained before proceedings were issued. The client files reviewed by the SRA contained no record of such approval being sought or received.

60.8 The insurance contracts were made between the Firm's client (the insured) and the insurer, Alpha A/S. However, as is set out in section 4.6 recited above, the policy was issued on the basis that the appointed solicitor, namely the Firm (being the solicitor accepted by the insurer to act for the insured on the terms of the ATE policy), would be irrevocably instructed to provide the insurer with "*full and prompt co-operation*" and to "*notify the insurer if the insured is no longer more likely than not to succeed in the legal action*".

60.9 It was said that the Respondent's conduct amounted to:

60.9.1 *Breach of Principle 4 of the Principles and/or Rule 1.04 of the Code of Conduct 2007* - Principle 4 of the Principles and Rule 1.04 of the Code of Conduct 2007 requires a solicitor to act in the best interests of each client and the failures identified above amounted to a clear failure to act in her clients' best interests. The best interests of the Respondent's clients would have been served by the prompt communication of the substance of counsel's advice, and clear advice as to the risk of continuing with a claim and issuing proceedings, including the risk of inter partes costs liability. The best interests of her clients e.g. Ms Newsome, would further have been served by communication with ATE insurers such that the insurers had a discretion to terminate cover in a manner which preserved her indemnification against inter partes costs incurred to the point of discontinuance. By failing to ensure that such steps were taken on cases which she supervised, the Respondent breached Principle 4 of the Principles or Rule 1.04 of the Code of Conduct 2007.

60.9.2 *Breach of Principle 5 of the Principles and/or Rule 1.05 of the Code of Conduct 2007* - Principle 5 of the Principles and Rule 1.05 of the Code of Conduct 2007 requires a solicitor to provide a proper standard of service to their clients. It was said that the Respondent failed to provide a proper standard of service. Despite telling clients in the initial letter that "*We will, of course, inform you if any evidence is obtained which in our view alters our view as to the prospect of being successful with this case*" the Respondent failed to do so, and failed to provide advice on steps to protect against inter partes costs liability. She thereby breached her obligations under Principle 5 of the Principles or Rule 1.05 of the Code of Conduct 2007.

60.9.3 *Breach of Principle 6 of the Principles and/or Rule 1.06 of the Code of Conduct 2007* - Principle 6 of the Principles and Rule 1.06 of the Code of Conduct 2007 requires a solicitor to behave in a way that maintains the trust the public places in them and in the provision of legal services. It was said that the public are entitled to expect that a solicitor will advise a client, while advancing a claim, if the prospects of the claim succeeding are diminished or inconsistent with advice initially given. The public would further expect a solicitor to ensure that where ATE insurance cover is arranged for the protection of clients, reasonable steps are taken by solicitors to comply with the terms of such insurance such as to protect clients from avoidable inter partes costs liabilities. In failing to so act the Respondent breached Principle 6 of the Principles and/or Rule 1.05 of the Code of Conduct 2007.

The Respondent's Case

60.10 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

60.11 The Tribunal reminded itself with respect to all the allegations that the Applicant must prove its case on the balance of probabilities; the Respondent was not bound to prove that she did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on the Respondent's part.

60.12 The Tribunal carefully considered the evidence it had heard and observed that its task in determining the allegations was made more difficult in circumstances where the Respondent had not engaged in the proceedings and had presented no evidence in her case.

60.13 The Tribunal approached this, and all the other allegations on the basis that they were denied by the Respondent and by applying the requisite standard of proof, namely the balance of probabilities.

60.14 The Tribunal found as a fact that it was a condition of the ATE cover arranged by the Firm for each of the clients identified by the Applicant in its case that the ATE insurer was required to be notified of advice stating that the respective claim had low prospects of success and that the insurance policy could be terminated if the insurer concluded that the insured was not more likely than not to succeed and, further, under the policy if a claim was discontinued immediately after termination of the policy by the insurer then inter partes costs liabilities would be met by the client.

60.15 The Tribunal also found as a fact that the Respondent was identified to clients as the person responsible for supervision and oversight of their claims.

60.16 The Tribunal considered that the Respondent's failures to communicate adequately, or at all, with ATE insurers and discontinuing claims without such communication and long after receipt of advice as to the low prospects of success of the claim were applicable to all the individual cases brought to the Tribunal's attention by the Applicant and were exemplified by the evidence presented to it in the case of Ms Newsome, Client A. The Tribunal accepted that Ms Newsome had been avoidably exposed to liabilities for inter partes costs, in circumstances where she had been advised that such costs were indemnified and that she had been met with a "wall of silence" from the Firm when she asked them to resolve the issue of the unpaid defendant's costs.

60.17 Having made the findings the Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principle 4 and/or Rule 1.04; Principle 5 and /or Rule 1.05 and Principle 6 and/or Rule 1.06 of the Principles 2011 and the Code of Conduct 2007.

60.18 The Tribunal considered that the circumstances identified by the Applicant represented failures by the Respondent to act in her clients' best interests. By failing to ensure that the appropriate and required steps were taken on cases which she supervised, the Tribunal was satisfied on the balance of probabilities that the Respondent had breached Principle 4 of the Principles or Rule 1.04 of the Code of Conduct 2007.

60.19 The best interests of her clients would have been served by the prompt communication of the substance of counsel's advice, and clear advice as to the risk of continuing with a claim and issuing proceedings, including the risk of inter partes costs liability. The best interests of Ms Newsome, for example, would further have been served by communication with ATE insurers such that the insurers had a discretion to terminate cover in a manner which preserved her indemnification against inter partes costs incurred to the point of discontinuance.

60.20 It followed that the Respondent had failed to provide a proper standard of service to her clients in breach of Principle 5 of the Principles and Rule 1.05 of the Code of Conduct 2007 as the Respondent had not acted in accordance with the initial letter sent to her clients to which her clients naturally believed she would adhere and follow.

60.21 Finally, the Tribunal considered that the Respondent's conduct amounted to a breach of Principle 6 of the Principles 2011 and Rule 1.06 of the Code of Conduct 2007 as it was clear that her failures would diminish the trust the public placed in her and in the provision of legal services. The Tribunal considered that the public were entitled to expect that a solicitor would advise a client, while advancing a claim, if the prospects of the claim succeeding were diminished or inconsistent with advice initially given and that the public would further expect a solicitor to ensure that where ATE insurance cover was arranged for the protection of clients, reasonable steps would be taken by a solicitor to comply with the terms of such insurance such as to protect clients from avoidable inter partes costs liabilities.

60.22 The Tribunal found that the Respondent had breached Principles 4, 5 and 6 of the Principles and Rules 1.04; 1.05 and 1.06 of the Code of Conduct 2007.

60.23 Allegation 1.1 was found proved the requisite standard of proof, namely on the balance of probabilities.

61. **Allegation 1.2 – failure to notify clients of adverse costs orders**

The Applicant's Case

61.1 The Respondent's clients were not informed by the Firm of the adverse costs orders, and so became aware of them only when pursued for payment by the successful defendants to claims. Examples were set out in the cases of Clients A, B, C, D and E above.

61.2 It was said that in this regard the Respondent's conduct amounted to:

61.2.1 *Breach of Principle 4 of the Principles and/or Rule 1.04 of the Code of Conduct 2007* - The Respondent, as the supervisor on each case, failed to inform clients, or cause them to be informed, of costs orders made against them. The obligation on a legal representative to notify a client of such an order is long established and set out in Rule 44.8 of the Civil Procedure Rules.

61.2.2 It was in each client's best interests to be informed promptly of the costs liability, in order that they could, if appropriate, make arrangements to meet such liability and, if they considered it appropriate, seek independent legal advice on the possibility of advancing a claim against the Firm.

61.2.3 The Firm's potential liability for such claims was highlighted in letters sent by the defendants' costs representatives in Ms Newsome's matter. The failure promptly to notify clients may further have deprived clients of the possibility of bringing appeals against such orders. The failure was a breach of Principle 4 of the Principles and/or Rule 1.04 of the Code of Conduct 2007.

61.2.4 *Breach of Principle 5 of the Principles and/or Rule 1.05 of the Solicitors Code of Conduct 2007* - Notification to clients of adverse costs orders was a requirement of the Civil procedure Rules and a failure to comply with a basic reporting obligation breached the obligation under Principle 5 of the Principles to provide a proper standard of service or breached Rule 1.05 of the Code of Conduct 2007.

61.2.5 *Breach of Principle 6 of the Principles and/or Rule 1.06 of the Code of Conduct 2007* - The public are entitled to expect that solicitors will promptly notify clients of adverse outcomes, including costs liability, and the failure to do so breached Principle 6 of the Principles and 1.06 of the Code of Conduct 2007.

The Respondent's Case

61.3 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

61.4 The Tribunal noted that there had been no evidence presented to it which contradicted the Applicant's evidence. The Tribunal accepted the detail of the evidence out in the statements of clients A, B, C, D and E. In all these cases the Tribunal was satisfied on the balance of probabilities that the Respondent's clients were not notified of factors and information which were pertinent to their case, particularly they were not informed of the cost ramifications and in one case, that of client E (Ms Ashton) , the client was not even informed of the court hearing date and the outcome of that case.

61.5 The Tribunal considered that the Respondent had, by her conduct, breached of Principle 4 of the Principles and Rule 1.04 of the Code of Conduct 2007. The Respondent, as the supervisor on each case, failed to inform clients, or cause them to be informed, of costs orders made against them. It was clearly in each client's best interests to be informed promptly of the costs liability, in order that they could, if appropriate, make arrangements to meet such liability and, if they considered it appropriate, seek independent legal advice on the possibility of advancing a claim against the Firm: this did not happen, to the detriment of each client and the failure may have deprived her clients of the possibility of bringing appeals against such orders.

61.6 Again, it followed that the Respondent had also breached Principle 5 of the Principles and Rule 1.05 of the Code of Conduct 2007 on the basis that notification to clients of adverse costs orders was a requirement of the Civil Procedure Rules and a failure to comply with a basic reporting obligation breached the Respondent's obligation to provide a proper standard of service to her clients.

61.7 The Respondent's conduct in failing to inform her clients of the adverse costs orders made against them and in circumstances where the clients only became aware of them only when pursued for payment by the successful defendants to claims was a clear breach of Principle 6 of the Principles and Rule 1.06 of the Code of Conduct 2007. This was a client's worst nightmare. The public are entitled to expect that solicitors will promptly notify clients of adverse outcomes, including costs liability, and the failure to do so would obviously reduce the trust the public placed in the Respondent and in the provision of legal services.

61.8 The Tribunal found that the Respondent had breached Principles 4, 5 and 6 of the Principles and Rules 1.04; 1.05 and 1.06 of the Code of Conduct 2007.

61.9 Allegation 1.2 was found proved the requisite standard of proof, namely on the balance of probabilities.

62. **Allegation 1.3 - failure to comply with LeO awards**

The Applicant's Case

62.1 During the course of the investigation, the FIO was notified by the Legal Ombudsman of 11 complaints having been made about the Firm.

Client A

62.2 Client A made a complaint to the Legal Ombudsman. On or about 3 November 2016, the LeO sent the Firm a Preliminary Decision to the effect that the Firm should pay to Client A the defendant's costs in the sum of £7,066.40, and pay a further £750 to Client A by way of compensation.

62.3 The LeO further concluded that the advice given to Client A during telephone calls prior to the decision to discontinue was "*misleading*" and concluded that the letters on file addressed to the ATE insurer were drafts which were not sent. The Firm sent a letter to the LeO purportedly rejecting the preliminary decision and setting out the basis on which it was contested. However, the LeO subsequently made a Final Decision consistent with the Preliminary Decision. The Firm never complied with the final decision.

Client B

62.4 Client B complained to the LeO and on 17 May 2016, the LeO wrote to the Firm to confirm that it had agreed to informally settle the complaint for £1,000

Client C

62.5 Client C complained to the LeO. The LeO preliminary decision was dated 11 September 2018 and awarded her a total of £3,985.35 comprising of £3,235.35 in costs she had paid and £750 compensation. In an e-mail dated 30 January 2019 Claire Orzel, an Investigator from the LeO, confirmed that the monies had not been paid.

Client D

62.6 Client D made a complaint to the LeO. Client D received a letter dated 15 November 2017 confirming that the Firm had agreed to pay the Defendant's legal costs.

Client E

62.7 On 31 January 2019 the LeO made a finding that the Firm's service had been unreasonable and directed the Firm to pay Client E £8,585.40 being the amount of the Defendant's costs. Client E's solicitor confirmed to Ms Wright, FIO, on 12 July 2019 that the payment had still not been made by the Firm.

Client F

62.8 Client F complained to the LeO. The LeO's preliminary decision was dated 25 January 2017 and awarded Client F the sum of £400. On 24 April 2017, the LeO confirmed that they considered their provisional view to be reasonable and adopted the view as a final decision

Client G

62.9 The LeO informed Ms Wright that a court order was issued on 22 September 2017 to enforce payment by the Firm to Client G, and that to date, no payments had been received.

Client W

62.10 On 8 February 2016 the LeO wrote to the Firm with a final decision with respect to the complaint received by Client W. She complained on 29 July 2015 that the Firm had:

- Failed to file a listing questionnaire which resulted in the claim being struck out;
- Delayed giving negative advice on the prospects of success until eight days before the trial was due to take place; and
- Provided deficient costs information, as they informed her on 17 June 2015 that her ATE insurance had been withdrawn.

62.11 The LeO concluded that the Firm's service was unreasonable and directed it to pay £250 in recognition of the emotional upset caused by the delay in informing her of a change in prospects and in failing to respond to her complaint.

62.12 The Respondent was aware on or shortly after the dates of the LeO decisions that awards of compensation had been made to clients. The Respondent must further have known that such awards were binding on the Firm if accepted by the client. However, she failed in each case to meet the award, promptly or at all, necessitating the issue of court proceedings by the LeO to enforce the awards in the case of Client G.

62.13 It was said that the Respondent's conduct amounted to:

62.13.1 *Breach of Principle 6 of the Principles* - The public would expect a solicitor promptly to honour any award of compensation made by a regulatory body, particularly where an award is to a client, and the failure to do so amounted to a clear breach of Principle 6 of the Principles.

62.13.2 *Breach of Principle 7 of the Principles* - Principle 7 of the Principles requires a solicitor to comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner. In this case the Respondent's failure to comply with an award by the LeO further amounted to a failure to comply with a regulatory obligation and so breached Principle 7 of the Principles.

The Respondent's Case

62.14 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

62.15 The Tribunal found the Applicant's evidence powerful and persuading and it was satisfied to the requisite standard that the Respondent was aware on or shortly after the dates of the LeO decisions that awards of compensation had been made to her clients and that the Respondent must further have known that such awards were binding on the Firm if accepted by the client and that the Respondent failed in each case to meet the award, promptly or at all, and, in the case of Client G, had it required court proceedings to enforce the award.

62.16 The Tribunal considered the Respondent's conduct to have been a depressing breach of Principle 6 of the Principles. Clearly, the public would expect a solicitor promptly to honour any award of compensation made by a regulatory body, particularly where an award is to a client, and the failure to do so eroded the trust the public placed in the Respondent and in the provision of legal services.

62.17 The Respondent's conduct was also a stark breach of Principle 7 of the Principles. Principle 7 of the Principles requires a solicitor to comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner. In this case the Respondent clearly failed to do so.

62.18 The Tribunal found that the Respondent had breached Principles 6 and 7 of the Principles

62.19 Allegation 1.3 was found proved the requisite standard of proof, namely on the balance of probabilities.

63. **Allegation 1.4 - costs schedules**

The Applicant's Case

63.1 Costs lawyer/draftsman, Jonathan Williams set out the context and background to this allegation in his evidence to the Tribunal.

63.2 He said that he had undertaken a variety of costs- related work and for many years a significant client of his practice had been A Insurance Plc ("the client"). The cases/instructions received from the A Insurance Plc had predominantly been low-value personal injury claims and he acted on behalf of this client on behalf of a number of insured defendants, in connection with the successful claimants' claims for costs.

63.3 Mr Williams said that he first came into contact with the Respondent and GSD Law Limited on 16 February 2010 when he received instructions from the client. The Respondent and GSD Law Limited were in that case instructed by another Firm of solicitors to represent a claimant in a successful claim for damages for personal injury with regard to the consequent claim for costs. That claim for costs appeared to be unusual in that it was considered to very high, but, ultimately, was settled for a relatively small percentage of the total claimed.

63.4 Over the next year or so, Mr Williams received further instructions from the client in which a similar scenario played out i.e. claims for costs presented by the Respondent and GSD Law Limited, on their own behalf (i.e. where the Firm had represented the underlying successful personal injury claimant) and on behalf of other Firms of solicitors, appeared to be unusually high and, sometimes in peculiar circumstances, were compromised for relatively small percentages of the totals claimed.

63.5 When he questioned GSD Law about these unusual claims, he said that the Firm would not address the issues he had raised but would simply seek to dramatically cut the costs claimed without providing reasons. These costs appeared to be inflated.

63.6 Matters came to a head in May 2011 when he received instructions from the client in what were by then the seventh and eighth cases involving GSD Law Limited, both being cases where they were acting on behalf of another Firm of solicitors in respect of costs. Again, the claims for costs, arising out of what were two road traffic accidents but involving five individual claimants, appeared to be unusually very high.

63.7 Mr Williams took his concerns to the client and subsequently with the support of counsel's advice it was decided that the costs claims would not be settled simply on economic grounds but to bring the suspicions to the attention of the Courts. The Respondent and GSD Law Limited were informed that no settlement proposals would

be made and that formal, detailed bills of costs and the commencement of formal detailed assessment proceedings would be required.

63.8 Following this further claims for costs were received from GSD Law Limited which continued in the same vein as before i.e. the claims for costs appeared to be unsustainably, high/excessive. In each such case, the Respondent and GSD Law Limited were advised that no settlement offers would be forthcoming and that detailed bills of costs and formal detailed assessment proceedings would be required.

63.9 Mr Williams said that the Respondent and GSD Law Limited dealt with matters in a haphazard way generally, including the way in which they instructed their external costs draftsman, PH, to deal with matters on their behalf. Non-qualified staff, such as the Respondent's personal assistant and other paralegals, would be involved and at times no- one seemed to know where the papers were or were able to update Mr Williams on matters.

63.10 Ultimately, across a cohort of 13 cases involving 17 individual claimants, the informal claims/schedules of costs totalling £225,029.94 were replaced by detailed bills of costs totalling £154,497.40. There was, therefore, an unexplained reduction of £70,532.54 across the cohort and there remained serious concerns regarding the veracity of even the replacement / detailed bills of costs. Two of the detailed bills of costs were subsequently replaced, by the solicitors who had previously instructed the Respondent and GSD Law Limited to deal with such costs, with the effect that the total claim across the cohort was further reduced to £128,227.29.

63.11 In the light of these serious concerns, in November 2012 Mr Williams decided with the client to file formal allegations of fraud and misconduct against the claimants and their solicitors, GSD Law Limited.

Costs claims: Cases M and I

63.12 In a number of personal injury cases handled by the Firm under the Respondent's supervision, individual clients' claims had succeeded such that those clients were entitled to recover their costs from the defendants.

63.13 In cases M and I the Respondent caused or allowed the submission to the paying parties of claims for costs which included claims to recover monies to which the Respondent (or the Firm's clients) were not entitled.

63.14 Having submitted claims to those acting on behalf of the paying parties, challenges were raised by the paying parties as in indicated in Mr Williams' evidence set out above.

63.15 The challenges raised by the paying parties were considered as preliminary issues in costs proceedings before District Judge Neaves in the Leeds County Court whose judgment was submitted for the Tribunal's consideration by the Applicant under Rule 32 (2) SDPR 2019 which states that "*the judgment of any civil court, or any tribunal exercising a professional or disciplinary jurisdiction, in or outside England and Wales (other than the Tribunal) may be proved by producing a certified copy of*

the judgment and the findings of fact upon which that judgment was based are admissible as proof but not conclusive proof of those facts."

Case M

63.16 In Case M, the Firm acted on behalf of the named client in a personal injury claim. On 13 May 2010, a letter was sent by the Firm to Client M identifying the Respondent as the supervisor and person responsible for the case, supervising another named individual. The letter stated that "*the hourly rate will be £180 plus VAT…we will notify you in writing of any increased rate*".

63.17 In a costs schedule a claim was advanced to recover work done at a rate of £203 plus VAT per hour.

63.18 The Respondent accepted under cross-examination, during the hearing before District Judge Neaves, that it was wrong to have claimed £203 per hour and that this figure was in excess of the sum which the client was obliged to pay.

63.19 Subsequently, in a formal Bill of Costs an hourly rate was provided for of between £198 per hour and £217 per hour. The Respondent certified that the bill was correct and accurate.

63.20 The Schedule of Costs served in the proceedings further claimed that the only grade of fee-earner involved in the matter was a "Grade 1" fee-earner. In fact the bill certified by the Respondent recorded that most of the work on the matter was actually undertaken by a fee earner who should have been categorised as the more junior Grade C, and that, in fact, for much of the currency of the file, the Respondent herself should have been categorised as a Grade B fee earner.

63.21 District Judge Neaves found that in the schedule the Firm falsely represented the hourly rate to be £203 per hour this being a rate that exceeded the hourly rate provided for in M's conditional fee agreement.

63.22 District Judge Neaves further found that in the bill of costs, the Firm falsely represented the hourly rate to be between £198 per hour and £217 per hour. The Judge remarked that the Respondent had provided no satisfactory explanation for claiming Grade A rates and found her explanation as alarming that she did not appreciate there were differences between the schedule and the bill and that she simply "*flicked through to check the disbursement vouchers*"

Case I

63.23 During the course of the hearing before District Judge Neaves, the Respondent produced three versions of a Conditional Fee Agreement with Client I. Two versions showed an hourly rate of £203 per hour, and one that was produced to the Court showed an hourly rate of £180 per hour. During the course of her evidence, the Respondent indicated that she believed the rate of £180 to be applicable to work done on Client I's matter. In any event, the Bill of Costs served in respect of the Client I matter claimed an hourly rate of £217 per hour, in excess of the rates provided for in any of the CFAs.

63.24 The Respondent further advanced a claim, in respect of the I matter, for having written 96 letters when only 58 letters appeared on the client file.

63.25 In relation to Case I, District Judge Neaves found:

- In the schedule, the representation that the work was carried out by a senior fee earner was false, as a not insignificant amount of work had been carried out by a fee earner who was not a senior fee earner. The file showed that the case was handled by a solicitor who qualified in 2010, and the work was carried out between 2010 and 2012. The solicitor with conduct of the matter was in fact a Grade C fee earner. In respect of the (limited) work undertaken by the Respondent, she was a Grade B fee earner, not a Grade A.

- In the schedule, the Firm claimed an hourly rate of £203 per hour, which was a false representation of what was reasonably claimable. The rate exceeded that which was set out in the CFA and it was a rate grossly excessive given that most of the work was carried out by a junior fee earner. The Respondent produced three versions of the CFA in the Case I matter; two containing an hourly rate of £180 per hour and one containing an hourly rate of £203 per hour. The Respondent admitted during cross-examination that 'CFA 1' was a forgery.

- In the Bill of costs itself, the Firm claimed hourly rates which included a rate of £217 per hour which was a false representation of what was reasonably claimable and did not reflect the hourly rates in any of the retainer documents in Case I.

- The Firm's schedule represented that 96 letters were reasonably claimable, when in fact the number of letters reasonably claimable was significantly lower than this.

- The Firm's schedule represented that 46 telephone calls were reasonably claimable when in fact the number of telephone calls reasonably claimable was significantly lower than this. As to the remainder of the profit costs, the schedule represented that 20 hours were reasonably claimable when in fact the time reasonably claimable was significantly lower than this.

- A complaint the Respondent made to the Costs Lawyer Standards Board about the paying party's costs lawyer *(Mr Williams)* was made in a blatant attempt to discredit him for the purposes of getting the upper hand in the litigation. The Respondent had originally said that there was a conflict of interest however, during cross examination, she was finally forced to accept that there was no conflict and that to have made the complaint was grossly improper.

63.26 District Judge Neaves concluded:

> "*I found the evidence of (the Respondent) to be not only evasive and inconsistent, but dishonest. She was a wholly unreliable witness. I can have no confidence in anything she has told me...if these were simple mistakes, they were mistakes which were not only repeated but all went to the advantage of [the Firm] and to the detriment of the paying parties.*

Furthermore, carelessness and inadvertence cannot even begin to explain the giving of dishonest evidence to the court or the submission of forged documents.

There comes a point where in the light of an accumulation of such "mistakes" and dishonesty the court is forced inevitably to the conclusion that, far from being inadvertent or careless, such "mistakes" are in truth not mistakes at all but quite deliberate.

The court should be slow to find that a solicitor has behaved dishonestly. I'm very conscious of the significance of such a finding both in terms of these detailed assessment proceedings and for [the Respondent] personally. I take no pleasure in being driven however to precisely that conclusion. To find otherwise would in my judgment fly in the face of the evidence in this case."

63.27 The Respondent appealed against the order that its clients' costs should be disallowed due to the Firm's misconduct. The court was required to determine whether the district judge should have declined to deal with the allegations because r.44.11 was a summary jurisdiction akin to wasted costs; and whether the procedure adopted was unfair. The Firm argued that the allegations were unsuited to summary determination as they should have been raised in a civil action for fraudulent misrepresentation. It also submitted that a "*bombshell*" had been dropped on the Respondent when she was accused during the hearing of creating a forged document.

63.28 The appeal was dismissed. It was held that the judge was right to entertain the application under r.44.11. The appeal court ruled that there was a strong public interest in ensuring that solicitors did not certify costs figures dishonestly and that there would be unfortunate consequences if paying parties lost confidence in the bona fides of solicitors signing these certificates as the Respondent had done.

63.29 Having regard both to the seriousness of the allegations and to the sums potentially at stake, The court further decided that the procedure adopted had been fair because (a) the Firm was allowed to be joined as a party; (b) the particulars of allegations served before the hearing gave the Firm sufficient notice of the case it had to meet, and the allegations of dishonesty; and (c) the "*bombshell*" arose from the Firm choosing to produce a document during the assessment proceedings that proved to be a forgery.

63.30 The Respondent applied for permission to appeal to the Supreme Court but permission was refused.

63.31 Ms Watts submitted that the evidence set out above demonstrated that the Respondent's costs claims had:

1.4.1. claimed for sums not recoverable from clients under Conditional Fee Arrangements

and/or

1.4.2. claimed for sums in excess of what could reasonably be charged for the services actually provided

and/or

1.4.3. contained false representations as to the costs incurred or services provided

63.32 It was said that the Respondent's conduct amounted to:

63.32.1 *Breach of Principle 2 of the Principles* - The Respondent's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity (i.e. moral soundness, rectitude and steady adherence to an ethical code) connotes adherence to the ethical standards of one's own profession.

63.32.2 The Respondent failed to act in accordance with such standards in submitting claims for costs, in the knowledge that such claims were made on the basis of one or more of an hourly rate in excess of that recoverable from the client, an overstatement of the seniority of fee earners involved in the matter, and overstatements as to work actually undertaken. She thereby breached Principle 2 of the Principles.

63.32.3 In Bailey v IBC Vehicles Ltd [1998] 3 All E.R. 570 Judge LJ stated "*As officers of the court, solicitors are trusted not to mislead or to allow the court to be misled. This elementary principle applies to the submission of a bill of costs"... In so signing he certifies that the contents of the bill are correct. That signature is no empty formality. The bill specifies the hourly rates applied, and the care and attention uplift claimed. If an agreement between the receiving solicitor and his client (here the trade union) restricted (say) the hourly rate payable by the client, that hourly rate is the most that can be claimed or recovered on taxation (see General of Berne Insurance Company v Jardine Reinsurance Management Limited above). The signature of the bill of costs under the Rules is effectively the certificate by an officer of the Court that the receiving party's solicitors are not seeking to recover in relation to any item more than they have agreed to charge their client under a contentious business agreement.*"

63.32.4 Ms Watts said that this passage showed the weight which the court attaches to a Solicitor's certificate on a bill of costs. Reliance upon such certificates is of fundamental importance in detailed assessment proceedings.

63.32.5 *Breaches of Principles 4 of the Principles* - It was contrary to the best interests of clients for false and inflated claims for costs to be made in circumstances where no benefit to those clients would be derived from the overstatements, and where such claims exposed clients to the risk, which eventually materialised, that costs would not be recovered.

63.32.6 *Breaches of Principles 6 of the Principles* -The public would expect a solicitor not to inflate the hourly rate in a cost schedule. Respondent knew and must have known of the overstatement of the hourly rate applied to the work done, the seniority of the fee earners involved and the amount of work

done. In each case, the matters on which incorrect statements were made were within her knowledge or, in the case of statements as to the amount of work done, readily discoverable.

63.32.7 *Failure to achieve Outcome O(5.1) of the Code of Conduct 2011* - Outcome O(5.1): sets out that a solicitor does not attempt to deceive or knowingly or recklessly mislead the court and in submitting to the court claims which were made on the basis of one or more of an hourly rate in excess of that recoverable from the client, an overstatement of the seniority of fee earners involved in the matter, and overstatements as to work actually undertaken the Respondent failed to achieve Outcome O(5.1).

The Respondent's Case

63.33 Whilst the Respondent had not engaged with the proceedings or provided an Answer to the allegations in the form now presented by the Applicant to the Tribunal she had, at an earlier stage, submitted a response dated 5 September 2018 to the Applicant's Explanation With Warning Letter dated 14 August 2018 in which the Applicant had sought the Respondent's explanation of her conduct culminating in the findings of District Judge in his judgment of 26 November 2014.

63.34 The Applicant uploaded this material to the Tribunal's bundle for the Tribunal's consideration.

63.35 In summary the Respondent considered that she was ambushed in the hearing before District Judge Neaves with questions relating to files of which she had not seen for some time and which, in relation to some, she was not the conducting solicitor and no personal knowledge of the files.

63.36 The Respondent believed that the hearing was in effect conducted as a fraud trial against her and that her and her answers elicited by leading and suggestive questioning.

63.37 The Respondent submitted that District Judge Neaves judgment showed a lack of understanding of r. 4.11 CPR and of the general application of the Civil Procedure Rules and also of legal principles, and that he had not understood that the cases of M and I did not fall under CPR 44.11 because they were settled cases. The Respondent submitted that judgment should be treated as being *per incuriam*, procedurally void and unlawful.

63.38 The Respondent denied that she had been dishonest and alleged that Mr Williams had planned to derail the detailed assessment proceedings by advancing a false, fraudulent and perjured case in court to deprive the Respondent and her Firm of costs that were correctly due them.

The Tribunal's Findings

63.39 The Tribunal read and considered with care the certified copy of District Judge Neaves' judgment, the findings of fact upon which that judgment was based and the

transcript of the hearing itself to fully understand the answers the Respondent gave to questions put to her and the position she adopted in those proceedings.

63.40 The Tribunal noted that the Respondent had not attended the present hearing to challenge the findings of the Judge in those proceedings and it was unclear what weight, if any could be placed upon the written material from the Respondent which was not an Answer to the allegations brought before the Tribunal by the Applicant and which had not been prepared for the purposes of the present proceedings.

63.41 The Tribunal noted that District Judge Neaves' judgment had been subject to the scrutiny of three Judges of the Court of Appeal and his approach to the law and his findings had not been criticised but had instead been affirmed by the Judges.

63.42 The Tribunal considered that there was nothing before the Tribunal which safely contradicted the conclusion reached by District Judge Neaves and it was satisfied on the balance of probabilities that the Respondent's actions amounted to a failure to act with integrity as per the definition of lack of integrity set out in Wingate.

63.43 By submitting claims for costs, in the knowledge that such claims were made on the basis of one or more of an hourly rate in excess of that recoverable from the client, an overstatement of the seniority of fee earners involved in the matter, and overstatements as to work actually undertaken was a breach Principle 2 of the Principles.

63.44 In the Respondent's case it followed naturally that her actions represented a breach of Principles 4 and 6 of the Principles on the basis that it could never be acting in the best interests of her clients for false and inflated claims for costs to be made in circumstances where no benefit to those clients would be derived from the overstatements, and where such claims exposed clients to the risk, which eventually materialised, that costs would not be recovered. The Respondent's actions could do no other than erode the trust the public placed in her and the provision of legal services.

63.45 Finally, the fact that the Respondent had attempted to mislead the court meant that the Respondent had failed to achieve Outcome O(5.1) of the Code of Conduct 2011.

63.46 The Tribunal made the above findings with respect to allegations 1.4.2 and 1.4.3. The Tribunal was not satisfied to the requisite standard that allegation 1.4.1 had been proved by the Applicant as it was not clear from the evidence presented to the Tribunal what costs which had been claimed by the Respondent were not recoverable under the conditional fee arrangements.

63.47 The Tribunal found that the Respondent had breached Principle, 2, 4 and 6 of the Principles and that she had failed to achieve Outcome O(5.1) of the Code of Conduct 2011 with respect to allegations 1.4.2 and 1.4.2 but not with respect to allegation 1.4.3. Allegation 1.4 was therefore proved in part to the requisite standard of proof, namely on the balance of probabilities.

64. **Allegation 1.5 - forged document**

The Applicant's Case

64.1 The Respondent purported to produce a CFA relating to Client I. However, further versions were produced and, during the course of giving evidence the Respondent accepted that the document referred to as "CFA1" was in fact a forgery and was not the CFA entered into between the Firm and Client I.

64.2 It was said that the Respondent's conduct amounted to:

64.2.1 *Breach of Principle 2 of the Principles* - The document described as "CFA1" was submitted to the Court on behalf of the Respondent, attached to a reply to serious allegations made against her and submitted during the course of litigation in which she gave evidence. It was the Applicant's case that the Respondent must have seen the Reply and its attachments before they were submitted to the Court. A solicitor acting with integrity would not have permitted such a document to be put before a court.

64.2.2 *Breaches of Principles 6 of the Principles* - The public would expect solicitors to take particular care to ensure that the Court is not misled by evidence, particularly in circumstances where the effect of the Court being misled would give rise to a potential financial benefit to the Respondent. In acting as alleged, the Respondent breached Principle 6 of the SRA Principles.

64.2.3 *Failure to achieve Outcome O(5.1) of the Code of Conduct 2011* - The Respondent accepted under cross-examination that the document was a forgery. In causing or allowing the submission of the document to the Court, the Respondent caused or allowed the Court to be misled and, in doing so, breached outcome O(5.1) of the SRA Code of Conduct 2011.

The Respondent's Case

64.3 The Respondent did not serve an Answer to the allegations and her position with respect to this allegation was not known although the Tribunal bore in mind the maters set out in the Respondent's document dated 5 September 2018.

The Tribunal's Findings

64.4 In the course of her evidence before District Judge Neaves the Respondent was asked a direct question in cross-examination as to whether the document referred to a CFA 1 must have been a forged document. In answer to this question the Respondent admitted to the court that she did know it was a forged document. The Respondent did not give any further explanation and by her non engagement in the present proceedings had given no further explanation or information in rebuttal for the Tribunal to consider and the Tribunal concluded that this was because she had no explanation to offer.

64.5 On the evidence presented to it the Respondent had, by submitting an admittedly forged document to the court during the course of litigation in which she gave evidence, clearly demonstrated lack of integrity in breach of Principle 2 of the Principles.

64.6 Such conduct in misleading the court, particularly in circumstances where the effect of the court being misled would give rise to a potential financial benefit to the Respondent was an obvious breach of Principle 6 of the Principles and contrary to the trust the public placed in the Respondent and in the provision of legal services.

64.7 It again followed that in the circumstances found by the Tribunal to have taken place the Respondent had failed to achieve Outcome O(5.1) of the Code of Conduct 2011.

64.8 The Tribunal found that the Respondent had breached Principles 2 and 6 of the Principles and that she had failed to achieve Outcome O(5.1) of the Code of Conduct 2011 with respect to Allegation 1.5 and that this allegation had been proved to the requisite standard of proof, namely on the balance of probabilities.

65. **Allegation 1.6 - production of files**

The Applicant's Case

Requests for documents by clients

65.1 Ms Newsome made efforts made to seek to recover her file from the Firm, the Firm failed to respond to correspondence or to her requests made in person to recover the file

65.2 Client B asked the Firm to provide his client file and said that this was not provided "*despite numerous requests*".

65.3 Ms Ashton also made efforts to recover her file from the Firm. She asked for her file on a number of occasions and was told it had been misplaced. Ms Ashton's representative requested the file from the Firm and was told that it had been sent to them and that no copy had been taken. The file was not received by her representative.

Requests for documents by SRA

65.4 On 26 September 2018, the SRA served a Production Notice on the Firm to make available the complete file of papers in relation to the eleven complaints that had been investigated by the LeO. The Firm provided six of the eleven files to the SRA.

65.5 The Firm informed the Forensic Investigation Officer Ms Wright that of the five files not provided, four were no longer in its possession, and one was for a case that had not been dealt with by the Firm.

65.6 It was said that the Respondent's conduct amounted to

65.6.1 *Breach of Principle 5 of the Principles* - In failing to ensure prompt compliance with clients' requests for the production of their files, particularly in matters known by the Respondent to have resulted in adverse costs orders against such clients, the Respondent failed to provide a proper standard of service and so breached Principle 5 of the SRA Principles 2011

65.6.2 *Breach of Principle 7 of the Principles* - In failing to comply with the SRA's request for client files, the Respondent failed to co-operate with her regulator and so breached Principle 7 of the SRA Principles 2011.

The Respondent's Case

65.7 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

65.8 The Tribunal considered that the Respondent's conduct and behaviour was exemplified by that set out in the statement of Client A, Ms Newsome, who had taken the time to attend at the hearing to confirm that the matters stated therein were true to her knowledge and belief.

65.9 Ms Newsome described making attempts to contact the Respondent by letter, email and telephone all of which failed to elicit a response and required a face to face meeting with an employee of the Firm who informed her that her file was not available for collection despite it being requested from the Firm's archive facility.

65.10 The Tribunal placed weight upon Ms Newsome's comment that the Respondent and her Firm had displayed "*an arrogant and uncaring behaviour towards her and had treated her like a throw away commodity and that they had 'really messed up my life.*"

65.11 This behaviour on the part of the Respondent was replicated in the experiences of Clients B and Ms Ashton.

65.12 The Tribunal accepted that the Respondent had not provided five of the eleven files requested for inspection by the SRA following the service of a Production Notice. The Respondent had provided no adequate explanation for her failure to do so.

65.13 With respect to Allegation 1.6.1 the Tribunal found that the Respondent had breached Principle 5 of the Principles as she had failed to ensure prompt compliance with clients' requests for the production of their files and had thereby failed to provide a proper standard of service to her clients in circumstances where she knew that they were subject to adverse costs orders.

65.14 With respect to Allegation 1.6.2 the Respondent had failed to comply with the SRA's request for client files and it was clear that the Respondent ad failed to co-operate with her regulator and had therefore breached Principle 7 of the Principles.

65.15 The Tribunal found that the Respondent had breached Principles 5 and 7 of the Principles and with respect to Allegation 1.6 and that this allegation had been proved to the requisite standard of proof, namely on the balance of probabilities.

66. **Allegation 1.7 - PII form**

The Applicant's Case

66.1 On or about 26 February 2018, the Respondent signed and submitted to PIB insurers a proposal form in respect of professional indemnity insurance. The insurance proposal form contained on the front page the following warning notice: "*An important purpose of this form is to help ensure that you comply with the disclosure responsibilities that apply due to The Insurance Act 2015. It is imperative that you disclose all material circumstances and if you are in doubt as to whether something is a material circumstance it is recommended that you disclose it*."

66.2 In response to the question in section 9 on page 4 of the insurance proposal form: "*In the last 10 years has any fee earner in the practice or any fee earner previously employed in the practice practised in a Firm subject to an investigation or an intervention by the Law Society or SRA?*" (question 4d) the Respondent answered "*No*".

66.3 In response to the question in section 9 on page 4 of the insurance proposal form: "*In the last 10 years has any fee earner in the practice or any fee earner previously employed in the practice had an award made for inadequate professional service by the Legal Ombudsman?*" (question 4e) the Respondent answered "*No*".

66.4 The insurance proposal form contained a declaration to the effect that the particulars and statements given in the proposal were true and that material circumstances had not been mis-stated or withheld. It also contained a declaration that the signatory understood that a failure to inform insurers of all material circumstances could result in the contract being invalidated.

66.5 On or about 28 January 2013, the SRA conducted a 'No Notice' investigation of the Firm which was authorised due to concerns about the Firm's involvement in referral arrangements. The Respondent, as sole manager, was notified of the inspection by a letter from the SRA addressed to her dated 28 January 2013.

66.6 When the inspection commenced on 28 January 2013, the Respondent met with the inspecting officer and was required to make various information and accounting records available to the inspecting officer.

66.7 Between February 2016 and November 2017, the LeO made awards for inadequate professional performance as follows:

Client	Date of Final Decision/ Informal Resolution	Award
[Client W]	FD: 8 February 2016	£250.00 for the client
[Client G]	FD: 21 April 2016	£1,000.00 for the client and £10,828.40 for costs order
[Client B]	IR: 17 May 2016	Firm agreed to pay £1,000.00 to client
[Client OB]	IR: 19 October 2016	Firm agreed to pay £1,000.00 to client
[Client TJ]	FD: 28 December 2016	£1,000.00 for the client
[Client A]	FD: 30 January 2017	£750.00 for the client and £7,066.40 for costs order
[Client F]	FD: 24 April 2017	£400.00 for the client
[Client D]	IR: 15 November 2017	Firm agreed to pay the costs order £4,345.80

66.8 It was said therefore that the Respondent was aware, at the time when she completed the PII proposal form, that the Firm had been the subject of an SRA investigation and that a number of awards had been made against the Firm for inadequate professional service by the LeO.

66.9 She knew that the insurer sought this information, and must have known that the information was relevant to the insurer's decision as to whether to offer cover and if so on what terms, including the premium to be applied. She further knew that the form carried a declaration of truth and that the insurer would rely on this information in assessing the application.

66.10 It was said that the Respondent conduct amounted to:

66.10.1 *Breach of Principle 2 of the Principles* - The Respondent knowingly provided inaccurate information to insurers with the possible consequence that terms would be offered which were more favourable than those which would be offered if accurate information had been provided. In so acting, the Respondent failed to act with integrity, in breach of Principle 2 of the Principles.

66.10.2 *Breach of Principle 6 of the Principles* - The public, and insurance providers, expect and are entitled to expect that solicitors will act truthfully in providing information on matters as important as professional indemnity insurance arrangements. In failing to so act the respondent breached Principle 6 of the Principles .

66.10.3 *Breach of Principle 8 of the Principles* - By completing the PII form in the circumstances above it was evident that the Respondent had failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles

The Respondent's Case

66.11 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

66.12 The Tribunal was satisfied on the balance of probabilities that the Respondent had completed the PII application in the knowledge that the Firm had been the subject of an SRA investigation and that a number of awards had been made against the Firm for inadequate professional service by the LeO.

66.13 The Tribunal also found that the Respondent knew that the insurer sought this information, and must have known that the information was relevant to the insurer's decision as to whether to offer cover and if so on what terms, including the premium to be applied. She further knew that the form carried a declaration of truth and that the insurer would rely on this information in assessing the application and that the Respondent had signed the declaration of truth at the end of the application form knowing that the information she had provided was false.

66.14 In these circumstances the Respondent's conduct demonstrated a lack of integrity in breach of Principle 2 of the Principles. The Respondent knowingly provided inaccurate information to insurers with the possible consequence that terms would be offered which were more favourable than those which would be offered if accurate information had been provided.

66.15 It again followed that her conduct in this regard was a breach of Principle 6 of the Principles. The public, and insurance providers, expect and are entitled to expect that solicitors will act truthfully in providing information on matters as important as professional indemnity insurance arrangements.

66.16 Finally, by completing the PII form with information which was false the Respondent had failed to run her business or carry out her role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles.

66.17 The Tribunal found that the Respondent had breached Principles 2, 6 and 8 of the Principles with respect to Allegation 1.7 and that this allegation had been proved to the requisite standard of proof, namely on the balance of probabilities.

67. **Dishonesty with respect to Allegations 1.4, 1.5 and 1.7**

The Applicant's Case

67.1 Ms Watts submitted that the Respondent's conduct with respect to Allegations 1.4, 1.5 and 1.7 had been dishonest.

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

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence

> (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.
>
> When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

Allegation 1.4

67.3 It was alleged that the Respondent plainly acted dishonestly in knowingly making false statements, which would, if accepted and relied on by the recipients, potentially give rise to financial benefit to her. Ordinary, decent people would consider it dishonest for a solicitor to so act.

Allegation 1.5

67.4 It was alleged that the Respondent acted dishonestly. The purpose of producing the forged document was to persuade the Court that an agreement was in place between the Respondent and her client which supported the claim as to the hourly rate recoverable for work done, when the Respondent knew that this document did not reflect the actual agreement reached. Ordinary decent people would consider such conduct to be dishonest.

Allegation 1.7

67.5 As the partner responsible for the completion and submission of the Pll proposal form, and likely directly to benefit directly from obtaining cover on preferential terms to those available if accurate answers were given, the Respondent acted dishonestly, applying the standards of ordinary, decent people, in knowingly providing inaccurate information.

The Respondent's Case

67.6 The Respondent did not serve an Answer to the allegations and her position with respect to this allegation was not known in detail save that she appeared to have denied dishonesty in earlier correspondence with the Applicant.

The Tribunal's Finding re Dishonesty

67.7 Having found the factual matrix in Allegations 1.4 *(save for allegation 1.4.1)* 1.5 and 1.7. proved to the requisite standard, namely on the balance of probabilities the Tribunal considered whether the Respondent had acted dishonestly in each of those allegations.

67.8 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- First, 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;

- Second, once the actual state of the Respondent's knowledge or belief as to the facts had been established the Tribunal next considered whether her conduct would be thought to have been dishonest by the standards of ordinary decent people.

67.9 The Tribunal considered the Respondent's state of knowledge at the material times, although this exercise was made more difficult in the absence of any input from the Respondent which may have assisted the Tribunal in determining any rationale or context with respect to the Respondent's state of knowledge.

67.10 With respect to Allegation 1.4 the Respondent had accepted under cross-examination, in the hearing before District Judge Neaves, that it was wrong to have claimed £203 per hour and that this figure was in excess of the sum which the client was obliged to pay. She had also accepted that the Schedule of Costs served in the proceedings further claimed that the only grade of fee-earner involved in the matter was a "Grade 1" fee-earner when she had known that that most of the work on the matter was undertaken by a more junior fee earner who and that the Respondent herself should have been categorised as a Grade B fee earner.

67.11 With respect to Allegation 1.5 the Respondent had been aware that the document which she produced to the court was false and misleading and did not reflect the actual agreement on costs between the Respondent and her client and she could have had no genuine belief that it was other than false and misleading.

67.12 With respect to Allegation 1.7 it was not conceivable that the Respondent had been unaware that at the time when she completed the PII proposal form, the Firm had been the subject of an SRA investigation and that a number of awards had been made against the Firm for inadequate professional service.

67.13 The Tribunal considered that ordinary decent people would consider a solicitor to be dishonest if the solicitor made knowingly false statements, particularly to obtain an unwarranted financial benefit from her client; submitted forged documents to a court and provide knowingly false information to her insurer to obtain a reduced premium.

67.14 The Tribunal noted that there were no character references or any other material put forward by the Respondent as evidence of her good character and lack of propensity to be dishonest which could be weighed in the balance before reaching a decision on dishonesty.

67.15 Therefore, in the light of its factual findings and its conclusions in relation to the Respondent's knowledge the Tribunal was satisfied on the balance of probabilities that the Respondent had been dishonest.

67.16 Dishonesty in relation to Allegations 1.4, 1.5 and 1.7.were proved on the balance of probabilities.

67.17 Having found the Respondent to have been dishonest with respect to Allegations 1.4 and 1.7 the Tribunal did not then go on to consider whether her actions had been reckless: recklessness having been pleaded in the alternative in Allegations 1.4 and 1.7.

Previous Disciplinary Matters

68. There were no previous matters.

Mitigation

69. The Respondent put forward no mitigation.

Sanction

70. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

71. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

72. 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.

73. In assessing culpability, the Tribunal found that the motivation for the Respondent was a nakedly financial one and her greed was at the heart of this matter.

74. In the pursuit of money and financial advantage the Respondent had, ignored counsel's advice; inflated her costs; put false information before a court and mislead her insurer. She had wrecked lives and the Tribunal was mindful of the comment made by Ms Newsome in her statement when she said that the Respondent and her Firm had "*...displayed an arrogant and uncaring behaviour towards me. They treated me like a throw away commodity….. The impact of the final charging order of £6,756.40 on my home was devastating. I feared that I would lose my house. It has been a massive human cost which has rippled into other parts of my life, the main one being the delay in starting a family because of the financial impact of having a charging order on my home.*"

75. The Respondent's actions were not spontaneous, on the contrary, the Respondent pursued a considered path of conduct which was calculated, repeated and systematic in which she had clearly breached the trust her clients had placed in her to responsibly represent their interests; provide them with timely and accurate advice and not to

overcharge them or allow them to be placed in situations where they would be subject to adverse costs orders which could have been prevented.

76. The Tribunal considered that the Respondent had had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent was supposed to have been supervising others in her Firm and it had ill behoved her to cast blame onto others in attempts to avoid the responsibility which was hers to bear.

77. The Respondent had been a solicitor since 2004 and she was experienced to understand the nature of her conduct and the consequences which flowed from them. A solicitor of any level of experience would know that inflating costs, misleading a court and her insurer was wrong. The Respondent had taken on the role of director of her Firm without shouldering the responsibility for her actions which went with this position.

78. The Tribunal considered that the Respondent had misled the Regulator; failed to co-operate in a meaningful way and failed to hand over files when requested to do so.

79. Overall, the Tribunal assessed the Respondent's culpability as very high taking into account all the factors it had considered.

80. The Tribunal next considered the issue of harm. There was evidence of direct harm to her clients and the quote from Ms Newsome set out above powerfully exemplified the harm experienced by many of her clients as a result of her misconduct. The Respondent's clients experienced financial loss and personal stress which could have been easily avoided had the Respondent not put the pursuit of her financial gain before the interests of her clients to whom she failed to give clear, accurate and timely advice.

81. The consequential damage to the reputation of the profession by the Respondent's misconduct was significant as the public would trust a solicitor not to mislead them on the prospects of success of their case, and not to mislead the court or an insurer. The Respondent had also made unfounded and malicious complaints against Mr Williams, a fellow professional which the Tribunal found to be disgraceful and outrageous.

82. The Respondent's conduct was a significant departure from the complete integrity, probity and trustworthiness expected of a solicitor.

83. The extent the harm was reasonably and entirely foreseeable by the Respondent who had had a clear knowledge of her actions.

84. The Tribunal assessed the harm caused as very high.

85. The Tribunal then considered aggravating factors. The Tribunal, in its finding of fact, had found that the Respondent had acted dishonestly and whilst there was no criminal findings made against her the Tribunal observed the comments made by District Judge Neaves who had found the Respondent evasive, inconsistent and dishonest.

86. The Respondent's actions had been deliberate and calculated and she had clearly taken advantage of vulnerable people. Many of her clients had suffered personal injuries and looked to her to help them obtain redress and they had not expected or deserved their vulnerabilities to be exploited by the Respondent for her own gain and to find themselves in an even worse position. The extent of the harm was spread across multiple clients.

87. The Tribunal considered there were very few mitigating factors but noted that the Respondent had no previous disciplinary findings recorded against her and that she had had a hitherto unblemished career.

88. However, there was no evidence of any genuine insight; no open or frank admissions and little if any co-operation with her regulator and the LeO. The Tribunal also considered that there was no evidence that the Respondent's misconduct was the result of deception by a third party.

89. In all the circumstances of this case the Tribunal considered the seriousness of the misconduct to be extremely high: this was perhaps an inevitable conclusion given the Tribunal's findings of dishonesty. In addition, the Respondent's conduct had been found to have lacked integrity and she had failed to uphold public trust in the provision of legal services on multiple occasions.

90. In the Judgment of the Divisional Court in SRA v Sharma [2010] EWHC 2022 (Admin) it had been held that "*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... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… 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*."

91. In SRA v James, MacGregor and Naylor it was said that exceptional circumstances must relate in some way to the dishonesty and that as a matter of principle nothing was to be excluded as being relevant to the evaluation, which could include personal mitigation.

92. In evaluating whether there were exceptional circumstances justifying a lesser sanction in this case the focus of the Tribunal was on the nature and extent of the dishonesty and degree of culpability and then to engage in a balancing exercise as part of that evaluation between those critical questions on the one hand and matters such as the Respondent's personal mitigation and health issues on the other.

93. In this case the Respondent had presented no personal mitigation to which the Tribunal could give any consideration and there was nothing before the Tribunal to allow it to conclude that the Respondent had not known the difference between true and false; honesty and dishonesty. The Tribunal noted that the Respondent had an otherwise unblemished record but that was perhaps all that could be said.

94. The Tribunal observed that this had not been a fleeting or momentary lapse of judgment but had been a repeated and ingrained course of conduct, involving dishonesty and the blaming of others.

95. The Tribunal therefore could find no exceptional circumstances within the meaning of Sharma and James in the Respondent's case.

96. The Tribunal considered that to make No Order, or to order a Reprimand, a Fine or Suspension (either fixed term or indefinite) would not be sufficient to mark the seriousness of the conduct in this case for the reasons set out above.

97. The Respondent's misconduct could only be viewed as extremely serious and this fact, together with the need to protect the reputation of the legal profession, required that Strike Off from the Roll was the only appropriate sanction.

98. The Tribunal wished to thank the lay witnesses who had taken the time to attend the remote hearing.

Costs

99. Ms Watts stated that as the Applicant had proved the vast majority of its case to the required standard it was entitled to its proper costs. The quantum of costs claimed by the Applicant was in the sum of £59,054.98 inclusive of VAT.

100. Ms Watts submitted that the claimed costs were not excessive but were reasonable and proportionate and due to the fact that it had been essentially a non-contested matter on the basis of the Respondent's non engagement Capsticks' initial fixed fee of £48,500.00 plus VAT had been downgraded to £34,500.00 plus VAT with investigative costs remaining at £17,654.98 .

101. The central feature of the case had been one of dishonesty and it had been very important for the Applicant to have thoroughly prepared its case in the investigatory stage and presented it with similar thoroughness. There had been considerable amount of documents to consider at all stages of the case and documents which formed the evidence of the exemplified cases formed only a part of the total number of documents which had had to be considered as a whole.

102. The Tribunal questioned why the case had required the input of 9 fee earners, 3 partners; 4 lawyers and 2 others without a breakdown in the costs schedule of extent of their contributions to the case preparation. Ms Watts explained that the work had been carried out under partner supervision and by an associate lawyer. Ms Watts was in- house counsel and the costs were commensurate to the level of complexity the case raised. Ms Watts emphasised that the case had originally been set down for a 5 day hearing but in the event had taken only 2 days and had been non contested and that this had afforded a reduction in the fixed fee now being claimed.

103. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate in all the circumstances of this case. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

104. The Tribunal considered that the case had been well presented and properly brought by the Applicant however it considered that the Applicant's assessment of the preparation costs was too high in the circumstances of this case and disproportionate. The Applicant would have known that there was limited prospect of the Respondent engaging in the proceedings and there was little more in terms of preparation for the Applicant after the Respondent had failed to serve an Answer.

105. Having read all the papers and acquainted itself with the issues in the case the Tribunal considered that the investigative costs were too high and that this should be reduced to £12,500.00 further, it appeared to the Tribunal that there had been unexplained duplication of work on the Applicant's part involving the input of 3 solicitors at partner level, 4 lawyers, one of whom was at associate level and 2 others.

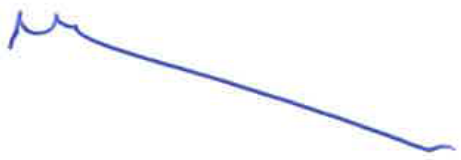
106. The Tribunal considered that it was appropriate for the Applicant to recover a proportion of its costs and assessed that, taking into account all the material circumstances, it was reasonable and proportionate for the Respondent to pay the costs of and incidental to this application and enquiry in the sum of £ 40,000.00.

107. The Tribunal noted that the Respondent had submitted no information regarding her means.

Statement of Full Order

108. The Tribunal Ordered that the Respondent, KIRNA DEVI MADHAS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £40,000.00.

Dated this 29th day of September 2020
On behalf of the Tribunal



R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
30 SEPT 2020