

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12088-2020

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

SAMUEL MAURICE CHARKHAM

Respondent

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Before:

Mrs J Martineau (in the chair)

Mr P S L Housego

Mrs S Gordon

Date of Hearing: 19 - 22 October 2020

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## **Appearances**

Nimi Bruce, barrister, of Capsticks Solicitors LLP, 1 St George's Road, London, SW19 4DR, for the Applicant

Jonathan Goodwin, solicitor, of Jonathan Goodwin Solicitor Advocate Limited, 69 Ridgewood Drive, Pensby, Wirral, CH61 8RF, for the Respondent.

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## **JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that, while in practice as a Partner at Simkins LLP (the Firm) he:
  - 1.1 In or about December 2016, at a social event organised by the Firm and attended by employees of the Firm, told a joke containing a racially abusive term in circumstances in which such conduct amounted to a breach of one or more of Principle 2, Principle 6 and Principle 9 of the SRA Principles 2011;
  - 1.2 On or about 13 January 2017, while in the Firm's office, acted towards Person A in a manner which was inappropriate and/or unwanted in that he moved towards Person A wearing a white A4 envelope on his head and used words to the effect of "I've joined the Ku Klux Klan" in circumstances in which such conduct amounted to a breach of one or more of Principle 2, Principle 6 and Principle 9 of the SRA Principles 2011;
  - 1.3 On more than one occasion between 2014 and 2017, while in the Firm's offices, touched Person A's bottom on more than one occasion in circumstances which breached one or more of Principles 2 and 6 of the SRA Principles 2011.
  - 1.4 On 22 February 2018 you touched Person B's backside in circumstances which breached one or more Principles 2 and 6 of the SRA Principles 2011.
  - 1.5 The conduct described at 1.1 and 1.2 above or either of them was racially motivated, but racial motivation is not a necessary ingredient to allegations 1.1 and 1.2 or either of them being found proved.
  - 1.6 The conduct described at 1.3 above was sexually motivated, but sexual motivation is not a necessary ingredient to allegation 1.3 being found proved.

## **Documents**

2. The Tribunal considered all of the documents filed in the proceedings which included:
  - Applicant's Rule 12 Statement and Exhibit DWRP1 dated 21 April 2020.
  - Applicant's statement of costs as at issue of the proceedings dated 21 April 2020.
  - Applicant's statement of costs as at the substantive hearing dated 12 October 2020
  - Respondent's Answer dated 2 June 2020.
  - Witness statements of:
    - Person A dated 1 December 2020
    - Person B dated 18 April 2020
    - Sarah Parker dated 5 March 2020
    - Sal Mamujee dated 12 March 2020
    - Kay Lesley Johnson dated 18 August 2020.
    - Susan Hill dated 25 August 2020.

## **Preliminary Issues**

### 3. Anonymity in respect of Person A

3.1 On 21 July 2020, the Tribunal granted the Applicant's application for special measures in respect of Person A. The Tribunal, on that occasion, determined that Person A was a vulnerable witness and as such made an anonymity Order in the following terms:

- [Person A] is not visible to the Respondent and gives evidence behind a screen if in person and/or other arrangements are made if the hearing is conducted virtually in whole or in part.
- [Person A] be anonymised in these proceedings and [Person A's] name and any matters personal to [Person A] which may lead to the identification of [Person A] be withheld from the public in the Tribunal proceedings, including any hearings which take place in public, and in the Tribunal's published judgment.

3.2 The substantive hearing was convened remotely. Ms Bruce submitted that the spirit of the Anonymity Order could be preserved by the Respondent turning his video off whilst Person A was giving evidence. That would, she submitted, be a sufficient safeguard to facilitate Person A in giving her best evidence. Mr Goodwin indicated that the Respondent did not object to the proposed approach.

### The Tribunal's Decision

3.3 The Tribunal noted the agreement between the parties and directed that:

- The Respondent must turn his video off during the course of Person A's evidence.
- Any observers to the hearing were required to call in via telephone so as to preserve Person A's anonymity.

### 4. Anonymity in respect of Person B

#### The Applicant's Application

4.1 Ms Bruce applied for an anonymity Order in respect of Person B in the same terms as that which had been imposed regarding Person A. Person B alleged that the Respondent had touched her bottom on one occasion and as such should, Ms Bruce submitted, be protected from view of the Respondent, any observers and anonymised in the Tribunal's judgment. The safeguards were required due to (a) the nature of the complaint, (b) assist the process and (c) allow Person B to give her best evidence. There was no prejudice to the Respondent in so doing.

#### The Respondent's Position

4.2 Mr Goodwin submitted that whilst he "was instructed not to object" he noted that the application was made "very late in the day." Mr Goodwin distinguished between the respective complaints of Person A and B. He stated that the Respondent denied the complaint made by Person A. In contrast the Respondent admitted that there was contact with Person B on her bottom but that he had an explanation for the same.

Mr Goodwin further asked the Tribunal to note that the Applicant did not allege sexual motivation in respect of Person B.

### The Tribunal's Decision

4.3 The Tribunal considered the submissions very carefully and noted that, notwithstanding the submissions made by Mr Goodwin, the Respondent did not oppose the application. The Tribunal recognised the importance of enabling Person B to give her best evidence. The Tribunal was alive to the risk of "jigsaw identification" of both Person A and Person B and the need to mitigate against that occurrence.

4.4 Having weighed all of the factors in the balance the Tribunal determined that special measures were required in respect of Person B and made an anonymity Order on the same terms as that in place regarding Person A.

### 5. Applicant's application for disclosure

5.1 During the course of Ms Johnson's evidence it came to light that her statement had been drafted with the assistance of the Respondent. Ms Johnson stated that "the Respondent emailed questions and I gave replies."

### The Applicant's Application

5.2 Ms Bruce applied for disclosure of all communications between the Respondent, Ms Johnson and Ms Hill (the other witness being called by the Respondent). Ms Bruce submitted that the credibility, safety, veracity, reliability of their evidence required disclosure so that the Tribunal could discern the appropriate weight to be attached the same. Ms Bruce contended that disclosure of all communications was required to assist her cross examination of both witnesses and challenge the parts of their evidence that represents their own words and the parts that were the Respondent's words.

### The Respondent's Position

5.3 Mr Goodwin opposed the application. He asserted that the application was made very late in the day and any challenge could be made by way of cross examination. Mr Goodwin contended that he had not sought disclosure of the Applicant's communications with the witnesses as there was trust that Capsticks (who investigated the complaint on behalf of the Applicant) would have acted with integrity.

### The Tribunal's Decision

5.4 The Tribunal carefully considered the submissions of the parties. The Tribunal noted that there had been significant discussions between the parties leading up to the substantive hearing in relation to redactions to the statements in question. The substance of this application was not raised then and had only come to light during the course of Ms Johnson's evidence on day 3 of the hearing.

5.5 The Tribunal had received oral evidence of the fact that the Respondent instigated the provision of witness statements from Ms Johnson and Ms Hill and the manner in which that was done. The Tribunal determined that it was sufficient to know the circumstances

as to how both statements came into existence in order for the appropriate weight to be attached to them.

- 5.6 Weighing all of those factors in the balance the Tribunal refused the Applicant's application for disclosure.
6. The Respondent's failure to file at the Tribunal and serve on the Applicant a witness statement

#### The Applicant's Position

- 6.1 Ms Bruce submitted that if the Respondent proposed to give oral evidence he required leave from the Tribunal in light of the failure to file and serve a witness statement. Ms Bruce contended that the failure to comply with the Standard Directions, which required the parties to file and serve witness statements in respect of evidence they sought to rely upon, issued in the proceedings was disadvantageous to the Applicant. Ms Bruce had not seen in a sworn statement the evidence that the Respondent was likely to give which presented an inequality of arms. Ms Bruce further averred that it was a tactic deployed by the Respondent which was not helpful to the Tribunal.

#### The Respondent's Response

- 6.2 Mr Goodwin did not accept that the failure to file and serve a witness statement was inappropriate as the Respondent had provided an initial response to the Applicant dated 20 August 2019 and an Answer to the Rule 12 Statement. Mr Goodwin submitted that the Standard Directions with regards to witness statements related to witnesses and not the Respondent. Mr Goodwin stated that the Respondent could not be compelled to give evidence and therefore "it must logically follow that he cannot be compelled to give a statement". Mr Goodwin submitted that he, in calling the Respondent, did not seek to elicit evidence beyond that which was contained in his initial response and Answer.

#### The Tribunal's Decision

- 6.3 The Tribunal noted that the Standard Directions, issued on 24 April 2020 provided that:

"[8] The Applicant and Respondent shall file at the Tribunal and serve on every other party the witness statements accompanied by a notice using the prescribed form of any witnesses upon whose evidence they intend to rely at the substantive hearing and whose statement has not already been served by **4.30 p.m. on Monday 21 September 2020.**"

- 6.4 The Tribunal further noted that the Solicitors (Disciplinary Proceedings) Rules 2019 provided that:

"Rule 28(2) Every Statement upon which any party proposes to rely must be sent to the Tribunal by that party and served on every other party on a date determined by the Tribunal which must be no less than 28 days before the date fixed for the hearing of the application.

The Statement must be accompanied by a notice, using the prescribed form.

...

Rule 28(5) If a Statement has not been served in accordance with paragraph 28(2) in relation to a witness, a party must apply to the Tribunal for permission—

(a) to produce that Statement; and

(b) for the witness to give evidence at the hearing...”

- 6.5 The Tribunal rejected the argument made by Mr Goodwin that the Respondent was not a witness to the proceedings. The Tribunal determined that both Standard Direction 8 and Rule 28 applied to all witnesses of which the Respondent was one.
- 6.6 The Tribunal rejected the argument made by Mr Goodwin that as the Respondent could not be compelled to give evidence he could not be compelled to file a witness statement. Whilst that would logically be the position if the Respondent elected, as was his right, not to give evidence, that was not the position presented to the Tribunal. The Respondent proposed to give evidence but had failed to file a witness statement in that regard. Permission was therefore required from the Tribunal.
- 6.7 The Tribunal was concerned at the fact that the Respondent had not filed a witness statement. There was a clear disadvantage to the Applicant in that regard. However, in light of the seriousness of the allegations, the parameters which Mr Goodwin had relayed to the Tribunal of the evidence he proposed to elicit from the Respondent and the fact that Ms Bruce did not seek an adjournment of the hearing for a statement to be filed, the Tribunal granted permission for the Respondent to give evidence, on the basis that his previous communications with the Applicant stood, cumulatively, as his witness statement.

### **Factual Background**

7. The Respondent was admitted to the Roll in June 1977 and had always held a practising certificate free from conditions.
8. At all material times the Respondent was a partner in the Firm and a member of the Firm’s LLP. He specialised in conveyancing matters and was the head of that department.
9. At all material times Person A was secretary at the Firm who occasionally carried out work for the Respondent when he was covering the work of the solicitor to whom she was allocated. Person A was a black woman of St Lucian heritage.
10. Person B was, and remains, the Accounts Manager at the Firm.
11. The Firm conducted internal investigations in relation to the Respondent’s conduct, with regards to Person A and Person B. Person A matters had concluded in 2017 by settlement with Person A and the Compliance Officer for Legal Practice made a report in that regard to the Applicant. Person B’s complaint in February 2018 was not

investigated to the same extent but the Firms report to the Applicant referred to the fact there had been a number of incidents of inappropriate behaviour on the part of the Respondent. It further stated that the Respondent was stressed by the loss of members of his team impacting on his client base and work levels so his reason for resigning is perhaps wider than just being a consequence of the Person B allegation. In Feb 2018 the Respondent tendered his resignation from the firm, leaving it at the end of June.

12. The Firm reported the Respondent to the Applicant on 21 December 2017.

### **Witnesses**

13. The Tribunal heard oral evidence from:

- For the Applicant:
  - (i) Person A
  - (ii) Person B
  - (iii) Sarah Parker
  - (iv) Sal Mamujee
- For the Respondent:
  - (i) The Respondent.
  - (ii) Kay Lesley Johnson
  - (iii) Susan Hill

### **Legal Framework**

14. When required to do so, the Tribunal applied the legal test/principles set out below.

#### Integrity

15. The test promulgated in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 namely:

“... Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbiter will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse...”

#### Sexual Motivation

16. In respect of Allegation 1.6, namely that the alleged touching of Person A by the Respondent was sexually motivated, the Tribunal had regard to Mrs Justice Foster’s judgment in General Medical Council v Raied Haris [2020] EWHC 2518 (Admin) in particular:

“ ...

[51] It remained for the GMC to show that it was more likely than not, looking at the material in the round, that the motivation was sexual...”

...

[57] It may be that a different form of allegation might assist a tribunal and diminish the risk of over-complication of the task they face where the essential charge, albeit in a wholly different context, is one of sexual assault. The regulatory context is of course different, particularly the medical sphere in which touching may be apparently sexual in character but entirely justified in certain circumstances by clinical need. The standard of proof is of course also different. The criminal offence is described thus in the Sexual Offences Act 2003 s3

1) A person (A) commits an offence if-

- (a) he intentionally touches another person (B)
- (b) the touching is sexual,
- (c) B does not consent to the touching, and
- (d) A does not reasonably believe that B consents

[58] As to “sexual” in subsection (1)(b), section 78 of the 2003 Act provides two ways to determine whether the touching is sexual thus:

78 “Sexual”

For the purposes of this Part .... touching or any other activity is sexual if a reasonable person would consider that-

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, **or**
- (b) because of its nature it **may** be sexual **and** because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.” [My emphasis]...”

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

17. The Applicant was required to prove the allegations to the civil standard of proof, namely on the balance of probabilities. The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
18. The evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was germane to the findings of the Tribunal, and to the facts 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 submissions.



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.

19. **Allegation 1.1 - In or about December 2016, at a social event organised by the Firm and attended by employees of the Firm, told a joke containing a racially abusive term in circumstances in which such conduct amounted to a breach of one or more of Principle 2, Principle 6 and Principle 9 of the SRA Principles 2011; and**

**Allegation 1.5 - Racial motivation**

The Applicant's Case

- 19.1 Ms Bruce stated that the Firm's Conveyancing Team held a Christmas party on 16 December 2016. It was at a bistro in Central London. During the course of the evening the Respondent told a "joke" in the following terms:

"...What do you call a black man who sells ties? A tycoon..."

Person A

- 19.2 Person A confirmed that the content of her witness statement was true to the best of her knowledge and belief. She adopted the content as her primary evidence before the Tribunal. She was taken to a number of paragraphs in her statement by Ms Bruce as set out below.

"[8] In around February 2013 (within one month of starting work at the Firm) [the Respondent] approached me at an office function. Without any introduction he said 'there was a black girl that used to work here and me and her at a good time'. I replied 'so where is she now', wondering why a Partner would approach me in this way, [the Respondent] then said laughing 'she may have got the sack'. I was appalled, but being new I did not want to offend, so replied words to the effect 'it would seem by you coming to me with this when I don't know you would mean you want the same demise for me. Actually, do not answer - let some time pass and you will see I am not that kind of woman'. [The Respondent] then said words to the effect 'actually you have me to thank for you coming back', by which I understood to mean that he was suggesting that he had been responsible for my getting the role at the Firm. By this point I was highly offended and walked away from him without another word.

[12] Whenever I went in to [the Respondent's] office to get documents signed, sometimes while Mr R was there and sometimes while he was not, he would make inappropriate comments about Mr R such as 'he's a fucking dickhead', 'he's fucking useless', 'he's a twat', 'he don't know what he's doing'. [The Respondent] also on occasion referred to Mr R as a "cunt" while speaking with me; which I considered highly offensive and inappropriate language. I cannot remember any specific dates that this happened as [the Respondent] used this sort of language on a regular basis. At some point Mr R moved out of [the Respondent's] office into

another office. I believe this was because of the inappropriate way [the Respondent] spoke to him, but I cannot be certain as I never spoke to Mr R about it.

[13] On one occasion when Mr R was away from the office in around 2015 (I cannot remember the exact date due to the passage of time), [the Respondent] came over to me about 10 times in quick succession telling me to do things for him. He kept coming at me and, on the last occasion, he was swearing at me and I just snapped. I shouted at him ‘would you stop fucking bullying me’ and pursued him down the corridor towards his office. I said words to the effect ‘you fucking keep bullying me, do I look like someone who can be bullied?’ I went back to my desk, but then went back to his office and said words to the effect ‘Look you don’t know me, all you see is a pretty black girl I am giving you one last chance, I don’t need this shit, leave me alone.’ [The Respondent] did not respond, I just turned straight around and went back to my desk...”

[17] The first incident was at the property department Christmas dinner in December 2016. I didn’t want to go to the Firm Christmas party (as explained below, I avoided social occasions at work to avoid being sexually harassed by [the Respondent]), but I thought I would go to the department dinner as it was a sit-down meal and I could sit as far away from [the Respondent] as possible. The meal took place at a basement bistro place just off Tottenham Court Road. Most of the conveyancing team went to the dinner, and there were about 18 of us. We sat at one long table; I sat in the south west corner as far away from [the Respondent] as possible, who was sat at the north east end of the table. I was set opposite DC (Partner), Ms. R was on my right, and lady called P (I cannot remember her full name or her role) was on my left. Mr E was also sat near me, but I cannot remember exactly where Mr N was sat on the direct opposite comer to me...”

19.3 Person A additionally stated that whilst at the table she was aware that the Respondent had made a “joke” of which she caught the odd word. One word that she did overhear was “coon” at which point everyone at the table gasped and stared at her. She “wanted the ground to open up” and thought “here I am again, I would rather be at home.”

19.4 In cross examination Mr Goodwin put to Person A that she had been reluctant to provide a witness statement in the proceedings as she had been contacted by Capsticks in May 2018 but had not finalised her statement until 7 months later in December 2018. Person A accepted that timeline but asserted that it was for reasons other than reluctance.

19.5 Mr Goodwin put to Person A that she did not hear the exact words of the “joke” and relied upon what others had told her about the content. Person A stated that she heard the words “black man” and “coon” and that others ..told her the full extent of the “joke”.

- 19.6 Mr Goodwin referred Person A to the Firm's report of the Respondent to the Applicant dated 21 December 2017 in which it stated that Person A wished "to draw this matter to a close." Person A stated that was her wish with regards to her employment at Simkins as opposed to her complaints against the Respondent.

Sarah Parker

- 19.7 Ms Parker confirmed that the content of her witness statement was true to the best of her knowledge and belief. She adopted the content as her primary evidence before the Tribunal. She was taken to a number of paragraphs in her statement by Ms Bruce as set out below.

"[8] ...members of staff had attended the property team Christmas dinner. I did witness a joke at the table which was told by [the Respondent] although I cannot remember the joke itself, it was a play on words and involved the word 'tycoon'.

[9] At the dinner, I was sat next to [Person A]. There was a large table of 16 to 17 of us. [Person A] was sat to my right. I don't remember exactly where [the Respondent] was sitting. I believe he was further down the table to the left.

[10] It was a close table and was quite easy to hear everybody provided no others were talking at the same time. I think everyone would have heard the joke if they weren't engaged in a conversation of their own. After he had told the joke there was just quietness and possibly a bit of fake laughter as it was an awkward situation. [Person A] didn't mention the joke to me after it had happened..."

- 19.8 Ms Parker added that she "didn't think it [the "joke"] was intended to be racist. I think Person A had overheard it and it was awkward at the punchline. There was some fake laughter to move the conversation along."

- 19.9 Ms Bruce asked whether Person A was present at the table when the "joke" was told. Ms Parker stated that Person A was "definitely next to me but I can't remember if she was next to me at the time [of the "joke"]. I believe she was but I could be incorrect. I don't remember her leaving the table and I can't remember what time the "joke" was told."

Sal Mamujee

- 19.10 Mr Mamujee confirmed that the content of his witness statement was true to the best of his knowledge and belief. He confirmed that he was present at the Christmas dinner organised by Mr N along with nine colleagues. The Respondent was seated opposite him and Person A was on the far left of him at the end of the table. He believed her to have been present as at the time of the "joke" but couldn't say for sure.

- 19.11 Mr Mamujee did not remember the context of the joke or the first line but he recalled the punchline was the word "tycoon". He considered it to be a play on words with racial connotations which shocked all at the table. Mr Mamujee stated that he had not heard

that kind of “joke” for over 25 years and described it as “playground stuff that [his] generation had grown up with.”

19.12 Principle 2: Integrity

19.12.1 Ms Bruce submitted that a solicitor acting with integrity would not tell “jokes” including racially abusive terms in the manner described, at all or within earshot of people likely to be particularly offended by the use of such terms. The Respondent, as a Partner, was and must have been well aware of the requirement to act appropriately towards colleagues at all times, and particularly as to his responsibility, as a Partner, to behave appropriately to people in the Firm who, even if not managed by him, were junior to him in the organisation of the Firm and who were or might perceive themselves to be the subjects of the racially abusive language used.

19.13 Principle 6: Public trust

19.13.1 Ms Bruce submitted that by telling a “joke” including a racially abusive term, in the hearing of others including people likely to be grossly offended by it, the Respondent acted in a manner likely to undermine public confidence in the profession, including the confidence of other attendees at the event, all of whom would have known that he was a solicitor.

19.14 Principle 9: Promotion of equality and respect for diversity

19.14.1 Ms Bruce submitted that by telling a “joke” at a work-related event which included a racially abusive term the Respondent failed to carry out his role in the business in a way that encourages respect for diversity.

**Allegation 1.5 - Racial motivation.**

The Applicant’s Case

19.15 Ms Bruce submitted that the Respondent’s conduct was racially motivated in that he told a joke, by his own admission, based on the word “coon”, the only meaning of which is racially abusive and has been known to be so for many years. Ms Bruce further submitted that the Respondent acted in a manner that was motivated by prejudice based on Person A’s race.

The Respondent’s Position

19.16 Mr Goodwin took the Respondent to his first response to the Applicant dated 20 August 2019 in which he stated:

“...at a firm Christmas party I told a joke to a few persons “What do you call a black man who sells ties- a tycoon”. I admit this is in bad taste but i (*sic*) can categorically swear that [Person A] was not in the room at the time (nor within earshot), and I cannot contemplate that such a joke is “harassment”...”

19.17 The Respondent confirmed that represented his true position.

19.18 Mr Goodwin took the Respondent to his Answer to the Rule 12 Statement which stated:

“[2] The Respondent admits the allegation as a breach of Principle 6 of the SRA Principles 2011. He denies that he acted contrary to Principles 2 and 9. The Respondent accepts that he told a joke that was in poor taste and offensive, for which he apologises.

[3] The Respondent will say that Person A was not in the room at the time, or within earshot.

[4] The Respondent denies that the joke and/or use of words was racially motivated as alleged in allegation 1.5. Racism of any kind is abhorrent to the Respondent. The Respondent said in his response dated 20 August 2019, amongst other things, “... I hold no racist views of any nature - I am a member of a religious minority, whose ancestors have been persecuted over many centuries, were obliged to run for their lives from pogroms in Russia and Poland, and I lost family members in the Holocaust. It is simply abhorrent to me for persons to persecute others on the grounds of race or religion...”

19.19 The Respondent confirmed that represented his true position.

19.20 Ms Bruce took the Respondent to his initial response to the allegations in which he stated:

“...I am undoubtedly guilty, only, of telling 2 jokes in bad taste. In the case of the first joke, [Person A] was not in the room or within earshot. In the case of the second, I offered my sincere apologies as soon as I realised my mistake. If the SRA chooses to punish me for these “crimes” then so be it...”

19.21 The Respondent confirmed that represented his true position.

19.22 Ms Bruce put to the Respondent that he regularly breached boundaries within the workplace to which the Respondent asked “what do you mean by boundaries?” Ms Bruce put to him that he told racist jokes to which the Respondent replied that he had “in the past”, he further accepted that he had been “known to” tell anti-Semitic jokes. The Respondent asserted that he had an “old fashioned sense of humour” and told such jokes “in a very different climate to now”. Ms Bruce put to the Respondent that it was never acceptable to use the word “coon” to which the Respondent replied “I didn’t say that I said tycoon” and he further asserted the word coon had previously “been acceptable on the BBC so was acceptable at work”.

19.23 Ms Bruce put to the Respondent that he was seeking to minimise his behaviour and that the first time he had accepted that his “joke” was offensive was in his Answer to the Rule 12 Statement which was drafted by Mr Goodwin. The Respondent accepted those contentions. Ms Bruce put to the Respondent that he did not truly accept that his “joke” was offensive to which he replied “it had now been drawn to my attention that it offended people so it is offensive”. Ms Bruce put to the Respondent that the term “coon” is at the top end of the scale with regards to racial slurs. The Respondent stated that it was “somewhere near that yes” and he accepted that he knew that when he made

the “joke”. Ms Bruce suggested that he knew it would have been deeply hurtful to Person A, the only person of colour sat at the table. The Respondent stated that he did not “think she was there in the room. If she was not in the room how can that be [hurtful]?”

- 19.24 Ms Bruce put to the Respondent that Person A was at the table, the “joke” represented targeted racial behaviour which was evident by the reaction of others at the table. The Respondent did not accept those contentions and stated that he did not “accept that it was directed at her [Person A], [he] accepts it was in bad taste and that [he] did not see the point in any further discussion as [he] apologised”.

### Mr Goodwin’s Submissions

- 19.25 Mr Goodwin reminded the Tribunal that the burden of proving the allegations was on the Applicant and that it was not for the Respondent to prove anything. Mr Goodwin remarked that the delay on the part of the Applicant in progressing the matter was such that the civil standard of proof applied as opposed to the criminal standard which was applicable to proceedings issued prior to 25 November 2019. Mr Goodwin further submitted that no good reason had been given by the Applicant in respect of the delay namely (a) from receipt of the Respondent’s initial response dated 20 August 2019 until the decision to refer him to the Tribunal on 22 November 2018 and (b) thereafter until 21 April 2020 when the Rule 12 Statement was finalised and lodged at the Tribunal. That delay, Mr Goodwin submitted, clearly impacted on the recollection of witnesses with regards to events that allegedly occurred between 2014 and 2017.
- 19.26 The civil standard, Mr Goodwin submitted, was that the burden on the Applicant was to prove the allegations on a balance of probabilities namely that the matters alleged were more likely than not to have occurred. However, Mr Goodwin invited the Tribunal to pay significant regard to the inherent likelihood of the misconduct alleged. He submitted that the more serious the allegation the less likely it was to have happened and the more cogent the evidence required to meet the threshold test. Mr Goodwin submitted that there had been no previous complaint made against the Respondent which was supportive of the proposition that he lacked the propensity to act in the manners alleged.
- 19.27 Mr Goodwin reiterated that the Respondent admitted the factual matrix of Allegation 1.1 and that it rendered him in breach of Principle 6 in that his conduct undermined the trust the public have in him and in the profession.
- 19.28 Mr Goodwin made plain that the Respondent denied that his conduct demonstrated a lack of integrity (Principle 2). Mr Goodwin endorsed the principles promulgated in Wingate and reminded the Tribunal that solicitors were not expected to be “paragons of virtue”, that there were degrees of such a breach which the Tribunal was required to infer.
- 19.29 Mr Goodwin further stated that the Respondent denied that his conduct breached Principle 9 (promotion of equality and respect for diversity), that he had never been accused of such in the past or since the material events and that he apologised to Person A in that regard.

19.30 Mr Goodwin submitted that there was no racial motivation in the “joke” told, that the Respondent had an “old fashioned/playful sense of humour” and that he now accepted that it was in bad taste.

### The Tribunal’s Findings

#### Allegation 1.1

19.31 On the basis of the evidence before it and the admissions, which were properly made, by the Respondent, the Tribunal found the factual matrix of Allegation 1.1 proved on a balance of probabilities and further that such conduct undermined the trust the public placed in the Respondent and the profession.

19.32 The Tribunal went on to consider whether such conduct demonstrated a lack of integrity on the part of the Respondent (Principle 2) and/or whether it failed to promote equality and respect for diversity (Principle 9). The Tribunal exercised its professional judgement in relation to both matters having carefully considered the submissions of the parties and the witness evidence received.

#### 19.33 Principle 2

19.33.1 The Tribunal considered that the concept of integrity was not binary, rather that it comprised of a sliding scale in respect of which seriousness was determined by reference to the profession concerned. The Tribunal regarded the solicitors’ profession to be one that demanded high standards of integrity both professionally and personally.

19.33.2 The Tribunal found the “joke” told by the Respondent to have been wholly reprehensible. It was told in a restaurant where members of the public were dining as well as staff from the Firm. It matters not whether Person A was present at the table or not at the material time; that did not vitiate the offence and disgraceful nature of the “joke”. In any event, the Tribunal rejected the Respondent’s assertion that Person A was not present.

19.33.3 The Tribunal concluded that the Respondent lacked integrity by telling a “joke” which included racially abusive language in a public setting. The Respondent was a partner in the Firm and a solicitor of significant experience who was well aware of the duty incumbent on him to lead by example. He failed in every respect and demonstrated a flagrant lack of integrity in so doing.

19.33.4 The Tribunal therefore found that the Respondent’s conduct breached Principle 2 on a balance of probabilities.

#### 19.34 Principle 9

19.34.1 The Tribunal had no hesitation in finding that the Respondent’s “joke” unquestionably impeded equality and demonstrated an audacious disrespect for black people in general and Person A in particular. Such “jokes” have no place in society 10 years on from the Equality Act 2010 and the preceding legislation in that regard.

19.34.2 The Tribunal therefore found that that the Respondent's conduct breached Principle 9 on a balance of probabilities.

Allegation 1.5

19.35 The Tribunal found that the "joke" would not have been a "joke" absent the derogatory, insulting and offensive word "coon".

19.36 Person A was the only black person at the table and the Tribunal found that it was made at her expense. The Tribunal accepted her evidence as to how the "joke" made her feel in that she "wanted the ground to open up". The Tribunal further accepted the evidence of Ms Parker and Mr Mamujee as to the reaction of those present who were shocked, who gasped and who "laughed nervously to move the conversation on".

19.37 The Tribunal rejected the Respondent's assertions that he "had an old-fashioned sense of humour" and/or that he "could not be a racist because [he] was Jewish". The "joke" distinguished black people in the most derogatory and insulting manner. The Tribunal found that even if he had not intended it to be the case, the Respondent relied upon a racially abuse term to elicit laughter in others which in and of itself demonstrated racial motivation. Nor was it any exculpation that he, being Jewish to told "jokes" about Jewish people. Such insults were offensive to all right- thinking people, including other Jews.

19.38 The Tribunal therefore found Allegation 1.5 proved on a balance of probabilities.

20. **Allegation 1.2 - On or about 13 January 2017, while in the Firm's office, acted towards Person A in a manner which was inappropriate and/or unwanted in that he moved towards Person A wearing a white A4 envelope on his head and used words to the effect of "I've joined the Ku Klux Klan" in circumstances in which such conduct amounted to a breach of one or more of Principle 2, Principle 6 and Principle 9 of the SRA Principles 2011; and**

**Allegation 1.5 - Racial motivation.**

The Applicant's Case

20.1 Ms Bruce submitted that on 13 January 2017, Person A was sitting at a desk awaiting dictation by a colleague when the Respondent came out of his office and moved towards her. He had placed an A4 white envelope on his head and said words to the effect of "I've joined the Ku Klux Klan".

Person A

20.2 Person A was taken by Ms Bruce to and relied upon the following paragraph of her witness statement as her primary evidence.

"[19] The second incident was on around 13 January 2017. I was sat at my desk poised for dictation with Ms R, who was stood next to me on my right, when [the Respondent] came running out from his office towards me calling my name. As he approached my desk he placed a white A4



envelope on his head and said loudly and in plain view and earshot of everyone else in that area of the office ‘I have joined the Ku Klux Klan’. There were about six or seven of us in the area when this happened, including all of the secretaries who were sat at their desks. SA, secretary, who was sat directly behind me, said ‘hang on a minute that definitely is not a joke - no way is that a joke’. [The Respondent] stood about one to two feet away from me defending his actions and saying it was a joke. One of the other secretaries, Sarah Parker, who was sat on my left, then said ‘that is crossing the line and is not a joke’. I was offended beyond belief and was visibly shaken and my hands shaking/trembling. Ms R was standing beside me throughout and said nothing, just asked if I was okay. I told Ms R to please dictate so I could go outside and try and process the violation of my human rights I had just been subjected to again...”

- 20.3 Person A stated that save for herself and Ms R, all other members of staff present were Caucasian.

Sarah Parker

- 20.4 Ms Parker was taken by Ms Bruce to and relied upon the following paragraph of her witness statement as her primary evidence.

“[12] On 13 January 2017, [the Respondent] strolled out of his office and put an envelope on his head. He was stood next to [Person A], which was to her immediate right. He was stood to my left when he said words to the effect of, ‘What gang am I from?’ He may have said ‘what clan am I from?’ He was laughing when he said it as he thought it was a funny joke. [Person A] gave a sort of smile as if to say, ‘very funny’.

[13] I clearly told [the Respondent] that it was not funny at all. He said it was a joke. I said that it was not funny and that it was really inappropriate. Afterwards, he went back into his office.”

Sal Mamujee

- 20.5 Mr Mamujee confirmed that he shared an office with the Respondent at the material time. At the time of the incident he was dictating when the Respondent grabbed his attention by saying “shall I go out and see Person A with this on my head.” Mr Mamujee stated that he shook his head and thought “oh God no”.

20.6 Principle 2: Integrity

- 20.6.1 Ms Bruce submitted that a solicitor acting with integrity would not, jokingly or otherwise, adopt a manner intended to suggest or represent membership of an organisation perceived to be racist and violent, at all or within earshot of people likely to be particularly offended by such conduct. The Respondent, as a Partner, was and must have been well aware of the requirement to act appropriately towards colleagues at all times, and particularly as to his responsibility, as a Partner, to behave appropriately to people in the Firm who, even if not managed

by him, were junior to him in the organisation of the Firm and who were or might perceive themselves to be the subjects of the conduct.

20.7 Principle 6: Public trust

20.7.1 Ms Bruce submitted that by acting in the manner described and admitted the Respondent acted in a manner likely to undermine public confidence in the profession, including the confidence of others present, all of whom would have known that he was a solicitor.

20.8 Principle 9: Promotion of equality and respect for diversity

20.8.1 Ms Bruce submitted that by acting in the manner described the Respondent failed to carry out his role in the business in a way that encourages respect for diversity.

**Allegation 1.5**

The Applicant's Case

20.9 Ms Bruce submitted that the Respondent's conduct as alleged was racially motivated. The Ku Klux Klan is very widely regarded as an embodiment of racism and racially-motivated violence. The Respondent deliberately used an item to represent a form of dress associated with the Ku Klux Klan, made a joke to the effect that he was a member of that organisation, and knowingly and deliberately directed such conduct towards a black employee of his Firm.

20.10 Ms Bruce further submitted that the Respondent acted in a manner that must have been motivated by Person A's race, and prejudice towards her based on her race.

The Respondent's Position

20.11 Mr Goodwin took the Respondent to his first response to the Applicant dated 20 August 2019 which stated:

“...the Ku Klux Klan incident is not denied. It was again an example of my playful sense of humour. However, as soon as my insensitivity was drawn to my attention I offered my sincere apologies to [Person A]...”

20.12 Mr Goodwin took the Respondent to his Answer to the Rule 12 Statement which stated:

“[5] The Respondent admits the allegation as a breach of Principle 6 of the SRA Principles 2011.

[6] The Respondent denies a breach of Principles 2 and 9 of the SRA Principles 2011. The Respondent accepts that his conduct was in poor taste and offensive for which he apologises. As soon as the insensitivity was drawn to his attention, the Respondent offered his sincere apologies to Person A.

[7] The Respondent denies that his actions were racially motivated...”

- 20.13 Ms Bruce challenged the Respondent’s assertion that his reference to the Ku Klux Klan was playful and put to him that he was well aware of the nature of the Ku Klux Klan at the material time. The Respondent stated that he was not and only now has a more detailed understanding of what the Ku Klux Klan represent. Ms Bruce put to the Respondent that as an educated man and a solicitor of the Supreme Court his account was not credible. The Respondent replied that he “knows more now than then”. Ms Bruce put to the respondent that he was well aware that the Ku Klux Klan is a white supremacist group with a history of targeted violence upon black people including lynching. The Respondent rejected that assertion and stated that he did not know that at the material time, he was unaware of their methodology and that the violence associated with the Ku Klux Klan “didn’t cross my mind in that moment of madness”.
- 20.14 Ms Bruce put to the Respondent that he was well aware of the hateful and disgusting act which was why he paused to ask Mr Mamujee whether or not he should do it. The Respondent stated that he did not recall doing that. Ms Bruce put to the Respondent that he did and proceeded to target his conduct to Person A nonetheless. The Respondent stated that it was 5/6 seconds afterwards that he was “just being playful but it didn’t turn out that way” and further that he thought the categorisation of his conduct as hateful was “a bit strong”.
- 20.15 Ms Bruce put to the Respondent that his conduct was neither a joke, banter nor funny. The Respondent accepted that it was not funny but asserted that “it was not racially motivated” and that he couldn’t be a racist because he was Jewish.
- 20.16 Ms Bruce put to the Respondent, and he accepted, that as a partner in the Firm junior and administrative staff looked up to him to set an example. Ms Bruce suggested that junior staff seeing him telling racist jokes and behaving in such a manner set a terrible example of a toxic environment. The Respondent stated that it “can today but it wasn’t like that 4-5 years ago. The political atmosphere is different now and the Black Lives Matter Movement didn’t exist 4 years ago.”

#### Mr Goodwin’s Submissions

- 20.17 Mr Goodwin relied upon the submissions made in respect of Allegation 1.1. He reiterated that the Respondent admitted the factual matrix and that it amounted to a breach of Principle 6 but denied that it demonstrated a lack of integrity (Principle 2) or a disregard for equality and diversity (Principle 9) and further that it was not racially motivated. Mr Goodwin urged the Tribunal to regard Allegations 1.1 and 1.2 as isolated incidents that occurred within a short space of time and in respect of which the Respondent had apologised to Person A.

#### The Tribunal’s Findings

##### Allegation 1.2

- 20.18 On the basis of the evidence before it and the admissions, which were properly made, by the Respondent, the Tribunal found the factual matrix of Allegation 1.2 proved on a

balance of probabilities and further that it found such conduct undermined the trust the public placed in the Respondent and the profession.

#### 20.19 Principle 2

20.19.1 The Tribunal noted that the Respondent's conduct occurred barely a month after the Christmas dinner incident after which the Respondent was told to apologise to Person A. Notwithstanding that fact the Respondent sought to refer to the Ku Klux Klan in what he described as a "jokey" manner. He did this having sought the opinion of Mr Mamujee (of Asian descent) beforehand. Mr Mamujee shook his head at the Respondent and the Tribunal accepted Mr Mamujee's evidence on that point.

20.19.2 The Respondent's conduct was specifically targeted to Person A to whom he strode with the white envelope on his head and claimed to be a member of the Ku Klux Klan. The Tribunal rejected the Respondent's evidence that he was not aware of the well documented and widely known violent nature of that white supremacist group. The Respondent was adult at a time when burning crosses and lynchings by white robe clad Ku Klux Klan members (with the eponymous hood) were frequently in the news and there was enormous racial tension in the south of the USA. He cannot have been unaware of the horrendous nature of that organisation.

20.19.3 The Tribunal concluded that the Respondent demonstrated an utter lack of integrity in his actions. The Tribunal therefore found that the Respondent's conduct breached Principle 2 on a balance of probabilities.

#### 20.20 Principle 9

20.20.1 The Tribunal determined that the Respondent would not have behaved in such a manner if Person A had not been present. The whole reason he did it was to direct it at her. In so doing, he made a conscious decision to conduct himself in a manner predicated on Person A's race and the oppression of black people at the hands of the Ku Klux Klan.

20.20.2 The Tribunal therefore found that the Respondent's conduct breached Principle 9 on a balance of probabilities.

#### Allegation 1.5

20.21 The Tribunal considered that if Person A had not been present, the Respondent would not have behaved in the manner that he did. He elected to act in the way that he did which unilaterally singled out the fact that Person A was black. He aligned himself with an organisation which prided itself on the well documented violence its members had inflicted on black people for decades. The Tribunal was concerned at the assertions made by the Respondent that he was not aware of the historical and present-day attitudes and actions of the Ku Klux Klan in an effort to minimise the detrimental impact his conduct had on Person A. The Tribunal found the Respondent's assertions that the Black Lives Matter Movement was not known in 2017 to be a disingenuous attempt to militate the seriousness of his misconduct.

20.22 The Tribunal therefore found Allegation 1.5 proved on a balance of probabilities.

21. **Allegation 1.3 - On more than one occasion between 2014 and 2017, while in the Firm's offices, touched Person A's bottom on more than one occasion in circumstances which breached one or more of Principles 2 and 6 of the SRA Principles 2011; and**

**Allegation 1.7 - Sexual motivation.**

#### The Applicant's Case

21.1 Ms Bruce submitted that the Respondent had no reason to believe that his conduct in repeatedly touching Person A's bottom was wanted by Person A. Person A had given the Respondent no indication that his conduct was appropriate or wanted, yet the Respondent persisted in that behaviour.

21.2 The conduct occurred in the Firm's office, while the Respondent and Person A were engaged in their respective roles in the Firm. Ms Bruce submitted that the Respondent, as a Partner in the Firm was, and knew himself to be, senior to Person A (a secretary working in the Firm) and further that he was in a position of authority in the Firm.

21.3 Ms Bruce contended that the Respondent knew or ought to have known that his conduct was inappropriate and an abuse of his position of seniority or authority.

#### Person A

21.4 Person A was taken by Ms Bruce to and relied upon the following paragraphs of her witness statement as her primary evidence.

“[20] In the four and a half years working at the Firm (between around 2014 and 2017) [the Respondent] touched my buttocks on at least 18 occasions (it could have been more, I can't be certain as I didn't make a note of each occasion, but I am certain it was no less than 18). [The Respondent] seemed to touch me whenever he felt like it, often when he had been out at a working lunch and had come back into the office drunk, with a slap of the bum here and there. This happened roughly every three to four months, but was more frequent around the part season (November December), and was often witnessed by other members of staff. It always made me feel highly uncomfortable and left me feeling violated each and every time. I never knew when it was going to happen so I tried to stay out of his way. It was usually a firm slap/tap with one hand as he passed me in the office, but on one occasion it was a two handed grab of both buttocks (see below). I felt that in order to keep my job I would have to put up with this behaviour, knowing all too well that it was unacceptable and wrong.

[21] I cannot remember the specifics of each and every incident given the passage of time, but the details of the incidents I do recall are set out below:

- a. One evening when I was working late at one of the Firm's art exhibition evenings (I cannot remember when this was) I was stood in the kitchen area next to [the Respondent's] office. I was next to the sink, [Person B] was sitting in a chair in the kitchen, and Ms R was sat by me. [The Respondent] walked out of his office (which was about a yard away), he look a right towards the lifts and, as he passed me, he slapped my right bum cheek. It was not a hard slap, but it was too hard for my liking as he should not have touched me at all. He did not stop and he did not say anything, he just kept moving towards the lifts and the reception area. I looked Ms R in the eye but she didn't do or say anything, so I just walked away.
- b. On another occasion (I cannot now independently remember when this was, but in my previous statement at exhibit 'EP4' I refer to this incident as happening on 31 July 2017 and I have no reason to doubt that date), I was standing by sink in the kitchen outside [the Respondent's] office making a cup of tea when [the Respondent] approached me from behind. He bent down by the fridge and grabbed me with two hands on the top of each of my buttocks. It wasn't a hard grab, but it was hard enough that I could feel the indent of each of his fingers. My body tensed up; I couldn't believe it had happened again and I was disgusted. He then went to the fridge and I walked away. He did not say anything, and I did not react - I wanted to, but I kept my mouth shut as I had agreed to do. I went to my desk, turned to the secretary to my left and said 'he did it again'. I made a note of the time in my Outlook calendar, and then went downstairs for a cigarette where I spoke to a lady called T (she was known as Mummy T but I cannot remember what her role was) and I told her what had happened. I then reported the incident to Mr R and Mr N.

[25] I always hoped that someone would do something about [the Respondent's] behaviour in the work place, knowing that his behaviour was inappropriate, but no one did. During that time I felt low and alone, and that I had to accept this behaviour and abuse if I wanted to keep my job.

[39] After the appeal meeting I was not provided with a copy of the notes despite requesting them, and I was not provided with the outcome, I was just told to get my lawyer to call the Firm's lawyer. I subsequently signed a settlement agreement (which included a number of confidentiality clauses), and left the Firm in around November 2017 without my grievance being resolved.

[40] Due to the confidentiality clauses in my settlement agreement I did not feel able to report my concerns about [the Respondent] or the Firm to the SRA, or anyone else. The first I knew about the SRA's investigation into [the Respondent] and the Firm was when I received a letter from Capsticks in June 2018, asking whether I would be willing to provide a witness statement setting out my recollection of events..."

- 21.5 Mr Goodwin put to Person A that (a) she did not report the Respondent to the police, (b) she did not report the Respondent to the Applicant and (c) that the confidentiality clauses in the settlement agreement with Simkins were included at her request. Person A confirmed that she did not report the Respondent to either authority as a consequence of legal advice received. She further asserted that the terms of the settlement agreement were similarly based on the legal advice received.
- 21.6 Mr Goodwin put to Person A the numerous references in her witness statement along the lines of “I cannot recall, I do not remember” and suggested that she was mistaken. Person A accepted that she could not “tell the date or time but [that she did] remember the incidents and the violation happening [to her]”.
- 21.7 Mr Goodwin asked Person A when the first alleged incident had occurred and Person A stated that she could not remember when exactly. Mr Goodwin put to Person A that other than 31 July 2017 she was unable to recollect any dates to which she responded; “I didn’t think at the time that I’d need to write it down. I didn’t think a day like this would come so I didn’t take a note of the dates.” Mr Goodwin put to Person A that the first time she formally raised the matter was in August 2017 which she accepted. Mr Goodwin enquired why, if incidents had occurred since 2014, had she delayed. Person A stated that “everyone was scared of [the Respondent]. I’d just taken 8 years out of work and I needed the job. I wasn’t sure why it was happening and I didn’t want anyone to think I was causing trouble. I just hoped it would never happen again.”
- 21.8 Mr Goodwin asked whether the 31 July 2017 was the last occasion to which Person A replied; “yes, I took time off afterwards, was placed on gardening leave and never went back.” Mr Goodwin asserted that the Respondent did not touch her buttocks rather that he touched her arm. Person A did not accept that contention and stated “he was nowhere near my arm, I know the difference.” Mr Goodwin suggested that she did not react to the incident and remained silent. Person A replied that she had pulled away and the reason why she did not say anything was because she had been “told by managers that if it happened again to do nothing and let them know.” Mr Goodwin questioned Person A as to when that conversation had taken place, Person A stated that it was “in a prior meeting, months before [the last incident], after the Christmas incident at a meeting with Mr N.”
- 21.9 Mr Goodwin put to Person A that she was “well capable of looking after [herself] and speaking to the Respondent”. Person A replied that all she wanted was help from HR and her manager and that their response was to advise her “not to react badly” so she agreed to go straight to management if any incidents occurred. She was specifically told to “get a thicker skin if [the Respondent] was having a bad day.”
- 21.10 Mr Goodwin suggested that Person A had defended herself and stood up to the Respondent in 2015, when he challenged her work, by shouting at him and following him into his office. Person A stated that was the only time that she had and that she was told “not to do it again” by management.
- 21.11 Mr Goodwin stated that the alleged first incident occurred in 2014 but she had not reacted or said anything nor was it witnessed by anyone. Person A stated that being inappropriately touched causes different reactions in different people. Her lack of reaction was predicated on the belief that she had to put up with it, put in the hours at

work and prove herself so that she could maintain her position but that it left her “feeling dirty” and taking a shower as soon as she returned home.

- 21.12 Mr Goodwin put to Person A that she had threatened violence against the Respondent and took her to an email dated 4 August 2017 from Ms R to Person A which stated:

“...We have considered you wish to return to work on Monday, Although we do understand that you are upset, in circumstances in which two partners have heard you specifically threaten to commit violence at work you told [Mr G] and [Mr N] at your meeting on Tuesday afternoon that you would break [the Respondent’s] arm If he touched you and you have used very inappropriate language to and about partners at the firm other than [the Respondent]. In your conversations with [Mr N] yesterday, we do consider that it is better that you remain away...”

- 21.13 Person A denied having threatened the Respondent and asserted that any comments she had made were justified as “after 4.5 years I was justified in having an angry moment. I never threatened violence at work. I was angry and said things I shouldn’t have. I was entitled to be angry.”

- 21.14 Mr Goodwin referred Person A to her witness statement in which she recalled a meeting with Mr N at which she said, “if [the Respondent] touches me again I will break his hand”. Mr Goodwin put to Person A that amounted to a threat. Person A did not accept that contention and asserted that it was the words of “an angry woman who had been racially and sexually abused.”

- 21.15 Mr Goodwin reiterated that Person A was well able to defend herself and that she was not telling the truth to the Tribunal, the Respondent had not touched her inappropriately and that was borne out by the fact that no-one witnessed any of the alleged incidents. Person A reiterated that her lack of reaction to the incidents was in line with what had been agreed with management (not to react and to report it to them), the Respondent had touched her inappropriately on about 18 occasions, she was telling the truth and that there were witnesses to the incidents but that she “didn’t expect them to say anything.”

- 21.16 Mr Goodwin took Person A to a note of a meeting between Mr L and Mr G on 5 October 2017 which took place following Person A’s assertion that Mr L had been aggressive in a meeting with her. Mr Goodwin put to Person A, on the basis of that note, that she had been ranting in her meeting with Mr L and that her allegation that Mr L had been aggressive was untrue. Person A stated that she had not been ranting, she had no-one with her in the meeting and she was simply saying how she felt to Mr L. Person A denied making a false allegation against Mr L and stated “no way would [she] do that. After 4.5 hours [in the meeting with Mr L] he stood up and said ‘what do you want?’ and [she] said ‘a duty of care, not to be sexually and racially abused or bullied.”

- 21.17 Mr Goodwin took Person A to an attendance note of a conversation between her and the Applicant on 6 February 2020 in which it was recorded:



“...[Person A] then said that the SRA have not regulated anything here, and that the ‘enablers’ had been allowed to carry on when they made her ill. She advised that it is all one big betrayal and that they are protecting themselves as ‘they are all Jewish’. She advised that if this had happened in St Lucia she would get him beaten up but that it was more complicated than that in the UK...”

- 21.18 Mr Goodwin put to Person A that this recorded another threat that she had made. Person A responded that it was said in anger borne out of frustration. Mr Goodwin asked Person A what she meant by “enablers” to which she replied “Simkins enabled him [the Respondent] to do what he did” even though she had “gone to them for help and kept her mouth shut as asked”. Mr Goodwin asked Person A why she was still upset in this conversation in February 2020 which was 3.5 years after the last alleged incident to which she replied “I was racially harassed, abused and bullied. I was scared, I live alone and it was very traumatic. A woman does not forget, it lives with you for years and years to come.”
- 21.19 Mr Goodwin put to Person A that she would do “physical exercises in skin tight leggings in the kitchen” which she rejected and she asserted that “she may have stretched” but that she wouldn’t do exercises as described as she was a professional person.
- 21.20 Mr Goodwin put to Person A that her allegations were untrue. Person A replied “definitely not. The reality is that I was there, it’s the absolute truth which is why it still upsets me because it effects so many things. I am untrusting of men.”
- 21.21 Mr Goodwin put to Person A that she had made up the allegations because the Respondent was critical of her work. Person A accepted that the Respondent was initially critical of her work but that was “definitely not enough [for her] to create all of this [I] was sexually harassed [the Respondent] put his hand on my buttocks over and over. I was racially attacked and bullied.”
- 21.22 The Tribunal asked Person A how the previous instruction (not to react and to report it) from management was given. Person A stated that “after the first weak moment that I reacted to the bullying I was told to keep quiet and that my reaction would be monitored. I realised that I had to learn as I was getting back into work after 8 years spent caring for my dying mother so I thought keep reporting it and keep in mind the bigger picture of keeping my job. I kept my head down to learn as much as possible and not upset the apple cart. I was told to go to HR, report it, stay quiet and grow a thicker skin. If [the Respondent] was angry I’m to walk away and tell management. I agreed and promised to and stuck to it. After my first blow up HR called me in and said my behaviour was unacceptable. I understood but as a woman I felt violated. I didn’t want all this, I just wanted it to stop so I decided to work with management.”

Sarah Parker

- 21.23 Ms Parker was taken by Ms Bruce to and relied upon the following paragraph of her witness statement as her primary evidence.

“[19] On 31 July 2017, [Person A] was sat at her desk, opposite me when she told me that [the Respondent] had put his hands on her bum.”

21.24 Ms Parker stated that Person A had walked back from the kitchen and “her first words were ‘he’s done it again’”.

“[20] I asked her to clarify what she meant because I had experienced being stood at the fridge when [the Respondent] has put his hands on my hips to move me out of the way. I didn’t find this behaviour anything other than him moving me out of the way. This is what I had tried to clarify with [Person A]...”

21.25 Ms Parker stated that Person A said “he’d touched her on the bottom”. Ms Bruce took Ms Parker to the notes of a meeting on 15 August 2017 between herself and Mr G in which it was recorded:

“...Ms Parker saying that [Person A] said she was standing at the kitchen area - she is not sure If [Person A] was at fridge but she said [the Respondent] came up behind her and put his hands on her bum. Ms Parker said “Oh right, actually on your bum?” ... Ms Parker enquired of [Person A] whether it just to move her out the way as [Person A] had asked if [the Respondent] had ever done that to Ms Parker before. [Person A] denied that [the Respondent] was moving her out of the way and said that he touched her bum and she didn’t really know what to do. Ms Parker informing [Mr G] that she advised [Person A] that if she felt it was inappropriate then she should report it [Person A] said that she did not want to cause any trouble. Ms Parker told [Person A] that only she will know if it was inappropriate or not and that she cannot comment since she didn’t see it but [Person A] said he touched her.

[Mr G] asking Ms Parker whether this has happened before, to her knowledge. Ms Parker responding that [Person A] did say that he had done something similar at a drinks function before...”

### Sal Mamujee

21.26 Mr Mamujee described the Respondent as “just tactile” and stated that he was not previously aware of any allegations or complaints of sexual misconduct made against the Respondent. He did not witness anything of that nature.

### 21.27 Principle 2: Integrity

21.27.1 Ms Bruce submitted that a solicitor acting with integrity would not intimately touch a member of staff without a clear invitation to do so. They would not persist in doing so in the absence of any indication that such behaviour was wanted, and after indications that such behaviour was unwanted. The Respondent, as a Partner, was and must have been well aware of the requirement to act appropriately towards colleagues at all times, and particularly as to his responsibility, as a Partner, to behave appropriately to people in the Firm who, even if not managed by him, were junior to him in the organisation of the Firm and so may have felt constrained as to how they could respond to such conduct. Such a failure to behave appropriately is a breach of Principle 2.

21.28 Principle 6: Public trust

21.28.1 Ms Bruce submitted that the conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in solicitors and the provision of legal services is likely to be undermined by solicitors who touch others, in an intimate manner, when such touching is unwanted and not invited. Such behaviour is a breach of Principle 6.

**Allegation 1.7 - Sexual motivation.**

The Applicant's Case

21.19 Ms Bruce relied upon the decision in Haris and commended the approach promulgated therein to the Tribunal.

21.20 Ms Bruce submitted that by repeatedly touching Person A on an intimate part of her body, in the knowledge that he was doing so, the Respondent's conduct was, and was known by the Respondent to be, sexually motivated.

21.21 Ms Bruce submitted that there was no credible motivation for repeated and deliberate intimate touching of a person without consent.

The Respondent's Position

21.22 Mr Goodwin took the Respondent to his first response to the Applicant dated 20 August 2019 which stated:

“...I deny that I have ever harassed [Person A] in a racial (or sexual) manner. Neither [Person A] nor Simkins have described any other instances of such conduct, nor has any evidence been produced by any third party of such matters.

I am confident that [Person A's] allegations against me are motivated by the poor working relationship that existed between us. This was because of my views of her incompetence and failure to comply with the standards of workmanship required of her. [Person A] acted as a secretary to my assistant, and thus in my team. When my assistant was absent, I was obliged to work closely with [Person A] and found myself continuously criticising her poor performance. I mentioned this to HR in a number of occasions and can, if requested, provide evidence from another solicitor who she worked for (who. *(sic)* incidentally, is of Asian ethnicity). *(sic)* [Mr Mamujee] of her poor work. [Person A] refers in her allegation to a conversation we had when she first joined when I mentioned a previous black employee (there were a few at Simkins) with whom I had enjoyed a close relationship. Contrary to her suggestion, I was simply attempting (poorly it turns out) to demonstrate my willingness to work with people of all races...

...I categorically deny touching [Person A], or any other person, in a sexual manner...”

21.23 Mr Goodwin took the Respondent to his Answer to the Rule 12 Statement which stated:

“...This allegation is denied in all respects. At no time has the Respondent touched Person A’s bottom. On one occasion the Respondent touched the outside of the upper arm of Person A, whilst asking her to move aside in the office kitchen, to allow him access to a cupboard...

...The Respondent denies allegation 1.6 asserting sexual motivation, as no such inappropriate touching ever occurred.

The Respondent’s former firm, Simkins, conducted an enquiry into Person A’s grievance that she had since the start of her employment with Simkins in February 2013 been subjected to unlawful sexual harassment by the Respondent and did not uphold the same. The firm said, amongst other things, *‘Others in the firm have been asked whether they have seen [the Respondent] touching or otherwise behaving inappropriately towards [Person A] (or any other person) but none have witnessed it. In the absence of any corroboration from others to support any of [Person A’s] 18 allegations it is not possible to uphold [Person A’s] grievance, however sincerely she maintains her claim concerning [the Respondent’s] behaviour. As a result of this aspect of the grievance is not upheld...’*

Person A did not make the complaint to the SRA. It was Simkins. The Respondent believes that Simkins used the opportunity to evict him from the partnership which was successful...”

21.24 Ms Bruce put to the Respondent that he was lying and that his conduct was sexually motivated. The Respondent rejected both contentions and asserted that he was “not lying [as he had] sworn on his holy book”. The Respondent further asserted that Person A did not like him as he drew to her attention the “sub-standard” nature of her work which, some years later, resulting in her making allegations against him. The Respondent stated that there was “no evidence of it except for what she said.”

21.25 Ms Bruce put to the Respondent that the corroborative evidence that he mentioned in his first response to the Applicant was in respect of Mr Mamujee who was a witness for the Applicant. The Respondent replied “that appears to be the case but he didn’t remember a lot.”

21.26 Ms Bruce suggested to the Respondent that his position that Person A was aggrieved at his criticism of her work in 2014 and therefore made up allegations against him 3 years later lacked all credibility. The Respondent rejected that assertion.

21.27 Ms Bruce put to the Respondent that the only person motivated to lie in respect of the allegations was him. The Respondent rejected that contention.

Kay Lesley Johnson

21.28 Ms Johnson confirmed that the content of her witness statement was true to the best of her knowledge and belief. She further confirmed, when asked by Mr Goodwin, that she had worked as a “float” legal secretary for most of the department including the

Respondent and knew him well. She had never seen the Respondent touch Person A, she had never heard any complaint from Person A in that regard and she had never heard anyone else make a similar complaint against the Respondent.

21.29 Mr Goodwin asked Ms Johnson whether the Respondent had complained regarding the quality of Person A's work. Ms Johnson stated that a lot of staff had complained about the quality of Person A's work and she was often asked to do their work instead because of errors made by Person A. Ms Johnson stated that the Respondent became frustrated because his work was not "done properly."

21.30 Mr Goodwin took Ms Johnson to the following paragraphs in her witness statement:

"[6] I was, however, aware that whilst in the kitchen area, directly in view of [the Respondent's] office, she was often stretching, or exercising and sticking her backside out, quite possibly in a provocative manner and which I thought was quite inappropriate behaviour...

[9] I remember being shocked at some of Person A's behaviour in the office. I recall her storming down the corridor shouting and screaming abuse and threatening [the Respondent]"

21.31 Ms Johnson stated that Person A would act in the manner described at paragraph 6 above "very frequently, nearly every day" and that it was Person A's "general practice to do exercises when making tea/coffee".

21.32 Mr Goodwin asked Ms Johnson when the behaviour set out in paragraph 9 above occurred. Ms Johnson replied that it was "a long time ago but I saw her [Person A] running in high heels shouting, screaming abuse and threatening [the Respondent]". Ms Johnson further stated that Person A would "frequently scream in the office".

21.33 Under cross examination Ms Bruce put to Ms Johnson that her witness statement evidence was in response to questions asked of her by the Respondent. Ms Johnson confirmed that the Respondent asked her questions but that the content was her opinion.

21.34 Ms Bruce asked whether Person A's movements in the office were the subject of discussion in the office. Ms Johnson replied that the secretaries did speak about Person A and that it was "gossip". Ms Bruce asked Ms Johnson whether she was suggesting that Person A's clothing and/or actions in the office were relevant to the allegations of sexual misconduct. Ms Johnson stated that she was not suggesting that but she thought that it was inappropriate and provocative.

### Susan Hill

21.35 Ms Hill confirmed that the content of her witness statement was true to the best of her knowledge and belief. She further confirmed, when asked by Mr Goodwin, that she had been a secretary to the Respondent for 23 years and knew him very well. Ms Hill stated that she had never seen the Respondent touch Person A or anyone else inappropriately nor had she heard of complaints of that nature.

21.36 Ms Hill stated that the Respondent was “quite loud all of the time and to everyone. He was demanding and got frustrated if things were not carried out as he wanted”. Mr Goodwin took Ms Hill to the following paragraph of her statement:

“[9] I believe that Person A was disgruntled by [the Respondent’s] continuous criticism of her work, culminating in her chasing him down the length of the office screaming at him to stop bullying her and launching into patois. I do not know what she said but I am sure it was insulting. Person A then came back to her desk, sat down, and then got up again and went back for another go. I recall [the Respondent] shouting back at her, “Get out of my office” and “Don’t touch me”.

21.37 Ms Hill could not recollect when that incident had occurred but that it may have been before Christmas 2016.

21.38 Ms Bruce put to Ms Hill that when she made her statement she was aware that it was for the Tribunal proceedings and that she knew the stakes were high for the Respondent. Ms Hill accepted both contentions and asserted that she hadn’t “left anything out, [she] was asked questions by the Respondent at the outset which [she] answered and that was how the statement was produced”. Ms Bruce put to Ms Hill that the content of certain paragraphs of her statement were identical to that contained in Ms Johnson’s statement which was accepted.

21.39 Ms Bruce took Ms Hill to the following paragraph of her witness statement:

“[6] On a few occasions I was surprised to find Person A in the kitchen area, bending over touching her toes, or stretching her arms or legs up in the air, wearing her usual outfit of skin tight leggings and top with high heels, although she had the figure to carry it off and look good...”

21.40 Ms Bruce asked Ms Johnson whether Person A was the subject of office gossip in that regard. Ms Johnson stated that the “gossip” was not “behind [Person A’s] back. She would often show stretching exercises to us as she was quite into her fitness.”

#### Mr Goodwin’s Submissions

21.41 Mr Goodwin submitted that Person A’s uncorroborated evidence was insufficient for the Tribunal to find Allegation 1.3 and 1.5 proved to the requisite standard. He contended that it was inherently improbable that the Respondent would have committed sexual assault and it simply did not occur.

21.42 Mr Goodwin reminded the Tribunal that Person A was unable to recall the date of any incidents save for 31 July 2017. He argued that her evidence was unreliable and was not supported by any other witness testimony. In fact Person A had stated that Person B was present at an alleged incident of inappropriate touching (the drinks function) which Person B denied. Mr Goodwin further reminded the Tribunal that Mr Mamujee had described the Respondent as “tactile” which was, he submitted, entirely different to “inappropriately touching”.

- 21.43 Mr Goodwin submitted that had the Respondent inappropriately touched Person A on 18 occasions as was claimed by her, she would have reacted at the material time. Mr Goodwin invited the Tribunal to have regard to the various threats made by Person A in support of his contention that she was “well capable of standing up for herself” and would have reacted verbally. Whilst Person A could have reported the Respondent to the Applicant and/or the police she did not do so.
- 21.44 Mr Goodwin submitted that the Respondent’s evidence should be given real credit and real weight. Further, the Tribunal should be persuaded that the more serious the allegation the less likely it was to have occurred and stronger evidence was required.

### The Tribunal’s Findings

#### Allegation 1.3

- 21.45 The Tribunal was cognisant of the fact that the evidence it had received was essentially Person A’s word against that of the Respondent. What fell to be considered by the Tribunal was their respective credibility; that would enable the Tribunal to determine whether the allegation was proved on a balance of probabilities.
- 21.46 It was plain to the Tribunal that Person A found the process of giving evidence in relation to these matters very distressing some 3 years since the last incident. The fact that she was prepared to put herself through the ordeal of so doing in relation to a complaint that was made to the Applicant by Simkins as opposed to herself, lent weight to her credibility. The Tribunal noted that it was the Firm, and not Person A who had reported the matters involving Person A to the Applicant. There was no question of Person A having any animus towards the Applicant motivating the allegations.
- 21.47 The Tribunal accepted and had empathy for Person A’s evidence with regards to having been out of work for a number of years, needing her job at Simkins, not wanting to upset the applicant and trying to put her head down, learn and get on with it.
- 21.48 Person A was not able to recollect any dates other than the 31 July 2017 and the (unknown) date of the work drinks party. The Tribunal noted that Allegation 1.3 was drafted on the terms “on more than one occasion” therefore the inability to recollect dates did not pose any concern for the Tribunal. Further, whilst there was an inability to recollect dates, Person A was clear and consistent as to what had occurred, the manner in which the Respondent touched her and how that made her feel. That she could not attach a calendar date to them was not damaging to her credibility.
- 21.49 The Tribunal accepted Person A’s evidence that she reported incidents contemporaneously to the Firm (HR and management). There was documentary evidence of this in the contemporaneous documentation. The Tribunal accepted Person A’s evidence that she was told by HR and management to “develop a thicker skin, not react and report any incidents to them.”

21.50 The Tribunal paid significant regard to:

- The notes of the meeting between Person A and Mr N on 16 January 2017 (after the Ku Klux Klan incident) in which she stated that the Respondent “had also been touching her backside and she was fed up with it.”
- The chronology prepared by Person A exhibited to her statement to the Firm in 2017 which referred to the manner and frequency of inappropriate touching and the Firm's response thereto.

21.51 The Tribunal carefully considered the Respondent's assertions that Person A had made up the allegations as a consequence of his criticism of her work. The Tribunal found those assertions to be without any merit.

21.52 The Tribunal carefully considered the Respondent's assertions that Person A had vindictively pursued her allegations against him and lied to the Tribunal. Person A had not reported the Respondent to the Applicant, Simkins had. If Person A was motivated by malice and intent on persecuting the Respondent as he had suggested, the Tribunal determined that she herself would have reported him to the Applicant. Person A was compelled to give evidence before the Tribunal as a consequence of Simkins report. Having found Person A to be a witness of truth, the Tribunal determined that the Respondent's assertions were without merit.

21.53 The Tribunal carefully considered the Respondent's assertions that there was no corroborative evidence to support Person A's allegations. The Tribunal concluded that whilst allegations must always be considered on their own facts, the common thread in allegations of sexual misconduct was that it was “he said/she said” namely one person's word against another. That did not prevent the Tribunal from determining the truth or otherwise of the allegations to the requisite standard. The Tribunal paid significant regard to the fact that the Respondent, on his own evidence, would move female employees out of the way in the kitchen area of the office. The Tribunal paid further regard to the evidence of Ms Parker to whom Person A made a contemporaneous complaint of an incident of inappropriate touching. Ms Parker sought clarity from Person A as to what she meant as her experience of the Respondent was that he would put his hands on her hips to move her out of the way in the kitchen area.

21.54 The Tribunal was troubled by the evidence of Ms Johnson and Ms Hill, called on the Respondent's behalf, which alluded to the manner in which Person A dressed and her movements in the kitchen area. The Tribunal found their evidence that Person A dressed and acted provocatively to be irrelevant, and an attempt to discredit Person A. The Tribunal rejected that evidence in its entirety. It was a topic which should never have been raised. Even if entirely accurate (and no finding of fact is made because it is irrelevant) it would be no excuse, or reason, to touch Person A's bottom.

21.55 The Tribunal ultimately found Person A to be a credible, consistent and honest witness. The Tribunal preferred her evidence over that of the Respondent. The Tribunal therefore found Allegation 1.3 proved on a balance of probabilities. The Tribunal accepted there was inappropriate touching on more than one occasion. It is not required to make any finding of fact as to the exact number of times.



21.56 Principle 2

21.56.1 The Tribunal, having found that the Respondent touched Person A's bottom on more than one occasion, determined that demonstrated a lack of integrity at the highest level.

21.56.2 The Tribunal therefore found the breach of Principle 2 proved on a balance of probabilities.

21.57 Principle 6

21.57.1 The Tribunal, having found that the Respondent touched Person A's bottom on more than one occasion, determined that inevitably undermined the trust the public placed in him and in the profession.

21.57.2 The Tribunal therefore found the breach of Principle 6 proved on a balance of probabilities.

Allegation 1.7

21.58 The Tribunal applied the principles promulgated in Haris on the facts found proved namely that:

- The Respondent intentionally touched Person A on more than one occasion.
- The touching was sexual in that he touched her bottom, an intimate area of her body.
- Person A did not consent to that touching.
- The Respondent did not and could not have reasonably believed that Person A consented to the same.

21.59 The Tribunal therefore found Allegation 1.7 proved on a balance of probabilities.

22. **Allegation 1.4 - On 22 February 2018 you touched Person B's backside in circumstances which breached one or more Principles 2 and 6 of the SRA Principles 2011.**

The Applicant's Case

22.1 Ms Bruce submitted that the Respondent had no reason to believe that his conduct in touching Person B's backside was wanted by Person B. (Person A had referred to "bottom", Person B to "backside" and the allegations were drafted according to the word used by each.) The conduct occurred in the Firm's office, while the Respondent and Person B were engaged in their respective roles in the Firm. The Respondent was a Partner in the Firm, knew himself to be, senior to Person B (an Accounts Manager working in the Firm) and in a position of authority.

22.2 Ms Bruce contended that the Respondent knew or ought to have known that his conduct was inappropriate and an abuse of his position of seniority or authority.

Person B

22.3 Person B confirmed that the content of her witness statement was true to the best of her knowledge and belief. She adopted it as her primary evidence before the Tribunal. She was taken by Ms Bruce to and relied upon the following paragraphs:

“[3] On 22 February 2018, I was standing at a secretary’s desk with my body facing the secretary, and the privacy screen at her desk. I was speaking with the secretary when [the Respondent] and a number of other secretaries became involved in the conversation we were having.

[4] I was still speaking with the secretary when [the Respondent] walked passed me as he was walking away from me. My body was side on to his when he flicked the side of my backside with his hand. He did not speak to me as he did this and I did not say anything to him as I was shocked that he had done it. He continued walking into his office.

[5] I would describe the contact as him flicking his fingers on my backside. It was not an open-handed slap. His fingers flicked quite hard and I felt it. It was too hard to have been an accident.

[6] After it had happened I went back to my office. I decided to report what had happened to me because an ex-employee named [Person A] had made a similar complaint about [the Respondent] and I did not believe her. After [the Respondent] touched my backside I thought maybe she was telling the truth and I felt that I had to report it.”

22.4 Ms Bruce asked Person B how she could be sure that the Respondent had touched her with his hand. Person B stated “I know it was a flick of his fingers because years ago I had an ex-boyfriend who did it so I know exactly how it feels. It can be painful if it is done hard. The Respondent’s flick was hard enough for me to feel it as he went past.”

22.5 Ms Bruce asked Person B whether she had taken the complaint any further than reporting it. Person B stated that she had not because of “private reasons”. Ms Bruce asked Person B whether she had discussed the incident with the Respondent to which she replied “I can’t remember exactly what was said but [the Respondent] asked me to withdraw the allegation. He said it was a kick not a slap or a flick. I said you know that’s not true.”

22.6 Ms Bruce took Person A to an email dated 12 July 2019 from the Respondent to her which stated:

“...I am being pursued by the SRA. I’m sure I recall you saying that you had withdrawn the complaint after I explained that it was a kick, and not a slap. Please can you just tell me if you did withdraw the complaint or not...”

22.7 Person B confirmed that she received that email from the Respondent’s personal email address.

22.8 Ms Bruce took Person B to an email dated 15 July 2019 from the Respondent to her which stated:

“...Can you please reply to this e mail address I just need to be able to know whether or not you withdrew the complaint as you told me. Please can you confirm one way or the other?...”

22.9 Person B confirmed that she received the email from the Respondent’s personal email address. Person B stated that she did not reply to either email and that she simply saved them in a folder then gave them to Capsticks when approached in respect of the Tribunal proceedings.

22.10 Mr Goodwin put to Person B that at the time of the incident she had her back to the Respondent, was talking to secretaries in front of her and that the Respondent walked behind her. Person B accepted all of those contentions. Mr Goodwin suggested that Person B could not have seen the Respondent’s hands due to her position which she accepted.

22.11 Mr Goodwin put to Person B that on the day of the incident there was a fraught atmosphere in the office due to identification documents being required from a new client. Person B accepted that contention. Mr Goodwin put to Person B that the Respondent had lost his temper with her over the documentation required which Person B accepted.

22.12 Mr Goodwin took Person B to the Firm’s report of the Respondent to the Applicant which described the incident as “[the Respondent] hit her bottom” not that he slapped or flicked it. Person B stated that she had never seen the Firm’s report before and that its description of the incident was not accurate.

22.13 Mr Goodwin further referred Person B to the Firm’s report which stated “[Person B] did not consider. this physical contact to be sexual in any way (and [the Respondent] denies that it was), she mentioned it to [Mr L] so that he was aware of the incident, coming as it did after [the Respondent’s] difficult behaviour earlier that day.” Mr Goodwin put to Person B that she did not consider the touching to be sexual to which she responded “I don’t know, I’m not in [the Respondent’s] head. I have no idea of motive, I can only say what happened.” Person B did not accept that she had told Mr L that the touching was not sexual.

22.14 Mr Goodwin suggested that the touching was in fact the Respondent’s foot and that it was a “jocular kick up the bottom”. Person B rejected that assertion and maintained that it was not his foot, it was his hand and a flick of his fingers.

22.15 *Principle 2: Integrity*

22.15.1 Ms Bruce submitted that a solicitor acting with integrity would not touch a member of staff without a clear invitation to do so. They would not repeat such behaviour following a recent investigation by their employer for similar behaviour in relation to, and alleged by Person A. The Respondent, as a Partner, was and must have remained well aware of the requirement to act

appropriately towards colleagues at all times, and particularly as to his responsibility, as a Partner, to behave appropriately to people in the Firm.

22.16 Principle 6: Public trust

22.16.1 Ms Bruce submitted that the conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in solicitors and the provision of legal services was likely to be undermined by solicitors who touch others, in an intimate manner, when such touching is unwanted and not invited.

The Respondent's Position

22.17 Mr Goodwin took the Respondent to his first response to the Applicant dated 20 August 2019 which stated:

“...Until the incident in question, I had worked with [Person B] for over 10 years, and I had always considered that we had a good working relationship.

In the week leading up to the incident, I had received instructions from a new offshore client and the KYC [know your client identification checks] tasks were becoming very complex and challenging. As [Person B] works in the relevant department, we had to work together to surmount the practical problems. I was under severe time pressure on this transaction, and I felt that [Person B] was not cooperating as much as she might. I therefore became quite stressed, and we had ‘a few words’ about our different interpretation of the facts. Shortly after this episode, I approached my secretary and found [Person B] stooped over her desk talking to her, with her back to me. In view of our previous good relationship, I gave her a friendly ‘kick up the bottom’ in jest. It is that she alleged was ‘touching’ her in a sexual manner. As she had her back to me, she could not possibly have (*sic*) seen what part of my anatomy was used to make contact. The gesture was a ‘joke’ that clearly back-fired on me, but was not in any way contact of a sexual nature.

[Person B] subsequently stated that she did not wish to pursue the matter...”

22.18 Mr Goodwin took the Respondent to his Answer to the Rule 12 Statement which stated:

“...The facts are admitted, in that the Respondent accepts that the incident involved a ‘jocular’ kick. The Respondent denies that he touched Person B with his hands as alleged by Person B, and denies that which occurred is a breach of Principles 2 and 6...”

22.19 Ms Bruce put to the Respondent that Person B had been employed by the Firm for a significant number of years first as a legal cashier then working her way up to become the Accounts Manager. The Respondent accepted that contention. Ms Bruce put to the Respondent that Person B was white, which he accepted. Ms Bruce put to the Respondent that Person B was thoroughly respected at the Firm and a “quieter

character” than Person A. The Respondent accepted those contentions and asserted “most people I have met are quieter than Person A.”

- 22.20 Ms Bruce put to the Respondent that when Person B made her allegation against him it posed a problem for him as Person B was more likely to be believed than Person A. The Respondent replied “I suppose so”. Ms Bruce put to the Respondent that there was no “jocular” kick and that the Respondent “flicked” Person B with his hand as alleged. The Respondent rejected that contention, maintained that it was a “jocular” kick and asserted that “had it been Person A or anyone else leaning over my secretary’s desk and laughing at me they would’ve got a kick up the bum”.
- 22.21 Ms Bruce put to the Respondent that his approach to Person B was different as his position at the Firm became more serious; he was required to meet with senior members of the Firm. The Respondent accepted that contention.
- 22.22 Ms Bruce put to the Respondent that, knowing that a female had made a serious allegation of sexual misconduct against him, the correct approach would have been to allow the Firm to investigate the same without any input from him. The Respondent accepted that contention. Ms Bruce asked the Respondent why he met Person B in a private room to persuade her to change her account. The Respondent replied that he “didn’t do that [he] asked if she intended to pursue it”.
- 22.23 Ms Bruce put to the Respondent that he had no business interfering with an ongoing investigation. The Respondent replied that “[Person B] wasn’t a principal witness, Person A was” and “Person B could’ve said I don’t want to meet with you”.
- 22.24 Ms Bruce put to the Respondent that as an equity partner in the Firm with Person B being the accounts manager his request to meet Person B was improper. The Respondent replied “I was not an equity partner I was a salaried partner and Person B was well capable of looking after herself with me”. Ms Bruce asked the Respondent whether it was appropriate for him to ask Person B to meet. The Respondent replied, “I don’t know, it possibly wasn’t”.
- 22.25 Ms Bruce put to the Respondent that the Applicant asked for an explanation of his conduct by way of a letter dated 11 July 2019 which the Respondent accepted and which he replied to on 20 August 2019. Ms Bruce put to the Respondent that in the intervening period it was improper of him to have contacted Person B via email on 12 and 15 July 2019. The Respondent replied that he “didn’t know that [as he was a] conveyancer not a litigator”. Ms Bruce put to the Respondent that his account lacked all credibility and that he knew it was improper to contact a witness in an ongoing investigation. The Respondent rejected that contention and asserted that “if that is the case then I had no idea, she [Person B] told me she had withdrawn her complaint and I wanted to use it to help me...I had no idea it was improper and I had received no advice at that point”.
- 22.26 Ms Bruce asked the Respondent whether his position was that Person B was mistaken or lying. The Respondent replied that he did not know.

Susan Hill

- 22.27 Mr Goodwin took Ms Hill to paragraph 12 of her witness statement which stated:

“[12] [Person B] was standing in front of my desk next to the photocopier, leaning on the partition, joking about how [the Respondent] had lost his temper about something. [The Respondent] then came over to us and stood behind the photocopier and we took the mickey out of him, which was usual “office banter”. [The Respondent] jokingly told us to “f... off and get back to work”, and then I believe (*sic*) he kicked [Person B], whereupon, she turned around and shot him a glance, and [the Respondent] walked off back to his office. [Person B] and I carried on joking about for a few minutes more and then we got back to work...”

- 22.28 Ms Hill confirmed that Person B was facing her and leaning on the partition. She saw the Respondent go past Person B and believed that he kicked her as “the way that he moved made me think that he stuck his leg out”.
- 22.29 Ms Bruce put to Ms Hill that her evidence in relation to the way that the Respondent moved was “new” in that it was not mentioned in her witness statement. Ms Hill accepted that contention. Ms Bruce put to Ms Hill that she was “growing her statement in oral evidence”. Ms Hill rejected that contention and asserted that it was not in her statement because “no-one asked [her]”. Ms Bruce put to Ms Hill that she did not actually see the contact between the Respondent and Person B. Ms Hill accepted that contention.

#### Mr Goodwin’s Submissions

- 22.30 Mr Goodwin made plain that the Respondent admitted that contact had been made with Person B but maintained that it was with his foot as opposed to his hand. He reminded the Tribunal that Person B did not and could not have seen which part of the Respondent’s anatomy had made contact as she was faced away from him at the material time. There was no corroborative evidence and, in the context advanced, Mr Goodwin submitted that the Applicant had not discharged the burden of proving that the contact that did occur demonstrated a lack of integrity (Principle 2) or undermined the trust the public placed in the Respondent and the solicitors profession (Principle 6).

#### The Tribunal’s Findings

- 22.31 The Tribunal carefully considered the evidence before it and the submissions made by the parties. The Tribunal noted that the Respondent did not dispute that he had made contact with Person B’s bottom. The issue that fell to be determined was the manner in which that contact was made. Person B stated that it was the Respondent’s hand and the Respondent averred that it was a “jocular kick”.
- 22.32 The Tribunal was not assisted by Ms Hill’s evidence which was, in her witness statement, that she “believed” it was a kick and which she expanded upon considerably in her oral evidence. The Tribunal was satisfied that from her seated position with Person B leaning over her desk and the Respondent walking behind Person B, Ms Hill could not have seen, as opposed to opine, which part of the Respondent’s anatomy made contact with Person B.

22.33 The Tribunal was therefore required to assess the evidence received from Person B and the Respondent.

22.34 Person B stated in her witness statement and maintained under extensive cross examination that the contact on her bottom was a “flick of the fingers”. Person B drew on her previous experience in her categorisation of the contact. The Tribunal found Person B to be a credible, consistent and straightforward witness.

22.35 The Tribunal found the Respondent’s assertions that it was a “jocular kick” not credible and rejected the same. The Tribunal was not required to consider his assertions as to the lack of sexual motivation in that regard as that was not alleged by the Applicant. The defence, that he had kicked her, not used his hand, was not an attractive proposition.

22.36 Principle 2

22.36.1 The Tribunal determined that in and of itself, in isolation, the inappropriate touching of member of staff more junior than himself, demonstrably showed a lack of integrity. The Tribunal noted, with concern, the fact that this incident occurred shortly after Simkins investigation into the similar complaint made by Person A which exacerbated the seriousness of the misconduct.

22.36.2 The Tribunal therefore found the breach of Principle 2 proved on a balance of probabilities.

22.37 Principle 6

22.37.1 The Tribunal, having found that the Respondent touched Person B’s bottom with his hand, determined that inevitably undermined the trust the public placed in him and in the profession.

22.37.2 The Tribunal therefore found the breach of Principle 6 proved on a balance of probabilities.

### **Previous Disciplinary Matters**

23. There were no previous findings recorded against the Respondent.

### **Mitigation**

24. Mr Goodwin submitted that the Respondent was a man of 43 years post qualification experience with a previous unblemished record and of exemplary character. He had been issued with practising certificates free from conditions throughout his professional life and that remained the case to date. Mr Goodwin reminded the Tribunal that the Respondent had co-operated with the Applicant from notification of complaint and with the Tribunal throughout the proceedings.

25. Mr Goodwin submitted that the Respondent was contrite and offered a full apology to all concerned, to the Tribunal and the profession at large.

26. Mr Goodwin commended the Tribunal's Guidance on Disciplinary Sanctions. He submitted that the Tribunal should approach sanction from the "bottom up" starting with the lowest sanction and stopping at that which was no more than needed, proportionate and fair in all the circumstances.
27. Mr Goodwin referred the Tribunal to the following excerpts of the character references submitted on the Respondent's behalf which included:
- "[the Respondent] is a man of integrity who has become a loyal and trusted friend".
  - "I have known [the Respondent] in a personal capacity for over 45 years and in this time have found him to be a loyal and extremely supportive friend. I have also known [the Respondent] on a professional basis having been appointed his accountant and tax adviser many years ago and using his services as a solicitor on many occasions. During this period, I have never found him to be less than honest, reliable and trustworthy at all times."
  - "I have known [the Respondent] both on a professional and personal level for approximately 25 years. I can confirm that I have always found him to be honest and trustworthy not to mention very capable."
  - "I have known [the Respondent] for almost forty years, both as a personal friend and in a professional capacity where he has acted for our family as well as my business. [The Respondent] is a highly professional, exceedingly competent lawyer who has my complete respect. He is totally honest and trustworthy and has always demonstrated the highest integrity whilst simultaneously having the ability to act very quickly when required to do so and yet maintain total accuracy in his work."
  - ["I have known [the Respondent] in the capacity of (1) employee for 2 years (2) partner for 13 years (3) personal friend for all of that time. Until and even during my partnership with [the Respondent], [he] was effectively a mentor to me, and I learnt a great deal from his professionalism and his capacity to deal with people and handle expectations. In 1998 when we were both at a firm called Finers Solicitors in London W1, my career path took a different avenue and I moved to this practice IWG LLP where I have been ever since. The move away from Finers of course had nothing to do with [the Respondent] and since that date, [the Respondent] and I have remained good personal friends liaising with each other on professional matters as and when necessary. I can say that with all my dealings with [the Respondent] over the years he has proven to be a person of integrity, trustworthy and of good character."
28. Mr Goodwin submitted that the references both individually and collectively were persuasive and compelling. He invited the Tribunal to have close regard to the same.
29. Mr Goodwin prayed in aid previous findings of the Tribunal in cases where sexual misconduct had been found and a financial penalty imposed. Mr Goodwin therefore submitted that the fair, reasonable and proportionate sanction was a financial penalty. He stated that the Respondent did not "advance any inability to pay" and that there was no limit to the level of fine that could be imposed. That having been said, Mr Goodwin



contended that a level 3 fine would sufficiently mark the gravamen of the misconduct found.

30. Mr Goodwin submitted that if the Tribunal was not with him on that point and considered that a suspension order was required, that would amount to a strike off for the Respondent in all but name in light of his age. Mr Goodwin invited the Tribunal not to impose a sanction that would interfere with the Respondent's ability to practice as he was 69 years of age, had been a solicitor his entire professional life, had no other employment options open to him, had not previously appeared before the Tribunal, had not been the subject of complaint before or subsequent to the present proceedings.

### **Sanction**

31. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
32. The Tribunal carefully considered the Respondent's culpability for his actions. When considering the Respondent's motivation, the Tribunal took careful account of the fact that the particular details of the allegations and the Respondent's conduct meant that they had already found racial motivation for allegations 1.1, 1.2 proved and sexual motivation for allegation 1.3 proved. Overall however the Tribunal believed that the Respondent's behaviour had been thoughtless and resulted from an inability to appreciate the inappropriateness of his actions and that he had no regard for the effects of his actions on others. The Tribunal did not consider that to vitiate, mitigate or excuse the behaviour. To the contrary, the Tribunal determined that it demonstrably showed the Respondent's lack of respect, inability to conform to acceptable standards of behaviour and belief that he could conduct himself in any manner that he deemed fit.
33. However, the Tribunal noted that with regard to allegation 1.1 that the Respondent's actions were not specifically directed at Person A. He told a single 'joke' with a racially unacceptable punchline at a seasonal dinner. It was accepted that, difficult though it was to understand how a professional person was not aware of the shift in public views about such matters during his working lifetime, the Respondent had not fully appreciated the racial implications of his words at the time he spoke them. It is an unfortunate aspect of society that some people still believe it is acceptable to make inappropriate and unacceptable comments when they are presented as 'jokes' or 'pranks'. Such are often described as "banter" which is frequently no more than an insult the speaker finds amusing. Allegation 1.2 related to an act which was specifically targeted at Person A, but again it appeared that there was no obvious malice intended. The Respondent sought the approbation of a colleague first, and it is unfortunate that the Respondent did not take note of his colleague's immediate reaction as to the unsuitability of his proposed action and abandon his misguided mission. With regard to the finding of sexual motivation, the Tribunal's finding was based on the clear evidence of unwanted touching of a sexually sensitive area – a woman's bottom, on more than one occasion. It was noted that the Respondent did not put any pressure on Person A to accept his actions or to keep silent about them. However, it was unfortunate that the Respondent did not perceive the total unacceptability of his actions, and that others, particularly Person A, would see them as predatory.

34. The misconduct arose from actions which arose spontaneously, but the Respondent had direct control of and responsibility for his actions at all times. As a partner with many years' experience of legal training and working in an office environment the Tribunal would have expected the Respondent to be more aware of all aspects of equality diversity and inclusion policies (which the Firm had) and to apply those principles throughout his work. The Tribunal was particularly concerned at the power imbalance between a partner and a secretary.
35. The harm caused to Person A was profound and plainly impacted on her to date as was clearly apparent during the course of her oral evidence.
36. The Tribunal found that the Respondent's motivation in respect of Person B demonstrably showed his inherent disregard to the impact of his behaviour on others. His attitudinal shortcomings were ingrained. In the investigation that followed, the motivation was self-preservation to the extent that the First Respondent sought to manage the way in which Person B engaged in the investigation both at local level, within the Firm, and subsequently the Applicant's investigation.
37. The Tribunal did not find that the conduct was premeditated to any significant extent in respect of the Christmas dinner "joke". It was, however, premeditated in respect of the KKK incident, as he had to cut the envelope, place it on his head and walk from his room, all the while intending to approach Person A. The Tribunal did not find that the Respondent's conduct in relation to the sexual touching of Person A and Person B to have been premeditated to any significant extent. It was a series of events borne out of the Respondent's inability to comprehend the inappropriateness of the same and his ingrained, mistaken, belief that his conduct was not unacceptable. The Tribunal did not consider that to vitiate, mitigate or excuse the behaviour. To the contrary, the Tribunal determined that it demonstrably showed the Respondent's lack of respect, inability to conform to acceptable standards of behaviour and belief that he could conduct himself in any manner that he deemed fit.
38. The Respondent was in a position of significant seniority and responsibility and the reputation of the profession was inevitably and severely damaged by this misconduct by a solicitor in such a role. That damage was compounded by the Respondent's approach to the Firm's investigation in that he "called Person B into a meeting room and asked if she had made a formal complaint." It was further compounded by the manner in which Ms Johnson and Ms Hill's witness statements were led by his questions, comments and language.
39. In considering mitigating factors, the Tribunal accepted that these were the first allegations of misconduct made against the Respondent in an otherwise 43 years of an unblemished and successful career.
40. The Tribunal was not assisted by Mr Goodwin's references to previous cases before the Tribunal. The Tribunal was not bound by the same. Further, the Tribunal was cognisant of the fact that cases of this nature, involving sexual and racial misconduct, were by their very nature fact specific.

41. The character references submitted on the Respondent's behalf were of limited assistance to the Tribunal. They were all addressed "To Whom it May Concern" and the Tribunal was not sure that the authors were aware of either the use to which the references would be put, or the allegations faced by the Respondent. Moreover, they related to his professional competence as a Solicitor which was not in question.
42. In assessing carefully the appropriate sanction the Tribunal rejected Mr Goodwin's assertions that the Respondent demonstrated insight as to the seriousness of his misconduct. Conversely, the Tribunal determined that the Respondent showed no particular insight and had not sought to address seriously his shortcomings with regards to his treatment of women and to those from another racial background to his own in an office environment. The Respondent sought to maintain, even under extensive cross examination, that he had displayed "a playful sense of humour" and merely told "old-fashioned" jokes. The Tribunal understood that was his view of his own conduct but it was simply not an acceptable excuse or explanation. Whilst he apologised for the bad taste of those "jokes" it was clear to the Tribunal that he had no real understanding that such an attitude is anathema to the core values of the profession. The Respondent's statements that he demonstrated that he did not hold racist views because, being Jewish himself, he told racist jokes about Jews showed a complete lack of appreciation of the impact his conduct might have on others whether Jewish or not.
43. The Respondent had sought to persuade the Tribunal that it was that it was extremely hard to change his attitudes, which were ossified in his youth. The Tribunal rejected that assertion. Such attitudes were never acceptable and 10 years after the Equality Act 2010 they can have no place in the profession.
44. However, the Tribunal did not consider that the First Respondent posed a risk to the public, nor that there was significant risk to colleagues and others of any repeat of the behaviour similar to that in 2014 – 2017. The Tribunal was satisfied that these proceedings and findings were such that the Respondent was unlikely to behave in the same manner moving forwards.
45. The Tribunal found that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability and the significant harm caused meant that these were serious matters such that the reputation of the legal profession required a greater sanction.
46. The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The Tribunal concluded that the misconduct was "very serious" and as such a Level 4 fine was an appropriate sanction. The Tribunal determined that a fine in the sum of £30,000.00 adequately and proportionately reflected the totality of the Respondent's misconduct.
47. The Tribunal further recommended that the Respondent do undertake training in equality, diversity and inclusion to satisfy the Applicant that he understand his obligations and the requirements in that respect.

## Costs

### The Applicant's Application

48. Ms Bruce applied for costs in the sum of £29,950.00 as set out in the costs schedule dated 12 October 2020. Ms Bruce submitted that the costs were reasonable and proportionate. Ms Bruce contended that it was entirely appropriate in a case of this nature for a partner (DP) to have drafted the Rule 12 Statement. She further submitted that it was entirely appropriate, for the same reasons, that a partner was deployed to represent the Applicant at the substantive hearing.
49. Ms Bruce relayed that the other fee earners who had conduct of the case were:
- JH, solicitor, who drafted Person A and Person B's witness statements.
  - LF, solicitor, who drafted Ms Parker and Mr Mamujee's witness statements and who also acted as witness liaison/support during the substantive hearing.
  - KS, senior solicitor and subsequently partner, who independently reviewed all witness statements upon finalisation and who managed the case in DP's absence.
  - LC, barrister, who spent 1.7 hours reviewing the case before it was passed on to Ms Bruce as advocate at the hearing.
50. Ms Bruce made plain that there was no duplication in relation to the work undertaken all of which was necessary in pursuance of the allegations faced by the Respondent.
51. Ms Bruce reminded the Tribunal that there were two vulnerable witnesses to the proceedings which required intensive input in relation to consent to participate and engagement in the proceedings.
52. Ms Bruce stated that the fixed fee of £24,950 (excluding VAT) claimed by Capsticks for all of the work undertaken, including the advocacy at the 4 day hearing, was reasonable and proportionate. She added that it represented an overall hourly rate in respect of all fee earners of £109.91.
53. Ms Bruce submitted that the Applicant's costs for their investigation pre- instruction of Capsticks were reasonable and proportionate in the sum of £1,950.00.

### The Respondent's Position

54. Mr Goodwin did not oppose the application in principle but disputed the quantum sought which he submitted was neither reasonable nor proportionate in that:
- The case was not complex.
  - The case was not document heavy.
  - The hourly rate provided was based upon the excessive number of hours spent therefore was of limited assistance.

- The number of hours expended by each fee earner was excessive and there was inevitable duplication.
55. Mr Goodwin submitted that he conducted the Respondent's case alone, relied upon two witnesses and that he did so in reasonable and proportionate manner. Mr Goodwin urged the Tribunal to scrutinise the Applicant's schedule of costs and reduce the same accordingly.

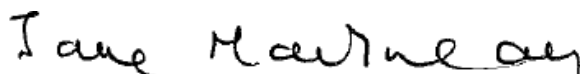
### The Tribunal's Decision

56. The Tribunal carefully considered the submissions made and the schedule of costs relied upon by the Applicant. The Tribunal accepted that in a case of this nature it was entirely appropriate for a partner to settle the Rule 12 Statement and for partner oversight to remain. However, the Tribunal was troubled by the lack of breakdown in respect of the work undertaken by all other fee earners who had conduct of the case at various stages in particular:
- 12.4 hours of a partner's time recorded in respect of "reviewing all case papers, investigations and drafting a case plan".
  - 7.7 hours of a partner's time (in addition to 11.4 hours of a solicitor's time) in respect of "Post CMH preparation for SDT hearing ... telephone attendance and emails with the Respondent's solicitor and Client; preparing CaseLines hearing bundle and preparation for substantive hearing (other than advocacy prep); drafting statement of costs".
57. Overall the Tribunal found that the hours claimed were excessive and included duplication of time spent but that the hourly rate advanced was modest. The Tribunal summarily assessed the quantum of costs that it considered to be reasonable and proportionate at £17,500.00 plus VAT which amounted to £21,000.00.

### **Statement of Full Order**

58. The Tribunal Ordered that the Respondent, SAMUEL MAURICE CHARKHAM, solicitor, do pay a fine of £30,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,000.00.

Dated this 30<sup>th</sup> day of November 2020  
On behalf of the Tribunal



J Martineau  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**30 NOV 2020**