SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No.12095-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GILLIAN MARGARET WALKER Respondent

Before:

Mr J C Chesterton (in the chair)
Mr M N Millin
Ms E A Chapman

Date of Hearing: 15 – 17 December 2020

Appearances

Rory Mulchrone, counsel of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent represented herself.

JUDGMENT

Allegations

1. The allegations made against the Respondent, who was not a solicitor, were that she had been guilty of conduct of such a nature that in the opinion of the Solicitors Regulation Authority ("SRA") it would be undesirable for her to be involved in a legal practice in that, while employed or remunerated at Opes Law Limited ("the Firm") as a fee earner and later as a director:

1.1 Between no later than 13 April 2016 and 24 May 2017, whilst acting as a director of the Firm, she failed to ensure that her position as a manager was approved by the SRA, and in so doing breached one or more of Rules 8.1 and 8.6 of the SRA Authorisation Rules 2011 ("the Authorisation Rules") and Principle 7 of the SRA Principles 2011 ("the Principles").

1.2 Between no later than 6 October 2016 and 24 May 2017, whilst owning the share capital of the Firm, she failed to ensure that her position as an owner was approved by the SRA, and in so doing breached one or more of Rules 8.1 and 8.6 of the Authorisation Rules and Principle 7 of the Principles.

1.3 On 11 May 2017, she wrote a letter to a potential witness for a defendant tour company, which impliedly threatened to expose the witness to allegations of benefit fraud if she gave evidence in accordance with her statement; and in so doing breached one or more of Principles 1, 2 and 6 of the Principles.

1.4 On 13 November 2017, she sent an email to her client, Person GW, enabling and/or encouraging him to report a potential witness to the benefit fraud helpline in order to discourage her from giving evidence for a defendant tour company; and in so doing she breached one or more of Principles 1, 2 and 6 of the Principles.

1.5 On or about 6 April 2017, she caused or allowed signed Parental Indemnity Forms to be sent to solicitors acting for Company J's insurers which were misleading in that they purported to accept settlement where no agreement had been reached between the parties; and in doing so she breached one or more of Principles 5 and 8 of the Principles.

1.6 Between 5 September 2016 and 24 May 2017, she failed properly to inform the Firm's clients of the details of its fee sharing arrangements; and in so doing failed to achieve one or more of Outcomes 9.4 and / or 9.5 of the SRA Code of Conduct ("the Code") and breached Principle 5 of the Principles.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit HVL1 dated 26 May 2020
- Respondent's Answer and Exhibits dated 26 June 2020
- Applicant's Reply dated 21 July 2020
- Respondent's Response to the Applicant's Reply dated 29 July 2020
- Applicant's Schedule of Costs dated 8 December 2020

- Respondent's Schedule of Costs dated 10 December 2020

Preliminary Matters

3. Respondent's application to stay the proceedings for abuse of process

3.1 The Tribunal relied on the test in R v Maxwell [2011] 1 WLR 1837:

> "It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in R v Horseferry Road Magistrates' Court, Ex p Bennett [1994] 1 AC 42, 74g) or will undermine public confidence in the criminal justice system and bring it into disrepute (per Lord Steyn in R v Latif [1996] 1 WLR 104, 112f)."

3.2 The Respondent applied to stay the proceedings on the grounds:

- Delay
- The failure by the Applicant to obtain or retain relevant evidence
- Oppressive conduct on the part of the Applicant; and
- Serious procedural failings by the Applicant.

Delay

The Respondent's Submissions

3.3 The Applicant commenced its investigation on 24 May 2017. The FI Report was produced on 24 July 2017. The Respondent provided a response to the EWW letter on 4 October 2017. There was then a delay of 8 months before the matter was referred to the Tribunal. Thereafter, there was a further delay of 23 months before proceedings were issued. It had been 3½ years from the commencement of the investigation to the proceedings. The Firm went into liquidation in 2018. All computer equipment was seized. The Respondent was unable to access her own computer or the computers of anyone else at the Firm. Thus the Respondent had no access to the case management system and insufficient email correspondence to use as evidence in her defence.

3.4 It was incumbent on the Applicant to take all reasonable investigatory action prior to any referral. The delay in the Applicant's failure to do so meant that the Respondent could not have a fair trial. The Applicant had failed to obtain witness statements within a reasonable time. For example, Ms Goddard made her complaint in 2017, however, the Applicant failed to obtain a witness statement from her until April 2019.

3.5 The Tribunal was referred to Wearn v HNH International Holdings [2014] EWHC 3542 (Ch) which, it was submitted, encapsulated the position as regards delay.

3.6 The Respondent submitted that it was unfair to her to be before the Tribunal over 3 years after the Applicant had commenced its investigation. The allegations she faced were not for dishonesty but for misconduct. There could be no reason that the Applicant had taken so long for bringing what were not complex matters. The Respondent considered that the proceedings against her ought to have been concluded within a year. The Respondent submitted that she had been caused prejudice by the delay, which, it was submitted, was inexcusable.

The Applicant's Submissions

3.7 Mr Mulchrone referred the Tribunal to the chronology which detailed the steps taken by the Applicant from the commencement of the investigation to the issuing of the proceedings. Following the referral of the Respondent to the Tribunal in June 2018, further investigatory steps were undertaken resulting in a second EWW letter being sent to the Respondent in April 2019, to which the Respondent replied in May 2019. Further investigations were also carried out in relation to JD (the former First Respondent) which resulted in a further EWW letter being sent to him in November 2019, with a response being received in January 2020. In the circumstances, it was not accepted that there was any undue delay in issuing the proceedings.

3.8 The Tribunal was referred to R v Sawoniuk [2002] 2 Cr. App. Rep. 220 and the general principles that:

(a) It would be rare for a stay to be imposed in the absence of fault on the part of the prosecutor or complainant;

(b) delay contributed to by the actions of the defendant should not found the basis of a stay.

3.9 As to the Respondent's assertion of a lack of access to the case management system and emails, she had not made any specific request for disclosure.

3.10 Mr Mulchrone submitted that the Applicant did not accept that there had been delay on its part. There had been no delay, let alone a delay so egregious such as to warrant staying the proceedings. The Respondent, it was submitted, had failed to demonstrate that she had suffered any prejudice or that she was now unable to have a fair trial. Accordingly, the application to stay on the grounds of delay should be dismissed.

The Tribunal's Findings

3.11 The Tribunal determined that unacceptable delay could amount to an abuse of process if, by reason of the delay, the Respondent was no longer able to have a fair trial, or to have the trial in the circumstances would offend the Tribunal's sense of justice and propriety.

3.12 The Tribunal was mindful of the guidance of Rose LJ in R v S (SP) [2006] EWCA Crim 756:

"the correct approach for a judge to whom an application for a stay for abuse of process on the ground of delay is made, is to bear in mind the following principles:

(i) Even where delay is unjustifiable, a permanent stay should be the exception rather than the rule;

(ii) Where there is no fault on the part of the complainant or the prosecution, it will be very rare for a stay to be granted;

(iii) No stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held;

(iv) When assessing possible serious prejudice, the judge should bear in mind his or her power to regulate the admissibility of evidence and that the trial process itself should ensure that all relevant factual issues arising from delay will be placed before the jury for their consideration in accordance with appropriate direction from the judge;

(v) If, having considered all these factors, a judge's assessment is that a fair trial will be possible, a stay should not be granted."

3.13 The Tribunal considered the case of Wearn to which it had been referred by the Respondent. In that case, proceedings were commenced in October 2000, concerning events between 1996 and 1999. The matter was before the Court in 2001 and did not come back before the Court until 2013. None of the procedural steps directed by the Court in 2001 had been complied with. The Court in Wearn was considering a matter that had commenced almost 14 years previously, in which the pleadings were not complete, disclosure had not taken place and evidence had yet to be exchanged. That was an entirely different position to the matter before the Tribunal. The Tribunal considered that Wearn was of no assistance to the Respondent, given the wholly different nature of the delay in that case.

3.14 As to the Respondent's submissions regarding delay prior to the decision to refer the matter to the Tribunal, the authorities made clear that time began to run from the referral decision and not from the commencement of the investigation.

3.15 The Tribunal considered the chronology. The Tribunal found that the time taken from the decision to refer the Respondent to the Tribunal to the issuing of proceedings was reasonable in all the circumstances. Further, the Tribunal considered the time taken from the commencement of the investigation to the issuing of the proceedings was also reasonable in all the circumstances. The Tribunal did not consider that there was any fault on the part of the Applicant for any delay, indeed there had been no delay. Even if, which the Tribunal did not find, there had been delay, the Tribunal did not consider that the Respondent had demonstrated that she had suffered such serious prejudice that no fair trial could be held.

3.16 Accordingly, for the reasons detailed, the Tribunal did not find that there had been an abuse of process caused by delay such that the proceedings should be stayed. The Respondent's application to stay the proceedings on the basis of delay was thus refused.

The failure by the Applicant to obtain or retain relevant evidence

The Respondent's Submissions

3.17 The Respondent submitted that the evidence of the Applicant dealt with consequential events. She asked the Tribunal to look at the investigative process and the steps taken by the Respondent. As regards allegations 1.1 and 1.2, the Respondent considered that she had taken all reasonable steps and that but for the actions of JD, the outcome would have been different.

3.18 A meeting had been arranged with a compliance officer. There was also the statement from GD, which the Applicant had not acknowledged. The Respondent submitted that she had been authorised at her former firm ("WB") to deal with a regulatory compliant closure of that firm. JD explained in his statement that he had contacted the SRA and had been informed them that the Respondent was approved for WB. He stated that he was told that no further FA2 was required for the Firm given the Respondent's previous approval.

3.19 Following the meeting with GD, the Respondent was provided with a plethora of documents including the FA2. Those documents were sent to JD both by email and post. As regards the certificate of good standing, that was a matter for JD. The ILEX website stated that it was a firm's responsibility to obtain the appropriate documents.

3.20 The Respondent submitted that when she contacted CILEx "in all probability" she also discussed the certificate of good standing, hence her contact with CILEx regulation; there would be no need for her to be in contact with regulation if her contact related solely to the payment of her subscription invoice.

3.21 The Respondent submitted that in all the circumstances, she had acted in a manner commensurate with her responsibilities as a Legal Executive.

The Applicant's Submissions

3.22 Mr Mulchrone submitted that there was a difference between failing to disclose evidence and a wider duty to gather in evidence in support of the Respondent's case as well as evidence in support of the Applicant's case. In Johnson & Maggs v NMC [2008] EWHC 885 Admin, it was held that there was no free standing duty in regulatory proceedings for the regulator to seek out exculpatory evidence on behalf of the Respondent unless there was a material inequality of arms. The Respondent had not submitted that there was any such inequality, further she had not explained what exculpatory evidence she had been unable to obtain. The Tribunal could not be sure that (i) any such evidence existed, (ii) that the Applicant ought to have obtained it or (iii) that the evidence would have been exculpatory.

3.23 Mr Mulchrone submitted that the Respondent's application under this heading had dealt more with her defence of the allegations, namely whether the steps that she had taken to obtain authorisation were reasonable and JD's admission that he failed to submit the FA2. Mr Mulchrone submitted that the Respondent was not correct in her belief that she had done all that she should.

3.24 Mr Mulchrone submitted that the Respondent had failed to demonstrate that there had been any failure to obtain or retain evidence, or that such a failure had been so egregious that the only remedy was to stay the proceedings as an abuse of process.

The Tribunal's Findings

3.25 The Tribunal found that the Respondent had failed, with any particularity, to identify the relevant evidence which the Applicant ought have, or failed to obtain, such that to proceed with the matter would render the proceedings against her unfair, or, in all the circumstances, would offend the Tribunal's sense of propriety or justice. There was no duty upon the Applicant to seek out exculpatory evidence on the Respondent's behalf. The matters raised by the Respondent were more appropriate to a defence of the allegations, and did not identify any issues which could be deemed to cause the Respondent serious prejudice. Accordingly, the Tribunal found that there had been no failure to obtain or retain evidence such that the only remedy available was to stay the proceedings. The Tribunal thus refused the Respondent's application to stay under this ground.

Oppressive conduct on the part of the Applicant

The Respondent's Submissions

3.26 The Respondent explained that she had in correspondence outlined that she felt victimised and bullied by the Applicant. On Friday 11 December 2020, she had received an email timed at 5.53pm from Ms Lane of Capsticks. The email stated:

> "I write to confirm that we have completed our review of the case, including all of the supplementary material you have filed and your latest witness statement.
>
> We remain of the view that there is a case to answer and we will not be withdrawing any of the allegations.
>
> Separately, further to our letter of 16 November 2020 in which we asked you to confirm whether you would be calling any witness evidence and to serve the requisite notices, we have not received a response from you, however wish to confirm for the avoidance of doubt that we require [JD] to attend the hearing so that he can be cross-examined."

3.27 The Respondent explained that she had previously explained to Ms Lane that she wanted to be "left alone". That had not happened. The Respondent considered that the email was an example of the Applicant's oppressive conduct.

The Applicant's Submissions

3.28 Mr Mulchrone submitted that the only example of oppressive behaviour cited by the Respondent was the email from Ms Lane detailed above. That email was entirely proper and appropriate in its tone. The Respondent, having sent in numerous documents and additional evidence, had requested that the Applicant consider whether in light of the additional evidence, it was appropriate to proceed with the matter against her. The email from Ms Lane confirmed that the review requested by the Respondent had been completed, and that the Applicant intended to proceed with the matter.

3.29 Further, the Respondent had failed to comply with notices. She had exhibited the statement of JD to her statement, but had not confirmed whether she was going to call him to give oral evidence. Ms Lane was making clear, for the avoidance of doubt, that if the Respondent intended to rely on that statement, JD would be required to attend the hearing for cross-examination.

3.30 Mr Mulchrone submitted that on a fair reading of that email, there was nothing in there that could be deemed to be oppressive.

The Tribunal's Findings

3.31 The Tribunal did not consider that there was anything in the email that could be considered to be bullying or oppressive. The email was appropriate in both language and tone, providing the Respondent with information that she needed as regards JD's evidence, and informing her of the outcome of the review requested.

3.32 The Tribunal found that there was no merit in the application to stay the proceedings on the basis of oppressive conduct. Accordingly, the application to stay for abuse of process under this ground was refused.

Serious procedural failings by the Applicant

The Respondent's Submissions

3.33 The Respondent submitted that the Applicant's investigation was seriously flawed. It had failed to disclose evidence:

(i) The Applicant had failed to disclose the unsigned statement of GW. The Respondent only became aware of that statement when perusing the Applicant's costs schedule. Further, not only had the Applicant failed to disclose it, it sought to claim costs for the preparation of that statement, when it was not relied upon by the Applicant.

(ii) The Applicant had failed to disclose any correspondence with governments of different countries in relation to holiday sickness claims. The Respondent explained that such information had been requested as she considered that it was pertinent to the political background in which the proceedings had been brought. Further requested disclosure was refused on the basis that it would take too long to obtain the relevant material.

(iii) The Applicant had failed to disclose counsel's advice in the GW case. Ms Lane, it was submitted, had admitted that failure. The advice made it clear that GW had provided consent

3.34 In addition, the Applicant had failed to obtain relevant and necessary documents in particular as regards allegations 1.3 and 1.4. The Applicant had not obtained a signed statement from GW, nor did it have a statement from KR, which the Respondent considered was crucial as the Tribunal required KR's evidence of whether she perceived the complained of letter to disclose a threat. Further, the Applicant had failed to obtain the full file from Kennedy's. Those failings meant that the Tribunal did not have a balanced view of the case or an overall understanding of the issues.

The Applicant's Submissions

3.35 Mr Mulchrone did not accept that the Applicant's conduct disclosed any serious procedural failings.

(i) The statement of GW was a draft statement and was unsigned. The Applicant did not rely on that evidence. The Applicant did not consider that the statement was disclosable, but disclosed it out of an abundance of caution, mindful that the Respondent was litigant in person. As to the time it had taken to prepare the statement being charged for, the time made no difference to the costs claimed as Capsticks claimed its costs on a fixed fee basis.

(ii) As regards correspondence with foreign governments, such correspondence, if it existed, had not been particularised by the Respondent. Nor had the Respondent explained why such evidence was relevant to the issues in the case.

In her email of 21 June 2020, the Respondent requested: "the following information and/or documentation and records requested … (1) Precisely what directives, communications, discussions, meetings or such like, your client or any officer of your client received or had with any government minister, department, civil servant or other agent of the Crown or any of them, or any other person or agent acting on behalf of any of them, together with such documented records of all or any communications, notes or similar in relation thereto? (2) What directives, standing orders, or similar communications were passed down to the investigating officers of your client in consequence, providing copies thereof? (3) How many firms of solicitors were investigated between February 2017 and the end of that year in primary respect of holiday sickness and related claims, and further what percentage of them were, have, or are being further investigated or pursued?"

In its response of 31 July 2020, as regards (1) the Applicant provided the Respondent with its response to a call or evidence from the Ministry of Justice on "Personal injury claims arising from package holidays", a parliamentary briefing note regarding holiday sickness and emails to the travel and holiday industry regarding our publications. As regards (2), the Applicant explained that it did not hold any guidance or directions issued to its investigation officers on holiday sickness reports. As regards (3), the Applicant stated "We are not able to provide information on your third question, this is because we are not able to extract reports about holiday sickness

claims from our system, to identify these cases would require a lengthy manual sift of our systems which would take longer than the 18 hours we are limited to in our Transparency Code."

(iii) Mr Mulchrone submitted that far from failing to disclose the advice of counsel, this was a document the Respondent had in her possession. In not relying on or disclosing that document to the Tribunal, the Applicant's conduct was in no way procedurally irregular and could not possibly give rise to an abuse of process.

3.36 As to the Respondent's submissions in relation to the alleged failure to obtain necessary and relevant documents for the proof of allegations 1.3 and 1.4, it had been open to the Respondent to obtain those documents herself. Further, at no time during the proceedings had the Respondent made an application for specific disclosure, naming the documents required or their relevance to the issues in the case.

3.37 Further, Mr Mulchrone submitted that a statement from KR was not necessary. The assessment of whether the letter to KR contained a threat was an objective one, and therefore KR's perceptions were irrelevant.

3.38 Mr Mulchrone submitted that the Respondent had failed to come close to establishing an abuse of process due to serious procedural failings; she had failed to demonstrate any failings in the Applicant's investigation process.

The Tribunal's Findings

3.39 The Tribunal determined that:

(i) The Tribunal agreed that the statement of GW was not disclosable. The statement neither undermined the Applicant's case, nor did it support the Respondent's. As to the Applicant recording the time it had taken to prepare the statement, that was a matter for the Tribunal to consider when it considered the costs in the proceedings. There was nothing in the late disclosure of the statement that evidenced that there were serious procedural failings by the Applicant.

(ii) The requests made by the Respondent had been general in nature. Rule 26 of the Solicitors (Disciplinary Proceedings) Rules 2019 stated that the Tribunal may make an order that material be disclosed where it considers that the production of the material is necessary for the proper consideration of an issue in the case. The Respondent had failed to identify any issue in the case to which the requested documents were relevant. Further, the Respondent had made no application for specific disclosure of any documents. The Tribunal found that there were no serious procedural failings in the Applicant not supplying documents that had been requested with particularity.

(iii) As regards counsel's advice, this was a document on which the Respondent had in her own possession and upon which she intended to rely. It was not the duty of the Applicant to disclose documents which the Respondent possessed and upon which she intended to rely. The non-disclosure of that document

provided no support for the Respondent's contention that the Applicant's investigation was seriously flawed.

3.40 The Tribunal considered that the matters raised by the Respondent as regards allegations 1.3 and 1.4 did not amount to serious procedural failings. The Applicant considered that the evidence upon which it relied was sufficient to substantiate the allegations. The Respondent, had she so chosen, could have obtained the documentation which she submitted that the Applicant was responsible for obtaining. It was again noted that the Respondent had not made a request for specific disclosure in the proceedings, nor had she detailed which documents on the Kennedy's file were relevant or how they were relevant to an issue in the case.

3.41 For the reasons stated, the Tribunal did not find that there were any grounds upon which it was impossible for the Respondent to have a fair trial, or that the Tribunal's sense of justice and propriety would be offended if the matter were to proceed. Accordingly, the Respondent's application for the proceedings to be stayed as an abuse of process was refused.

4. Respondent's submission of no case to answer

4.1 At the conclusion of the prosecution case, the Respondent submitted that the Applicant had failed to demonstrate that there was any evidence upon which any of the allegations could be found proved.

4.2 The Tribunal relied on the test in R v Galbraith [1981] 1 WLR 1039:

> "(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

Allegations 1.1 and 1.2

Respondent's Submissions

4.3 As regards allegations 1.1 and 1.2, the Respondent submitted that JD had been appointed as a director of the Firm in 2015. The Tribunal was referred to an email of 5 May 2015 sent by Mr FM to the Respondent. That email stated:

> "These are the fors (sic) for COLP/COFA approval. The approval for owner/manager is done online. I will get the details and let you know, but most of it will probably be similar to the COLP COFA one."

4.4 That email was sent to JD by the Respondent on 12 June 2015 approximately four months before the Firm began trading. The Respondent submitted that this was the first time that she had flagged with JD about the procedures.

4.5 The Tribunal was referred to an email of 17 April 2019 from the Respondent to the SRA which highlighted that the Respondent could not complete and submit the application without JD; the FA2 required a solicitor's signature. The Respondent did not have access to the mySRA portal.

4.6 The Respondent submitted that it was not accepted that either allegation had been properly brought against her as it was JD who was responsible for ensuring that the appropriate application was made. The Applicant was misconceived in bringing the allegations against her. The Respondent submitted that she had taken all necessary and reasonable steps.

The Applicant's Submissions

4.7 Mr Mulchrone submitted that there was clearly a case to answer in relation to all allegations.

4.8 As regards allegations 1.1 and 1.2, it was the Respondent's submission that she had done all that she could in order to obtain the requisite approval, and that the failure to obtain approval was the responsibility of JD. Mr Mulchrone submitted that it was not within JD's sole power to obtain approval. It was, however, within the Respondent's sole power to ensure that she did not act as a director or owner until she had obtained, and was satisfied that she had obtained, approval from the SRA.

4.9 As regards the email dated 12 June 2015, this pre-dated the period in the allegations, and related to what JD needed to do to obtain approval. This did not assist the Respondent in her assertion that she was not an owner or a director. On the contrary, it demonstrated that the Respondent was aware of the process that was required to obtain approval prior to her becoming an owner and a director.

4.10 The email of 17 April 2019 post-dated the period referred to in the allegations and was a response to the Applicant detailing her defence. As such, it was difficult to see how it undermined the prosecution case.

The Respondent's Reply

4.11 The Respondent agreed that it was her responsibility to put steps in place for approval. However, as she was not a solicitor, she was unable to sign the applications or upload them. The Applicant had failed to consider the steps she had taken. She had asked JD if he had done so, and he said that matters were in hand. The Respondent submitted that there was a saturation point as to what was within her power and capability. As the owner and manager at the time, it was JD's responsibility to ensure her approval.

The Tribunal's Findings

4.12 The Tribunal noted that the allegations related to the Respondent's alleged failure to ensure that her position as a director and owner was approved by the SRA. In order for the submission of no case to answer to be successful, the Respondent needed to demonstrate that the Applicant had failed to provide evidence (or that the evidence provided was tenuous) in support of those allegations.

4.13 The Tribunal considered that the submissions made by the Respondent did not identify the deficiencies in the evidence upon which the Applicant relied, but instead detailed her defence of the allegations. Notwithstanding that failure, the Tribunal considered whether the Applicant had failed to provide any evidence in support of the allegations, or whether the evidence provided was tenuous such that properly directed, the Tribunal could not find the matters proved.

4.14 The Tribunal determined that, taking the Applicant's case at its highest, namely, in short, that the Respondent was the owner and director of the Firm without obtaining SRA approval, it would be open to the Tribunal to determine that the Respondent's conduct was in breach of the Authorisation Rules and Principle 7 as alleged.

4.15 The Tribunal determined that the Respondent had not demonstrated that a Tribunal, properly directed, would be unable to find that the Respondent had undertaken those roles without approval and had thus breached her professional duties as alleged. Accordingly, the Respondent had failed to satisfy the Galbraith test, and the Tribunal found that there was a case to answer as regards allegations 1.1 and 1.2.

Allegations 1.3 and 1.4

The Respondent's Submissions

4.16 As regards allegations 2.3 and 2.4, there were numerous flaws in the Applicant's case. The Applicant had failed to obtain:

- the full file from Kennedy's
- a copy of the Court transcript
- a statement from KR
- a signed statement from GW

4.17 In failing to obtain that material, the Applicant had failed to provide the Tribunal with context or a balanced view. The allegations were marred as the only evidence provided was that from the Respondent's file.

The Applicant's Submissions

4.18 The Respondent submitted that the Applicant's case was matted with a lack of evidence. Mr Mulchrone submitted that the Respondent's submissions were at most tangential and did not come close to displacing a case to answer. There was no dispute that the Respondent wrote the letter and email complained of. It was, of course, a matter for the Tribunal to consider whether it was proper for a lawyer to write the letter and email, and whether the letter contained a threat and the email

enabled or encouraged the Respondent's client to report KR to the benefit fraud helpline in order to discourage KR from giving evidence. The non-reliance on KR as a witness, was, it was submitted, irrelevant. The gravamen of allegation 1.3 related to the content of the letter itself and an objective interpretation of the meaning of that letter. In any event, it was open to the Respondent to have called KR or GW to give evidence or to have issued a writ for the production of Kennedy's file. For the avoidance of doubt, it was submitted that the Applicant did not require the file in order to prove the allegations; the context of the litigation would not assist in an assessment of whether the correspondence to KR was intimidating.

The Respondent's Reply

4.19 The Respondent submitted that the perception of KR was important; in order to assess whether there was a threat, the Tribunal needed to know how the letter was perceived by KR. The failure to obtain a statement from her was a serious failure such that the allegation could not be proved.

The Tribunal's Findings

4.20 The Tribunal noted that there was no dispute as to the content of either the email or the letter. Nor was it disputed that these had been sent by the Respondent. The Respondent, in her submissions, had pointed to what she considered to be a number of failings in the investigative process, however, the Respondent did not particularise why the evidence relied upon was incapable of substantiating the allegations. Notwithstanding that failure, the Tribunal considered whether the Applicant had failed to provide any evidence in support of the allegations, or whether the evidence provided was tenuous such that properly directed, the Tribunal could not find the matters proved.

4.21 The Tribunal found that the documents upon which the Applicant relied sufficiently evidenced that there was a case to answer. Accordingly, the Tribunal found that the Respondent had failed to satisfy the Galbraith test, and there was a case to answer in respect of both allegations 1.3 and 1.4

Allegation 1.5

The Respondent's Submissions

4.22 The Respondent submitted that in relation to allegation 1.5, she was unaware of this until approximately 2 years later. The Applicant had failed to provide any other parental indemnity forms for cases with Company J and was thus unable to evidence whether there had been settlement using the same forms.

4.23 In addition, the Applicant had provided no evidence to demonstrate that the Respondent's supervisory skills were in any way lacking, or that there were not sufficient policies and procedures in place. Further, they had failed to obtain a statement from SK. The Applicant did not demonstrate that there were no letters to the parents or guardians explaining the position. The Respondent submitted that she was perplexed as regards the allegation, and that the Applicant had not provided any evidence to support it.

The Applicant's Submissions

4.24 Mr Mulchrone submitted that he was in some difficulty identifying what the issue was. It was not disputed that the forms had been sent out. Those forms, it was submitted, clearly purported to accept settlement. The witness evidence upon which the Applicant relied, and which was unchallenged, evidenced that the proceedings had not been settled. That being the case, the only remaining issue was whether the Respondent had caused or allowed the forms to be sent to the solicitors acting for Company J. The Respondent, it was submitted, was the lawyer with conduct of the case and was responsible for what documents went out on the case.

4.25 As to the Respondent's complaint of there being no statement from SK, the Respondent was at liberty to call her as a witness and had not done so.

4.26 Mr Mulchrone submitted that there was abundant evidence in support of the Applicant's case. Further, that evidence was unchallenged by the Respondent.

The Respondent's Reply

4.27 The Respondent questioned why the Applicant had highlighted certain forms. It was submitted that there was no evidence of any wrongdoing on the Respondent's part, nor was there any evidence of flaws in her supervision or the processes in place at the Firm. In addition, the Respondent queried why the forms had been sent by the solicitors to Company J if the cases were not settled.

The Tribunal's Findings

4.28 The Tribunal noted that the evidence from the solicitors to Company J upon which the Applicant relied had been unchallenged by the Respondent. That evidence, it was determined, supported allegation 1.5 such that, without more, a Tribunal properly directed could determine that the Respondent's conduct was in breach of the Principles as alleged. The Tribunal found that the Respondent had failed to satisfy the Galbraith test. Accordingly, there was a case to answer as regards allegation 1.5.

Allegation 1.6

The Respondent's Submissions

4.29 As regards allegation 1.6, the Respondent submitted that she was at a loss as to why this matter had been alleged against her. She was neither the COLP nor the COFA, and was not responsible for compiling the information contained in the client care pack. The allegation had been admitted by JD, and in alleging the same matter against her, the allegation was duplicitous. The Respondent submitted that the Applicant had failed to show why she should be deemed culpable.

The Applicant's Submissions

4.30 Mr Mulchrone submitted that the Respondent's application was in effect that as JD had admitted the matter, it should not be brought against the Respondent. The Applicant routinely raised like allegations against Respondents, and it was perfectly

proper to do so. Leaving aside the Respondent's erroneous submission as regards duplicity, her submission was in any event misconceived; whatever responsibility JD had taken did not negate the Respondent's responsibility. It was not disputed that the documents were not compliant. As an owner and manager of the Firm, the Respondent was obligated to ensure that documents that were sent out were compliant with any rules. Mr Mulchrone submitted that in the circumstances, there was sufficient evidence to make out the allegation.

The Respondent's Reply

4.31 In reply, the Respondent submitted that JD had accepted this matter. The Applicant had failed to provide any evidence that the Respondent was culpable.

The Tribunal's Findings

4.32 The Tribunal noted that there was no dispute that the information contained in the client care pack and sent to clients did not provide the information as to the Firm's fee sharing arrangements as was required. The Applicant's case was that as an owner/manager, the Respondent was responsible for ensuring that documents emanating from the Firm were compliant with the rules. The Tribunal found that there was a case for the Respondent to answer as regards this. The evidence upon which the Applicant relied, it was determined, supported allegation 1.6 such that, without more, a Tribunal properly directed could determine that the Respondent's conduct was in breach of the Code and Principle 5 as alleged. The Tribunal found that the Respondent had failed to satisfy the Galbraith test. Accordingly, there was a case to answer as regards allegation 1.6.

4.33 For the reasons detailed above, the Tribunal found that there was a case to answer on each allegation. Accordingly, the Respondent's application to dismiss the allegations for want of evidence was refused.

Factual Background

5. The Firm received recognition from the SRA on 1 May 2015 when the sole director of the Firm was recorded as Mr FM. By the time the Firm started trading in October 2015, dealing with holiday sickness claims, Mr JD had taken the place of Mr FM and the Respondent had been brought on board to run the Manchester Office. The Firm was a recognised body. The Firm had ceased trading and was in liquidation.

6. The Respondent was a Fellow of the (now-Chartered) Institute of Legal Executives (FCILEx). She was the lawyer and fee earner working at the Firm's office on a day to day basis. She referred to herself as an employee in interview with the FIO. In his interview, JD stated that the Respondent was to be the Practice Manager. She became a manager and an owner of the Firm during the period covered by these allegations, although (as set out below) those positions were not approved by the SRA.

Witnesses

7. The following witnesses provided statements and gave oral evidence:

- The Respondent

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

Findings of Fact and Law

9. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

10. **Allegation 1.1 - Between no later than 13 April 2016 and 24 May 2017, whilst acting as a director of the Firm, she failed to ensure that her position as a manager was approved by the SRA, and in so doing breached one or more of Rules 8.1 and 8.6 of the Authorisation Rules and Principle 7 of the Principles.**

Allegation 1.2 - Between no later than 6 October 2016 and 24 May 2017, whilst owning the share capital of the Firm, she failed to ensure that her position as an owner was approved by the SRA, and in so doing breached one or more of Rules 8.1 and 8.6 of the Authorisation Rules and Principle 7 of the Principles.

<u>The Applicant's Case</u>

10.1 The Firm was a limited company with an issued share capital of 2 shares. On 13 April 2016, Companies House recorded the Respondent as being appointed as a director of the Firm. As a director of a Company, the Respondent was therefore a "manager" for the purpose of the SRA's rules.

10.2 A confirmation statement dated 6 October 2016 and filed with Companies House stated that both of the 2 shares in the Firm were (by that time) held by the Respondent. The Companies House documentation recorded that the 2 shares in the Firm were transferred from the JD to the Respondent on 8 October 2015. However, JD and the Respondent explained that this date was chosen in effect retrospectively when the shares were transferred in 2016.

10.3 A notification included with the confirmation statement of 6 October 2016 recorded the Respondent as being a person with significant control (registrable date: 6 April 2016) by virtue (among other things) of holding 75% or more of the shares in the Firm. As a person who held a material interest in an authorised body, the Respondent was therefore an "owner" for the purpose of the SRA's rules [Glossary].

10.4 In her response to the EWW letter, the Respondent stated that she became a director of the Firm on 6 April 2016 and (to the best of her knowledge and belief) a shareholder on 6 or 7 October 2016.

10.5 Rule 8.6 of the Authorisation Rules required the Firm as an authorised body to ensure that any manager or owner had been approved by the SRA. The procedure for seeking and obtaining approval of managers and owners was governed by Part 4 of the Authorisation Rules (version 16, published on 1 April 2016, and subsequent versions). An application is made on the SRA's form FA2. The Respondent was not covered by the "deeming provisions" of Rule 13.2, because she was not a solicitor, an authorised body, an REL or an RFL. Therefore, the application process would include consideration of a suitability test and required a certificate of good standing from CILEX.

10.6 As a manager of the Firm from 13 April 2016, the Respondent had a duty under Rule 8.1 of the Authorisation Rules to ensure that obligations imposed on the Firm by or under the SRA's regulatory arrangements were complied with. Regulatory arrangements included all rules and regulations of the SRA in relation to the authorisation, practice, conduct, discipline and qualification of persons carrying on legal activities [Glossary].

10.7 However, at the commencement of the FIO's investigation, the SRA had not been notified that the ownership of the Firm had been transferred to the Respondent, nor that the Respondent had been appointed as a director.

10.8 From 13 April 2016, the Respondent accepted the role of director at the Firm and continued in this role without ensuring that she had approval from the SRA. The regulator was therefore unable to check that the Respondent was a fit and proper person to carry out this role. In the same way, by no later than 6 October 2016, the Respondent was the (sole) owner of the Firm. Again, she continued in this role without ensuring that the SRA had an opportunity to carry out its regulatory functions.

10.9 In interview with the FIO on 23 June 2017, the Respondent stated that she was unaware that JD had not obtained approval before commencement of the investigation. She believed that JD had contacted the SRA and that she was approved. She said: "I must admit I was a little ignorant on the process, so I wouldn't have known to obtain the Certificate of Good Standing."

10.10 On 1 March 2018, the Respondent forwarded to the SRA supervisor an email and signed statement of JD, dated 28 February 2018. The statement asserted that JD had telephoned the SRA with enquiries about the Respondent's involvement in the Firm. He was advised that "a FILEX could own 100% of the shares and that they could be a Director. I was informed that they were within the group that were automatically authorised". He stated that he informed the Respondent of this information.

10.11 However, in her response to the EWW letter, the Respondent said in explanation: "I took considerable care to be advised on the matter". In support of this, the Respondent appended minutes of a meeting of the directors of the Firm (at that time only JD, although the Respondent was in attendance) on 21 December 2015. At paragraph 9 of the minutes, it was recorded that: "Consideration was made that [the Respondent]

needs to seek advice whether SRA registration is needed or automatic entitlement can be used to come on as a director".

10.12 The Respondent also appended what purported to be an email from Consultant IA to the Respondent dated 13 January 2016. This document made it clear that, in order to become a manager and interest holder in the Firm:

- The Respondent would be required to apply for authorisation before appointment (because deemed authorisation did not apply to her);
- A form FA2 was attached for this purpose: "much of the detail thereon is personal…";
- The application would be subject to the suitability test;
- the Second Respondent would need to get a Certificate of Good Standing from ILEX: "could you contact them immediately and arrange"; and
- A cover letter was prepared for JD including reference to the Respondent's previous firm.

10.13 Mr Mulchrone submitted that as the Respondent received this advice, she was on notice as to the regulatory procedure required to be followed for her approval as manager and owner of the Firm. She ought to have ensured that it was followed and not taken up those roles without this being done. She was further on notice to be questioning of any suggestion put to her by JD that her approval had been secured without her input. Even if the Respondent believed that her approval for her positions had been sought by JD, it was clear that she did not take any or any adequate steps to check this but continued to act as manager and owner.

10.14 In addition, it was submitted, events in the Respondent's professional history meant that she was already on notice as to the importance of ensuring that her positions were approved by the SRA and as to the procedural requirements to this end.

10.15 The SRA's records showed that the Respondent had previously worked as an owner and manager at her previous firm from 5 September 2014 without obtaining approval from the SRA. On 5 May 2015, an application was made for approval of the Respondent as COLP and COFA of her previous firm. Application forms were submitted to the SRA by the Respondent from her email address. In the course of this application, it became known to the SRA (and was acknowledged by the Respondent) that she was an owner and director of that previous firm and that no application for approval of these roles had been made. In an email sent by the SRA on 8 June 2015 it was explained to the Respondent that:

> "[…] whilst lawyers who are not solicitors can be directors in a recognised body, any individual who is not classed as deemed-approved is still required to submit an application to the SRA for approval.

> Regrettably the only individuals who can be deemed-approved as managers or owners are those listed in Rule 13.2 of the SRA Authorisation Rules 2011, which does not include legal executives."

10.16 The Respondent was subsequently authorised as COLP, COFA, owner and manager on 9 June 2015. The decision maker, it was submitted, had plainly considered whether the absence of an application for approval as manager or owner was due to dishonesty, but concluded that it was not. Notification of the approval and a copy of the decision were emailed to the Respondent (and acknowledged by her – "Thank you so much") on 9 June 2015. However, when asked about this in her interview with the FIO, the Respondent stated that she did not recall seeing a copy of the authorisation decision.

10.17 Mr Mulchrone submitted that for the reasons detailed above, the Respondent was on notice as to the procedure for seeking approval as an owner or manager, and the importance of obtaining this approval. This was less than two years before the Respondent became a manager at the Firm.

10.18 Despite being on notice, which, it was submitted, was an aggravating feature, the Respondent failed to ensure that the positions she occupied were approved by the SRA, and so breached the Authorisation Rules.

10.19 Managers and owners occupy positions of responsibility and trust: managers had ultimate responsibility for how a firm was run and its legal services delivered; owners could potentially exert significant influence over the business. The approval process enabled the SRA to be satisfied that a future role holder understood their responsibilities and would not compromise the regulatory objectives or compliance by the Firm. In the case of the Respondent, this was important because she was the only lawyer routinely present in the office and she was in effect running the Firm on a day-to-day basis. By not complying with the Firm's regulatory obligations in respect of her roles, the Respondent breached Principle 7 of the Principles.

<u>The Respondent's Case</u>

10.20 The Respondent denied allegations 1.1 and 1.2.

10.21 The Respondent submitted that there was no impediment to approval, or any conceivable reason for the Firm to knowingly defer submission of an FA2. Only a few months previously she had obtained, and delivered to the SRA, a certificate of good standing from the Chartered Institute of Legal Executives. There had been no event in the interim to change that position.

10.22 The Respondent submitted that the arrangement to become a Manager/Owner of the Firm was governed by a Service Agreement - Director (the "Agreement"). The agreement was signed by the Respondent in mid or around mid-February 2016.

10.23 Recital A of the Agreement unequivocally stated:

> "Subject to approval of the Practitioner by the Solicitors Regulation Authority as a manager and interest holder of the Company, the Company wishes to

> appoint the Practitioner as a Director of the Company and the Practitioner wishes to serve the Company in such capacity".

10.24 Section 1.1 of the Agreement defined the Commence Date as:

> "The day on which this Agreement, is to take effect which shall be immediately upon receipt of notice of authorisation of the Practitioner as a manager and interest holder by and from the Solicitors Regulation Authority."

10.25 The Respondent submitted that by virtue of the wording of Recital B of the Agreement, she would only become an interest holder and owner when those positions had received SRA approval: "The Parties have agreed the terms and conditions of the Director's appointment and remuneration as a director of the Company, and the Shares to be transferred or allotted to the Company in further consideration of (their) appointment and service as stated herein."

10.26 The Respondent explained that she received a partially completed FA2 with the draft Agreement, which she completed and provided to JD by no later than February 2016.

10.27 The Respondent understood that JD had contacted the SRA and been told that as the Respondent was a Fellow of CILEX and had been previously authorised by the SRA as a manager and owner (and COLP/COFA), she was already authorised. There was no reasonable cause for the Respondent to call into question his assertion that he had spoken to the SRA. The Respondent explained that she accepted the assurance provided to her by JD.

10.28 The Respondent submitted that between February 2016 and the end of the year prior to the SRA investigation, she had taken all reasonable steps to ensure all necessary forms had been submitted and that she had been approved as director and shareholder.

10.29 In evidence the Respondent referred to the email of 12 June 2015, which, it was explained, demonstrated that JD was aware of the process and was also illustrative of the Respondent's mindset at the time. As a non-solicitor, the Respondent was not able to sign the FA2, nor was she able to upload it to the SRA portal.

10.30 The Respondent referred to her communication with CILEx, in which she considered that she would have discussed the certificate of good standing.

10.31 JD had given the Respondent the impression that all was well following an enquiry by her. The Respondent believed that she only asked JD about this on one occasion. She had no reason to question him further. The Respondent considered that she had taken all reasonable steps and could not have done anything further to ensure her approval. The Respondent considered that it was inequitable and against all reason for her to be held responsible for her non-approval; it was JD that was responsible for that.

10.32 As to the suggestion that the Respondent could have checked the position on the SRA website, the Respondent questioned how often the website was updated. The Respondent asked the Tribunal to consider whether, in all the circumstances, she had acted reasonably in relying on the assurance of JD who was her superior and a solicitor of 20 years standing.

The Tribunal's Findings

10.33 The Tribunal found that the Respondent was by 13 April 2016 a manager of the Firm, and by 6 October 2016 the owner of the Firm. That this was the case was evident on the face of the documents obtained from Companies House. The Tribunal further found that neither of those roles had been approved by the Applicant. The Tribunal noted that the Respondent sought to rely on the provisions of the Applicant which deemed a person previously approved being deemed to be approved again. The Tribunal noted that those provisions were not in force at the material time, and were therefore not applicable to the Respondent.

10.34 The Tribunal found that the Respondent was required to obtain approval from the Applicant to be an owner and/or manager but that such approval had not been granted. As to her knowledge of the requirements:

- The matter had been considered by the Respondent and JD in a meeting of 21 December 2015 and had been specifically referred to in the minutes of that meeting.

- She had received specific advice on the point. The Respondent had relied on an email from IA of 13 January 2016. That email explained:

  > "Rule 8.6(a) only gives deemed authorisation to solicitors, REL and RFL. You therefore are required to apply for authorisation before appointment. I attach a copy of FA2 for that purpose, together with a simple cover from JD. The sooner that is submitted the better. You will note that your application is subject to the "suitability test"… Once you are approved as an manager/interest holder then you will be entitled to deemed approval as a CO as a lawyer, which will simply require advance notice to the SRA ...You will also have to disclose the share-holding that you are taking on approval as a manager/owner … With specific regard to the FA2 much of the detail thereon is personal and can easily be completed. I have noted indicative answers where necessary. You will need to get a certificate of good standing from the ILEX. Could you contact them immediately and arrange."

  The Tribunal considered that the email was clear as to the regulations and what the Respondent was required to do to obtain approval. The advice had been tendered to the Respondent prior to her appointment. In the circumstances, the Tribunal found that the Respondent was fully aware that both that she required approval and the steps that she was required to take.

- The Respondent had failed to become authorised as an owner/manager at WB. This had been specifically referred to by the Applicant when it considered her application to be the COLP and COFA of that firm on 9 June 2015. In its decision, the Applicant stated:

  > "The records held by Companies House indicate that Gillian Walker has been a director of the Applicant Firm since 5 September 2014, however the records held by the SRA list [DF] as the sole director. I therefore requested further clarification regarding the ownership of the firm.

> Within her email response of 8 June 2015 [the Respondent] advised that she holds 97% of shares within the Applicant Firm, with [DF] holding the remaining 3%.
> …..
>
> I am satisfied that the absence of an application for approval as a manager or owner was not due to dishonesty. Moreover the submission of this application as a manager and owner of the Applicant Firm has regularised the position and, therefore, the time without SRA approval will not adversely affect my decision. I would, however, advise [the Respondent] and the Applicant Firm to bear in mind Rule 8.6(a) SRA Authorisation Rules if anything changes in the future."

The Tribunal found that this notification made clear to the Respondent that she ought to have made an application for approval of her roles as owner and manager of WB.

10.35 The Respondent in her evidence stated that the approval, had it been received, would have been sent to JD. The Tribunal considered that whilst that may well have been the case, such approval would have been sent to the Firm. The Respondent also confirmed that she had made no enquiries of the Firm's HR department. The Tribunal accepted that it was for JD to sign the FA2, however it considered that it was the Respondent's responsibility to ensure that she had obtained the necessary approval, particularly in circumstances where she was aware that such approval was required. The Respondent stated that she had asked JD on one occasion whether things were proceeding as they ought to, to which JD explained that things were in hand. She made no further enquiry of him, nor did she make any enquiries of the Applicant. The Tribunal considered that it was incumbent on the Respondent to have made those enquiries. Whilst JD was culpable for his failure to send the FA2 form to the Applicant, the Respondent was culpable for her failure to ensure that she complied with the requirements of Rules 8.1 and 8.6 of the Authorisation Rules. The Tribunal found that in breaching those Rules, the Respondent had failed to comply with her legal and regulatory obligations in breach of Principle 7.

10.36 Accordingly the Tribunal found allegations 1.1 and 1.2 proved on the balance of probabilities.

11. **Allegation 1.3 - On 11 May 2017, she wrote a letter to a potential witness for a defendant tour company, which impliedly threatened to expose the witness to allegations of benefit fraud if she gave evidence in accordance with her statement; and in so doing breached one or more of Principles 1, 2 and 6 of the Principles.**

Allegation 1.4 – On 13 November 2017, she sent an email to her client, Person GW, enabling and/or encouraging him to report a potential witness to the benefit fraud helpline in order to discourage her from giving evidence for a defendant tour company; and in so doing she breached one or more of Principles 1, 2 and 6 of the Principles.

The Applicant's Case

11.1 The Firm acted on behalf of Person GW in respect of a gastric illness and ear infection suffered in Tunisia in August 2014. The defendant tour operator was Company T, represented by Kennedys Law LLP. The matter was duly litigated.

11.2 Kennedys obtained a statement from Person KR, who had been Person GW's girlfriend at the relevant time and who had accompanied him on holiday. Person KR would say that Person GW did not fall ill as alleged. Kennedys applied to rely on oral evidence from Person KR, as her statement had been served out of time.

11.3 On 11 May 2017, the Respondent wrote as a Director of the Firm to Person KR at a residential address in Cheshire and explained why Person GW objected to her giving oral evidence. The central passage read:

> "Additionally, we have reason to believe you have acted dishonestly or deliberately to claim benefits to which you were not entitled and as such you will be aware benefit fraud is a criminal offence. It is further believed you failed to inform the benefits Office as regards the change in your financial position when our client cohabited with you. Consequently, further investigations are taking place and as such your credibility will be seriously questioned if the Court permits you to give oral evidence.
>
> We trust you will consider matters very carefully in view of the allegation made against you."

11.4 On the same day, Kennedys also contacted the Respondent by email to raise concerns about her conduct in writing to the defence witness and to seek an explanation. Among other things, the partner invited the Respondent to "reconsider the tone and content of your communication with this third party". The Respondent responded to Kennedys in the following terms:

> "We would advise no such threat was intended and if this was the interpretation, we would apologise. Our concerns are whether there was a motive behind the statement, which would in in turn question [Person KR's] credibility."

11.5 On 12 May 2017, Kennedys referred the matter to the SRA.

11.6 Mr Mulchrone submitted that the Respondent's letter to the defence witness was, in all the circumstances, inappropriate. Firstly, the letter referred to Person KR having provided a statement. While it was said that there is "no property in a witness", she did not notify Kennedys that she would be writing to the witness and her letter to the witness did not attempt to obtain or clarify any point of evidence. Instead, it focused on extraneous matters of Person KR's benefit arrangements.

11.7 On an objective interpretation, the letter made an implied threat to expose Person KR to a serious allegation of wrongdoing (i.e. benefit fraud). Reference was made to benefit fraud being a criminal offence. The reference to "further investigations" taking place was potentially ominous and implied consequences for the recipient of the

letter. By telling Person KR that her "credibility will be seriously questioned if the Court permits you to give oral evidence" and by encouraging Person KR to "consider matters very carefully in view of the allegation made against you", the natural result of the Respondent's letter would have been to put pressure on the witness either to change her account or not to give evidence in court.

11.8 As the author of the letter, the Respondent must have intended for Person KR not to give evidence or to change her account. Mr Mulchrone submitted that if the Respondent wished to challenge the admissibility of the evidence or the credibility of a witness, then the correct way to do that was in submissions to the trial Judge, in cross-examination, or in correspondence with the defendant solicitors. By writing a letter directly to the witness in terms which implied a threat, the Respondent's actions risked either depriving the Court of potentially relevant evidence or leading the witness to change their account under pressure applied outside the court room.

11.9 By writing to a defendant's witness in this way, the Respondent breached Principle 1. A solicitor seeking to interfere with or intimidate a witness with the intention of causing them to change, or refuse to give, evidence in court proceedings was a clear example of a failure to uphold the proper administration of justice. The Respondent therefore breached Principle 1.

11.10 By writing to a defendant's witness in this way, the Respondent also failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. The standards of the profession included respecting and upholding due process in litigation and not doing anything without that process to deprive the Court of an opportunity to hear and test relevant evidence in the normal way. A lawyer acting with integrity could have raised their concerns with the other side or the Judge, or saved them for cross-examination, rather than writing to a witness at a residential address in terms which implied a threat. The Respondent therefore breached Principle 2.

11.11 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. The Respondent wrote as a solicitor to a lay witness in terms which, on an objective interpretation, threatened to expose her to a criminal investigation if she continued to give evidence in a trial. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a solicitor writing to a member of the public in this way. The Respondent therefore breached Principle 6.

11.12 As regards allegation 1.4, on 11 and 12 May 2017, the Respondent exchanged emails with JD in respect of the enquiry from Kennedys about her letter to Person KR. In the course of these exchanges, JD expressed a view that "being robust" was not bad conduct, although it was unclear whether or not he had seen the letter in question.

11.13 However, on 15 May 2017, the Respondent brought the correspondence with Kennedys to the attention of Person JB, who was a compliance consultant at the Firm. Person JB responded by email to give advice, among other things, that: "I clearly don't have the full picture here, but I would agree that the letter to the witness puts

you at conduct risk. It reads like a threat. I'm sure that wasn't your intention so you may wish to clarify with the witness."

11.14 The Respondent's email response, again on 15 May 2017, stated: "I was going to deal with conduct issues at the end of the trial as Kennedys have withheld information knowingly amongst other matters. I cannot see the SRA would take issue with this letter to a witness who is clearly non independent and has an axe to grind but thank you anyway".

11.15 Mr Mulchrone submitted that by 15 May 2017, the Respondent had been put on notice by her opponent solicitors and by the Firm's own compliance consultant that writing to the witness had put her at "conduct risk" in as much as the letter could be read as a threat. However, despite these warnings the Respondent returned to the issues of Person KR's evidence and a possible report to the authorities in an email which she sent to Person GW on 13 November 2017.

11.16 The email included a direct link to the webpage through which members of the public can report people suspected of benefit fraud. Read objectively, the natural effect of the email would have been to enable and encourage Person GW to report Person KR to the benefit fraud helpline in the hope that "if she knows that she is under investigation" this might make Person KR reconsider giving evidence for the defence. As the author of the email, the Respondent must have known that it could have had this effect (whether or not Person GW ultimately made a referral).

11.17 Although this communication was not sent directly by the Respondent to the witness (unlike the letter of 11 May 2017) the indirect effect could have been the same – i.e. depriving the Court of potentially relevant evidence and dissuading a witness from giving evidence by pressure applied outside the court room. The Respondent must have anticipated that the witness could remember the letter written to her by the Respondent in May, which she had chosen not to clarify, and this would be the context within which future developments might be viewed – i.e. the witness could have perceived that the implied threat was being carried out.

11.18 In her second EWW response, the Respondent has suggested that she was passing on information from a third party and this should be seen in the context of her own refusal to make a report to the helpline on behalf of Person GW. This, however, did not change the fact that she was providing him with information and means to make the report, and with an explicit link in the hope that Person KR would think again about helping the defence. By this point (if not before) the Respondent should have reflected on the views expressed to her by others and not taken the risk of repeating or exacerbating a conduct risk.

11.19 Mr Mulchrone submitted that by writing in terms which could have encouraged Person GW to use a referral to a benefit fraud helpline in order to dissuade Person KR from giving evidence in Court, the Respondent breached Principle 1. A solicitor seeking to interfere with or intimidate a witness with the intention of causing them to change, or refuse to give, evidence in court proceedings was a clear example of a failure to uphold the proper administration of justice. The Respondent therefore breached Principle 1.

11.20 By writing in such terms, the Respondent further failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. The standards of the profession included respecting and upholding due process in litigation and not doing anything without that process to deprive the Court of an opportunity to hear and test relevant evidence in the normal way. A solicitor acting with integrity would not have sent an email to her client in these terms. The Second Respondent therefore breached Principle 2.

11.21 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in her and in the provision of legal services. The Respondent had already written as a solicitor to a lay witness in terms which impliedly threatened to expose her to serious allegations if she gave evidence at trial. Letting Person KR know that she was subject to investigation could have had the effect of making good that threat. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a solicitor encouraging her client to take such steps. The Respondent therefore breached Principle 6.

The Respondent's Case

11.22 The Respondent denied allegations 1.3 and 1.4.

11.23 The Respondent submitted that the allegations were "a desperately imaginative and skewed interpretation of the facts and circumstances of the matter".

11.24 By way of background, GW brought a claim for gastroenteritis and an ear infection which he had incurred whilst on holiday with KR. After the holiday, GW ended the relationship with KR, and asked her to move out of his property. GW instructed the Firm that KR had threatened to make his life hell. She had, at her own instigation, volunteered a witness statement to Kennedys to the effect that Mr Wilson had suffered no illness and that GW's claim was fraudulent. GW stated that KR's statement was manifestly untrue. Kennedys sought to rely on KR's oral evidence; her statement having been served out of time.

11.25 GW discovered, and instructed the Firm, that KR had continued claiming benefits to which she was no longer entitled while living with him. The Respondent submitted that GW was perfectly entitled to report the fact, and potentially obligated to do so. GW, however, did not report KR.

11.26 The Respondent submitted that the issue of dishonesty and KR's threat to exact revenge on GW "ran to the very heart of the credibility of the evidence that she was proposing to give". The Respondent submitted that the Firm would have been perfectly entitled to raise it in cross-examination in court and, ambush KR with both the matter, and the pre-meditated improper motive which lay behind the evidence she was proposing to give. This, it was submitted, would have been a waste of the court's time, and led to unnecessary expense. It was appropriate for us to forewarn of the issue prior to proceedings.

11.27 The Respondent submitted that the letter was carefully worded to avoid any threat, and did not go beyond what was strictly necessary. The Respondent further submitted

that she failed to understand, and the Applicant had failed to plead with any particularity in the Rule 12 Statement, what protocols or conventions, or rules of civil procedure she had allegedly violated by doing so.

11.28 The Respondent submitted that an 'expressed intention' was completely different, grammatically speaking, from a 'threat' accompanied by an "if you do such and such a thing". The Firm was merely advising of its intention of doing so. The intention was not conditional. Had the matter gone to court, the issues would have been raised. The Respondent submitted that "whether it had the effect of discouraging the recipient is neither here nor there. It was not our expressed intention, rather the fact of her own alleged fraud (and improper motives) which she may have found discouraging".

11.29 As regards allegation 1.4, it was submitted that the Respondent was "perfectly at liberty to tender advice to a client when it is requested, and obliged (as a matter of trite law) to confirm such advice in writing". As a matter of policy of the utmost importance to all practitioners, lawyers should not be restrained, or intimidated, from doing so in their client's best interests by whatever the Applicant may edict on the matter, which was the attempted practical effect of the dogged investigation of this holiday sickness claim by the SRA at the time of the correspondence cited.

11.30 The Respondent submitted that she could not see how precisely GW had been enabled to do anything, as he was keenly aware of the issue. The Applicant had failed with any particularity whatsoever to argue to the contrary.

11.31 Given that GW was intent on reporting the matter, the Respondent failed to see precisely how an email to him confirming advice, encouraged him to take a course of action which he was intent on taking in any event. GW sought the Firm's advice on his position and he was provided with that advice. The Respondent submitted that the email had been taken out of the context of her conversations with GW. The email simply provided a summary of the main points of her advice.

11.32 The Respondent expressed her "surprise, on the bare face of it, that the Applicant, who has finite resources, should have devoted such a significantly proportion of them to so unworthy a cause as these specific allegations".

<u>The Tribunal's Findings</u>

11.33 The Tribunal noted that the Respondent did not deny that she was the author of the letter to KR. It was thus for the Tribunal to consider whether the complained of wording amounted to an implied threat. The Tribunal determined that that consideration was an objective one; whether or not KR considered the wording to be threatening was immaterial. Accordingly, no statement from KR was required. Indeed none had been submitted.

11.34 During cross-examination, the Respondent explained that having had sight of the statement from KR, she considered that it was full of a number of dishonest statements. The Tribunal considered that if the letter to KR was to warn her of matters that were likely to be raised against her in cross-examination at any hearing, the Respondent would have referred to those matters. Instead, the Respondent referred to potential criminal proceedings for benefit fraud, which bore no relevance

to her client's case. Further, the Respondent advised KR to "consider matters very carefully in view of the allegation made against you". The Tribunal found that there could be no other reason for writing in the terms that she did other than to attempt to persuade KR not to give evidence in the proceedings, and that if she did so, it was likely to result in her being subject to criminal proceedings for benefit fraud.

11.35 The Respondent, during cross-examination confirmed that she was aware that allegations of fraud could only be made where there was clear and cogent evidence. The only evidence she had was the assertion of her client. The Respondent had not provided any evidence of the alleged benefit fraud.

11.36 Having determined that the complained of wording contained an implied threat as alleged, the Tribunal considered whether the Respondent's conduct was also in breach of the Principles.

11.37 The Tribunal found that by impliedly threatening to expose KR to allegations of benefit fraud, the Respondent had sought to dissuade KR from giving evidence in the proceedings. In seeking to interfere with a witness in this way, the Respondent had failed, on the balance of probabilities, to uphold the administration of justice in breach of Principle 1.

11.38 Such conduct, it was found, was likely to undermine public trust in the Respondent and in the provision of legal services. Members of the public would not expect a lawyer to write to a witness in proceedings and impliedly threaten that if they were to give evidence against that lawyer's client, they would be exposing themselves to potential criminal proceedings in an attempt to dissuade that witness from giving evidence. Accordingly, the Tribunal found on the balance of probabilities that the Respondent's conduct was in breach of Principle 6.

11.39 The Tribunal considered that no lawyer acting with integrity would have written to KR in the terms that the Respondent had done. Indeed, Kennedys reported the conduct. Further, the Respondent was advised that by writing in those terms, the Respondent had put herself at conduct risk. Counsel, in her advice to GW, explained that one of the reasons she felt compelled to withdraw should GW continue to be represented by the Firm, was that she was concerned that the letter sent by the Respondent to KR had caused a conflict between the Firm and GW. The Tribunal further found that a solicitor acting with integrity would not seek to remove evidence from court proceedings by making an implied threat in the way that the Respondent did. Thus the Tribunal found that the Respondent's conduct was in breach of Principle 2.

11.40 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities.

11.41 As regards allegation 1.4, the Tribunal noted that following the correspondence from Kennedys, the Respondent consulted with JB. Whilst he did not have "the full picture", JB considered that the letter to KR put the Respondent at "conduct risk".

11.42 Therefore the Respondent was aware, the Tribunal determined, that her own compliance consultant considered that in writing to KR in the terms that she did, the

Respondent had put herself at "conduct risk". Notwithstanding this, the Respondent sent an email to her client dated 13 November 2017 which stated:

> "I have received a link from the agents we use to take statements. Please see email below from the agent.
>
> The suggestion was that you report her to the Benefit Fraud Helpline. This can be done anonymously if you prefer, but would at least get a process started and might, if she knows that she is under investigation, make her think twice about acting for the defence?"

11.43 The email also detailed the direct weblink for reports. During her evidence, the Respondent explained that she was simply passing information from a third party to her client, and that the email could not encourage her client to do something that he was already intent on doing.

11.44 The Tribunal did not find that the inclusion of the weblink in the email to GW enabled him to make the report, however, it was found that the email encouraged GW to report the matter so as to make KR "think twice" about giving evidence for the defence. The Tribunal found that having received the correspondence from Kennedys as well as advice from her own compliance consultant, the Respondent was on notice that sending such an email could also place her at "conduct risk".

11.45 The Tribunal found that in writing to her client in the way that she did, she had sought to dissuade KR from giving evidence in the proceedings. Such conduct, it was found, failed to uphold the proper administration of justice in breach of Principle 1. Members of the public would not expect a lawyer to seek to dissuade a Witness from giving evidence in the way that the Respondent did. Accordingly, the Tribunal found that the Respondent had failed to maintain the trust placed in her and in the provision of legal services in breach of Principle 6.

11.46 That such conduct lacked integrity in breach of Principle 2 was plain. A lawyer acting with integrity would not seek to prevent the Court from hearing evidence in proceedings by encouraging her client to make a report in order to dissuade a Witness from giving evidence.

11.47 Accordingly, the Tribunal found allegation 1.4 proved on the balance of probabilities.

12. **Allegation 1.5 - On or about 6 April 2017, she caused or allowed signed Parental Indemnity Forms to be sent to solicitors acting for Company J's insurers which were misleading in that they purported to accept settlement where no agreement had been reached between the parties; and in doing so she breached one or more of Principles 5 and 8 of the Principles.**

<u>The Applicant's Case</u>

12.1 The Firm acted in two holiday sickness claims against Company J: W & Ors and H & Ors. Company J's insurer was represented by Miles Fanning Legal Services Ltd ("Miles Fanning") and the two claims were duly forwarded to the solicitors. Witness

statements from two fee-earners at Miles Fanning were obtained on behalf of the SRA.

12.2 On 2 March 2017, a meeting was arranged between the Respondent, on behalf of the Firm, and two representatives of Miles Fanning. The purpose of this meeting was to discuss a list of open matters in which the Firm was acting for the claimant, and to explore options for settling these claims. The W and H claims were included on the list. Notes from the meeting were recorded on a spreadsheet. In respect of the W and H claims, the representatives from Miles Fanning made clear that discussions were "Without Prejudice" and subject to the client's instructions. The Respondent indicated that she understood this.

12.3 On 6 April 2017, a claims handler at Miles Fanning received two emails from Person SK at the Firm containing 8 Parental Indemnity Forms. These forms related to claimants in the W and H cases. The forms were on Company J's headed paper and therefore had not been sent out by Miles Fanning. On each form, the signatory purported to accept a sum of money from Company J on behalf of the minor in settlement of the claim. The figures cited on the forms corresponded to those discussed in the Without Prejudice meeting of 2 March 2017, as recorded on the spreadsheet.

12.4 Parental Indemnity Forms were a settlement form in respect of claims made on behalf of a minor. Such settlement forms were used by Company J in response to a direct customer complaint where the claimant did not have legal representation. They were rarely sent to a claimant with legal representation. Subsequently, in August 2017, Miles Fanning received the same Parental Indemnity Forms again, from another law firm which had taken over the W and H cases from the Firm. The matter was then investigated.

12.5 A review of the claims confirmed that there was no record at Company J of the documents ever having been sent out to the Firm. Company J also noticed a number of discrepancies between their template settlement form and the forms received from the Firm. Company J's IT department provided an annotated comparison of these documents, setting out the discrepancies in the text and layout. A Senior Claims Solicitor at Company J was concerned that the documents had been forged.

12.6 Signed Parental Indemnity Forms on Company J's headed paper being sent to Miles Fanning would have given the impression that the Firm's clients were accepting settlement with Company J. However, this was not the case, because discussions between the Firm and the representatives from Miles Fanning had concluded without any formal offers being made. The discussions had been Without Prejudice and pending instructions from the client. Therefore, the emails containing the forms were potentially misleading. They purported to settle a case where no agreement between the parties had been reached and they were misleading in that Miles Fanning could have accepted this implication without enquiry.

12.7 The Respondent was the only litigator working in the Firm on a day to day basis. She explained that Person SK (who sent the emails) was an administration assistant at the Firm. However, the Respondent had conduct of the matters, as demonstrated by her participation in the meeting with Miles Fanning on 2 March 2017. The Respondent

ought to have ensured that these documents were not sent out on behalf of the Firm. From her attendance at the meeting, she knew that the cases had not been settled. As the forms had not been sent out by Company J or Miles Fanning, a template must have been obtained or adapted from somewhere and completed with the Firm's clients' details. The forms were signed by the parents despite the fact that the claims had not been settled.

12.8 Mr Mulchrone submitted that by failing adequately to supervise Person SK, and to have effective oversight of the cases in her care, the Respondent failed to run her business or carry out her role in the business effectively, in breach of Principle 8 of the Principles. By allowing her clients to sign documents purporting to settle cases which were not in fact subject to agreement, and which were not settled, the Respondent failed to provide a proper standard of service to those clients, in breach of Principle 5.

The Respondent's Case

12.9 The Respondent denied allegation 1.5.

12.10 The Respondent submitted that this matter, having not been raised until the Rule 12 Statement, "scrapes the bottom of the Applicant's regulatory barrel".

12.11 The Respondent confirmed that she met with Miles Fanning and that agreement was reached on the settlement of a number of claims on a without prejudice basis.

12.12 The Respondent did not accept that beyond the meeting having been conducted on a without prejudice basis, Miles Fanning ever stated that they would have to get their insurer client's consent to pay the sum provisionally agreed.

12.13 The Respondent clarified that she caused the settlement to be brokered to the parents of the minors concerned and spoke to them on the phone explaining that the provisionally agreed offer was subject to written confirmation by both parties. Following that telephone conversation, the Respondent instructed SK to send a form to the parents on the basis of the agreed sum for their confirmed acceptance and signature, although not in the format in which SK chose to send it.

12.14 The Respondent noted that no allegations had been bought against SK nor had SK been required to provide a witness statement. The issue of potential forgery raised by the Applicant was "an absurdity", and it was "disingenuous" of Miles Fanning to suggest as much. Whatever the format adopted, the parents concerned accepted the offer, and signified their acceptance on an informed basis, knowing that it had been made "without prejudice", and the issues raised were irrelevant to that.

12.15 The Respondent explained that she did not have personal conduct of the client matter referenced, and the Applicant has not pleaded to the contrary. SK, who did have conduct, was a Paralegal who was experienced in holiday sickness claims.

12.16 The Respondent further avowed that the Firm had reasonable supervision procedures in place at the relevant time and adhered to those; the Applicant had manifestly failed in any particularity to plead to the contrary. The Respondent submitted that "it would

be totally impractical for any practitioner to review every single action which a fee-earner under their charge took". Whilst the Respondent was not the author of, nor authorised the use of, the particular format which SK chose to adopt, it was submitted that as it truly reflected what has been agreed at the meeting, origination is a matter of irrelevancy, and pedantic.

The Tribunal's Findings

12.17 The Respondent had not required any of the Applicant's witnesses as regards allegation 1.5 to attend for cross-examination. She highlighted that there were no statements from others who were present at the meeting and also that there was no statement from SK. Further, she submitted that the Applicant had failed to provide any evidence as regards her supervision or the processes in place at the Firm.

12.18 In her evidence the Respondent had suggested both that the mistake had been made by SK and that the Parental Indemnity Forms were not misleading as the case had settled. As regards settlement, the Tribunal considered that if, as the Respondent stated in cross-examination, she did not accept the contents of those statements, the Respondent ought to have required the witnesses to give evidence so that she could put the 'plainly wrong' contents of those statements to those witnesses. The Tribunal accepted the uncontested evidence of the Applicant's witnesses, and found that the claims had not settled. Indeed, there had been further communication between the Firm and Miles Fanning which, had the cases been settled, would not have been necessary.

12.19 The Respondent also submitted that as SK had conduct, the clients were not her clients, but those of SK. The Tribunal found that the clients were the clients of the Firm, and as the owner and director, the clients were the Respondent's clients.

12.20 As the only lawyer at the Firm supervising the staff, the Respondent was responsible for the work they sent out on behalf of the Firm. The Tribunal did not find that the Respondent (or SK) had deliberately attempted to mislead, however, allowing the completed forms to be sent out, when no settlement had in fact been reached, the Respondent had not exercised appropriate supervision over the case. In so failing, the Respondent had failed to run her business or carry out her role in the business effectively, in breach of Principle 8. Further, in allowing clients to sign documents in purported settlement of claims that were not settled, the Respondent failed to provide a proper standard of service in breach of Principle 5.

12.21 Accordingly, the Tribunal found allegation 1.5 proved on the balance of probabilities.

13. **Allegation 1.6 - Between 5 September 2016 and 24 May 2017, she failed properly to inform the Firm's clients of the details of its fee sharing arrangements; and in so doing failed to achieve one or more of Outcomes 9.4 and/or 9.5 of the Code and breached Principle 5 of the Principles**

The Applicant's Case

13.1 Outcome (9.4) required that: "clients are informed of any financial or other interest which an introducer has in referring the client to you". Outcome (9.5) required that: "clients are informed of any fee sharing arrangement that is relevant to their matter".

13.2 In the course of reviewing a number of client files, the FIO identified documentation referred to as a "Client Care Pack". The FIO took copies of five client care pack documents from different client matters, the dates of which ranged from 5 September 2016 to 27 October 2016. The FIO then reviewed the same document on a further seventeen client files without making a copy, the dates of which ranged from 2 September 2016 to 9 January 2017. Within the section on CFA Terms and Conditions was a heading "Recommendations". This section advised the client that they "may have been recommended to the Firm by a third party" and that under SRA rules the Firm was required to provide information about that arrangement. The document went on to say: "In this case we may pay an initial sum not exceeding £250.00 exclusive of VAT. More specific information will be provided on request."

13.3 The wording of the notification did not refer to any profit sharing arrangements or give any percentage figures for the same. The name of the introducer was not given. By making a limited reference to "an initial sum" the Terms and Conditions were potentially misleading by omission, because they painted an incomplete picture of the Firm's arrangements. The document left open the possibility of more information being provided "on request", but this did not displace the duty on the Respondent to achieve the Outcomes.

13.4 The example client care pack referred to by the FIO was dated 5 September 2016. By this point, the Respondent was a director of the company and running the Firm on a day to day basis. She was responsible for corresponding with clients and was named on the client care pack. While JD was the COLP and had previously been the sole manager, he did not run client cases.

13.5 The notification given on the client care pack did not effectively inform clients of the introducers' interests or the fee sharing agreements in place. Accordingly, the Respondent failed to achieve Outcomes 9.4 and 9.5. To the extent that clients were entitled to this information and were not given it, the Respondent also failed to provide a proper standard of service to her clients, in breach of Principle 5.

The Respondent's Case

13.6 The Respondent denied allegation 1.6.

13.7 The Respondent submitted that she had neither drafted nor approved the actual format and content of the Client Care Pack. This had been created by JD, who had already admitted his misconduct in this regard. In pursuing this allegation against her, the Applicant was attempting to have "two bites of the cherry". She was neither the COLP nor the COFA during the time that the incorrect information was being sent to clients; those failures lay with the COLP and COFA.

The Tribunal's Findings

13.8 The Tribunal found, and it was not disputed, that the notification given on the client care pack did not effectively inform clients of the introducers' interests or the fee sharing agreements in place.

13.9 The Tribunal did not find that the Applicant was not entitled to bring allegation 1.6 against the Respondent on the basis that JD had admitted his misconduct. The fact that JD had admitted culpability did not mean that the Respondent could not also be culpable. The Tribunal determined that as a director and manager at the Firm, the Respondent was responsible for ensuring that documentation that was sent to clients was compliant with the Rules. This was the case whether or not those documents had been created by her.

13.10 The Tribunal found that the Respondent had failed to achieve the Outcomes as alleged, and that clients had not been provided with a proper standard of service in breach of Principle 5. Accordingly, the Tribunal found allegation 1.6 proved on the balance of probabilities.

Previous Disciplinary Matters

14. None.

Mitigation

15. The Respondent did not consider that it was undesirable for her to work in the profession. She was currently working as a consultant for a Firm certifying documents. She also assisted in bankruptcy matters. The work she was undertaking did not require, and did not provide her with rights of audience before a court. The imposition of a Section 43 Order would be disproportionate and would mean that she was no longer able to work. The loss of a single days work would have a detrimental effect on the Respondent and her family.

16. There had been no dishonesty alleged against her, and there had been no intention to commit misconduct or to cause harm either to clients or to the reputation of the profession. The Respondent submitted that she had no intention to work within a firm again, and simply wanted to be able to continue working as a consultant. She had not worked in a firm for the last two years; the work that she had undertaken for firms had been highly praised.

Sanction

17. The Tribunal had regard to the Guidance Note on Sanctions (7th Edition – November 2019). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

18. As regards allegations 1.1, 1.2, 1.5 and 1.6, the Tribunal found that the Respondent's misconduct was by acts of omission. Those actions were not planned. As regards 1.3

and 1.4, the Tribunal found the Respondent was motivated by her consideration that KR had been dishonest in the statement provided to Kennedys and her threat to make GW's life difficult. The Tribunal determined that the Respondent's "passion" in the defence of her client had crossed the line into misconduct. Her actions were planned and considered. Having been warned of the conduct risk posed by her letter to KR, the Respondent then sent the email to her client which encouraged him to report KR in order to discourage KR from giving evidence. The Respondent was an experienced legal executive. Her conduct had caused harm to GW who, as a result of the Respondent's misconduct, had to transfer his case away from the Firm in order to retain instructed counsel. In breaching Principle 1, the Respondent had also caused harm to the reputation of the profession. Maintaining the rule of law and the administration of justice was fundamental for any legal professional.

19. Her misconduct as regards allegations 1.1 and 1.2 was aggravated by the fact that she had, whilst at WB, failed to obtain the relevant approval. Despite the advice she sought and received, she still failed to comply with her regulatory obligations. That misconduct continued throughout her directorship and ownership of the Firm. The letter to KR and email to her client was a deliberate attempt by the Respondent to discourage KR from giving evidence. The Tribunal found that the Respondent was in material breach of her obligation to protect the public and the reputation of the profession. In mitigation, the Respondent had an unblemished record and had cooperated with the Applicant throughout the investigation.

20. The Tribunal considered the appropriate sanction. The Tribunal's powers as regards a non-admitted person were:

- an order directing payment of an unlimited financial penalty payable to HM Treasury.
- an order requiring the SRA to consider taking such steps as the Tribunal may specify in relation to the individual.
- if the individual is not a solicitor, a Section 43(2) Order.
- an order requiring the SRA to refer to an appropriate regulator any matter relating to the conduct of that employee.

21. The Tribunal did not consider (and indeed the Applicant did not request) that a financial penalty was appropriate or proportionate to the Respondent's misconduct. The Tribunal determined that given all the circumstances and the nature of the Respondent's misconduct, it was appropriate and proportionate to make the Respondent subject to an order under Section 43 of the Solicitors Act 1974. Such an order was regulatory and did not prevent the Respondent from working within the profession; it required the Firm who intended to employ the Respondent to seek permission from the SRA.

Costs

22. Mr Mulchrone applied for costs in the sum of £34,253.00. This included investigation costs of £5,153.00 and legal costs inclusive of VAT of £29,100. Mr Mulchrone

submitted that the Applicant had considered all costs that related solely to JD and removed those from the costs claimed. Whilst the costs claimed were under a fixed fee, the notional hourly rate was £77 per hour, which, it was submitted, was reasonable.

23. The Respondent referred the Tribunal to her statement of means. The Respondent explained that her financial position was not strong. She resided in rented accommodation and was a single parent following her divorce. Her elderly father now resided in the former matrimonial home in which she held a modest beneficial interest. She was still responsible for paying the mortgage on that property. The Respondent referred to the costs claimed by the Applicant for the preparation of the statement of GW which was unsigned and upon which the Applicant had not relied.

24. The Tribunal noted that the Applicant had detailed 14.8 hours in the preparation of that statement. Even if that time were to be deducted from the Applicant's claim for costs, given it was a fixed fee, it would not affect the overall claim. Removing that time would alter the notional hourly rate so that it was £81 per hour. The Tribunal considered that even amended, the notional hourly rate was reasonable, as was the time taken by the Applicant to consider, prepare and present the matter.

25. The Tribunal thus found that the Applicant was entitled to its costs in full, those costs being entirely reasonable in all the circumstances. The Tribunal considered the Respondent's means and the immediate reduction in her income given the sanction imposed. The Tribunal considered that it was appropriate to make a significant reduction to the costs ordered so as to take account of the Respondent's financial circumstances. The Tribunal considered that in light of her means, an order for a contribution to the costs of the Applicant in the sum of £15,000 was fair and proportionate.

Statement of Full Order

26. The Tribunal Ordered that as from 17 December 2020 except in accordance with Law Society permission:-

    (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Gillian Margaret Walker;

    (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Gillian Margaret Walker;

    (iii) no recognised body shall employ or remunerate the said Gillian Margaret Walker;

    (iv) no manager or employee of a recognised body shall employ or remunerate the said Gillian Margaret Walker in connection with the business of that body;

    (v) no recognised body or manager or employee of such a body shall permit the said Gillian Margaret Walker to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Gillian Margaret Walker to have an interest in the body;

And the Tribunal further Ordered that the said Gillian Margaret Walker do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

Dated this 6th day of January 2021
On behalf of the Tribunal

J C Chesterton
Chair