

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12114-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MATTHEW SMITH

Respondent

Before:

Mr D Green (in the chair)

Mr P S L Housego

Dr A Richards

Date of Hearing: 28 June 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent made in a Rule 12 Statement by the Solicitors Regulation Authority (“SRA”) were that while in practice as a Solicitor at Reeds Solicitors Ltd (“the Firm”) he:
 - 1.1 Between 30 June 2016 and 30 April 2018, submitted inappropriate expense claims to the Firm for reimbursement of mileage and car parking expenses in relation to any or all of the clients and dates of visits set out in Schedule A when visits to those clients had not taken place and in doing so breached Principles 2 and 6 of the 2011 Principles ("the Principles").
 - 1.2 Between approximately 30 June 2016 and 30 April 2018, created inaccurate attendance notes for prison visits, including recording time and disbursements, in relation to any or all of the clients and dates of visits set out in Schedule A when he had not attended upon those clients on those dates and in doing so breached Principles 2 and 6 of the Principles.
2. In addition, Allegations 1.1 and 1.2 above were advanced on the basis that the Respondent’s conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct but was not an essential ingredient in proving the allegations.
3. In the alternative to dishonesty, Allegations 1.1 and 1.2 were advanced on the basis that the Respondent’s conduct was reckless. Recklessness was alleged as an aggravating feature of the Respondent’s misconduct but is not an essential ingredient in proving the allegations.
4. The Respondent admitted allegations 1.1 and 1.2. The Respondent also admitted that his conduct was reckless. The Respondent denied that his conduct was dishonest. The Respondent agreed that the appropriate sanction in this matter was for him to be struck off the Roll. The Respondent also undertook not to reapply for admission to the Roll. The Applicant considered that given his admissions and proposed sanction, it was not proportionate to pursue the allegation of dishonesty.

Documents

5. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit LJF1 dated 11 August 2020
 - Statement of Agreed Facts and Outcome dated 25 June 2021

Background

6. The Respondent was admitted to the Roll in February 2013 and remained on the Roll. He held a current practising certificate free from conditions. At the material time, the Respondent was a Solicitor in the Firm and was working as the joint head of the Prison Law Department. The Respondent has since left the Firm, having been dismissed from

his role by the Firm following an investigation into the matters. The Respondent was working as a solicitor at another firm of solicitors.

Application for the matter to be resolved by way of Agreed Outcome

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

8. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
10. The Tribunal considered the Guidance Note on Sanction (8th Edition, December 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal found that the Respondent's conduct was in breach of the integrity, probity and trustworthiness expected of solicitors. It found the Respondent entirely culpable for his misconduct, which the Tribunal found was extremely serious. The Tribunal noted that the Respondent's conduct, whilst relating to monies, did not relate to client monies. The Tribunal determined that the nature of the Respondent's misconduct and the length of time over which it had occurred was such that the proportionate sanction was to strike the Respondent from the Roll of the solicitors. The Tribunal agreed with the parties' submissions that it would be disproportionate to proceed to a substantive hearing given the admissions made and the agreed sanction. The sanction proposed adequately protected the public and the reputation of the profession. Accordingly, the Tribunal granted the application for the matter to be dealt with by way of an Agreed Outcome.

Costs

11. The parties agreed costs in the sum of £15,000. The Tribunal considered those costs to be appropriate and proportionate. Accordingly, the Tribunal ordered costs be paid by the Respondent in the agreed amount.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, MATTHEW SMITH, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.

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

A handwritten signature in black ink, consisting of a series of loops and a final upward stroke.

D Green
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
06 JUL 2021

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

- and -

MATTHEW SMITH (474658)

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By an Application and statement made by Lyndsey Jayne Farrell on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 10 August 2020, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made standard directions on 14 August 2020. There is a substantive hearing listed for 26 to 30 July 2021.
2. The Respondent is prepared to make admissions to all Allegations in the Rule 12 Statement, as set out in this document, save for the allegation of dishonesty (Allegation 2).

Admissions

3. The Respondent admits that while in practice as a Solicitor at Reeds Solicitors Ltd ("the Firm") he:
 - 1.1 Between 30 June 2016 and 30 April 2018, submitted inappropriate expense claims to the Firm for reimbursement of mileage and car parking expenses in relation to any or all of the clients and dates of visits set out in Schedule A when visits to those clients

had not taken place and in doing so breached Principles 2 and 6 of the 2011 Principles (“the Principles”).

- 1.2 Between approximately 30 June 2016 and 30 April 2018, created inaccurate attendance notes for prison visits, including recording time and disbursements, in relation to any or all of the clients and dates of visits set out in Schedule A when he had not attended upon those clients on those dates and in doing so breached Principles 2 and 6 of the 2011 Principles (“the Principles”).
4. The Respondent further admits that his conduct as set out at allegations 1.1 and 1.2 was reckless (Allegation 3).
5. An allegation of dishonesty was made in the Rule 12 Statement in relation to these allegations and was certified by the Tribunal.
6. However, on the basis of the full admissions to all allegations, other than dishonesty, and on the basis that the Respondent agrees to be struck off the roll and undertakes not to reapply, the SRA considers that it is not proportionate to pursue the allegation of dishonesty.
7. The SRA is therefore satisfied that the admissions and outcome adequately meet the public interest having regard to the overall gravity of the matters alleged.

Agreed Facts

Professional details

8. The Respondent, was admitted to the Roll on 1 February 2013 and remains on the Roll. He holds a current practising certificate free from conditions.
9. At the material time, the Respondent was a Solicitor in the Firm and was working as the joint head of the Prison Law Department. The Respondent has since left the Firm, having been dismissed from his role by the Firm following its investigation into the matters set out in this Statement. The Respondent is now a solicitor at another firm of solicitors.

Background

10. The Respondent’s conduct was reported to the SRA by the Firm on 3 September 2018 (**LJF1 p774-779**).
11. At the material time the Respondent was employed as a Solicitor and joint head in the Prison Law Department (the ‘Department’) in the Firm (**LJF1 p776**). The Respondent’s

main role related to the provision of prison law services to clients and the majority of these were publicly funded by the Legal Aid Agency ('LAA') (LJF1 p1).

12. In order to claim the incurred expense or disbursement in carrying out his role, the Respondent was required to record the attendance and expenses on the digital system by way of an attendance note and to submit a separate expense claim using an Excel spreadsheet (the 'Spreadsheet') (LJF1 p6). The Spreadsheet required the client name, matter number, value of expense and information as to what the expense related (LJF1 p6).
13. On 22 May 2018 Ms M (the Respondent's co-head of the Prison Law Department) identified concerns regarding the Respondent's time recording and expense claims where it appeared that the Respondent had prepared attendance notes, and submitted expense claims, relating to attendances on clients that had not in fact taken place (LJF1 p 1 and 542). Ms M raised her concerns to the Practice Manager and conducted a further investigation (LJF1 p542).
14. The Applicant refers to the Rule 12 which sets out how the attendance notes and expense claims were generated and the explanation for Schedules A and B to the Rule 12 document.
15. In summary, the Respondent's position from his responses when the matter was investigated by the Firm and also in correspondence with the SRA was as follows:-
 - 15.1 The Respondent accepted that he did not in fact attend the clients on the instances found, although in some instances he stated that he made the journey, or partially made the journey, before the visited was cancelled or aborted for different reasons.
 - 15.2 He indicated that this arose due to errors and mistakes on his part and was not dishonest. He stated that he created a spreadsheet at the beginning of each month as a monthly planner, into which he inserted planned or intended visits to clients, which he then used to base his expense claims on at the end of the month/beginning of the following month. If visits were cancelled, the spreadsheet might not have been updated to reflect this which could have resulted in expenses being claimed for visits that had not in fact taken place.
 - 15.3 As a result, the Respondent asserted that the claiming of expenses in relation to visits that did not take place was either in error, or in fact justified if the travel to the prison had happened without the visit being successful, and was not dishonest.
16. The Applicant's case as set out in the Rule 12 document is that the expense claims for which attendance notes were created to justify or support those claims, were inaccurate and improper in that the Respondent claimed expenses for visits which had not in fact taken place, for his own financial benefit. The timing and content of the attendance notes and expenses claims indicate that at the time of drafting those attendance notes and

submitting the expenses claims, the Respondent would have been aware that he had not in fact attended on those clients.

17. The Applicant whilst not withdrawing the allegation of dishonesty, does not pursue it on grounds of proportionality and also acceptability of the sanction proposed in this document, however that such conduct was reckless is admitted by the Respondent.

Client A

18. The Respondent submitted an expense claim for visiting Client A at HMP Mount on 19 February 2018 (**LJF1 p72**). The prison confirmed to Ms M that the visit was cancelled by the Respondent on the morning of 19 February 2018 (**LJF1 p120-121**).
19. The Respondent created an attendance note on 19 February 2018 for the visit said to have taken place that day. The attendance note states "*MPS engaged in meeting with client ahead of hearing*" (**LJF1 p118**). As part of this attendance note, the Respondent recorded his time as 1 hour 48 minutes of travel, 30 minutes of waiting and 2 hours attendance (**LJF1 p119**). He also recorded a disbursement of £33.30 for his travel by mileage which was subsequently claimed in his expense claim for February 2018, as set out above. The system shows that the attendance note was 'transcribed by' the Respondent (under his fee earner reference 'WS') at 16:04 on 19 February 2018 (**LJF1 page 118-119**).
20. Mr R exhibits an email sent by the Respondent to Client A at 9:42:34 on 19 February 2018 which stated that he had cancelled the visit for that date (**LJF1 p122**).
21. At the investigation meeting on 1 June 2018, when asked about the entry for this client having been made on 19 February 2018, the Respondent was unable to provide any explanation or account for it, but accepted that there had been no visit to the client (**LJF1 p552-553**).
22. In the disciplinary meeting of 12 June 2018 when asked by Mr R "*on this case, the time recording was done in the afternoon after you didn't attend in the morning. The struggle I have, regardless of what mind-set I was in, if I was sat there thinking about the time recording got the visit I didn't go in the morning and then did a claim on LF?*", the Respondent is recorded as having responded "*I am looking at this now and I struggle to understand it. I can't explain what was going on*" (**LJF1 p435**).
23. In the Respondent's response to the Applicant of 2 December 2019, this client is given as an example of the Respondent's approach to the matters where, to the best of his knowledge and belief, the visits would have been booked and there would have been a real and genuine attempt made to attend the visit. For this matter it is explained that the Respondent made the journey but called the prison at 8:30 am "for reasons he cannot now recall" (**LJF1 p805**).

24. At the time of creating and writing the attendance note at 16:04 on 19 February 2018, the Respondent would have known that he had not in fact attended on the client that morning and yet he created the attendance note and recorded time and expenses as if the visit had been effective, recording 30 minutes of waiting time and 2 hours of attendance. The attendance note thus does not refer to an aborted journey, or the reason why the visit had been cancelled. The expenses were subsequently claimed in his February expenses claim.

Client B

25. The Respondent claimed expenses for visiting this client at HMP Warren Hill on 28 March 2018 (**LJF1 p73**). The prison service confirmed to Ms M that they had no record of a visit booked for 28 March 2018 and later confirmed that the Respondent had not attended at all between 7 December 2017 and 22 May 2018 (**LJF1 p130-132**).

26. The Respondent created an attendance note on 9:28 on 3 April 2018 in respect of attendance on this client on 28 March 2018 stating “*engaged in attending warren hill to meet with client. See notes*” (**LJF1 p128**). The Respondent recorded 2 hours of travel time, 30 minutes for waiting and 2 hours attendance on the client. He also recorded a disbursement of £102.60 for mileage (**LJF1 p129**). A corresponding entry was not entered into the Respondent’s diary (**LJF1 p319**).

27. The Respondent wrote to Client B on 23 March 2018 to advise that an Oral Hearing date had not been listed and that he would continue to chase the prison for a date. There is no reference to a visit scheduled to take place in 5 days from the date of that letter (**LJF1 p133**).

28. At the Investigation Meeting of 1 June 2018, the Respondent does not explain why he claimed for a visit and created an attendance note for the attendance on 28 March 2018. The Respondent explains that the client was going to pay privately and had been his client for 3-4 years. In conclusion he states – “*So same issues as before*”, which it is understood refers to the Respondent’s general explanation of basing his expense claims on what was set out in his monthly spreadsheet (**LJF1 p557**).

29. At the Disciplinary Meeting of 12 June 2018, the Respondent informed Mr R that he would have been going to see this client but his hearing fell during the period that the Respondent was on annual leave so he had handed his files over to Ms M and that he wouldn’t have gone to visit the client as Ms M would be seeing him instead (**LJF1 p436**). The Respondent does not explain why he claimed for a visit and created an attendance note. Within his letter on 23 March 2018 he notes that a hearing had not been listed (**LJF1 p133**).

30. When creating the attendance note on 3 April 2018, to enable a corresponding expenses claim, for a visit on 28 March 2018, just six days after the purported visit, the Respondent would have known that he had not in fact visited the client on the date in question and yet

he recorded an attendance note and inserted times for travel, waiting and attendance, as well as detailing the expense for the mileage.

31. In addition, at the time of creating the attendance note on 3 April 2018 for a visit on 28 March 2018, the Respondent must have been aware of the simple fact that he had not attended on this client just six days before, but also that he had not attended on this client at all between 7 December 2017 and 22 May 2018.
32. There is also the fact that the Respondent had sent letters to the client only shortly before the purported visit indicating that an oral hearing had not yet been listed and not referring to the forthcoming visit on 28th March 2018, which he must have been aware of on 3 April 2018 when entering an attendance note into the system for a visit on this client.

Client C

33. The Respondent claimed expenses for visiting Client C at HMP Berwyn on 23 February 2018 in his expense claim for February 2018 (**LJF1 p72**).
34. HMP Berwyn prison confirmed to Ms M that the Respondent had never in fact attended the prison at all and that he was not on the system as an approved visitor (**LJF1 p147-148**). A letter sent by the Respondent to the client at HMP Berwyn on 7 March 2018 contains no reference to a visit on 23 February 2018 (**LJF1 p149**).
35. An attendance note for a visit on 23 February 2018 was created by the Respondent on 28 February 2018 at 11:28 containing no information in respect of the attendance (**LJF1 p145**). The Respondent also recorded travel time of 2 hours and 1 hour 30 minutes of attendance, as well as a disbursement of £120.60 for travel by mileage (**LJF1 p146**). The Respondent's diary contained no entry for a visit to this client on this date. In fact the diary showed that he had an appointment to see a different client (**LJF1 p144**). A letter sent by the Respondent to the client at HMP Berwyn on 7 March 2018 contains no reference to a visit on 23 February 2018 (**LJF1 p149**).
36. At the investigation meeting on 1 June 2018 the Respondent accepted that a visit had not taken place. He informed Mr M that Client C was at HMP Erlestoke and transferred to HMP Berwyn. He explained that he planned to see him but that he was placed in segregation and there was talk of moving him (**LJF1 p553-554**). The Respondent stated that the client indicated to him that the transfer was going to be any day, so he did not go to see him. The Respondent stated that the cause of this claim for a visit which had not in fact taken place was the issue of him filling the spreadsheet out at the beginning of the month and using that to base his expense claim on. He accepted that he had input the attendance note on to the system on 28 February 2018, but that there had been no visit to the client.
37. At the disciplinary meeting on 12 June 2018, the Respondent stated that at the beginning of the month the client had been transferred a few times and at the time of booking a visit

he had had a call to say that the client was being transferred and so he didn't book a visit in case he wasn't at that prison (**LJF1 p436**). The letter to Client C on 7 March 2018 does not refer to a transfer and indicates that information is awaited regarding a parole hearing (**LJF1 p149**). When asked by Mr R *"But then a few days later you recorded 268 miles, that's a lot and I would have thought you would have remembered that trip?"*, (**LJF1 p436**) the Respondent stated that he had got his new car in January and had already done 11 thousand miles, that he did a lot of miles and that he could forget what he has done. When asked *"Surely you would have known a few days later you didn't attend?"*, the Respondent stated *"If I wasn't working from home I would have been forced to talk to someone because they would have asked, or it would have come up in a conversation. Working from home is not a benefit, I thought it was.... [I] have completely detached myself from everyone"* (**LJF1 p437**).

38. In the Respondent's response of 2 December 2019, the Respondent states that to the best of his recollection he visited this client on over four occasions at HMP Erlestoke (**LJF1 p806**). The client moved to HMP Berwyn around the time of the February 2018 visit and states that he cannot recall whether the visit was aborted or ineffective on arrival but that he recalled travelling to see his parents who live in Gloucestershire, which was supportive of the journey being made. The time and expense claim was therefore legitimate given that the journey had been made (**LJF1 p806**).
39. The Respondent created an attendance note, including precise times for 1 hour 30 minutes of attendance on the client and mileage, relating to a purported visit to a client just 5 days before when he would have known that he had not attended on that client on that date and had in fact not even ever attended that particular prison. The Respondent accepted at the meeting on 1 June 2018 that a visit had not taken place and so it does not follow that the Respondent would have travelled to the prison for a visit which had not been booked.

Client D

40. The Respondent claimed expenses for visiting this client at HMP Winchester on 20 November 2017 in his expense claim for November 2017 (**LJF1 p69**). HMP Winchester prison confirmed to Ms M by telephone on 6 June 2018 that there was no visit recorded for Client D in November 2017 (**LJF1 p154**).
41. An attendance note was created for a visit on this client on 20 November 2017, the attendance note having been created at 10:10 on 20 November 2017 which stated *"MPS engaged in attending prison to discuss hearing – see notes – agreed to defer"* (**LJF1 p152**).
42. On 20 November 2017 the Respondent sent an email to the Parole Board in relation to Client D at 10:04am (**LJF1 p155-157**). The Respondent wrote to Client D by letter on 29 November 2017 and makes no reference to a visit in this letter, and states *'further to the above and our telephone conversation last week'* (**LJF1 p158**).

43. There were no other notes were recorded on the system in relation to this visit (**LJF1 p17**). The Respondent also recorded 2 hours of travel time, 24 minutes for waiting and 2 hours for attendance, and a disbursement of £82.80 for his travel (**LJF1 p153**). The Respondent's diary indicated an appointment at HMP Littlehey between 9am and 12pm in relation to a different client (**LJF1 p318**).
44. In the response dated 2 December 2019, the Respondent states that he recalls attending HMP Winchester on four or five occasions during 2017/2018 and that he never had an effective visit for various reasons (**LJF1 p806**).
45. Given the timing of the creation of the attendance note, at the time of creating that attendance note the Respondent must have known that he had not, and was not going to be, visiting the client that day. This is supported by the other correspondence around the timing of the attendance note and the Respondent's diary.

Client E

46. The Respondent claimed expenses for visiting this client at HMP Leyhill on 19 January 2018 in his expense claim for January 2018 (**LJF1 p71**). HMP Leyhill prison confirmed to Ms M that the Respondent did not visit Client E on 19 January 2018 (**LJF1 p164-165**).
47. An attendance note was created on 20 January 2018 at 12:44 by the Respondent for a visit on this client on 19 January 2018, stating "*MPS engaged in meeting with client ahead of new OH date. See notes*" (**LJF1 p162**). No other notes were recorded on the system in respect of this attendance. The Respondent also recorded time for travel of 2 hours, 12 minutes waiting and 1 hour 30 of attendance, and a disbursement of £44.55 for travel (**LJF1 p163**). The Respondent's diary contained an entry for the Respondent to visit this client and another client at HMP Leyhill on this date (**LJF1 p315**).
48. The Respondent wrote to Client E on 15 January 2018 in response to a letter he had received on 9 January 2018. There is no reference to a visit taking place in 4 days' time at that point and the Respondent provides advice within this letter 'ahead of the Oral Hearing' on 2 February 2018. The Respondent ends his letter by stating '*I look forward to hearing from you*'. (**LJF1 p166-167**). The Respondent then wrote to Client E on 6 February following his attendance before the Parole Board on 2 February 2018 (**LJF1 p168-169**).
49. No response has been provided by the Respondent specifically in relation to this client.
50. The Respondent created an attendance note the day after the purported visit, which he must have known had not in fact taken place. Correspondence to the client from both before and after the purported visit makes no reference to any visit and on 20 January 2018. When creating an attendance note with some information and recording specific times, the Respondent must have been aware that he had written to the client just five days before and must have therefore been aware of the general status of the file and stage reached in respect of this client.

Client F

51. The Respondent claimed expenses for attending upon Client F at HMP Highpoint on 8 December 2016 (**LJF1 page 58**), 18 April 2017 (**LJF1 p62**) and 22 August 2017 (**LJF1 p66**). The Respondent did not claim expenses for an attendance on 30 June 2016 within his June expense claim (**LJF1 p64**).
52. The prison service confirmed to Ms M that the Respondent had booked visits to this client on 30 June 2016, 8 December 2016, 18 April 2017 and 22 August 2017 but that all of those visits were cancelled (**LJF1 p171-173**).

The Attendance note – 30 June 2016

53. An attendance note created by the Respondent on 30 June 2016 at 15:38 stated “*MPS engaged in attending HMP Highpoint to discuss recent events at Parole Hearing and new charges that are due before the courts shortly. Client confirms he will be pleading NG. He knows he has a new OM and is happy about this. Client does not want hearing to go ahead until he has been acquitted. For more notes please see attached*” (**LJF1 p176**). No other notes were recorded on the system in respect of the attendance (**LJF1 p20**). The Respondent recorded time for travel of 2 hours, 30 minutes waiting and 1 hour attendance and a disbursement of £56.70 for his travel (**LJF1 p177**). A further attendance note was created on 20 July 2016 at 19:48 for the attendance on 30 June 2016 (**LJF1 p181**) and the Respondent recorded time for travel of 2 hours, 30 minutes waiting and 2 hours attendance and a disbursement of £96.30 for his travel (**LJF1 p182**).
54. The Respondent wrote to Client F on 30 June 2016 making reference to his attendance on the client earlier that day (**LJF1 p178**). However on 30 June 2016, the Respondent’s diary showed that he was due to see this client and a second client on this date (**LJF1 p323**). The Respondent wrote to the second client who was also located at HMP Highpoint in Suffolk, on 17 June 2016 to confirm that he had requested a legal visit with him on 30 June 2016 (**LJF1 p179**) but on 30 June 2016 he sent a further letter to advise that he had re-arranged the meeting to take place on 12 July 2016 (**LJF1 p180**).

The Attendance note – 8 December 2016

55. An attendance note was created by the Respondent on 14 December 2016 at 10:13 to record his attendance on Client F on 8 December 2016. The attendance note states “*MPS engaged in meeting with the client to prepare for Oral Hearing*” (**LJF1 p184**). On 8 December 2016, the Respondent’s diary indicated that he was due to see the client on this date between 2 and 4pm (**LJF1 p317**). No other notes were recorded on the system for this attendance (**LJF1 p21**). The Respondent recorded time for travel of 2 hours, 30 minutes waiting and 2 hours attendance and a disbursement of £56.70 (**LJF1 p185**).
56. The Respondent wrote to Client F on 14 December 2016 and referred to a hearing “*which was scheduled to take place on 13 December 2016*” and noted that “*following discussion*

with your OM who supported the deferral, the panel finally agreed and your case will now be re-listed” (LJF1 p186). The date of the ‘Deferral and Adjournment Directions Form’ is 7 December 2016 which indicates that the prison vacated the hearing a day before the visit (LJF1 p187-188 and p21).

The Attendance note – 18 April 2017

57. On 18 April 2017, the Respondent’s diary indicated a visit to this client on this date (LJF1 p324). The Respondent created an attendance note on 19 April 2017 at 14:50 stating “MPS engaged in attending prison for a pre-hearing visit. For notes see attached” (LJF1 p190). The Respondent also recorded his time of 2 hours travel, 30 minutes waiting and 2 hours attendance and a disbursement of £115.20 for his travel (LJF1 p191).
58. The Respondent wrote to Client F on 20 April 2017 and noted that the hearing listed for that day had been deferred due to an unwell panel member (LJF1 p192).

The Attendance note – 22 August 2017

59. On 22 August 2017, the Respondent’s diary indicated that he was due to see this client on this date (LJF1 p325). The Respondent created an attendance note on 22 August 2017 at 9:59 and stated “MPS engaged in attending prison for a pre-hearing visit. See notes” (LJF1 p194). The Respondent also recorded his time of 2 hours travel, 30 minutes waiting and 12 minutes attendance and a disbursement of £56.70 (LJF1 p195). In a letter to Client F also on 22 August 2017, the Respondent stated “-I have had to cancel the visit and apologise for any inconvenience” (LJF1 p196).

The Respondent’s response

60. In the letter dated 2 December 2019, the following is stated on behalf of the Respondent in respect of this client:- he was an established client who the Respondent visited on at least twenty occasions in prison throughout the seven years or so of dealing with him. The client was a mentor within the prison and would often refer clients to the Respondent. In return it was agreed with the client that when the Respondent attended any new clients he would also add the client on to the visit list to see him and it would be the client’s choice as to whether he attended. The consequence was that the Respondent recalls that he met the client on a number of occasions which makes it difficult for the Respondent to comment on specific dates. In relation to the visit on 30 June 2016 the Respondent states that to the best of his recollection, the visit was cancelled due to traffic. The reason for the Respondent’s assumption is that he had arranged to see a different client on that date also who was a new referral from Client F It is stated that given the claim for expenses and time was made, the Respondent can only but conclude that the visit was undertaken in good faith but entry was not gained to the prison (LJF1 p806). However, the Respondent’s letter refers to a ‘meeting’ with Client F, indicating that a meeting did take place.
61. He cannot recall the attendances on 8 December 2016 and 18 April 2017 but believes that attempts were made but which had been cancelled for reasons he cannot recall. In relation

to the attendance on 22 August 2017, he states that he prepared an attendance note 'that day'. To the best of his recollection that would not be unusual, and indeed would be a common feature of the way in which he worked at the time. The note would be prepared in respect of the visit arranged for later that day with a view to prompting him to consider the electronic file. It is stated on behalf of the Respondent, that on occasion the Respondent used to enter the attendance note for that visit later in the day as a pre-emptive note but at the time with every intention of attending. In the event that the note remained on the file this would have been in error. In the event that the visit took place but was aborted the claim for travel and expenses would be legitimate and properly incurred (**LJF1 p806**).

The Applicant's position

62. The timing of the creation of the attendance notes, together with the other correspondence around the dates of the purported visits and the creation of attendance notes, would appear to indicate that at the time of creating the attendance notes, which were the basis for subsequent expenses claims, the Respondent must have known that he had not visited the client. For each visit times were recorded not only for travel, but also for waiting and attendance on the client.
63. For 30 June 2016, an attendance note (and letter to the client) was created on the date of the purported visit which the Respondent would have known had not taken place. When writing the attendance note the Respondent must have known that the day before he had not in fact visited the client. In relation to 18 April 2017, the Respondent created an attendance note the day after a visit he would have known had not taken place. In relation to 22 August 2017, the Respondent wrote to the client indicating that the visit planned for that day had had to be cancelled and yet also created an attendance note for the visit.

Client G

64. The Respondent submitted expense for visits to this client on 26 September 2017 (**LJF1 p67**) 11 January 2018 (**LJF1 p71**), 7 February 2018 (**LJF1 p72**) and 17 April 2018 (**LJF1 p74**) in his expenses claims.
65. The prison service confirmed to Ms M that a visit on 26 September 2017 had been cancelled and that the Respondent did not visit Client G on 11 January 2018, 7 February 2018 or 17 April 2018 (**LJF1 p210**).
66. The Respondent created an attendance note on 28 September 2017 at 15:14 for his attendance on 26 September 2017 stating "*MPS engaged to meet with client to discuss oral hearing on the 5th – agreed to defer – see notes*" (**LJF1 p212**). There were no other notes were recorded on the system in respect of this visit. The Respondent also recorded times for travel of 2 hours, waiting of 30 minutes and 2 hours attendance and a disbursement for mileage of £54.00 (**LJF1 p213**).

67. On 28 September 2017 the Respondent wrote to Client G and referred to receiving recent instructions but did not refer to a visit on 26 September 2017 (**LJF1 p214**).

68. The Respondent, in his letter to the SRA of 2 December 2019, states that this client was a very high risk client in terms of his mental health and would often send offensive letters to the Respondent, together with making abusive telephone calls. The Respondent states that for the visits, the travel claim and expenses were legitimately incurred (**LJF1 p807**).

Client H

69. The Respondent submitted expense claims for a visit to this client on 16 April and 30 April 2018 (**LJF1 page 74**).

70. The HMP Bullingdon prison service confirmed to Ms M that the Respondent had attended on this client on 16 April 2018 but did not attend on 30 April 2018 (**LJF1 p233-235**). The Respondent's diary makes no reference to a visit with the client on 30 April 2018 (**LJF1 p330**).

71. An attendance note was created by the Respondent on the 30 April 2018 at 10:17 stating "*MPS engaged in attending on client to take his instructions ahead of oral hearing as visit cannot be agreed on the day of the hearing*" (**LJF1 p237**). The Respondent also recorded his times for the visit as 1 hour 24 minutes for travel, 12 minutes waiting and 2 hours attendance and a disbursement of £27.00 for mileage (**LJF1 p238**), which he claimed for.

72. The Respondent wrote to Client H on 4 May 2018 following the oral hearing on 1 May 2018 and stated that '*prior to the oral hearing we had the opportunity to discuss matters*' (**LJF1 p239-240**). Mr M refers to the oral hearing on 1 May 2018 at the interview with the Respondent on 1 June 2018 (**LJF1 p554**).

73. At the meeting with Mr M the Respondent accepted that two claims were made on 16 April for two clients seen on the same day (**LJF1 p555**).

74. At the investigation meeting on 1 June 2018, the Respondent accepted double claiming on 16 April 2018 and in relation to the second claim for Client H on 30 April, he states that he would have 'been planning to go' but appears to have sought to explain this as being due to the issue with how he used his monthly spreadsheet (**LJF1 p554-555**).

Client I

75. The Respondent claimed for a visit to this client to HMP Liverpool on 13 February 2018 in his expense claim for February 2018 (**LJF1 p72**).

76. The prison service confirmed to Ms M that the last visit to Client I had been on 27 November 2017 (**LJF1 p248-249**). The Respondent claimed for this visit on 22 November 2017 and not the date provided by the prison (**LJF1 p69**).
77. The Respondent created an attendance note on 2 March 2018 at 8:25 for the visit on 13 February 2018, stating '*Visit- see notes*' (**LJF1 p243**). No other notes were recorded on the system in respect of this attendance (**LJF1 p30**). The Respondent also recorded time for travel of 2 hours and attendance of 2 hours and a disbursement of £54.00 for travel (**LJF1 p244**). The expense sheet records an incurred expense for mileage of £153.00. There was no entry in his diary for a visit with this client on this date (**LJF1 p332**).
78. The Respondent wrote to Client I on 6 February 2018, which refers to his '*most recent correspondence*' yet there was no reference to the forthcoming visit on 13 February 2018 and an oral hearing had not been listed (**LJF1 p245-246**). In a further letter dated 16 February 2018 to Client I which confirms that an oral hearing date has been listed, there is no reference to the visit that would have taken place only a few days beforehand (**LJF1 p247**).
79. At the investigation meeting on 1 June 2016, the Respondent informed Mr M that Client I was released, but that he would have been going to see him as he had a hearing in May. It was also noted at this meeting that the Respondent was off sick on 13 February 2018 (**LJF1 p473**). The Respondent stated that it was planned, that it went down on expenses but that it didn't get amended and that the visit didn't happen (**LJF1 p473**).

Client J

80. The Respondent claimed for visits to this client on 10, 15 and 16 January 2018 at HMP Winchester in his expense claim for January 2018 (**LJF1 p71**).
81. HMP Winchester prison service confirmed to Ms M that visits had not taken place on 10 or 15 January 2018. The visit clerk confirmed that a visit had been booked for 15 January 2018, but that this was cancelled (**LJF1 p251**).
82. The Respondent's diary for 10 January 2018 indicates an entry for the Respondent to see this client between 8am and 11am (**LJF1 p331**). The Respondent created an attendance note on 10 January 2018 at 10:33am which stated "*MPS attends for pre-hearing visit – client does nto attend*" [sic] (**LJF1 page 253**). The Respondent recorded time for his attendance as 2 hours travel, 1 hour waiting and attendance of 12 minutes and a disbursement of £54 for travel and £5.50 for parking (**LJF1 p254**).
83. The Respondent's diary for 15 January 2018 indicates an entry for the Respondent to see the client between 1pm and 4pm (**LJF1 p333**). The Respondent's diary also indicates he was due to visit a client at HMP Bullingdon between 9am and 12pm.

84. The Respondent also created an attendance note for 15 January 2018, on 15 January 2018 at 11:32 stating “MPS engaged in meeting with client ahead of hearing – see attached” but the visit according to the Respondent’s diary was due to take place from 1pm (**LJF1 p256**). No other notes were recorded on the system in respect of this attendance (**LJF1 p32**). Time was recorded for the attendance of 2 hours travel, 24 minutes waiting and attendance of 2 hours and disbursements of £54.00 for travel and £5.50 for parking (**LJF1 p257**).
85. The attendance notes were therefore created on the same days as the purported visits and the Respondent would therefore have known that he had not visited the client on those days when entering those records into the attendance notes.

Client K

86. The Respondent claimed for a visit to this client at HMP Guys Marsh prison located in Dorset on 22 December 2018 in his expense claim for December 2017. The Applicant assumes that the use of ‘2018’ is an administrative error (**LJF1 p70**). A further visit was also claimed for 17 January 2018 (**LJF1 p71**).
87. HMP Guys Marsh prison service confirmed to Ms M that the Respondent had only attended this particular prison to visit the client on 15 March 2018 (**LJF1 p259**), for which there was a separate attendance note relating to that attendance.

The Attendance note – visit on 22 December 2017

88. The Respondent created an attendance note for a visit on 22 December 2017 on 3 January 2018 at 12:12 which stated ‘visit’ and nothing else, with no other notes on the system (**LJF1 p262**). The Respondent had also recorded time for his attendance as 2 hours travel, 18 minutes waiting and attendance of 1 hour and a disbursement of £117.90 for travel (**LJF1 p263**). The Respondent sent a letter to Client K dated 4 January 2018, which referred to an oral hearing which was listed on 21 March 2018. The letter makes no reference to any visit on 22 December 2017 (**LJF1 p264**).
89. The visit was not diarised in the Respondent’s diary and he had diarised to see a different client between 9am and 12pm at HMP Winchester on that date (**LJF1 p334**).

The Attendance note – visit on 17 January 2018

90. The Respondent created an attendance note for a visit to Client K on 17 January 2018 on 5 February 2018 at 9:44 stating ‘Prison visit’ with no other notes recorded on the system (**LJF1 p266**). The Respondent recorded time for his attendance as 2 hours travel, 30 minutes waiting and attendance of 2 hours and a disbursement of £117.90 for travel (**LJF1 p267**). The Respondent sent a letter to Client K on 7 February 2018 to confirm that the oral hearing had been listed for 21 March. The letter made no reference to a visit on 17 January (**LJF1 p268**).

91. The visit to see Client K on 17 January 2018 was not diarised in the Respondent's diary and an entry in his diary states 'legal clinic only' (**LJF1 p335**).

92. In these circumstances, at the time of creating the two attendance notes the Respondent must have known that he had not in fact visited the client on those dates.

Client L

93. The Respondent claimed for visits to this client at HMP Wayland prison on 13 February 2017 in his expense claim for February 2017 (**LJF1 p60**), 11 May 2017 in his expense claim May 2017 (**LJF1 p63**), 15 November 2017 in his November expense claim (**LJF1 p69**) and 14 March 2018 in his March expense claim (**LJF1 p73**).

94. HMP Wayland prison service confirmed to Ms M that the Respondent had booked to see this client on 13 February 2017, 11 May 2017, 23 November 2017 and 14 March 2018, but that the Respondent had cancelled these visits himself (**LJF1 p270-271**). The prison confirmed that the Respondent did attend a visit on 23 October 2015 (**LJF1 p270-271**).

95. For 13 February 2017 the Respondent's diary contained an entry to visit this client (**LJF1 p272**). The Respondent created an attendance note on 13 February 2017 at 16:42 for the visit on 13 February 2017 which stated "*MPS engaged in attending HMP Wayland in order to take client's instructions. Visit necessary and justified due to client mental health condition hence video link even if available not appropriate. For notes – see attached*" (**LJF1 p35 and p273**). Mr R states that there are no further notes recorded on the system (**LJF1 p35**). The Respondent also recorded time for 2 hours travel, 30 minutes waiting and attendance of 2 hours and a disbursement of £118.80 for travel (**LJF1 p274**).

96. The Respondent wrote to Client L on 31 January 2017 and stated that he had requested a legal visit to take place on 13 February 2017, but that at the time of writing the visit had not been confirmed (**LJF1 p275**).

97. The Respondent wrote a letter to Client L on 15 February 2017 which referred to a visit 'earlier this week' (**LJF1 p276**). It is not known if the letter was sent (**LJF1 p35**).

98. For 11 May 2017, the Respondent's diary indicated a visit to this client and another at HMP Wayland between 1pm and 4pm (**LJF1 p336**).

99. On 11 May 2017 at 17:30 the Respondent created an attendance note which stated "*MPS engaged in attending prison – see notes*" but with no other notes on the system for this attendance (**LJF1 p35 and p278**). The Respondent also recorded times for 2 hours of travel, 30 minutes waiting and attendance of 2 hours (**LJF1 p279**). Whilst the Respondent did not record a disbursement on the system for this date, he claimed expenses for £135 for the travel (300 miles) in his expense claim for May 2017 (**LJF1 p63**).

100. On 14 March 2018, the Respondent's diary indicated a visit to Client L at HMP Wayland between 8:30 and 11:30 (**LJF1 p338**). On 21 March 2018 at 11:27 the Respondent's secretary created an attendance note for a visit on 14 March 2018 which stated "*MPS engaged in attending upon client ahead of OH to discuss application*" (**LJF1 p282**). There was no time recorded for this attendance but there was a claim of £118.80 for travel (**LJF1 p283**).
101. On 21 March 2018 the Respondent wrote to Client L and referred to an oral hearing which was due to have taken place on 19 March 2018 but had been deferred (**LJF1 p284**).
102. In the investigation meeting of 1 June 2018, the Respondent stated that the visit for 11 May 2017 was planned. He stated that the doctor had visited initially and had said that the client would not come out for the visit and that "*he wasn't in a good state*". The Respondent states that he therefore called the prison about his welfare and that he could not remember if he had cancelled the visit or deferred it. He states that there were lots of concerns about the client's mental health so he probably would have cancelled it. The claim for expenses was explained by the Respondent as being the same issue about the spreadsheet and the hearing being deferred and that this was also the case for 14 March 2018 visit (**LJF1 p556-557**).
103. In the disciplinary meeting of 12 June 2018, when asked about this client and visit, that he claimed for 300 plus miles for the visit that didn't happen, the Respondent stated that he had got at least three quarters of the way there and had then got a call from the doctor (**LJF1 p435**). The Respondent stated that the Legal Aid Agency had said that it was the Firm's responsibility to make sure that the visit was effective and that they had the results from the LAA Audit from around that time. On a few of the files that were audited they had a couple of aborted visits and the LAA decided that they would not be paying for those visits as it was their (the Respondent's) responsibility to make sure the visit was going to happen prior to attending. The LAA had said that they had to call the prison in the morning to make sure it was happening and "*I would have just put that because I thought the LAA would have said I should have called up to check*". The Respondent was unable to explain why there was time recording on the same date of travel which made it difficult to understand how the Respondent could forget that he had not in fact travelled on that day (**LJF1 p435**).
104. When creating the attendance notes for 13 February and 11 May 2017 on these dates themselves, the Respondent must have known that he had not in fact attended on the client earlier on those same days. In relation to the Respondent's response, it was not only travel that was claimed for on the first two purported visits, but also 2 hours attendance on the client, which the Respondent must have known was inaccurate, even on his account of having started to make the journey to the prison to carry out a visit.

Client M

105. The Respondent claimed for a visit to this client on 28 February 2018 in his expense claim for March 2018 (**LJF1 p72**).
106. HMP Granby prison service confirmed to Ms M that the Respondent had booked to see the client on 1 March 2018 but that this visit was cancelled (**LJF1 p290-292**). HMP Granby confirmed to Ms M that no visits had taken place in February
107. On 1 March 2018 at 10:29am the Respondent sent Client M an email to indicating that he was unable to attend the visit arranged for 'today' but that he would send draft representations separately (**LJF1 p293**).
108. On 2 March 2018 at 08:14 the Respondent created an attendance note for the visit on 28 February 2018, stating "*Visit – see notes*" (no other notes being recorded on the system for this visit) (**LJF1 p288**). The Respondent also recorded time for 2 hours travel, 30 minutes waiting and 2 hours attendance and disbursements of £97.20 for travel (**LJF1 p289**).
109. Mr R states that at 8:56 the Respondent saved the written representations to the digital system and at 9:01 he saved a letter to the client on the system on 2 March 2018 (**LJF1 p38 and p295**).
110. There was no visit diarised to attend upon Client M in his diary on 28 February 2018 (**LJF1 p339**). However, the Respondent had diarised to see a different client between 9am and 11am at HMP 'Ranby' on 1 March 2018 (**LJF1 p341**).
111. In the investigation meeting of 1 June 2018, the Respondent said that the date on the expenses claim was 28 February, which would have been the wrong day anyway and that the visit was cancelled because of the snow. He stated that the visit was down for the 1st but because of the weather he did his 'reps' and sent them to the client because he didn't get to see him. He stated that because he relied on his spreadsheet it was wrong (**LJF1 p554**).
112. In the investigation meeting of 12 June 2018, Mr R indicated that this was one example where the attendance note had been prepared very close to the date of the attendance; on 28 February, the Respondent had recorded a visit with Client M and did the attendance note on 2 March, claiming 216 mileage (**LJF1 p434**). The Respondent stated that that visit had been cancelled because of weather conditions and that there was an email to the client cancelling the visit, which was on a group email account and therefore not hidden in any way. The Respondent was unable to explain why the email had been sent to the client on 1 March cancelling the visit and yet the time recording as if the visit had occurred had been done the following day on 2 March. When asked "*I can see how you may have forgotten if it was a longer period of time but the next day? Why would you do it the day after, writing an attendance note for something you didn't do. Why did it not occur to you that you didn't attend the planned visit?*" the

Respondent stated “*I don’t know, I sent him the email saying I drafted the representation. I can’t explain. I wasn’t thinking, if I had been in the office people would see I wasn’t right. If I was trying to do falsely claim expenses and trying to hide it, I wouldn’t have sent this email. I can’t tell you what I was thinking on 1 or 2 March*” (LJF1 p434).

113. However, at the time of completing the attendance note, a day after the purported visit and email cancelling the visit and also at the time of drafting other documents, the Respondent must therefore have known that he had not in fact attended the client the day before.

Client N

114. The Respondent claimed for a visit on 14 February 2018 (LJF1 p72) and 12 April 2018 (LJF1 p74). HMPS Bullingdon confirmed to Ms M that there had been no visits for Client N when he was at HMPS Bullingdon (LJF1 p300-302).
115. A letter was saved on the system to Client N on 20 February 2018 and referred to his ‘recent attendance’ at HMP Bullingdon (LJF1 p303-304). It is not known if this letter was actually sent (LJF1 p39).
116. The Respondent’s diary for the 14 February 2018 indicated a visit to this client (and three others) on this date between 9am and 12pm at HMP Bullingdon (LJF1 p340).
117. An attendance note stating “*MPS engaged in attending bullingdon to take client’s instructions*” was entered by SN (the Respondent’s secretary) at 14:42 on 20 February 2018 (LJF1 p298). The Respondent’s secretary also recorded time for the attendance (travel time 1 hour 24 minutes, waiting of 12 minutes and attendance of 1 hour 30 minutes) and a disbursement of £27.00 for travel (LJF1 p299).
118. In the Investigation meeting of 1 June 2018 the Respondent stated that 16 April 2018 was the same day as seeing two other clients The Respondent stated that this client hadn’t even sent in his legal aid and that when he was going to Bullingdon he would have added him onto the visit to sign legal aid unless he was planning to see him (and all of the clients) on 12 April but that the date to 16 April (LJF1 p555). He said that he would have seen them altogether. When asked why he would put mileage on if he knew that there wasn’t legal aid, the Respondent replied ‘*Well I wasn’t thinking*’ (LJF1 p555).
119. The Respondent was not questioned on the visit dated 14 February 2018 but answered ‘no’ when asked ‘no visits at all for Hussain’ (LJF1 p555).
120. On 20 February 2018 the Respondent must have known that he had not in fact attended this client just 6 days earlier, especially when he had never visited this client at this prison.

Client O

121. The Respondent claimed for a visit to see this client at HMP Exeter on 29 March 2018 within his March expenses (**LJF1 p73**). The prison service confirmed to Ms M that a visit had not been booked for that date (**LJF1 p359**).
122. There was no entry diarised to see Client O in the Respondent's diary (**LJF1 p358**). An attendance note was created on the system to record this visit and the attendance note was last updated on 10 May 2018 at 14:29. The attendance note stated "*MPS engaged in attending on client to discuss next steps for OH in particular getting his case listed as a priority due to his Mother ppoor health [sic]*" (**LJF1 p359**) No other notes were recorded on the system (**LJF1 p343**). The Respondent recorded travel time of 2 hours, waiting time of 30 minutes and 2 hours for attendance. He also recorded a disbursement of £168.30 for 374 miles return travel (**LJF1 p360**).
123. At the meeting with Mr M on 1 June 2018 (**LJF1 p558**) the Respondent advised that he had conduct of the file at the beginning but the hearing was listed whilst he was on holiday and he handed the file over to Ms M. The Respondent stated it was the 'same issue' in relation to the attendance note on the system.

Client P

124. The Respondent claimed for a visit to HMP Leyhill on 19 January 2018 (**LJF1 p71**). HMP Leyhill confirmed to Ms M that the Respondent did not attend on this date (**LJF1 p384-385**).
125. The Respondent also claimed for a visit to see this client at HMP Leyhill on 23 March 2018 (**LJF1 p73**) and 2 April 2018 (**LJF1 p74**). The prison service confirmed to Ms M that a visit did not take place on 23 March 2018. Ms M noted with her file note that she did not enquire about a visit on 2 April as this was a Bank holiday Monday and prisons do not have legal visits at weekends or Bank holidays (**LJF1 p368**).
126. The Respondent's diary showed that he had a meeting scheduled between 11.30am and 3.30pm with two other clients at HMP Leyhill on 19 January 2018 (**LJF1 p381**). On 20 January 2018 at 12:43 the Respondent created an attendance note for the visit to Client P on 19 January 2018 and stated "*MPS engaged in meeting with - see notes*" [*sic*] (**LJF1 p386**).
127. There was no diary entry diarised to see Client P on 23 March 2018 (**LJF1 p363**). The Respondent created an attendance note on 27 March 2018 for the visit on 23 March 2018 at 10:35 which stated "*MPS meeting with client*" (**LJF1 p364**). There are no other notes recorded on the system in relation to this attendance (**LJF1 p344**).
128. On 25 April 2018 at 09:29 the Respondent created an attendance note for the visit on 2 April 2018 which stated "*MPS engaged in attending on client*" (**LJF1 p366**). There are no other notes recorded on the system in relation to this attendance (**LJF1 p344**).

Mr R states that the 2 April 2018 was a Bank Holiday and prisons do not have legal visits on Bank Holidays (**LJF1 p345**).

129. At the meeting with Mr Matthews on 1 June 2018, the Respondent stated that the client was in an open prison and so a legal visit was not booked. He states that as he had met the client outside prison, the prison would not have a record of this visit. The Respondent accepts that he did not attend the visit on 2 April 2018 but states that he had a conversation with the client on 25 April, not 2 April 2018 (**LJF1 p557**).
130. However, the prison confirmed to Ms M that a visit had not taken place on the dates claimed by the Respondent. In relation to the visit on 2 April 2018, the Respondent states that he created the attendance note on 25 April 2018 in relation to a conversation he had with this client on that day, but the note was created at 09:29am. If the Respondent is referring to a telephone conversation with Client P then it is still incorrect that a visit was claimed under his expenses.

Client Q

131. The Respondent claimed for a visit to HMP Stafford on 9 February 2018 (**LJF1 p72**) and 4 April 2018 (**LJF1 p74**). The prison service confirmed to Ms M that a visit took place on 22 January 2018 but that a visit did not take place on 9 February 2018 and 4 April 2018 (**LJF p372**). The prison did confirm that a visit was booked for 10 April 2018 (**LJF p372**).
132. There was no diary entry diarised to visit Client Q on 9 February 2018 and his diary scheduled a visit to HMP Bullingdon to see two clients between 1pm and 3.30pm (**LJF1 p369**). The Respondent created an attendance note on 2 March 2018 at 08:21 (**LJF1 p370**) which stated "*Visit – see notes*". There were no notes recorded on the system (**LJF1 p345**). The Respondent also recorded time for 2 hours travel, 30 minutes waiting and 1.30 hours attendance and disbursements of £93.20 for travel and £5.50 for car parking (**LJF1 p371**).
133. There was no diary entry for a visit with Client Q on 4 April 2018 in the Respondent's diary (**LJF1 p373**) and states "*MPS court*". The Respondent created an attendance note on 4 May 2018 at 08:45 for the visit on 4 April 2018 which stated "*MPS attends for visit – client has been placed in seg so cannot be facilitated*" (**LJF1 p374**). Mr R states that the Respondent represented a number of clients at the Banbury Magistrates Court on 4 April 2018 (**LJF1 p346**).
134. At the meeting with Mr M on 1 June 2018, the Respondent stated that the hearing was listed for 15 May 2018. The Respondent stated that the "*visits probably took place on 22 January and 10 April*". The Respondent further added that he thinks he took instructions "*over the phone 09/02 same with 04.04?*" (**LJF1 p558**).
135. However, the prison confirmed that a visit did not take place on the dates claimed by the Respondent. The Respondent has accepted that the dates are incorrect but indicated that the attendances took place on the telephone. Even if this position is accepted, a

claim has been made for an attendance upon the client at the prison when it did not take place, and the attendance note on 4 May 2018 indicates that he attended the prison and that the visit could not be facilitated because the client had been placed in segregation.

Client R

136. The Respondent claimed for a visit to HMP Highpoint on 5 April 2018 and 21 April 2018 (**LJF1 p74**). HMP Highpoint prison confirmed to Ms Maynard that a visit did not take place on 5 April 2018 (**LJF1 p379-380**). The Firm did not make enquiries with the prison regarding whether a visit took place on 21 April 2018.
137. There was no diary entry for a visit with Client R on 5 April 2018 (**LJF1 p376**). The Respondent created an attendance note on 4 May 2018 at 08:34 for the visit on 5 April 2018 which stated, “MPS engaged in attending client in order to take instructions on post programme progress ahead of OH” (**LJF1 p377**). The Respondent also recorded time for 2 hours travel, 18 minutes waiting and 2.00 hours attendance and disbursements of £48.00 for travel (**LJF1 p378**).
138. At the meeting with Mr M on 1 June 2018 the Respondent stated that he knew that he had not seen this client as he had a hearing coming up at the time that the Respondent was on annual leave. Mr M states that the visit on 21 April is a Saturday. The Respondent accepted that he did not visit Client R on 5 April or 21 April 2018 (**LJF1 p553**).

Client S

139. The Respondent claimed for a visit to Client S at HMP Leyhill on 20 March 2018 (**LJF1 p73**) and 25 April 2018 (**LJF1 p74**). HMP Leyhill prison confirmed to Ms M that the Respondent did not attend on 20 March 2018 as visits did not take place on a Tuesday. The prison also confirmed that a visit did not take place on 25 or 27 April 2018 (**LJF1 p391**).

The Attendance note – March 2018

140. The Respondent created an attendance note on 27 March 2018 at 10:22 for an attendance on 21 March 2018, not the date claimed of 20 March 2018 (**LJF1 p388**).
141. Ms M notes that on 21 March the Respondent claimed a visit to a client at HMP Guys Marsh prison on 21 March 2018 for an oral hearing which the Respondent would have attended (**LJF1 p73 and p391**). The Respondent’s diary for 20 March 2018 does not show that a visit to a client had been arranged (**LJF1 p 390**). The Respondent’s diary shows ‘[Client] Oral Hearing – HMP Highpoint – MPS’ (**LJF1 p390**).

The Attendance note – April 2018

142. Mr R states that there is no attendance note on the system for a visit on 25 April 2018 (**LJF1 p351**).

143. The Respondent created an attendance note on 4 May 2018 at 8:48 for a visit on 27 April 2018 but no details as to the nature of the attendance have been entered into the note (**LJF1 p392**). The Respondent also recorded time for 2 hours travel, 6 minutes waiting and 6 minutes attendance and disbursements of £89.10 for travel (**LJF1 p393**).
144. The Respondent's diary for 25 April 2018 shows that he was diarised to see a client at HMP Bullingdon between 10am and 12pm (**LJF1 p394**). His diary for 27 April 2018 shows that he was diarised to visit two clients at HMP Earlstoke (**LJF1 p395**).
145. At the investigation meeting with Mr M on 1 June 2018, the Respondent stated that he knew he was going to see this client but that he had not been as he was waiting for his hearing. The Respondent stated "*I haven't been to see him at all*" and that he was going to see him but that the date had been "*put back*" (**LJF1 p555-556**).

Client T

146. The Respondent submitted an expense claim for 29 June 2017 to visit Client T at HMP Highpoint (**LJF1 p64**). The prison confirmed to Ms M that the visit on 29 June 2017 had been cancelled (**LJF1 p396**).
147. The Respondent wrote to Client T on 16 June 2017 to advise that a visit had been arranged to see him at 2pm on 29 June 2017 (**LJF1 p397**). The Respondent's diary showed that he had diarised to see Client U and another client on 29 June 2017 between 1pm and 4pm at HMP Highpoint South (**LJF1 p398**).
148. The Respondent created an attendance note on 29 June 2017 at 09:35 in relation to the visit on 29 June 2017 stating "*MPS engaged in meeting with client to discuss oral hearing application – client refused visit despite numerous requests*" (**LJF1 p399**). The Respondent also recorded time for 2 hours travel, 30 minutes waiting and 30 minutes attendance and disbursements of £59.40 for travel (**LJF1 p400**).
149. Mr R states that if the visit had been cancelled the Respondent would have known not to attend and if he had attended the visit, he would have been in the prison at the time the attendance note was prepared but if the visit had been arranged for 2pm, the Respondent was recording time for a visit that had not taken place that day, even if it had not been cancelled (**LJF1 p353**).
150. The Respondent thus created the attendance note before the visit was due to take place and the prison confirmed that the visit was cancelled and so could not have taken place. The Respondent must have been aware that the visit was cancelled when he created the attendance note and submitted his expense claim.

Clients U and V

151. The Respondent claimed for a visit with Client U on 6 December 2017 (**LJF1 p70 and p353**), 18 January 2018 (**LJF1 p71 and p353**) and 26 April 2018 (**LJF1 p74**) at HMP Earlstoke.
152. HMP Earlstoke confirmed to Ms M that there were no professional visits to Client U in December 2017 (**LJF1 p401-407**). The prison also confirmed to Ms M that a visit was booked to see Client U on 29 September 2017 (**LJF1 p353 and p408**) but did not provide any confirmation that 18 January 2018 had been booked and attended by the Respondent (**LJF1 p401-407**).
153. They also confirmed that the Respondent had booked to see Client U and Client V on 27 April 2018 between 9am and 11am but that a visit was not booked on 26 April 2018 (**LJF1 p353 and p401-407**).
154. The Respondent's diary on 6 December 2017 does not show that a visit was diarised with Client U (**LJF1 p410**). However his diary indicates that he was required to attend an oral hearing for a different client at HMP Wayland. The Respondent created an attendance note on 3 January 2018 at 11:59 in relation to his attendance on 6 December 2017 which states "*MPS engaged in meeting with client following TPS course*". There are no other notes recorded on the system (**LJF1 p354 and p411**). The Respondent also recorded time for 2 hours travel, 18 minutes waiting and 1.30 minutes attendance and disbursements of £93.60 for travel (**LJF1 p412**).
155. The Respondent created an attendance note on 5 February 2018 at 09:38 for the visit on 18 January 2018 and the note stated "*Prison visit*". There are no other notes on the system for this visit (**LJF1 p414 and p354**). The Respondent also recorded time for 2 hours travel, 30 minutes waiting and 2 hours attendance and disbursements of £93.60 for travel (**LJF1 p415**). The Respondent's diary contains a visit to a different client between 1pm and 4pm (**LJF1 p413**).
156. The Respondent's diary on 27 April 2018 accords with the information given to Ms M regarding the prearranged visit on 27 April 2018 for Client's U and V (**LJF1 p417**). On 3 May 2018 at 10:41, the Respondent's secretary created an attendance note for a visit on 26 April 2018 which stated "*WS engaged in attending client in order to take detailed instructions ahead of Parole hearing. Despite waiting for over an hour and a half, the legal visits were unable to locate Mr Smith and as such they had to cancel the visit*". (**LJF1 p418**). There are no other notes recording on the system for this attendance (**LJF1 p355**). The Respondent's diary for 26 April 2018 shows that he was diarised to attend an oral hearing in relation to a different client at HMP Springhill (**LJF1 p416**).
157. The Respondent claimed a visit to Client V on 27 April 2018 (**LJF1 p74**). The prison confirmed to Ms M that a visit was booked for this date for both Client U and V (**LJF1 p401-407**).
158. Mr R states that had the Respondent attended to see both Client U and V on 27 April 2018 he would have only been able to claim the travel disbursement once. However, the Respondent claimed for both visits on two separate dates which enabled a claim

to be made for travel on both dates as opposed to one expense claim to the prison (LJF1 p355).

159. At the meeting with Mr M on 1 June 2018 the Respondent stated he had booked a legal visit to see Clients U and V on 27 April but “*then called last minute because of the time it takes to see each client*”. The Respondent states that he asked if he could see one client on 26 April and one on 27 April and they said he was only down to visit on 27 April (LJF1 p557). The Respondent states that he went on Friday [27 April] but Client U was ‘lost in prison’ and so he only saw Client V.
160. The prison have confirmed that a visit was arranged to see Client’s U and V on 27 April but not 26 April. The Respondent states that he asked if he could see one client on 26 April but there is no record of this, and a claim has been made for 26 April within his expenses when that visit did not take place.

Allegation 1.1 – inappropriate expense claims

161. As demonstrated above, the Respondent submitted expense claims to the Firm for reimbursement for mileage and car parking expenses for attending on clients in prison, when he had not attended on those clients on the dates in question. The quantity and repetition of submission of expense claims when there had been no corresponding visit to a client was unacceptable conduct by the Respondent.

Principle Breaches

162. In light of the conduct above the Respondent was in breach of Principles 2 and 6 of the SRA’s Principles 2011 (“the Principles”).

Principle 2: You must act with integrity

163. The Respondent’s actions as set out in allegation 1.1 amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles. In *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366* (pp. 471 – 507/HWP1), it was said that integrity connotes adherence to the ethical standards of one’s own profession.
164. The Respondent failed to act with integrity in that he:
 - 164.1 Improperly claimed for reimbursement of expenses which he was not entitled to/had not incurred;
 - 164.2 Failed to adequately check the relevant files and records to ensure that his expense claims were accurate;
 - 164.3 Failed to have an effective system in place in order to ensure the submission of accurate expense claims;

164.4 In a large number of instances submitted claims at times when he would have been aware that the visits had not taken place – either before the alleged attendances or very shortly after, on the same day or only a short time after.

Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services

165. 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 him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by the Respondent's actions in that the public would not expect a solicitor to submit claims for expenses for disbursements that had not been incurred. To behave in such a way does not maintain the trust that the public would place in the Respondent personally, or in the provision of legal services.

Recklessness in respect of allegation 1.1

166. The test for recklessness is that which was adopted and approved by Wilkie J in the case of *Brett v SRA* [2014] EWHC 2974:

78. 'I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied:

*"with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk" (See *R v G* [2004] 1AC 1034 Archbold para 11-51.)*

I adopt that as the working definition of recklessness for the purpose of this appeal.'

167. On the basis of the conduct set out above, it is accepted by the Respondent, that he was at least reckless as to all or any of the following:

- 167.1 whether the expense sheets were accurate;
- 167.2 whether the disbursement entry was accurate;
- 167.3 whether it was proper to submit unchecked expense claims over period 30 June 2016 to 30 April 2018;
- 167.4 whether he was were adhering to the LAA contract and Firm's expense policy.

Allegation 1.2 – inaccurate attendance notes

168. As set out in this document, the Respondent created attendance notes for prison visits, including recording time and disbursements, when he had not in fact attended on those clients on the dates in question. The quantity and repetition of inaccurate records of attendance and time recording was unacceptable conduct by the Respondent.

Principle Breaches

169. In light of the conduct above the Respondent was in breach of Principles 2 and 6 of the SRA's Principles 2011 ("the Principles").

Principle 2: You must act with integrity

170. The Respondent's actions as set out in allegation 1.2 amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles.

171. The Respondent failed to act with integrity in that he:

- 171.1 Created attendance notes, including recording times for travelling, waiting and attendance and details of mileage, for visits to clients which had not in fact taken place, thereby creating inaccurate records, in circumstances where he must have been aware that such visits had not been effective/not taken place;
- 171.2 Failed to adequately check the relevant files and records to ensure that his attendance notes were accurate and reflected a visit which had occurred;
- 171.3 Failed to have an effective system in place in order to ensure the accuracy of attendance notes and time recording.

Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services

172. 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 him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by the Respondent's actions in that the public would not expect a solicitor to create attendance notes for visits which had not occurred or have no system in place to ensure for the accurate recording of attendances on clients. To behave in such a way does not maintain the trust that the public would place in the Respondent personally, or in the provision of legal services.

Recklessness in respect of allegation 1.2

173. The Respondent's conduct was at least reckless as to all or any of the following:

- 173.1 whether the disbursement entry in the attendance note was accurate;
- 173.2 whether the attendance notes reflected an accurate version of events;
- 173.3 whether a prison visit had been booked or even confirmed.

Dishonesty

174. The SRA's case on dishonesty was particularised at paragraphs 179 to 180 and 189 to 190 of the Rule 12 Statement.

175. As noted below, the Respondent does not admit dishonesty but is willing to be struck off and also give an undertaking never to reapply to the Roll. It follows that the SRA has already secured the most severe sanction available to the Tribunal, which clearly safeguards the public interest and protects the reputation of the profession. As such, the SRA has formed a view that there is little public interest in pursuing the Respondent to a full hearing on the only disputed issue namely whether his misconduct was aggravated by dishonesty as well as recklessness.
176. It is also the SRA's position that, even in the absence of a finding of dishonesty, it would be open to the Tribunal to order a strike off in light of the gravamen of the admitted breaches. Therefore, whether or not the Tribunal makes a finding of dishonesty is unlikely to make a material difference to sanction.
177. It is accepted that a Respondent making an application to re-apply to the Roll will be in a better position in the absence of finding of dishonesty. However, this scenario is mitigated by the Respondent's undertaking never to re-apply to the Roll.
178. In respect of the issue of the proportionality of proceeding to a hearing, the SRA has also had regard to the Respondent's personal circumstances. The Tribunal is invited to view the 'side letter' which has been filed with this document, and which contains private information about the Respondent's personal circumstances.

Mitigation

179. The following points are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:-
- 179.1 *'It is with a heavy heart that I put forward this mitigation in the form of an agreed outcome in relation to the above proceedings'.*
- 179.2 *'I never anticipated or expected that something I had worked so hard to achieve in my life would be voluntarily given up due to severe and serious lapse in judgement'.*
- 179.3 *'I have fully accepted responsibility for my actions throughout this incident. I was cooperative with the internal investigation at Reeds Solicitors despite having handed in my notice. I engaged at all stages in writing and in person'.*
- 179.4 *'At the time of my dismissal, with the benefit of hindsight, I'm able to identify that I had a number of factors in my life that were causing me significant disruption. I would of course ask the tribunal to consider the attached side letter and enclosures which document these difficulties'.*
- 179.5 *'I worked extremely hard to attempt to resolve these matters and became engaged with new employment. I was open and honest with my new employers who had sight of all information and had previous knowledge of me who and were subsequently happy for me to return to work'.*

- 179.6 *'Being a criminal solicitor means that I've spent my career working hard to ensure justice for some of the most vulnerable people in the community. I am proud of my achievements in helping people from all backgrounds and ways of life. From prisoners seeking parole to juveniles detained at the police station. There is nothing in these allegations that suggests any of my clients were ever receiving substandard legal advice and I think it's important to highlight this. It is something that I take away with pride that I did help so many people during my short career'.*
- 179.7 *'Despite attempting to get on with my life throughout 2019, I was subsequently informed of the SRA investigation and again fully engaged with this process however difficult it was. I have engaged throughout despite the issues raised in the sideletter attached'.*
- 179.8 *'I have dealt with these proceedings for over three years. My life has changed dramatically and I am not the same person that I was three years ago. I have different priorities and due to the issues outlined in my sideletter, I must now focus on myself and my family'.*
- 179.9 *'I would like the tribunal to know and be confident as to how seriously I've taken these matters. I understand that my actions and my competencies were not that should be expected from a qualified solicitor. As such, I have come to the conclusion that I should no longer practice as a solicitor'.*
- 179.10 *'I thank the SRA for their pragmatic view on this matter and hope that the tribunal, after considering all of the information, will approve this agreed outcome'.*
- 179.11 *'These Proceedings have been the first thing on my mind and last thing on my mind every day for the last three years. It feels like my life has been in suspension whilst going through these proceedings'.*
- 179.12 *'Finally, I maintain that some of the examples provided in this matter were legitimately claimed expenses. However, due to my incompetence and negligence in keeping accurate notes of all files and time recording, I am unable to prove this in any event. I accept that if I had acted with due diligence in maintaining files to a high standard, then he's examples could've been proven to be true. These mistakes that I have come to own and except and hopefully can move on with my life with the support of my family'.*

Proposed Sanctions

180. Subject to the Tribunal's approval, it is agreed that the Respondent should be struck off the Roll of Solicitors. In the event that the Tribunal is minded to make that order, the Respondent also gives an undertaking to the SRA that he will never reapply for readmission to the Roll in the future.

181. For the avoidance of doubt, the SRA's readiness not to pursue an admission of dishonesty on the grounds of proportionality is conditional and contingent upon the Respondent not only being struck off, but also upon his provision of that undertaking.
182. The Respondent agrees:
- 183.1 to be struck off the Roll;
 - 183.2 to undertake not to reapply to be admitted to the Roll;
 - 183.3 to pay costs to the SRA in the sum of £15,000.
183. The Parties consider and submit that in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 8th Edition. The matters admitted are so serious as to warrant striking off the Roll; this is misconduct at the highest level and a most serious departure by the Respondent from the required standards of integrity, probity and trustworthiness, such that a lesser sanction is inappropriate and the protection of the reputation of the legal profession requires such a sanction.
184. In respect of the level of culpability:
- 184.1 The Respondent was the joint head of the Prison Law Department and was thus knowledgeable and experienced as to the system of attendance notes and claiming expenses and independently responsible for his actions in this regard;
 - 184.2 The Respondent claimed potentially up to an amount of £3,248.65 as a result of the claims, he therefore benefitted financially and would have known that submitting the expense claims that he did would result in financial benefit to himself;
 - 184.3 The fact that in many instances the claims were made before or shortly afterwards on the day of the purported visit, or close in time afterwards, when the Respondent would have known that visits (effective or no visit at all) had not taken place, suggests planned conduct on the part of the Respondent;
 - 184.4 Given that the claims were for publicly funded work, the expenses of inaccurate or fabricated claims for visits which had not in fact taken place, resulted in a loss to the public purse. Consequently the Respondent acted in breach of a position of trust in respect of his employer and the Legal Aid Agency (LAA).
185. In respect of the level of harm:
- 185.1 The Respondent's misconduct impacted on his employer, the LAA, the public and the reputation of the legal profession;
 - 185.2 A failure to ensure that the reporting to the LAA was accurate could have resulted in sanctions for the Firm, including termination of the contract which

would have prevented the Firm from undertaking publicly funded work and the LAA ordering that monies paid due to inflated claims be recouped from the Firm;

185.3 By failing to ensure that the reports to the LAA were accurate:

185.3.1 The Respondent could have foreseen the extent of harm caused by his conduct;

185.3.2 The Respondent's conduct as alleged was a significant and serious departure from the complete integrity, probity and trustworthiness expected of a solicitor and there is therefore a greater level of harm to the reputation of the legal profession.

186. In respect of aggravating features, the following factors apply:

186.1 Misconduct which was deliberate and calculated or repeated;

186.2 Misconduct continuing over a period of time;

186.3 A serious departure from the required standards of integrity, probity and trustworthiness;

186.4 Misconduct where the Respondent knew, or ought reasonably to have known, that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

Costs

187. As noted above, subject to the approval of this Agreed Outcome, it is agreed that the Respondent will pay **£15,000.00** towards the SRA's costs of the Application and Enquiry, including VAT, the SRA waiving any further claim to costs. This figure is commended to the Tribunal as being reasonable and proportionate.

Signed:

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LYNDSEY FARRELL

Solicitor, Capsticks Solicitors LLP

For and on behalf of the Solicitors Regulation Authority

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MATTHEW SMITH

Respondent

Dated 25 June 2021