SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12141-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL JOHN BAGGOTT Respondent

Before:

Mr S Tinkler (in the chair)
Ms B Patel
Dr S Bown

Date of Hearing: 16 March 2021

Appearances

Alastair Willcox, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent did not appear and was not represented

REDACTED JUDGMENT
ON AN APPLICATION HELD REMOTELY

NB: Part of the hearing took place in private

Allegations

1. The allegations against the Respondent, Mr Michael John Baggott, made by the SRA were that:

1.1 On or about 15 March 2019, the Respondent failed to provide a specimen of breath for analysis in the course of an investigation into whether he had committed an offence under Section 3A, 4, 5 or 5A of the Road Traffic Act 1988. He thereby breached any or all of:

1.1.1 Principle 1 of the SRA Principles 2011
1.1.2 Principle 2 of the SRA Principles 2011
1.1.3 Principle 6 of the SRA Principles 2011.

1.2 The Respondent failed to report his conviction dated 1 May 2019 to the SRA. He thereby breached:

1.2.1 Principle 7 of the SRA Principles 2011.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 12 Statement dated 17 November 2020 with exhibit AHJW1
- Civil Evidence Act notice dated 26 January 2021
- Letter from the Applicant to the Respondent dated 26 January 2021 comprising notices
- Applicant's Statement of Costs on Issue dated 17 November 2020
- Applicant's Statement of Costs - Substantive Hearing on 16 March 2021 dated 9 March 2021
- Emailed letter from the Applicant to the Respondent dated 9 March 2021
- Email from the Applicant to the Respondent dated 9 March 2021
- Blank Personal Financial Statement form
- Applicant's authorities bundle
- Tribunal's Practice Direction No 5 dated 4 February 2013, now reflected in Rule 33 of the Solicitors (Disciplinary Proceedings) Rules 2019
- Judgment in the case of Beckwith v SRA [2020] EWHC 3231 (Admin)
- Applicant's Procedural chronology as at 5 February 2021
- Applicant's Procedural Chronology as at 12 March 2021
- Correspondence sent from the Applicant to the Respondent and where received the Respondent's replies

Respondent

- None, other than correspondence referred to above

Preliminary Issues

3. The Respondent was not present. For the Applicant, Mr Willcox applied for the Tribunal to proceed with the application in his absence. Mr Willcox first addressed whether the Respondent had been properly served with notice of the proceedings. He referred the Tribunal to a chronology he had prepared for a Case Management Hearing ("CMH") which took place on 9 February 2021 and which he had updated to 12 March 2021 in a separate document both of which were before the Tribunal. Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR 2019") provided:

> "If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."

4. Mr Willcox submitted that the case was issued on 17 November 2020 and certified by the Tribunal. (Certification occurred on 18 November 2020.) Two notices of hearing had been sent to the Respondent. The first was contained in the Standard Directions dated 20 November 2020 issued by the Tribunal at the start of the case which would have been sent by the Tribunal by email using the Mimecast (secure) system. That email was not put before the Tribunal. The second notice was to be found in two places in the Memorandum of the CMH on 9 February 2021 where it was stated in paragraph 1:

> "The Rule 12 Statement was certified as showing a case to answer on 23 (sic) November 2020 when Standard Directions were issued which included:
>
> (i) Listing the substantive hearing on 16 March 2021 with a time estimate of one day."

At paragraph 8.1 of the Memorandum the directions included:

> "The case be listed for substantive hearing on Tuesday 16 March 2021 at 10:00 a.m. based on the worst-case scenario time estimate of one day …"

The Tribunal sent this Memorandum out to the parties on 11 February 2021 to an email address which was used throughout for the Respondent. That email was before the Tribunal. The case papers were sent to the same email address. Mr Willcox submitted that the Tribunal could be satisfied that the Respondent had received the notice of hearing on two occasions.

5. On 19 November 2020, during the course of a telephone call, Mr R of the Applicant informed the Respondent that the case had been lodged at the Tribunal. His telephone attendance note recorded:

> "[Mr R] explaining that the Tribunal will decide whether to certify the case. If it does, [the Respondent] will have an opportunity of submitting a reply setting out his position to the allegations."

On 30 November 2020, Mr H, a paralegal in the Applicant's Legal and Enforcement Department emailed the Respondent including:

> "I write in relation to the above matter. You should by now be aware that the Solicitors Disciplinary Tribunal have certified that there is a case against you to answer and that proceedings have been issued. If this comes as a surprise, I would urge you to review your inbox as the SDT will have served proceedings to the email address I am currently writing to you at."

The Respondent then emailed the Applicant on 8 December 2020. Mr Willcox submitted that the Respondent had received the case papers and the notice of hearing and was aware that the hearing was taking place.

6. Mr Willcox informed the Tribunal that he had also emailed the Respondent at the end of the previous week attaching authorities along with a copy of the Tribunal's Practice Direction 5 and the Applicant's updated procedural chronology. Mr Willcox asked the Respondent to confirm whether he would be attending the hearing. (The email included the hearing date.) Mr Willcox had received no response to that email. The Chair obtained confirmation from Mr Willcox that an email had also been received dated 17 December 2020 from the Respondent's email account from a person X and that nothing has been received by telephone or email from the Respondent since. Mr Willcox informed the Tribunal that the Applicant had also received an email dated 26 February 2021 from a Mr T, which the Applicant sent out for the Respondent's representations but in respect of which the Applicant had not received any representations. Mr T stated he was writing on behalf of the Respondent. He wrote from a separate email address. Mr Willcox uploaded the email to CaseLines. It had been sent to the Applicant's Investigation Officer for the case Mr M.

7. The Tribunal decided to conclude the issue of proper service of the proceedings before considering the contents of Mr T's email. Rule 44 of the SDPR 2019 provided:

> "(1) Any document to be sent to the Tribunal or any other person or served on a party or any other person under these Rules, a practice direction or a direction given under these Rules must be—
> (a) …: or
> (b) sent by email to the email address specified by the Tribunal or other person or specified for the proceedings by a party (or if no such address has been specified to the last known place of business or place of residence of the person to be served)…"

The proceedings had been sent to an email address to which the Respondent had replied and he had not provided a subsequent email address and the Tribunal had seen a copy of the email of 11 February 2021 sending out the case management papers which had details of this hearing. The Tribunal considered that email service to the last known email address was valid. It was therefore satisfied that notice of this hearing had been properly served upon the Respondent.

8. At this point the Tribunal determined that the email from Mr T contained sensitive personal data relating to the Respondent and went into private session to begin to hear submissions upon whether it was appropriate to proceed in the absence of the Respondent.

Part of Hearing in Private

9. Redacted.

Resumption of Hearing in public

10. Mr Willcox referred the Tribunal to the cases of R v Hayward; R v Jones; R v Purvis [2001] EWCA Crim 168 referred to below as "Jones". In applying Rule 36 of the SDPR 2019, the Tribunal must have in mind the checklist of the Court of Appeal in this case. Mr Willcox drew the Tribunal's attention to the following points from the checklist applicable to this case.

> "3. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
>
> 4. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> 5. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial …and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;"

Mr Willcox also referred to other factors referred to in the case; the seriousness of the offence and whether it was in the public interest that the hearing should take place in a reasonable time and submitted that there was no evidence to suggest that any delay would improve the Respondent's position.

11. Mr Willcox also drew the Tribunal's attention to the judgment in the case of GMC v Adeogba [2016] EWCA Civ 162 in which Sir Brian Leveson affirmed the principles set out above and indicated that it provided a useful starting point. He further stated that in respect of regulatory proceedings there was a need for fairness to the regulator as well as the Respondent, (following the numbering of the judgment in Adeogba):

> "19. There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the

> public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

And

> "23. Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the GMC and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner."

Mr Willcox submitted that in accordance with this judgment the decision whether to proceed in the Respondent's absence should be made in the context of the Tribunal's duty to protect the public, bearing in mind that the Respondent also had a duty to co-operate with his regulator and the Tribunal. Mr Willcox submitted that the Tribunal could be satisfied that the Respondent had been served with the case papers and notice of the hearing. He was therefore aware of the hearing, had voluntarily absented himself from it and waived his right to appear so the Tribunal could be satisfied it was appropriate to proceed in his absence in accordance with Rule 36.

12. The Tribunal had regard to the submissions for the Applicant, the authorities to which it had been referred and to the information submitted to the Applicant by and about the Respondent. He had emailed Mr R of the Applicant on 19 November 2020 providing information about problems in his personal life and with his health. Subsequently X and Mr T had written to the Applicant on 17 December 2020 and 26 February 20221 respectively saying they did so without the Respondent's permission. Mr H of the Applicant had also spoken on the telephone to a close family member of the Respondent on 29 January 2021. Essentially X and Mr T asked for the Applicant's process to be paused on grounds of the Respondent's health problems. The Respondent had not engaged with the Tribunal proceedings although it was apparent from his email to Mr R that he had understood the nature of the proceedings and that he would be given the opportunity to set out his case. He had not done so. The Tribunal had not received any direct evidence or more particularly any medical evidence as to a reason for the Respondent's non-engagement. It might be an open question as to whether he was deliberately not engaging or whether there were circumstances that were causing him not to engage but before proceedings were issued the Applicant had gone to considerable lengths to encourage the Respondent to seek medical help, to engage with the process and to ensure that the Respondent understood it. The information provided by third parties showed concern but they

spoke without the Respondent's authority and their information was essentially hearsay. There was no indication that an adjournment might result in the Respondent attending the Tribunal voluntarily which was one of the factors in the Jones case to be weighed against proceeding in his absence. The Tribunal also considered another factor from Jones, the extent of the disadvantage to the Respondent in not being able to give his account of events, having regard to the nature of the evidence against him. Without prejudging the matter, the Tribunal noted that this was a case arising out of a criminal conviction based on a guilty plea, where no witnesses were to be called. The Tribunal also bore in mind that if the case proceeded in the absence of the Respondent he had a right under Rule 37 of the SDPR 2019 to apply for a re-hearing. The Tribunal not only had to balance fairness to the Respondent with fairness to the regulator, it also had to have regard to the protection of the public. The Respondent did not have a current practising certificate but could apply for one if he chose to. If the matter proceeded, as an independent Tribunal, it would ensure that the proceedings were conducted fairly and ask questions of the Applicant which the Respondent might have asked. The Tribunal would ensure that points made by the Respondent in communications with the Applicant were taken into account. The Tribunal was also mindful of the duty of the regulator to prosecute matters promptly and of the Tribunal to hear matters such that the confidence of the public and that of other members of the profession was maintained. On balance, the Tribunal determined that it was the right thing to do to proceed in his absence.

Factual Background

13. The Respondent, was born in 1966 and admitted to the Roll of Solicitors on 1 October 1990.

14. At all material times, the Respondent was employed by Hugh James Involegal LLP based in Cardiff.

15. The Respondent remained on the Roll of Solicitors however he did not have a current practising certificate. The Respondent's most recent practising certificate expired on 31 October 2019 and a renewal application had not been received.

Allegation 1.1

16. On 15 March 2019, the Respondent was reported to the police by security staff at University of Wales Hospital in Cardiff. The report was made on the basis that the Respondent had been found in a slumped position in the driver's seat of a motor vehicle parked in a parking bay at the hospital.

17. The following information was recorded in the South Wales Police Headquarters' MG5 file:

    i) A security guard at the hospital had seen the Respondent's car parked in an obscure manner with the Respondent in the driver's seat with the keys in the ignition. The Respondent appeared unconscious, with the security guard banging on the car window several times to get the attention of the Respondent.

ii) The Respondent exited the vehicle and was unsteady on his feet and disorientated. It was at this point that the police were contacted.

iii) PC W arrived at the scene. The note recorded that the Respondent's breath smelt of intoxicants.

iv) A roadside breath test was administered which returned a reading of 83 ug (a fail).

v) At 15:15 hours, the Respondent was arrested and then transported to Cardiff Bay custody suite.

vi) At 16:18 hours, a breath test procedure was commenced with the Respondent. As part of this procedure, a warning for the failure to provide a sample was given.

vii) The Respondent failed to provide an adequate sample of breath. He blew into the machine three times, first for 0.7 seconds, the second for 2.2 seconds and the third for 1.0 seconds. The partial readings received were 75 ug, 76 ug and 63 ug respectively.

viii) As the Respondent had failed to provide a sample of breath, he was asked if there were any medical or other reasons why he could not or should not provide a sample of breath. The Respondent replied concerning medical matters and said also: I'm in sh*t order".

ix) The officer checked with the custody health care professional to determine if this condition would prevent the Respondent from blowing into the machine. The health care professional informed the officer that the Respondent's condition would not have any effect.

18. The Respondent was charged with, when suspected of, having been in charge of a vehicle and, having been required to provide a specimen of breath for analysis by means of a device of a type approved by the Secretary of State, failed, without reasonable excuse, to do.

19. The Respondent subsequently pleaded guilty to the offence and was sentenced to the following:

i) A fine of £700.00.
ii) To pay a surcharge to fund victim services of £70.00.
iii) To pay costs of £85.00 to the Crown Prosecution Service.
iv) Disqualified for holding or obtaining a driving licence for 12 months.

Allegation 1.2

20. On 18 March 2019, South Wales Police notified the Applicant that the Respondent had been arrested and later charged with the offence described above.

21. The Applicant wrote to the Respondent on 29 October 2019, after the Respondent had been convicted, seeking further information about the conviction of 1 May 2019. One of the queries raised centred around why the Respondent had not told the Applicant about the conviction.

22. The Respondent replied via email on 24 January 2020. The Respondent cited the following reasons for his failure to report the conviction to the Applicant; the death of a close family member and the effect it had had on another close family member, his acrimonious divorce, moving out of his home and staying with various friends and family, and the effect that this had on family members, the loss of his job, medical issues resulting in hospitalisation on several occasions.

23. The Respondent stated that he had no money and no income, that he already had significant debt and there was no possibility of him borrowing any more money, and that he hoped to get back into work when he was well enough, but this would take some time. The Respondent stated that he needs to be able to practise as a solicitor in order to secure a position, which was vital for him and his family. The Respondent also outlined in his response that he was not working and he specialised in company/commercial law. He also stated that the fine, victim surcharge and costs were paid by a close family member.

24. On 7 July 2020, a notice recommending referral to the Tribunal was sent to the Respondent. The Respondent's representations arising from the notice were due on 20 July 2020. No response was received.

25. On 21 August 2020, an authorised decision maker decided to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

26. On 14 October 2020, after the matter had been received by the Legal and Enforcement Department at the Applicant, the Respondent sent an email. Following its receipt, attempts were made to contact the Respondent but to no avail. The Respondent contacted Mr H, by email on 3 November 2020. Further telephone calls with the Applicant followed.

Witnesses

27. None.

Findings of Fact and Law

28. The Applicant was required to prove the allegations to the standard applicable in civil proceedings that is on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

29. **Allegation 1.1 On or about 15 March 2019, the Respondent failed to provide a specimen of breath for analysis in the course of an investigation into whether he had committed an offence under Section 3A, 4, 5 or 5A of the Road Traffic Act 1988. He thereby breached any or all of:**

1.1.1 Principle 1 of the SRA Principles 2011
1.1.2 Principle 2 of the SRA Principles 2011
1.1.3 Principle 6 of the SRA Principles 2011.

29.1 Regulatory provisions relied upon in allegation 1.1:

Principle 1 of the SRA Principles 2011 stated that you must uphold the rule of law and the proper administration of justice.

Principle 2 of the SRA Principles 2011 stated that you must act with integrity.

Principle 6 of the SRA Principles 2011 stated that you must behave in a way that maintains the trust the public places in you and in the provision of legal services.

29.2 The Applicant relied on the Respondent's conviction for the offence of when suspected of having been in charge of a vehicle and, having been required to provide a specimen of breath for analysis by means of a device of a type approved by the Secretary of State, failed, without reasonable excuse, to do as evidence that the Respondent was guilty of that offence, and relied upon the findings of fact upon which that conviction was based as proof of those facts. The Respondent appeared at Cardiff Magistrates' Court on 1 May 2019, pleaded guilty and was convicted of the offence. A certified copy of the memorandum of entry was before the Tribunal.

Principle 1

29.3 Mr Willcox submitted that by being convicted of a criminal offence the Respondent clearly failed to uphold the rule of law and the proper administration of justice. A failure to provide a specimen without reasonable excuse was not just a conviction, but also an example of obstructing a public authority in this case the police. A solicitor would be expected to comply with a lawful request made by a member of law enforcement. A refusal to comply with such a request was a breach of Principle 1 of the SRA Principles 2011.

Principle 2

29.4 Mr Willcox referred the Tribunal to the case of Wingate & Evans v SRA v Malins [2018] EWCA Civ 366, paragraph 97:

> "In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards."

Applying the principles set out by Lord Justice Jackson to this case, Mr Willcox submitted that by being convicted of a criminal offence the Respondent had clearly failed to live up to the higher standards which society expected from professional persons and which the professions expected from their own members. This was in

accordance with the privileged and entrusted role that they have in society. This was clearly a breach of Principle 2.

29.5 The Tribunal had asked Mr Willcox to address it upon the case of Beckwith v SRA [2020] EWHC 3231 (Admin) which had been decided after proceedings were issued in the Tribunal against the Respondent. Mr Willcox submitted that the starting point for the Tribunal was to look at what were the relevant parts of the Handbook at the material time and to construe the statutory scheme on its own terms. The Rules were made pursuant to Section 31 of the Solicitors Act 1974 (as amended). The Handbook in force at the material time was the SRA Code of Conduct 2011. The relevant procedural rules in force were the SRA Disciplinary Rules 2011. Under Rule 10, the conduct with which the Tribunal was concerned was deemed sufficiently serious to engage the Tribunal in that a decision was made to refer the Respondent's conduct to the Tribunal and a copy of the referral decision was in the bundle. The task was then for the Tribunal to identify on the facts of the case and by reference to the contents of the Handbook whether and if so what ethical standards emerged which were relevant to the misconduct alleged. This exercise was best undertaken on a case by case basis and any attempt to formulate a comprehensive list of what was prohibited and what was permitted detracted from the circumstances of a particular case; according to the judgment it could only provide a hostage to fortune. In relation to this conviction case as set out in Rule 12 Statement, paragraph 5.1 of the application provisions in the SRA Code of Conduct 2011 stated:

> "In relation to activities which fall outside of practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 1, 2 and 6 apply to you if you are a solicitor, REL or RFL."

29.6 Mr Willcox submitted that the Tribunal could be satisfied that it was dealing with professional misconduct for the purposes of the regulatory scheme in force at the time. By way of general submissions Mr Willcox made the following points:

- Firstly the nature of this case, that the Respondent had broken the law by failing to provide a specimen of breath was clearly one of those cases where the Tribunal was required to adjudicate on professional conduct reaching into a solicitor's private life. He failed to co-operate with a public body the police and was convicted of a criminal offence.

- Secondly, common sense dictated that the Respondent had broken the law and had been convicted of the offence of failing to provide a specimen without reasonable excuse. This offence reached into his private life.

- Thirdly, it was a matter of public interest and proper regulation of the profession; even though the offence was committed in the Respondent's private life it should be subjected to scrutiny by the Tribunal because the Respondent was a solicitor who had broken the law and been convicted of a criminal offence.

- Fourthly the offence was capable of endangering lives of members of the public. While the car was stationary at the time, it was in public and the Respondent was arrested at a hospital and he failed a breath test. The Chair reminded Mr Willcox that the conviction was of failing to provide a specimen of breath at the police

station. Mr Willcox agreed but submitted that given that the Respondent had broken the law, the balance was tipped in favour of the Tribunal dealing with the matter although the offence took place in his private life therefore it should be scrutinised as a matter of legitimate public interest.

29.7 Mr Willox referred the Tribunal to the first sentence of paragraph 54 of the judgment in Beckwith. The paragraph is set out below in its entirety for ease of reference:

> "There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession…"

Mr Willcox submitted that the conduct realistically touched on the Respondent's practise of the profession because the Respondent was a solicitor and solicitors were not expected to break the law. The conduct touched on the standing of the profession because by reason of being convicted of a criminal offence his actions clearly failed to maintain the trust the public placed in him and in the provision of legal services. The Tribunal then had to go on to consider if it was qualitatively relevant and Mr Willcox submitted that it was; the Tribunal was concerned with a criminal offence. The Respondent's behaviour led to a criminal conviction and he pleaded guilty. As to whether it was demonstrably relevant, Mr Willcox submitted that it was because he admitted the offence and pleaded guilty. Solicitors were not expected to be convicted of criminal offences; they were expected to adhere to the law.

29.8 The Chair referred to paragraph 54 where the judgment said "It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook." The Chair asked to be directed to such standards of behaviour in this matter. Mr Willcox responded that they were Principles 2 and 6.

29.9 As the Respondent was not present, Mr Willcox drew the Tribunal's attention to what he had said in respect of the allegations beginning with the Respondent's email to the Applicant dated 24 January 2020 which is summarised in the background to this judgment and which additionally said that he had slept in the car on previous occasions following disagreements. He also said that he eventually decided to plead guilty.

29.10 Mr Willcox referred to further emails from the Respondent as follows:

- An email dated 14 October 2020 to Mr H of the Applicant in which the Respondent said he had been seriously unwell, had been homeless, that he had been a temporary guest of a number of people; that he was without his computer.

He provided a telephone number. He referred to his family again and referred to having given information to Mr M of the Applicant previously.

- An email dated 3 November 2020 to Mr H in which the Respondent said he had been unwell and described his symptoms and that he had now reverted to the address the Applicant had for him, he had been away from his computer since the last occasion when he emailed Mr H. He also said he had mislaid his phone; he knew where it was but he could not get it back and provided a different number.

- An email dated 4 November 2020 to Mr H referring to 2 health problems and the reasons for the first. The Respondent said he was suffering from mental and physical health problems. He referred to being homeless in Cardiff and said:

  > "I want you to start this process again. I have been incapable of dealing with this since this process started - because of health problems, no access to my computer and when I see it I am overwhelmed with the number of unread emails…"

- Again on 4 November 2020, the Respondent emailed:

  > "I have just seen your message which crossed with mine. With the greatest respect medical health professionals and all the medication they peddle are rubbish…"

This was an email to Mr H in response to a lengthy email Mr H had sent offering options for the Respondent to get help. Mr H detailed Lawcare and the Solicitors' Assistance Scheme.

- An email on 8 December 2020 to Mr H in which the Respondent provided two telephone numbers for Mr H to call him on:

  > "I am very unwell at the moment. I have … If my friend answers, then you have my consent to speak to her…"

- The email from X sent from the Respondent's email account which the Tribunal had seen.

- An email to Mr R of the Applicant dated 19 November 2020 which began:

  > "Thank you for your call this morning. I note that you cannot set this process back to the beginning because the case is "too old". The papers have been sent to the Tribunal and there will now be a "certification process" which will result in the Tribunal deciding whether there is a case to answer. If they decide that there is, then I will be given the opportunity to set out my case at that stage..."

The Respondent referred to the period since he had learned there was to be a divorce as "an absolute, unmitigated nightmare" and went on to list a number of points he had previously touched upon.

29.11 Mr Willcox submitted that these were the communications to which he wished to draw attention and also to the fact that the Respondent had not filed an Answer to the Rule 12 Statement.

29.12 The Tribunal had regard to the evidence and the submissions for the Applicant and what the Respondent had said in his communications with the Applicant. (What had been said about the Respondent by X and Mr T largely went to mitigation and was not relevant at this point in the proceedings.) Rule 32 (1) of the SDPR 2019 provided:

> "A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances."

The Tribunal noted that the Respondent said he had been unable to provide the required specimen for medical reasons but he had pleaded guilty to the offence, he said on the advice of his lawyer. The Tribunal did not consider that this constituted exceptional circumstances such as would justify it going behind the conviction and the Respondent had not asked it to do so. The Tribunal found the facts giving rise to allegation 1.1 proved on the evidence to the required standard.

29.13 The Respondent had been convicted of failing to provide a specimen of breath when required to do so by a lawful authority. Principle 1 required the Respondent to uphold the rule of law and the proper administration of justice. The Tribunal found proved that by his conduct the Respondent had failed to do so and this constituted a breach of Principle 1 which it found proved on the evidence to the required standard.

29.14 As to the alleged breach of Principle 2, the Tribunal had invited submissions from Mr Willcox upon the authority of Beckwith which had been heard after these proceedings had been issued. The Tribunal had been directed to the Principles 2 and 6. The Tribunal noted that the Handbook stated in the notes to Principle 2:

> "Personal integrity is central to your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers and the public"

Paragraph 30 of the Rule 12 Statement set out:

> "A solicitor of integrity would not act in a way that is non-compliant with the request of a police officer and would ensure that any lawful request is complied with in a reasonable and timely manner. By failing to comply with the request from the police, the Respondent has failed to act with integrity in that he has failed to live up to the higher standards which society expects from him and which the profession expects from their own members, in accordance with the privileged and trusted role he has in society (see the principles set out by Lord Justice Jackson in the case of Wingate & Evans v SRA v Malins [2018] EWCA Civ 366, paragraph 97). He has therefore breached Principle 2 of the SRA Principles 2011."

While noting paragraph 5.1 of the application provisions in the Code of Conduct 2011, the Tribunal also bore in mind that the note to Principle 2 in the Code of Conduct 2011 referred only to "professional dealings". The Tribunal noted that in contrast the notes to Principle 6 specifically referred to conduct in both professional and private capacities. When the Respondent had committed the criminal offence of failing to provide a breath sample, he was not involved in a professional dealing with a client, a court, other lawyers or the public. Paragraph 101 of the judgment in Wingate gave examples of what constituted lack of integrity and they all related to actions carried out in professional practice. The Tribunal found the Respondent's conduct on the facts of this case to be part of his private life and was not satisfied that it realistically touched on his practise of the profession; for example he was not on his way to see a client, or at court in a professional capacity, nor was he interacting with the public in his capacity. Whilst he may have been in breach of other obligations, the Tribunal considered that in the particular circumstances of this case the offence did not touch sufficiently on the professional practice carried out by the Respondent to fall within Principle 2. Accordingly it had not been proved on the evidence to the required standard that breach of Principle 2 had been committed.

29.15 As to Principle 6, the note in the Handbook stated:

> Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society."

By contrast with its consideration of Principle 2 above, the Tribunal determined that the Respondent's conviction adversely affected the confidence the public placed in him and in the provision of legal services. Solicitors, as legal advisers to the public, must be seen to comply with the law and if the public became aware that a solicitor had not done so their trust would be undermined and therefore the Respondent had breached Principle 6. The Tribunal found allegation 1.1 found proved on the evidence to the required standard in so far as breaches of Principle 1 and 6 were concerned but not with regard to Principle 2.

30. **Allegation 2 – The Respondent failed to report his conviction to the SRA and has therefore breached Principle 7 of the SRA Principles 2011.**

30.1 Regulatory provision relied upon in allegation 1.2:

Principle 7 of the SRA Principles 2011 stated that you must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner.

30.2 It was submitted that the Respondent did not contact the Applicant to report the conviction of 1 May 2019 and therefore failed to co-operate with the Applicant. It was reported to the Applicant by the police rather than by the Respondent. Mr Willcox submitted that this was linked to the aggravating feature of this case that the Respondent had a previous regulatory history and was on notice that he should report matters. (It was set out in the Rule 12 Statement that the Respondent was convicted in the Cardiff and the Vale of Glamorgan Magistrates' Court on 7 July 2016 for the

offence of driving with excess alcohol, contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988.) The Applicant had sent a letter to the Respondent on 21 July 2017. It included:

> "We have considered the time lapsed since the conviction date (27 July 2016) and when you reported the conviction to us (7 October 2016), and your explanation that you did not think you were required to report it but when you checked the position you realised otherwise. Although we view such failures to notify seriously, in these circumstances we will not be pursuing this particular issue further but do remind you of your notification and reporting obligations…"

Mr Willcox submitted that there was a breach of Principle 7 and the Respondent was on notice of his reporting and notification obligations.

30.3 The Tribunal had regard to the evidence and the submissions for the Applicant and what the Respondent had said in his communications with the Applicant. The Tribunal noted that allegedly aggravating features were not generally taken into account unless and until the Tribunal reached the stage in a case where it had to consider sanction. The Tribunal was here considering it findings. It therefore limited the weight it attached to the evidence of the Respondent having a previous alcohol related criminal conviction and his subsequent dealings with the Applicant about the conviction to their establishing that the Respondent had been made aware in 2017 of his obligation to report a conviction to the Applicant. The Tribunal noted that the Respondent was arrested on 15 March 2019, convicted on 1 May 2019 and when the Applicant contacted him on 29 October 2019 he still had not notified the Applicant of the conviction. There was a least a seven month period in which he was aware of the conviction and had failed to notify the Applicant. The Tribunal found the facts of allegation 1.2 proved and found proved on the evidence to the required standard that by his conduct the Respondent had breached the requirement of Principle 7 to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and co-operative manner.

Previous Disciplinary Matters before the Tribunal

31. None

Mitigation

32. The Respondent had made representations to the Applicant in emails which could constitute mitigation and Mr Willcox had drawn this information to the attention of the Tribunal as set out under allegation 1.1 above. The Tribunal also had the information received from X and Mr T.

Sanction

33. The Tribunal had regard to its Guidance Note on Sanctions (December 2020), to the representations made by the Respondent in communications with the Applicant and to the representations made on his behalf but without his authority by X and Mr T. The Tribunal assessed the seriousness of the Respondent's misconduct. As to culpability,

while the Tribunal had no medical evidence concerning the Respondent it had a degree of anecdotal evidence from third parties and what the Respondent had said in his communications with the Applicant that his judgment was affected by alcohol and by his personal circumstances so that the Tribunal considered that his decision making ability was possibly compromised. The extent to which the Respondent's actions were deliberate was open to serious doubt. The Tribunal assessed his level of culpability as low. The Respondent had not caused harm to anyone else by his actions but he had damaged the reputation of the profession. As to aggravating factors; a criminal offence had been committed and the Respondent's failure to notify it to the Applicant lasted several months although the Tribunal was not certain that the failure had been calculated. (The previous criminal conviction was different in nature and had been dealt with by the Applicant.) The Respondent did not seek to blame others for what had occurred rather he blamed his personal circumstances. He ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the reputation of the legal profession. As to mitigation, the Respondent showed some indication of remorse but this did not really amount to insight as the Tribunal felt that his state at the time as he described it, meant that he was not thinking rationally. He had made an admission by pleading guilty on advice but had not consistently engaged with the disciplinary process and not engaged with the Tribunal at all. The Respondent's personal circumstances provided the context for what the Respondent had done rather than constituting personal mitigation.

34. As to sanction, the Tribunal considered the misconduct too serious for no order. This was more than a minor breach of the Applicant's regulations. The criminal conviction, and what the Tribunal determined to be the potential for further misconduct of a similar or related nature took the sanction beyond a reprimand and beyond a fine in the Indicative Fine Band at Level 1. The Tribunal assessed the misconduct at Level 2 that is moderately serious because of the breaches of Principles 1, 6 and 7. The Tribunal also considered whether restrictions upon the Respondent's ability to practise were called for but there was no evidence before it of professional practice related issues which restrictions could address. The Tribunal determined that a fine towards the upper end of Level 2 in the amount of £5,500 would be appropriate The Respondent had been given every opportunity to provide information about his financial circumstances but had not formally done so. On the other hand, The Tribunal had noted that the Respondent had, albeit informally, provided representations as to his poor financial circumstances, and the Tribunal had further information from third parties which indicated the Respondent's reduced circumstances; that he was not presently working, was not in possession of a practising certificate and sometimes at least was homeless. The Tribunal also took into account that he would be liable for the Applicant's costs. In the light of the Respondent's financial situation the Tribunal therefore reduced the amount of the fine to £2,001.

Costs

35. For the Applicant, Mr Willcox applied for a costs order. The costs set out on the Applicant's Schedule for this substantive hearing, taking in the costs at the date of issue amounting to £1,239,34, totalled £2,684.84. The Schedule had been emailed to the Respondent on 9 March 2021 along with a letter from Mr H referring to the case of SRA v Davies v McGlinchey [2011] EWHC 232 (Admin) (now reflected in

Rule 43(5) of the SDPR 2019). The letter advised that if the Respondent proposed to contend that no order for costs should be made or that any order for costs should be limited by reason of his lack of means, he should provide evidence upon which he intended to rely. Mr H had attached to his letter a blank Personal Financial Statement Form for the Respondent to complete and return by 12 March 2021. In the letter, Mr H had also asked the Respondent if the Schedule of Costs could be agreed but nothing had been heard from the Respondent in respect of either matter. As to the detail, the Schedule of Costs as at date of issue included Mr H drafting his case plan and preparing the Rule 12 exhibit bundle. He also drafted the Rule 12 Statement on which 4 hours were spent. There was £600 for the costs of the investigation. Correspondence referred to in the Schedule of Costs dated 9 March 2021 comprised Mr H's correspondence with the Respondent, the Tribunal and third parties. That Schedule also showed Mr Willcox's time for attending the CMH on 9 February 2021, preparation for this hearing at 4 hours and attendance at this hearing at 6 hours the latter of which Mr Willcox submitted could be adjusted to 3.5 to 4 hours to reflect time actually spent. The Tribunal noted that if the Respondent had been present he might have asked for the order not to be enforced without permission of the Tribunal. Mr Willcox responded that in the absence of any evidence to support such an order the Tribunal should make a fixed order as to costs. Although he could not speak for them, the Applicant's Costs Recovery department usually took a pragmatic approach in relation to payment plans and the recovery of costs. The Tribunal considered the costs claimed to be reasonable and reduced Mr Willcox's time for attending the hearing from 6 to 4 hours as he had suggested. The Tribunal assessed costs fixed in the amount of £2,424.84. The Tribunal did not make a reduction in the amount assessed because it had already taken into account the Respondent's circumstances across the aggregate level of fine and costs. The Tribunal had also decided not to make any restriction on the Applicant's right to enforce costs bearing in mind the confirmation given by Mr Willcox about the way that would be taken forward.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, MICHAEL JOHN BAGGOTT, solicitor, do pay a fine of £2,001.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,424.84.

Dated this 7th day of April 2021
On behalf of the Tribunal

S Tinkler
Chair