

# **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12172-2021

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

STEPHEN EVANS-JONES

Respondent

---

Before:

Ms T. Cullen (in the chair)  
Ms B. Patel  
Ms J. Rowe

Date of Hearing: 6 to 8 July 2021

---

## **Appearances**

Inderjit Johal, barrister, of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

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

---

## **JUDGMENT**

---

## Allegations

1. The allegations against the Respondent were set out in a Rule 12 Statement dated 24 February 2021 and were that:
  - 1.1 On 2 May 2018 he created letters which he backdated to either 19 February 2018 or 1 March 2018 to make it appear as though they were contemporaneous documents that had been created and sent on 19 February 2018 or 1 March 2018. In doing so, he breached Principle 2 and Principle 6 of the SRA Principles 2011 (“the Principles”).
  - 1.2 He caused or allowed letters that he had created and backdated on 2 May 2018 to be attached to particulars of claim dated 4 May 2018, as true copies of documents which were created on the dates on which they were purported to be created, knowing that the particulars of claim would be served on both the defendant’s solicitors and the Court. In doing so, he breached Principle 2 and 2 Principle 6 of the Principles and Outcome 5.1 of the SRA Code of Conduct 2011 (“the Code”).
  - 1.3 On 2 May 2019 he signed a witness statement supported by a statement of truth which was filed in possession proceedings and served on the defendant’s solicitors. In paragraph 8 of the witness statement the Respondent said the following:

*“I can recall signing and despatching the Letters and Enclosures on 19 February 2018. On that date, I personally signed each of the Letters and checked the Enclosures. I then passed them straight to my PA and asked her to put the Letters and Enclosures into envelopes and send them out...which I believe she did”.*

That paragraph was inaccurate and misleading because on 2 May 2018, the Respondent had created and backdated the letters dated 19 February 2018 which were appended to his witness statement and he did not personally sign the letters or despatch them on 19 February 2018. In signing the witness statement containing an inaccurate and misleading assertion, he breached Principle 2 and Principle 6 of the Principles and Outcome 5.1 of the Code.

- 1.4 Dishonesty was alleged against the Respondent in respect of all the allegations as an aggravating factor; however, proof of dishonesty was not an essential ingredient for proof of the allegation.
- 1.5 Recklessness was alleged as an alternative to dishonesty in respect of allegation 1.3.

## Documents

2. The Tribunal considered all of the documents in the case which included:

### Applicant

- Application and Rule 12 Statement dated 24 February 2021 with exhibits
- Reply dated 4 May 2021
- Costs schedules dated 24 February 2021 and 29 June 2021

## Respondent

- Answer dated 20 April 2021
- Respondent's witness statement dated 20 May 2021
- Witness statement of Paul Stanley, former colleague of the Respondent
- Witness statement of Paula Evans-Jones, wife of the Respondent
- Two further character references

## Factual Background

3. The Respondent was admitted to the Roll of Solicitors on 2 September 2002. At the relevant time he practised as a member and equity partner in the Manchester office of Fieldfisher LLP ("the Firm"). At the date of the hearing the Respondent held a practising certificate free of any conditions and was a director of Flahive Law Limited.
4. On 11 July 2019, the Applicant received a report from Mr Rider, general counsel of the Firm, about the Respondent. Mr Rider set out the Firm's conclusions of an investigation into the issues which subsequently gave rise to the allegations before the Tribunal. On 20 March 2020, the Respondent agreed to go on garden leave and he subsequently resigned from the Firm in November 2020.
5. The allegations all arose out of one client instruction to pursue possession proceedings. The Respondent's client had made loans which were secured by a fixed charge over various assets including two residential properties. Initially the Respondent had conduct of the proceedings and was assisted by Paul Stanley, an assistant solicitor in the Manchester office. The borrowers defaulted on loans and in early May 2018 two related sets of possession proceedings were initiated. There was a large measure of agreement between the parties over the factual underpinnings of the allegations. Details on the areas of dispute and the basis of the denials of some of the alleged breaches of the Principles, the Code, dishonesty and recklessness are set out below under the findings of fact and law.

## Witnesses

6. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:
  - Tom Rider, general counsel and partner at the Firm;
  - Paul Stanley, partner at Ronald Fletcher Baker LLP (former colleague of the Respondent);
  - Paula Evans-Jones, wife of the Respondent; and
  - The Respondent.

## Findings of Fact and Law

7. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. **Allegation 1.1: On 2 May 2018 the Respondent created letters which he backdated to either 19 February 2018 or 1 March 2018 to make it appear as though they were contemporaneous documents that had been created and sent on 19 February 2018 or 1 March 2018. In doing so, he breached Principles 2 and 6 of the Principles.**

### The Applicant's Case

- 8.1 All of the allegations arose out of possession proceedings pursued on behalf of one of the Respondent's clients. The Respondent's client was a specialist mortgage lender. The Respondent, assisted by Mr Stanley, initially had conduct of the matter.
- 8.2 From April 2018, HC, an associate solicitor in the litigation department of the Firm's London office became involved. She drafted the particulars of claim. During the preparation of the particulars of claim in early May 2018 it became necessary to append copies of letters previously sent to the defaulting borrower and the guarantors for the loan. Those letters contained formal demands for repayment of the loans ("FD letters") which were sent to on 19 February 2018 and letters before action ("LBA letters") sent on 1 March 2018.
- 8.3 The Respondent was copied into an email dated 30 April 2018 to Mr Stanley and another colleague regarding the draft particulars, missing documents and the appendices. On 1 May 2018 the Respondent replied stating that he would locate and provide the letters.
- 8.4 On 2 May 2018, the Respondent created two FD letters addressed to the guarantors relating to the two residential properties and dated them 19 February 2018. There had been only one unsigned word version of one FD letter on the Firm's file (created by the Respondent's personal assistant EL on 19 February 2018). It was alleged that the Respondent created the other FD letters from the one unsigned word version. All three FD letters were identical in substance save for the reference to the property names (a third FD letter was generated as one of the properties was known by two names).
- 8.5 It was alleged that the Respondent printed off all three FD letters on 2 May 2018. The Applicant's case was that the FD letters appeared to contain the Respondent's signature, but he denied signing them. The Firm's metadata relating to the FD letters supported the above chronology of the document creation which was traceable as each letter had a unique document number. Despite the Respondent's denial that he signed any of the FD letters it was submitted to be likely that he did so as he had created them, printed them and the signatures on them were said to be similar to his. Mr Johal

submitted that it was not credible that someone else in the Respondent's team had mistakenly signed and scanned the FD letters after the Respondent had (by his own admission) created them.

- 8.6 On the same day, 2 May 2018, the Respondent also created three LBA letters and dated them 1 March 2018. Again, all the letters he created were identical in substance save for references to the three addresses. The Firm's metadata and details of the document numbers was made available to the Tribunal. The Firm's files contained no record of any letters to the relevant borrower and guarantors having been created on 1 March 2018. According to the document history, the letters were not created until the beginning of May 2018. All three LBA letters were signed.
- 8.7 The Respondent had also prepared an initial version of the LBA letter that was not sent (which had a different document number). The wording of this letter was different to the LBA letters that the Respondent created on 2 May 2018.
- 8.8 The Applicant's case was that the Respondent was aware that the FD and LBA letters were required for the purpose of appending to the particulars of claim as evidence. Rather than explaining that he could not locate the original versions of the letters which may have been sent, he created carbon copies and dated them 19 February 2018 and 1 March 2018 respectively.
- 8.9 The letters created (and backdated) by the Respondent were disclosed to the defendants during the possession proceedings in early 2019. Through their solicitors the defendants stated that only one FD letter had been sent by the Firm. In addition, queries were raised about two of the LBA letters as to whether they were sent as drafted, evidence of proof of postage was requested as was confirmation of which of the two signatures on the appended letters were the Respondent's. NH (who had assumed conduct of the possession proceedings when HC left the Firm) consequently queried the service of the letters with the Respondent and asked whether he had signed them. On 17 April 2019, the Respondent emailed NH informing her that he did sign one of the LBA letters dated 1 March 2018 and that the other two were possibly signed by his personal assistant.
- 8.10 Following the trial on 8 to 10 May 2019, the Firm undertook an investigation into the Respondent's conduct. Mr Rider met with the Respondent on 15 May 2019. During this meeting the Respondent stated:
  - He had been reminded by his wife the previous evening that he was in fact on holiday for the whole week commencing 19 February 2018 as it was half term week. This meant he had not been in the office on the 19 February 2019 when the original FD letters had been prepared and he had not signed them.
  - He said he did not know who signed the FD and LBA letters.
  - He had received an email from one of the defendants to the possession proceedings in February 2018 acknowledging receipt of a letter. At the time he had assumed that they were acknowledging all three FD letters.

- He spoke to Mr Stanley at the beginning of May 2018 and Mr Stanley was certain that the FD letters were sent. Mr Stanley had a habit of keeping documents on his desktop and not putting them into the relevant legal file.
- Mr Stanley had also assured him that the LBA letters had been sent. The Respondent then created “carbon copies” to include with the particulars of claim.
- In response to a query about how he could have known the contents of the LBAs as there was no copy on file from which to create new carbon copies, the Respondent stated he did not know and said that Mr Stanley may have saved it to his desktop or alternatively they may have recreated the letter from memory.
- The Respondent stated that the copies of the LBA letters did not bear his signature (and that his comment to the contrary made to colleagues and in his witness statement, with which allegation 1.3 was concerned, were incorrect).

- 8.11 Mr Stanley had left the Firm in January 2019, but as part of the Firm’s investigation the contents of his desktop, which had been preserved, and the Firm’s document management system were searched. No letters to the defendants dated 1 March 2018, or any other documents relating to the matter, were found. It was not possible to search Mr Stanley’s laptop because it was wiped after he left the Firm. Mr Rider’s investigation also established that on 3 May 2018 Mr Stanley emailed the Respondent indicating that he had located an electronic version of one FD letter dated 19 February 2018 but not the LBA letters dated 1 March 2018. Mr Stanley confirmed to Mr Rider by telephone on 21 May 2019 that it was indeed his habit to save some documents on his laptop but he was unable to recall in this instance whether he had done so. Mr Stanley had asked the Respondent if he had the copies. Mr Rider submitted a report about the Respondent’s conduct to the Applicant in July 2019.
- 8.12 Mr Johal invited the Tribunal to give little weight to Mr Stanley’s witness statement and oral evidence in which he stated that he now remembered creating the LBA letters of 1 March 2018. He had not remembered this when approached by Mr Rider despite Mr Rider sending the letters to seek to jog his memory. By his own account Mr Stanley suffered difficulties with his memory sometimes and Mr Johal stated that the Applicant did not accept his recent evidence. Mr Johal submitted that Mr Stanley’s recent evidence was inconsistent with the contemporaneous evidence, in that he had said in May 2019 (as set out in the preceding paragraph) that he had looked for and been unable to find the letters dated 1 March 2018 and there was no record of any letters to the relevant borrower and guarantors being created on 1 March 2018 on the Firm’s files. It was submitted to be implausible that Mr Stanley’s evidence would have become clearer on these points given the additional passage of time.
- 8.13 The Applicant commissioned a handwriting expert to help determine whether the Respondent had signed the FD and LBA letters. The results were inconclusive. Nevertheless, Mr Johal invited the Tribunal to review the relevant signatures and submitted that the Tribunal could conclude based on an evaluation of the documents and surrounding circumstances that it was more likely than not that the Respondent had signed the letters he had created and backdated.

- 8.14 Despite any assurances that were given to the Respondent by Mr Stanley in respect of the FD and LBA letters, it was submitted that the Respondent should not have created and backdated letters and provided them to his colleagues as contemporaneous and true documents. It was submitted to be difficult to imagine what assurance Mr Stanley could have given the Respondent in respect of the LBA letters in circumstances where he could not locate a copy of them.
- 8.15 In creating and backdating letters to give the impression that they were contemporaneous documents it was alleged that the Respondent lacked integrity, in other words moral soundness, rectitude, and a steady adherence to an ethical code. The Applicant relied upon Hoodless & Blackwell v FSA [2003], Newell Austin v SRA [2017] EWHC 411 (Admin) and Wingate & Evans v SRA v Malins [2018] EWCA Civ 366, [2018] P.N.L.R. 22. In Wingate the Court of Appeal held that “integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty.”
- 8.16 It was further submitted that the public would not expect solicitors to create backdated letters and permit them to appear as though they were contemporaneous documents. In doing so, it was alleged that public confidence in the Respondent and in the delivery of legal services was undermined in breach of Principle 6.

#### The Respondent’s Case

- 8.17 The allegation was admitted as a breach of Principle 6. The Respondent accepted, as a fact, that he recreated two letters dated 19 February 2018 in the honest and genuine belief that all three FD letters had been prepared and sent on 19 February 2018, and that he was recording that which had actually occurred on the file.
- 8.18 The Respondent accepted, on the basis of reflection and informed with the benefit of hindsight, that whilst he was of the honest and genuine belief that he was entitled to act as he did, it would have been preferable to have recreated the letters and explained on the face of the document the position, that they were recreated on 2 May 2018 but dated 19 February 2018 and the reasons why.
- 8.19 A breach of Principle 2 (acting without integrity) was denied. The Respondent’s position was that he did not recreate the letters to make it appear as though they were contemporaneous documents that had been created and sent on 19 February 2018 as alleged. His evidence was that he had a genuine belief that all three letters had, in fact, been created and sent on 19 February 2018.
- 8.20 In his Answer and his oral evidence the Respondent explained the basis of this belief. One of the defendants sent an email to the Respondent on 21 February 2018 in which he acknowledged receipt of “Your correspondence posted and dated 19 February received by me late yesterday, 20 February.” The defence filed by both defendants referred, amongst other things, to “the demands relied upon within the POC at Appendix 8 and 9 thereto were sent only to [one of the three addresses]”. Further, the Respondent’s case was that the witness statement prepared by one of the defendants acknowledged receipt (contrary to what was asserted in the Rule 12 Statement) of one of the letters dated 19 February 2018 of which there was no copy found on the Firm’s system. This statement was submitted to be entirely supportive of and consistent with

the Respondent's genuine and honestly held belief that all three letters were created and sent on 19 February 2018.

- 8.21 Mr Goodwin noted that Mr Rider had concluded in his investigation that it was more likely than not that the Respondent's personal assistant used the same document to produce the three original FDA letters to the defendants, printed them off separately, but only saved one version on the Firm's system.
- 8.22 The Respondent's position was the same in relation to the LBA letters. The defendant's solicitors had originally raised a query relating to the LBA letters dated 1 March 2018, but following explanation, did not pursue the matter. The defendants' witness statements indicated they had received only one of the FD letters but no issue was pursued by the defendants' solicitors in relation to the LBA letters.
- 8.23 Following a further query from the defendants' solicitors in relation to the metadata of the LBA letters, the document histories were openly and transparently provided to them prior to trial. No point was taken by the defendants and/or their legal team concerning the production and delivery of the letters dated 19 February 2018 and/or 1 March 2018. It was submitted that it could reasonably be inferred that the defendants raised no issues with the LBA letters dated 1 March 2018 because they had received them.
- 8.24 In relation to the letters dated 1 March 2018, the Respondent relied upon his own recollection, and that of Mr Stanley, that they had been created and sent. Mr Stanley had a habit of saving documents on his desktop and/or his laptop, but not saving the documents to the file so it came as no great surprise to the Respondent that the document(s) had not been saved. Mr Stanley confirmed this occasional habit in his oral evidence and in a letter to which the Tribunal was referred. Mr Stanley stated that he recalled the Respondent providing him with a precedent document that he had used to create the three versions of the letter dated 1 March 2018. He stated that he now recalled the letter as they had enclosed a National Homelessness Advice Service Booklet which was the first and last time he had encountered that document.
- 8.25 In his live evidence Mr Stanley responded to the suggestion that his recollection was unreliable. He explained that his memory of specific events often returns, anything from a few seconds to up to a year after the event. He was adamant and consistent in his evidence that he had a firm recollection of EL asking him to check a copy of the FD letters dated 19 February 2018 she had created, and of asking her to check with the Respondent that she could sign them on his behalf. He also stated that he recalled creating three versions of the LBA letters dated 1 March 2018 and passing them to a colleague to post.
- 8.26 It was submitted that a distinction should be drawn between recreating letters the Respondent genuinely and honestly believed had originally been sent on 19 February 2018 and 1 March 2018 and a situation where a solicitor creates and backdates a letter in the knowledge that the created and back-dated letter never existed at all. In recreating letters he genuinely and honestly believed had been sent it was denied that the Respondent's conduct had lacked integrity in breach of Principle 2.



- 8.27 The handwriting report was submitted by Mr Goodwin to be prejudicial but in any event to be of no probative value concluding as it did that the author was unable to offer any reliable opinion as to whether the Respondent had signed any of the FD or LBA letters.

### The Tribunal's Decision

- 8.28 The Respondent had admitted that he 'recreated' two FD letters on 2 May 2018 and dated them 19 February 2018. He also admitted that he created the LBA letters on 2 May 2018 and dated them 1 March 2018. These admissions were consistent with the Firm's metadata and the relevant document numbers. The Respondent accepted that his conduct breached Principle 6 on the basis that it would have been preferable to have explained on the face of the documents that they were recreated on 2 May 2018 and the reasons why. The Tribunal accepted that the admission was properly made and found the alleged breach of Principle 6 proved to the requisite standard.
- 8.29 There was a large measure of agreement between the parties as to the underlying facts. The Respondent denied that he had signed the letters that he had created on 2 May 2018 and he denied that his actions in creating and backdating the letters, considered in context and in light of his belief at the time, lacked integrity.
- 8.30 The Tribunal accepted that the Respondent genuinely believed that the FD letters dated 19 February 2018 had previously been sent when he created and backdated them on 2 May 2018. The Tribunal considered there were plausible grounds to sustain this belief and accepted the Respondent's consistent evidence that it was genuinely held. A reply from one of the recipients acknowledging "your correspondence posted and dated 19 February received by me late yesterday, 20 February" had been received by the Respondent. The defence filed by one of the recipients of the FD letters acknowledged receipt of one of the FD letters. The Tribunal noted, whilst not being bound by his findings, that Mr Rider had concluded that it was more likely than not that the Respondent's personal assistant used the same precedent document to produce the three FD letters to the defendants in February 2018.
- 8.31 The Tribunal similarly accepted that the Respondent genuinely believed that the LBA letters dated 1 March 2018 had previously been sent when he created and backdated them on 2 May 2018. The Tribunal accepted that the defendants to the possession claim did not pursue the LBA letters which supported the Respondent's contention that they had been sent and supported the basis for his belief. Mr Stanley had stated in evidence that he had a clear recollection of the letters being created, something he suggested was due to recalling the National Homelessness Advice Service Booklet which had been enclosed which he had not encountered before or since. The Tribunal considered that Mr Stanley's evidence was genuine and sincere and that he sought to assist the Tribunal. The Tribunal accepted the evidence was given in good faith and found it was a factor which supported the Respondent's evidence about the reasonableness and the genuineness of his belief that the LBA letters had been sent as dated and that he had sought to 'recreate' what had been sent (to use Mr Goodwin's phrase) rather than to manufacture something which had never existed.

- 8.32 The Tribunal considered that for some reason, given this genuine belief that the FD and LBA letters had been sent as dated, the Respondent then ‘recreated’ them, rather than doing what any solicitor should do, which is explain that copies were not available, or make it plain on the face of the ‘recreated’ document that it was not a copy of the original. The Tribunal accepted that the Respondent appeared to genuinely believe that he was entitled to ‘recreate’ these documents in the way he did. The Tribunal found this belief to be bizarre and plainly wrong, but accepted that it was genuinely held. All solicitors should know that they must be scrupulously accurate and that documents should not be ‘recreated’, that is to say created and backdated, without being clearly identified as such. However, the Tribunal did not consider that there was evidence sufficient to gainsay the Respondent’s account of his belief on this point.
- 8.33 The Tribunal accepted there was a meaningful and substantial distinction between the creation of something which had existed, as it had existed, and the creation of something entirely new which gave the impression that something had previously existed when this was not in fact the case.
- 8.34 The Tribunal found that it was inconceivable that the Respondent was not aware that those who saw the ‘recreated’ documents would assume they were true copies of the originals. Whilst they may be indistinguishable from what copies of the originals would have looked like, he knew this was not their true status. The Respondent had accepted this and it informed his admissions.
- 8.35 The Tribunal did not consider that it had been proved that the Respondent signed the letters that he had created on 2 May 2018. Whilst there was some inherent implausibility in a colleague doing so after the Respondent had created the letters, the handwriting expert was unable to offer a view and in these circumstances, and given the Respondent’s consistent evidence on this point, which contrasted with his admission that he had created the letters, the Tribunal did not consider that the requisite standard of proof had been met.
- 8.36 The Tribunal had regard to the test for conduct lacking integrity in Wingate. In [100] Rupert Jackson LJ stated “a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”. This comment related to a solicitor conducting negotiations or a barrister making submissions, but the Tribunal considered the situation the Respondent was in to be analogous. Integrity requires more than mere honesty. The Tribunal found that the Respondent was not full and frank in his creation of and dealings with the FD and LBA letters, and this was what integrity required. Integrity required that he explain what he had done when he sought to create a copy of letters he genuinely believed had been sent.
- 8.37 ‘Recreating’, or creating and backdating, a document in any circumstance is always going to be potentially very problematic for a solicitor. This was something the Tribunal considered should be clear to any solicitor. The Respondent was necessarily aware that the documents he created on 2 May 2018 were backdated and not wholly authentic. The Tribunal found that acting with integrity required it be clear on the face of the document when it was created, or for the provenance of the document to be clearly communicated to those receiving it. He failed to ensure this. The Tribunal

accordingly found proved to the requisite standard that the Respondent had thereby failed to adhere to the ethical standards of the profession which required scrupulous accuracy. This overarching ethical standard was heightened in the case of documents which would be used in proceedings. The Tribunal found on the balance of probabilities that the Respondent's actions had lacked integrity in breach of Principle 2.

9. **Allegation 1.2: The Respondent caused or allowed letters that he had created and backdated on 2 May 2018 to be attached to particulars of claim dated 4 May 2018, as true copies of documents which were created on the dates on which they were purported to be created, knowing that the particulars of claim would be served on both the defendant's solicitors and the Court. In doing so, he breached Principles 2 and 6 and Outcome 5.1 of the Code.**

#### The Applicant's Case

- 9.1 As set out above, the impetus for the Respondent's creation and backdating of the FD and LBA letters was the client instruction to issue possession proceedings. HC drafted the particulars of claim in early May 2018 and sought to append copies of the letters.
- 9.2 As also stated above, in reply to an email of 30 April 2018 from MW (a colleague of HC who was assisting with the particulars of claim) the Respondent confirmed on 1 May 2018 that he would locate and provide the LBAs.
- 9.3 It appeared that Mr Stanley received the relevant file from archives on the afternoon of 2 May 2018.
- 9.4 On 2 May 2018 (at 16:24) EL (the Respondent's personal assistant) emailed HC attaching the correspondence referred to in the email from MW. HC duly forwarded this email to MW at 16:28 on the same day. The attachments to these emails included the three signed FD letters and three signed LBA letters created by the Respondent on 2 May 2018 (as described in allegation 1.1).
- 9.5 Mr Stanley emailed the Respondent on 3 May 2018 (at 09:46) stating he had "rooted through" but could not locate the requested appendices and asking if the Respondent had copies. Mr Stanley subsequently emailed the Respondent and provided an electronic copy of one of the FD letters (the one which was on the system and which had been created by EL on 19 February 2018). Mr Stanley then emailed MW (at 09:49) and informed her that he had located the FD letter and would revert to her on the other appendices. The Respondent then emailed Mr Stanley and MW (at 09:50) stating that EL had the requested letters and asking to see the particulars of claim and exhibits before they were sent out.
- 9.6 In the particulars of claim, dated 4 May 2018, for each of the related actions, reference was made to demands for payment made by the Firm on 19 February 2018. One copy of each of the FD letters 19 February 2018 and the LBA letters dated 1 March 2018 were attached to the particulars of claim. The Applicant's case was that the Respondent would have seen this document and exhibits before they were served on the defendant's solicitors and the Court.

- 9.7 As described in relation to allegation 1.1, the defendant's solicitors raised queries in March 2019 about two of the LBA letters (and maintained that only one FD letter had been sent). On 5 April 2019, NH emailed the Respondent and asked whether the LBA letters were sent as attached and if so whether all three letters sent and if there was proof of postage. As the signature on two of the LBAs were slightly different, she asked which was the Respondent's signature.
- 9.8 The Respondent informed NH on 9 April 2019 that the letters were sent to all three addresses and he thought they were all sent by recorded delivery and first-class post. Subsequent checks revealed that the letters were not sent by special or recorded delivery. The Respondent then emailed NH and informed her that the letters were sent by first class post, following up with a further email in which he said that they were definitely sent first class.
- 9.9 On 17 April 2019, the Respondent emailed NH informing her that he did sign one of the LBA letters dated 1 March 2018 and that the other two were possibly signed by EL. He attached to his email a copy of the LBA. On 18 April 2019, the Firm sent a reply to the defendants' solicitors in which they confirmed that:
- The LBA letters were sent as drafted;
  - Both letters were sent by first class post; and
  - One of the LBA letters was signed by the Respondent.

As stated in relation to allegation 1.1, the Respondent subsequently stated that the copies of the LBA letters did not bear his signature and that this comment to NH to the contrary was incorrect.

- 9.10 As with the previous allegation, it was submitted that in causing or allowing the documents which he had created and which gave the false impression that they were contemporaneous documents to be served with a particulars of claim on the defendant's solicitors and the Court, the Respondent lacked integrity and had breached Principle 2. It was again submitted that such conduct would undermine the trust placed by the public in the Respondent and in the provision of legal services in breach of Principle 6.
- 9.11 It was also alleged that the Respondent also breached Outcome 5.1 of the Code of Conduct 2011 in that he attempted to deceive or knowingly or recklessly mislead the Court by allowing the letters to be served with the particulars of claim.

#### The Respondent's Case

- 9.12 The Respondent accepted that he caused or allowed the recreated letters dated 19 February 2018 and 1 March 2018 to be attached to the particulars of claim. As with the previous allegation, this was in the genuine and honestly held belief that the recreated letters had, in fact, been created and sent on the earlier dates. With the benefit of hindsight and reflection, the Respondent admitted that his conduct breached Principle 6.
- 9.13 The Respondent denied any breach of Principle 2 or Outcome 5.1 of the Code for the reasons summarised above in relation to allegation 1.1.

### The Tribunal's Decision

- 9.14 The Respondent had admitted that caused or allowed the 'recreated' letters dated 19 February 2018 and 1 March 2018 to be attached to the particulars of claim. These admissions were consistent with copy correspondence to which the Tribunal was referred. The Respondent accepted that his conduct breached Principle 6. The Tribunal accepted that the admission was properly made and found the alleged breach of Principle 6 proved to the requisite standard.
- 9.15 The alleged breach of Principle 2 was denied on the same basis as in allegation 1.1, that the Respondent had genuinely believed the letters had been sent on the earlier dates and that he had created carbon copies of correspondence previously sent. There was considerable overlap between allegations 1.1 and 1.2. As already stated, the Tribunal accepted that the Respondent genuinely believed that the letters he created on 2 May 2018 reflected originals which had been created and sent as dated on 19 February 2018 and 1 March 2018.
- 9.16 In the findings on allegation 1.1, the Tribunal had found the Respondent's stated belief he was entitled to 'recreate' documents in the way he admitted was bizarre and plainly wrong but was genuinely held.
- 9.17 The Tribunal found the Respondent to be a somewhat combative witness whose defence of the allegations put to him often took the form of aggression. He spoke repeatedly, and the Tribunal accepted genuinely, about the professional pressures on him at the time and how routinely busy he was. He was a successful solicitor and produced a range of extremely impressive testimonials. He appeared to the Tribunal to be somewhat dismissive of the seriousness of the allegations at times. The Tribunal accepted that the misapprehension which led him to genuinely believe that he was entitled to 'recreate' the documents also led him to cause or allow the appending of those letters to the particulars of claim.
- 9.18 For the same reasons set out in relation to the allegation of conduct lacking in integrity in allegation 1.1, the Tribunal did not find this belief to be an adequate answer to the allegation that his conduct lacked integrity. As was stated above, integrity and the ethical standards of the profession required that the Respondent explain what he had done when he sought to create a copy of letters he genuinely believed had been sent. The same applied to causing or allowing those letters to be attached to the particulars of claim. By being appended to particulars of claim the letters were inevitably going to be served on the defendants and the Court. The Tribunal again found that acting with integrity required it be clear on the face of the documents appended to the particulars of claim when and why they were created or for their provenance to be otherwise made clear in the particulars of claim. The Respondent failed to ensure this. The Tribunal accordingly found proved to the requisite standard that the Respondent had thereby failed to adhere to the ethical standards of the profession and act with integrity in breach of Principle 2.
- 9.19 As a simple and direct consequence of the 'recreated' letters appearing to be something they were not, the recipients of those letters may have been misled. The particulars of claim were served on the defendants and filed with the Court. That the letters did not feature in the trial was not a complete answer to the allegation that by

causing or allowing the letters to be appended to particulars of claim the Respondent breached Outcome 5.1 of the Code. This Outcome, applicable to all solicitors, states:

*“You do not attempt to deceive or knowingly or recklessly mislead the Court.”*

- 9.20 The Tribunal found that by failing to provide the scrupulous accuracy as to when and why the letters were created that acting with integrity required, the Respondent had been reckless as to the possibility of the Court being misled. He created the letters on 2 May 2018 precisely because colleagues sought to append copies of the original letters to the particulars of claim. He had admitted causing or allowing the letters he created to be appended in the days immediately after he had created and backdated them. When the particulars of claim were finalised, the Respondent knew that the appended letters were presented as true copies of the original letters when they were not. Whilst the Tribunal accepted, as set out above, that he genuinely considered at the time that he was entitled to reproduce the letters in the way he did, the Tribunal did not think it was credible that as an experienced solicitor he did not perceive some risk that the Court as a recipient of the appended letters could thereby be misled, even if ‘only’ to the extent of a distinction the Respondent considered unproblematic between a true copy and a faithful reproduction. The Tribunal found that it being more likely than not that the Respondent perceived that risk, he was reckless to it by causing or allowing the letters to be appended to the particulars. The Tribunal found on the balance of probabilities that the Respondent was reckless as to this risk and accordingly found the breach of Outcome 5.1 proved.

10. **Allegation 1.3: On 2 May 2019 the Respondent signed a witness statement supported by a statement of truth which was filed in possession proceedings and served on the defendant’s solicitors. In paragraph 8 of the witness statement the Respondent said the following:**

*“I can recall signing and despatching the Letters and Enclosures on 19 February 2018. On that date, I personally signed each of the Letters and checked the Enclosures. I then passed them straight to my PA and asked her to put the Letters and Enclosures into envelopes and send them out...which I believe she did”.*

**That paragraph was inaccurate and misleading because on 2 May 2018, the Respondent had created and backdated the letters dated 19 February 2018 which were appended to his witness statement and he did not personally sign the letters or despatch them on 19 February 2018. In signing the witness statement containing an inaccurate and misleading assertion, he breached Principles 2 and Principle 6 of the Principles and Outcome 5.1 of the Code.**

### The Applicant’s Case

- 10.1 The trial of the consolidated possession actions took place on 8 to 10 May 2019. The Firm instructed Mark Sefton QC to deal with the claim and he advised the Respondent to provide a witness statement confirming that the three FD letters had been sent by first class post to the addresses on the letters.

- 10.2 A witness statement was prepared for the Respondent. A draft was sent to him on 1 May 2019 and the wording discussed with him by telephone. On 2 May 2019, the Respondent signed the witness statement. In paragraph 5 of the witness statement the Respondent referred to the three FD letters which he refers to in the statement as the “Letters”. The letters enclosed further letters, and these were termed as “Enclosures” in the witness statement.
- 10.3 In paragraph 8 of the witness statement, which contained a statement of truth, the Respondent stated:
- “I can recall signing and despatching the Letters and Enclosures on 19 February 2018. On that date, I personally signed each of the Letters and checked the Enclosures. I then passed them straight to my PA and asked her to put the Letters and Enclosures into envelopes and send them out...which I believe she did”.*
- 10.4 A copy of the Respondent’s signed witness statement and exhibits were served on the defendants’ solicitors and a copy was filed with the Court. The defendants’ solicitors raised queries and asked to see the metadata for the three FD letters to two of the defendants.
- 10.5 The document reference number formed part of the Firm’s reference in the heading to the FD letters. The document histories showed that one of the FD letters was created on 19 February 2018 by EL and the two other FD letters were created by the Respondent on 2 May 2018. The document histories were provided to the defendants’ solicitors before the trial.
- 10.6 At the outset of the trial on 8 May 2018, the Firm’s counsel, Mr Sefton QC, informed the Judge that no reliance was being placed upon any of the FD letters and that it was therefore unnecessary for the Judge to read the Respondent’s witness statement.
- 10.7 The trial concluded on 10 May 2019. The Judge found in favour of the Firm’s clients and made an order for possession of both properties.
- 10.8 As stated in relation to allegation 1.1, the Respondent had stated to Mr Rider on 15 May 2019 that he had not signed the FD letters (or the LBA letters) having been reminded by his wife that he was away from work during the relevant week on a half-term holiday. In that meeting with Mr Rider the Respondent had acknowledged that paragraph 8 in his witness statement was clearly incorrect but stated that at the time of signing the witness statement he genuinely thought what he said in the paragraph was true. He accepted that he should have given it more thought and stated that although NH discussed it with him it was all done in a bit of a hurry.
- 10.9 The Applicant’s case was that paragraph 8 of the Respondent’s witness statement was clearly inaccurate and misleading, and that the Respondent knew that the FD letters attached to his witness statement were not true copies of documents that he had signed and dispatched on 19 February 2018, as they were created by him on 2 May 2018. It was noted that the Respondent’s assertion in paragraph 8 was made after the defendants had asserted in their own witness statements that they had not received all the letters served by the Firm.

- 10.10 It was submitted that a simple check by the Respondent of his calendar would have revealed that he was not in the office on 19 February 2018 so could not have signed and despatched the FD letters on 19 February 2018. It was also stated that the Respondent only admitted to Mr Rider that he could not have signed and despatched the FD letters on 19 February 2018, after the Firm had discovered that the metadata showed that he had created them on 2 May 2018.
- 10.11 In signing the witness statement containing an inaccurate and misleading assertion, it was alleged that the Respondent lacked integrity (Principle 2). It was submitted that a solicitor acting with integrity would have ensured that any assertion made in a witness statement was correct and true. It was further alleged that the public would expect solicitors to be scrupulous in checking witness statements before signing them attesting to the truth of the facts therein and serving them on the Court. It was alleged that the Respondent had undermined public trust in him and in the provision of legal services by signing a witness statement that contained inaccurate and misleading assertions (in breach of Principle 6). The Respondent was also alleged to have breached Outcome 5.1 of the Code by attempting to deceive or knowingly or recklessly misleading the Court.

#### The Respondent's Case

- 10.12 The allegation was admitted as a breach of Principle 6 on the basis that the Respondent accepted that the witness statement dated 2 May 2019 contained an inaccurate representation.
- 10.13 The allegation was denied as a breach of Principle 2. The witness statement was prepared by colleagues based in the Firm's London office and was sent to the Respondent on 1 May 2019 at 13:37. The Respondent replied on the same day at 14:57 saying "It seems fine to me".
- 10.14 On the following day, 2 May 2019, NH sent the final version of the witness statement to the Respondent. The Respondent signed the statement on 2 May 2019 and it was returned by his personal assistant to NH on the same day at 11:38. The Respondent's evidence was that he was under considerable pressure, both from a work perspective and to return the statement, and acknowledged that it was dealt with in a hurry and in haste. At the time he signed the statement it was 15 months after the letters dated 19 February 2018 had been prepared and sent and his genuine and honest recollection at that time (May 2019) was that he recalled signing and despatching the letters on the date they were signed. He accepted that he was mistaken.
- 10.15 The Respondent's account, corroborated by evidence from his wife and also from dated social media posts, was that he was in fact abroad on holiday for the whole week commencing 19 February 2018. His evidence, and hers, was that she brought this to his attention on the evening of 14 May 2019 when the Respondent mentioned that he had a meeting with Mr Rider the following day in relation to this matter and letters sent on 19 February 2018.
- 10.16 It was submitted to be to the Respondent's credit that he volunteered at the first available opportunity (his meeting with Mr Rider the following day) that his representation had been inaccurate.



- 10.17 Mr Goodwin submitted that whilst it would not be something that the Respondent would have contemplated, if the Respondent had acted deliberately and knowingly as alleged, it would have been open to him to have said nothing to Mr Rider having discovered he had been away on a family holiday, and maintained the position within the statement. The Respondent's case was that he did not and would not act in that way, and it was submitted to be supportive of his honesty and integrity that he immediately disclosed the error to Mr Rider at the first available opportunity. There was no attempt to deceive, or to knowingly and/or recklessly, mislead the Court and/or the defendant. The inaccurate representation was said to be the consequence of genuine error and nothing more. The alleged breach of Outcome 5.1 of the Code was denied on the same basis.

### The Tribunal's Decision

- 10.18 The Respondent had admitted that the witness statement he signed on 2 May 2019 contained an inaccuracy. This admission was consistent with his wife's evidence that he was abroad when the letters were signed on 19 February 2018 and the corroborating dated social media posts. On the basis that he had not checked the position, and had allowed the inaccuracy to remain in the statement drafted for him when he signed the statement, the Respondent accepted that his conduct breached Principle 6. The Tribunal accepted that the admission was properly made and found the alleged breach of Principle 6 proved to the requisite standard.
- 10.19 The Tribunal considered that the Respondent had been careless in failing to ensure that his statement was wholly accurate. However, the Tribunal considered that the fact that the statement was prepared and signed a year after the letters were created and appended to the particulars of claim was significant, taking into account the burden of proof which was on the Applicant. The Respondent did not have to prove anything. The Respondent had presented various character references which spoke of his professionalism and integrity, and had an otherwise unblemished disciplinary and regulatory record. There was no propensity for the making of inaccurate statements.
- 10.20 The Tribunal also noted that the statement was prepared for him and that he approved, and returned, it very promptly. The Tribunal accepted the Respondent's evidence about the volume of work and emails he was routinely handling at the time. This did not excuse a failure to ensure the statement was wholly accurate, but the Tribunal accepted it was part of the factual matrix in which that failure occurred.
- 10.21 The Tribunal accepted Mr Johal's submission that it was not bound by the concept of inherent improbability if there was sufficient evidence to support the allegation. However, the Tribunal did not consider that the burden on the Applicant had been discharged. The Respondent's evidence was that, when he received this request for a statement to be approved and signed, concerning events which took place a year previously, he did not consider that he had to check his work diary on the basis that he thought he clearly remembered having signed and despatched the letters. Whilst plainly it would have been advisable to do so, on balance the Tribunal accepted that the reason the Respondent did not check was more likely than not that he was acting on the basis of what he remembered. The Tribunal accordingly did not consider that it had been proved to the requisite standard that the Respondent had been deliberately misleading in his statement.

- 10.22 The Tribunal stressed, in its findings in relation to allegations 1.1 and 1.2, that scrupulous accuracy was an important ethical standard of the profession and a requirement of acting with integrity. The Respondent had accepted that his statement had contained an inaccuracy. However, unlike the previous allegations, the Tribunal did not consider that the burden of proof on the Applicant had been discharged. Based on the year which had passed, the fact the statement was prepared for him, the fact he was under pressure to and did approve and return the statement quickly and, importantly, the finding that it had not been shown that the Respondent had deliberately misled but was acting on what he thought he recalled, the Tribunal did not consider that a breach of Principle 2 had been proved. The test for conduct lacking integrity in Wingate is an objective one, but however advisable it would have been for the Respondent to have checked the position, given that the Tribunal accepted he was acting on what he thought he recalled, the Tribunal did not consider that this failure, considered in context, could be characterised as a failure to adhere to the ethical standards of the profession. To fail to check if there was doubt would be highly likely to amount to a failure to act with integrity, but for the reasons summarised above the Tribunal did not consider that it had been proved to the requisite standard that such doubt existed in the Respondent's mind. The Tribunal did not consider that the Respondent could inadvertently act without integrity. The mistake in the statement was evidently a serious one, and the proven breach of Principle 6 reflected this, but it did not amount to conduct lacking integrity.
- 10.23 The Tribunal similarly did not find that it had been proved to the requisite standard that the Respondent had breached Outcome 5.1 of the Code. Whereas in allegation 1.2 the act of causing or allowing the 'recreated' letters to be appended to the particulars of claim was in the days immediately following his creation and backdating of the letters, the inaccuracy in his witness statement was a year later. Whilst the subject matter was the same, the Tribunal considered this factor, and those listed above in relation to the findings on Principle 2, to be relevant to the discharging of the burden of proof. The Tribunal had found that it was more likely than not that the Respondent was acting on the basis of what he remembered when signing the statement containing the inaccuracy. Whilst it was finely balanced, the Tribunal did not consider that it had been proved that the Respondent had perceived a risk of misleading the Court when he approved and signed the statement containing the inaccuracy. Accordingly, the Tribunal found that the alleged breach of Outcome 5.1 of the Code was not proved.
11. **Allegation 1.4: Dishonesty was alleged against the Respondent in respect of allegations 1.1 to 1.3 as an aggravating factor; however, proof of dishonesty was not an essential ingredient for proof of the allegation.**

#### The Applicant's Case

- 11.1 The Respondent's actions were alleged to be dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67. In particular, the Applicant relied upon the following paragraph:

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

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

- 11.2 Mr Johal referred the Tribunal to the cases of Re H and ors (minors) [1995] UKHL 16 and the subsequent cases of Re B (children) [2008] UKHL 35 and Re S-B [2009] UKSC 17. In summary, his submission based on these cases was that whilst the inherent probability of an event was a factor the Tribunal could take into account, it was not decisive and may be disregarded where there was other evidence supporting the allegation.

#### *Allegation 1.1*

- 11.3 It was alleged that the Respondent acted dishonestly according to the standards of ordinary decent people by creating and backdating FD and LBA letters on 2 May 2018. As to the Respondent’s knowledge or belief as to the facts, it was alleged:

- The Respondent was aware that the FD and LBA letters were required for the purpose of appending to the particulars of claim as evidence that formal demands for payments of loans were made of the defendants and that they had been informed of the pending proceedings and of the pre-action protocol for possession claims;
- The Respondent was aware that there was only one unsigned version of the original FD letter on file;
- The Respondent signed the FD and LBA letters so that they would appear to be contemporaneous documents; and
- The Respondent was aware that his colleagues would assume that the FD and LBA letters that he provided to them were created on the dates that they were purported to have been created as he had not told them otherwise.

#### *Allegation 1.2*

- 11.4 It was alleged that the Respondent acted dishonestly according to the standards of ordinary decent people by causing or allowing the FD and LBA letters to be appended to the particulars of claim as true documents. As to the Respondent’s knowledge or belief as to the facts, in addition to the matters listed directly above, it was alleged:
- Having read the particulars of claim he was aware that it appended signed FD and LBA letters and referred to those letters as copies of the letters that were sent on behalf of the claimants;

- He was aware that the defendant's solicitors and the Court would assume that the FD and LBA letters attached to the particulars of claim were true copies of documents created and sent on 19 February 2018 and 1 March 2018;
- He was aware that the particulars of claim contained a statement of truth in the terms "The claimants believe that the facts stated in these particular of claim are true" and that it was signed by a colleague of the Respondent based in the London office.
- The Respondent would have been aware that he had not appraised the claimants or his colleague that he had created and backdated the FD and LBA letters, so his colleague was not in an informed position to sign the statement of truth.

### *Allegation 1.3*

11.5 It was alleged that the Respondent acted dishonestly according to the standards of ordinary decent people by making a misleading and inaccurate assertion in his witness statement that he had signed and despatched the FD letters on 19 February 2019. As to the Respondent's knowledge or belief as to the facts, it was alleged:

- He would not have been aware who signed the original FD letters on the 19 February 2018, or who despatched them, as he only had found one unsigned electronic version of the FD letter created by EL on 19 February 2018 on file;
- However, having created the FD letters on 2 May 2018 and backdated them to 19 February 2018, and it appeared having signed them, he was aware that they had been disclosed as contemporaneous letters with the particulars of claim and by way of disclosure to the defendant's solicitors;
- He would have been aware that in light of the disclosure of the FD letters, his assertion in Paragraph 8 of his witness statement about having signed and despatched them on 19 February 2018 was consistent with the disclosed FD letters;
- He knew however that the FD letters attached to his witness statement were not contemporaneous documents that he had signed and dispatched on 19 February 2018;
- He was also aware that the defendants were asserting that they had not received all of the letters dated 19 February 2018 and,
- although if proved true it was not fatal to the claimant's claim, his assertion in his witness statement could assist the claimant's case.

### The Respondent's Case

11.6 Mr Goodwin agreed that the test in *Ivey* was the correct one for determining the allegations of dishonesty. He submitted that the fundamental element in this case was whether the Respondent's belief was genuinely held at the relevant time in relation to the three allegations of dishonesty as described above.

- 11.7 Mr Goodwin referred the Tribunal to the various positive character references submitted on the Respondent's behalf. The Respondent was described as a person of impeccable character, with an unblemished disciplinary and regulatory history of some 19 years. As such, it was submitted that his explanation should be given full credit and accepted. There was said to be no evidence challenging or contradicting the Respondent's explanation as to his knowledge or belief at the time. It was submitted that ordinary decent people, in full knowledge of the facts and circumstances would not consider the Respondent's actions to be dishonest. Mr Goodwin submitted that Re H remained good law and whilst accepting that there was only one standard of proof, the balance of probabilities, the inherent unlikelihood of an event was a factor the Tribunal was entitled to take into account and the more serious and unlikely the allegation the more cogent the evidence required.
- 11.8 Mr Goodwin submitted that one of the examples from the Ivey judgment was relevant in this case, that of the man who, coming from a country where public transport is free, uses the bus without paying on his first day in the UK. If the belief that public transport was free was genuinely held, the conduct would not be characterised as dishonest.
- 11.9 Mr Goodwin referred the Tribunal to Mr Rider's conclusions that it seemed more likely than not that the Respondent's personal assistant used the same document to produce the three FD letters dated 19 February 2018. Mr Rider also concluded that it seemed probable that she signed the letters but regrettably did not retain file copies. Mr Rider confirmed the basis for his conclusions in his oral evidence to the Tribunal. Mr Rider's conclusions, which were based on a detailed review of the metadata and document history of the various letters, were submitted to support the explanation of the Respondent as to his knowledge and genuine belief at the relevant time.
- 11.10 As set out in relation to allegation 1.1, the defendants had confirmed receipt of one of the FD letters dated 19 February 2018. The fact that two of the letters were later stated not to have been received was submitted not to mean that they were not created and sent on 19 February 2018. It simply meant that the letters were not received for some unknown reason. It was noted in the Respondent's Answer that one of the three addresses to which the FD letters were sent was a piece of land which cast some doubt on whether it was safely delivered. In any event, no letters were returned to the Firm by Royal Mail.
- 11.11 As stated above, in relation to the LBA letters dated 1 March 2018, copies of which were recreated by the Respondent on 2 May 2018, the Respondent relied upon his own recollection, together with the assurances of Mr Stanley. Mr Goodwin referred the Tribunal to Mr Rider's conclusion, which he repeated in his oral evidence, that it was a possibility that Mr Stanley had created the original 1 March 2018 letters on his laptop and not saved it to the Firm's document management system.
- 11.12 Mr Goodwin stated that the contents of the recreated letters was not false, it replicated that which the Respondent genuinely believed had been sent. With regards to the witness statement, as set out above the Respondent accepted that he had made a mistake but maintained that it was one which reflected his genuinely held belief at the time. It was submitted that the Respondent's actions did not prejudice anyone.

- 11.13 The allegations of dishonesty were submitted to be without merit, misplaced and unsupported by evidence. There was submitted to be nothing to challenge the explanation of his actions and the honestly held belief that underpinned them. Mr Goodwin submitted that if the Tribunal accepted that the Respondent's professed belief that the letters he recreated had been sent, then he should be found not to have acted dishonestly.

#### The Tribunal's Decision

- 11.14 The Tribunal accepted the summary of the test for dishonesty provided by the parties. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. Accordingly, the Tribunal adopted the following approach:

- firstly, the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;
- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

#### *Allegations 1.1 and 1.2*

- 11.15 As to the state of the Respondent's knowledge or belief as to the facts, the Tribunal had found that the Respondent genuinely believed that the FD letters dated 19 February 2018 and the LBA letters dated 1 March 2018 had previously been sent when he created and backdated them on 2 May 2018. The Tribunal had found that the Respondent then 'recreated' these letters and at the time genuinely believe that he was entitled to do so. That the Tribunal considered he was wrong in that belief and that it was not a reasonable belief for an experienced solicitor to hold did not result in the Tribunal finding it was not genuinely held for the reasons set out above. The Tribunal had also found that it was inconceivable that the Respondent was not aware that those who saw the 'recreated' documents, including potentially the Court, would assume they were true copies of the originals and would, to this extent, be misled.
- 11.16 The Tribunal then applied (objective) standards of ordinary decent people to the Respondent's conduct as per the second limb of the Ivey test. The Tribunal considered that ordinary decent people would be deeply unimpressed with the Respondent's actions. Both in creating and backdating the letters and in causing or allowing them to be attached to particulars of claim. However, the Tribunal did not consider that the conduct would be characterised as dishonest. The fact that the Respondent sought to create a faithful copy of letters he genuinely believed had been sent was central to this finding. Doing so was ill-advised, and was likely to undermine public trust, as reflected in the findings on the breaches of the Principles, but in the light of the Respondent's genuine belief as summarised above, the Tribunal did not consider the burden of proof had been discharged and found the allegation of dishonesty not proved in relation to allegations 1.1 and 1.2.

### *Allegation 1.3*

- 11.17 As to the state of the Respondent's knowledge or belief as to the facts, the Tribunal had found that the Respondent had been careless in failing to ensure that his statement was wholly accurate. However, the Tribunal had accepted that the reason for this was more likely than not that he was acting on the basis of what he remembered and did not consider he needed to check, the passage of time, the pressure of work and the need to approve the statement quickly and the fact the statement was prepared for him. The Tribunal had found it had not been proved that the Respondent had been deliberately misleading or reckless in his statement.
- 11.18 Applying the second limb of the Ivey test, the Tribunal again found that whilst ordinary decent people would be very concerned about inaccuracies in documents created by solicitors to be relied upon in court, the Tribunal did not consider that the Respondent's conduct would be characterised as dishonest. The fact that the inaccuracy had been held to be the result of oversight rather than deliberate was central to this finding. Again, the conduct was likely to undermine public trust, as reflected in the Respondent's admission, but in the light of the Respondent's genuine belief at the time that he recalled sending the letters and was not aware of the inaccuracy, the Tribunal did not consider the burden of proof had been discharged and found the allegation of dishonesty not proved in relation to allegation 1.3.
12. **Allegation 1.5: Recklessness was alleged as an alternative to dishonesty in respect of allegation 1.3.**

### The Applicant's Case

- 12.1 It was submitted that the Tribunal could be satisfied that the Respondent's conduct in making a misleading and inaccurate assertion in his witness statement regarding whether he had signed and dispatched the letters dated 19 February 2018, was reckless. This was on the basis that there was said to be a risk that the matters he was attesting to which had taken place 15 months before signing his witness statement would not be recalled accurately without adequate investigation. It was alleged that the Respondent should have ensured that he fully investigated the circumstances of the signing and despatching of the letters before signing the statement of truth in his witness statement.
- 12.2 The Respondent's actions were submitted to be reckless in accordance with the test for recklessness originally provided in R v G [2004] 1 AC 1034 and accepted in Brett v SRA [2014] EWHC 2974 (Admin) and adopted by Wilkie J at [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.”*

12.3 It was submitted that the Respondent acted recklessly by:

- Failing to undertake any or any adequate enquiries into whether he had signed and despatched the 19 February 2018 letters; including:
- Checking his calendar to assess whether he was in the office on the 19 February 2018 so that he was able to personally sign the letters;
- Asking his secretary whether she recalled him signing the letters or whether she had signed them and;
- Asking his secretary whether she recalled receiving the signed letters from him and despatching the letters.

12.4 The Applicant submitted that no reasonable solicitor in the Respondent’s position and with his experience would have acted as he did. It appeared that he made the assertion in his witness statement about a matter that had occurred 15 months earlier, and which had become an issue in the possession proceedings, simply upon his memory of what had occurred.

12.5 Although his witness statement may not have been drafted by him and there was a pressure of time to finalise it, he reviewed it and agreed the contents before signing it. It was submitted that he should have been scrupulous in ensuring that the witness statements contained only accurate assertions before signing it and attesting to the truth of the facts therein. He was aware that the witness statement would be served on the Court.

#### The Respondent’s Case

12.6 The allegation of recklessness was denied. The test for recklessness was set out in the case of Brett v SRA [2014] EWHC 1974 as follows:

*“Conduct is reckless (i) with respect to a circumstance, when (the solicitor) is aware of a risk that it exists or will exist and (ii) with respect to a result when (the solicitor) is aware that a risk will occur and it is, in circumstances known to them, unreasonable for him to take the risk”.*

12.7 Recklessness was pleaded as an alternative to dishonesty in relation to allegation 1.3 (the signing of the witness statement on 2 May 2019). The Respondent’s evidence was that he did not know of a risk at the time. It was submitted that without the knowledge of any risk the Respondent did not take an unreasonable risk in acting as he did. As set out above, he accepted, with hindsight and reflection, that he could have done things differently, but maintained that which he did was not done dishonestly or recklessly.



- 12.8 The Respondent was criticised for not being scrupulous in ensuring the witness statement contained only accurate assertions before signing it and attesting its truth. Mr Goodwin noted that the Rule 12 Statement, which contained a statement of truth, contained various errors and that its author had not been under pressure of time when drafting it. Mr Goodwin submitted that no one would suggest that the errors and mistakes in the Rule 12 Statement were anything other than genuine errors without more. He invited the Tribunal to conclude that the same approach and credit should be offered to the Respondent.

### The Tribunal's Decision

- 12.9 The Tribunal accepted the submissions from the parties as to the test from Brett to be applied when determining allegations of recklessness.
- 12.10 The allegation of recklessness was pleaded as an alternative to dishonesty as an aggravating feature of allegation 1.3. As set out above, the Tribunal had accepted that it was more likely than not that the Respondent had not taken steps to check the aspect of his witness statement that was inaccurate primarily because he believed (mistakenly but genuinely) he remembered signing and sending the letters the previous year.
- 12.11 In its findings on the alleged breach of Outcome 5.1 in relation to allegation 1.3, the Tribunal had found that it had not been proved that the Respondent had perceived a risk of misleading the Court when he approved and signed the statement containing the inaccuracy. The reasons for this finding are set out above. In circumstances where the Tribunal had accepted that it was not proved that the Respondent was aware that his recollection may be mistaken, the Tribunal did not consider that the burden of proof had been discharged. Without a finding of any perception of this risk, the Tribunal did not consider that the test in Brett for acting recklessly could be met. The allegation of acting recklessly was not proved.

### **Previous Disciplinary Matters**

13. There were no previous disciplinary findings.

### **Mitigation**

14. Mr Goodwin submitted that the Respondent had made admissions at an early stage and should be given credit for that. The admissions demonstrated insight and he had cooperated with the Applicant and the Firm's investigation. The aggravating allegations of dishonesty and recklessness had not been proved and he submitted that this provided the context for the appropriate sanction.
15. Mr Goodwin referred the Tribunal to paragraph 8 of the Tribunal's Sanctions Guidance (8<sup>th</sup> Edition) which stated:

*"There are three stages to the approach... The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to*

*choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.”*

He submitted that proportionality was a relevant and important principle to be considered by the Tribunal taking into account the level of the Respondent’s culpability.

16. Whilst accepting that any breach of the Principles was serious Mr Goodwin submitted there were degrees of seriousness and that the Respondent’s culpability was towards the lower end. He stated that no harm had been caused by the misconduct found proved. Mr Goodwin referred the Tribunal to the non-exhaustive list of aggravating factors in paragraph 20 of the Sanctions Guidance and submitted that none applied to the Respondent’s conduct.
17. The misconduct was of very brief duration in an otherwise unblemished 19-year career. Mr Goodwin submitted that a financial penalty would be a fair and proportionate outcome and he invited the Tribunal not to impose a sanction which would affect the Respondent’s ability to practice. The Respondent was 45 and had much to contribute to the profession. By reference to the indicative bands of fines in the Sanctions Guidance Mr Goodwin submitted that a fine within Level 3, £7,501 to £15,000, may be proportionate.
18. Mr Goodwin referred the Tribunal to the character references which had been provided. The Respondent had found the two years of the Applicant’s investigation and the proceedings traumatising and humiliating. He recognised he was before the Tribunal due to his own conduct and apologised sincerely for it.

## **Sanction**

19. The Tribunal referred to its Guidance Note on Sanctions (8<sup>th</sup> Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent’s culpability and the harm caused, together with any aggravating or mitigating factors.
20. In assessing culpability, the Tribunal found that the Respondent’s motivation was expediency. The Tribunal concluded that he did not consider he was seeking advantage for himself, or his client, but sought to take a short-cut in a cavalier fashion. His conduct was planned to the extent that the creation and backdating of the letters involved various steps and could not be described as spontaneous. He had had a number of chances, with colleagues and later in response to queries received from the defendants, to clarify the precise status of the letters he had created on 2 May 2018. The Respondent had direct control over the circumstances giving rise to the misconduct. He had taken it upon himself to act as he did. The Respondent was an experienced solicitor and should have been aware that his actions in ‘recreating’ and backdating documents was highly problematic. He had not misled the regulator. The Tribunal assessed his culpability as high.
21. The Tribunal considered the harm caused by the misconduct was entirely foreseeable. The harm to the reputation of the profession caused by an experienced solicitor creating inauthentic documents and allowing them to be misrepresented in legal

proceedings and put before the Court was very significant. There was harm caused to the Firm and potentially to the colleagues who had conducted the litigation without a full appreciation of the true status of the documents provided to them or the Respondent's actions.

22. The Tribunal then considered aggravating factors. The conduct had been deliberate and had been repeated. The Respondent had 'recreated' multiple letters. The Respondent's actions had concealed the absence of a true copy of the original letters. The Tribunal considered that the misconduct found proved was conduct the Respondent ought reasonably to have known was in material breach of his obligations to protect the public and the reputation of the legal profession.
23. The Tribunal also considered mitigating factors. The Respondent had an otherwise unblemished record and had produced extremely positive testimonials which spoke about his professionalism and integrity. The Respondent had cooperated with the Applicant and made admissions. Whilst he had at times appeared somewhat dismissive of the allegations, the Tribunal accepted that he had shown some level of insight into the seriousness of the misconduct during his evidence and by way of his admissions.
24. The Tribunal assessed the misconduct as very serious. The Tribunal had found that the Respondent's actions had lacked integrity. The misconduct involved the creation of documents which were misleading on their face as to their true status and allowing them to be deployed in legal proceedings. Such conduct offended a cornerstone of legal practice which is a requirement for all solicitors to be scrupulously accurate and to take particular care not to mislead. Whilst the Tribunal had not found the Respondent had acted dishonestly, the creation, backdating and use in proceedings of letters was conduct in which no solicitor should engage. In view of this seriousness and the potential for damage to the reputation of the profession, the Tribunal did not consider that No Order or a Reprimand were adequate sanctions.
25. The Tribunal considered that a fine was the appropriate sanction. Having made this determination, the Tribunal did not go on to consider suspension or strike off from the Roll. The misconduct was very serious and this seriousness together with the protection of the reputation of the profession required that a substantial fine be imposed. The Tribunal considered that in all of the circumstances a fine at the top of Level 4 in the indicative bands contained within the Guidance Note on Sanctions was appropriate. The Respondent had not put forward any evidence of means to be taken into account and the Tribunal accordingly determined the level of the fine without consideration of his means. The Tribunal determined that a fine of £50,000 should be imposed on the Respondent.

### **Costs**

26. On behalf of the Applicant Mr Johal applied for costs of £11,483.50 as set out in the Applicant's schedule of costs dated 29 June 2021. Mr Goodwin indicated that the Respondent did not take issue with the costs and was content to agree the costs as claimed.

27. The Tribunal assessed the costs for the hearing. In all of the circumstances the Tribunal considered that the figure agreed between the parties was reasonable and ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £11,483.50.

**Statement of Full Order**

28. The Tribunal ORDERED that the Respondent, STEPHEN EVANS-JONES, solicitor, do pay a fine of £50,000, 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 agreed sum of £11,483.50.

Dated this 7<sup>th</sup> day of September 2021  
On behalf of the Tribunal



T Cullen  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**7 SEPT 2021**