SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12214- 2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

ASHLEY STANTON SINGER Respondent

Before:

Ms A Kellett (in the chair)
Ms B Patel
Ms J Rowe

Date of Hearing: 29-30 September 2021

Appearances

Victoria Sheppard Jones, barrister of Capsticks Solicitors LLP of 1 St George's Road, London, SW19 4DR, for the Applicant.

Jonathan Goodwin, Solicitor Advocate of Jonathan Goodwin Solicitor Advocate for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent are that:

1.1 whilst acting for Clients WEL and/or KAW the Respondent:

(a) Purported to serve medical reports on the defendants when he knew or should have known no such report existed at the time.

(b) Caused or permitted the date of the examination and/or the date of medical report to be altered.

(c) Sought to mislead the defendants by seeking to rely on altered medical reports.

In doing so the Respondent acted in breach of Principles 2 and 6 of the SRA Principles 2011.

1.1. On 7 October 2016, whilst acting for Client AF the Respondent mislead the defendant, by serving Particulars of Claim which referred to a medical report which created the impression that a medical report was in existence.

The Respondent knew/or should have known that no such medical report existed. In doing so the Respondent acted in breach of Principles 2 and 6 of the SRA Principles 2011.

2. Dishonesty was alleged in relation to Allegations 1.1 and 1.2. Allegation 1.2 was also advanced on the alternative basis that the Respondent's conduct was reckless.

Documents

Applicant

- Application dated 16 June 2021
- Rule 12 Statement and Exhibits 'KS1 'dated 16 June 2021
- Costs at Issue dated 16 June 2021
- Schedule of Costs dated 22 September 2021
- Authorities

Respondent

- Answer dated 16 August 2021
- Statement of means dated 27 August 2021
- Character references

Preliminary Matters

3. Notices under the Civil Evidence Act 1995 ('the Act')

3.1 In response to an enquiry from Mr Goodwin, Ms Sheppard Jones informed the Tribunal that a Civil Evidence Act Notice under the Act had not been served with respect to the material which formed the exhibits attached to the Rule 12 Statement.

3.2 Ms Sheppard Jones explained that a Civil Evidence Act Notice had not been a mandatory requirement under the Tribunal's rules as the bundle had contained documents only and not witness statements.

3.3 Ms Sheppard Jones drew the Tribunal's attention to Rule 28 of the Tribunal's 2019 Rules which drew a distinction between 'statements 'and 'documents'.

3.4 Rule 28 (2) & (3) states respectively:

> "*Every Statement upon which any party proposes to rely must be sent to the Tribunal by that party and served on every other party on a date determined by the Tribunal which must be no less than 28 days before the date fixed for the hearing of the application. The Statement must be accompanied by a notice, using the prescribed form.*
>
> *Any party on whom a notice has been served under paragraph (2) and who requires the attendance of the witness in question at the hearing must, no later than seven days after service of the notice require, in writing, the party by whom the notice was served to produce the witness at the hearing."*

3.5 Whereas, Rule 28 (6) states:

> *"Any party to an application may, by written notice, not later than 21 days before the date fixed for the hearing, request any other party to agree that any document may be admitted as evidence."*

3.6 Ms Sheppard Jones submitted that because the Applicant had not served statements it had not been obliged to serve a Civil Evidence Act Notice and the documents upon which the Applicant sought to rely had been served correctly upon the Respondent and the Tribunal.

3.7 Such documents which had been served had, in large measure, originated from the Respondent's own files and their authenticity had not been challenged by the Respondent.

3.8 Mr Goodwin disagreed and submitted that the requirement to serve a Civil Evidence Act Notice applied not only to witness statements but also to documents. Therefore, all the material which accompanied the Rule 12 Statement were hearsay and whilst this did not necessarily render such material inadmissible it affected the weight the Tribunal should place up on it.

The Tribunal's Decision

3.9 The Tribunal ruled that in circumstances where no witness evidence was served or relied upon by the Applicant a Civil Evidence Act Notice was not required.

3.10 In the alternative, if the Tribunal was incorrect in its interpretation of Rule 28, and a Civil Evidence Act Notice had been a requirement, the Tribunal did not find that this would affect the admissibility of the evidence, merely the weight it attached to the evidence, and this was a matter for the Tribunal to consider in the course of its assessment of the evidence as a whole.

4. Application to adduce further evidence

4.1 Ms Sheppard Jones applied to adduce further evidence outside of the time set out in the Standard Directions. The further evidence related to witness statements from the medical experts who had prepared the reports.

4.2 Ms Sheppard Jones informed the Tribunal that Mr Goodwin had been put on notice on 24 September 2021, that an application would be made to the Tribunal on the morning of the substantive hearing to adduce the further evidence. The application and statements were served on the Tribunal, with a Notice pursuant to Section 2 of the Civil Evidence Act 1995, on Monday 27 September 2021.

4.3 Ms Sheppard Jones said that the three further witness statements dealt with discrete pieces of evidence, namely, the date each of the medical experts were instructed by the Respondent; the date each met with the Respondent's clients; the date the reports were prepared and the dates the reports were served on the Respondent. The evidence was relevant and admissible and it should be received by the Tribunal in furtherance of its duty under the overriding objective to deal with cases justly.

4.4 Ms Sheppard Jones stated that the reasons for the late service of the material was as follows:

- As the Respondent had never sought to assert that the medical professionals may have amended the relevant dates in their reports, the Applicant had not previously sought to obtain any evidence from the medical professionals on that point.

- However, it was considered by counsel, Ms Sheppard Jones (latterly instructed by the Applicant) that the Respondent may seek to suggest, albeit without any evidential basis, that the reports were amended by the medical professionals themselves.

- Therefore, evidence was sought from the medical professionals to clarify whether that might have been the case and that these enquiries may well have assisted the Respondent if the medical professionals advised that they were responsible for changing the relevant dates.

- The evidence, albeit late, assisted in clarifying what may have become an unknown area of the evidence in the substantive hearing.

- The question for the Tribunal was whether the evidence was relevant and admissible, bearing in mind the principle of fairness, and that the Tribunal ought to admit this evidence on that basis.

- Its admission would cause no prejudice/unfairness to the Respondent. The evidence was discrete and in no way changed the nature of the case the Respondent had to meet.

4.5 Mr Goodwin opposed the application on the basis that it was too late for the Applicant to rely on this material and for the Tribunal to grant the application would be inappropriate and unfair. Such material, if admitted into evidence, at such a late stage was inherently prejudicial to the Respondent.

4.6 The standard directions had required the Respondent to serve his Answer by 16 August 2021. The Respondent had complied with the direction and there had been no reply from the Applicant. Thereafter, the Applicant had waited 6 weeks before approaching the medical professionals.

4.7 Mr Goodwin said that this case had had a long history and the Applicant had had over 3 years to make all the necessary enquiries it had wanted to make. The Applicant had chosen to bring the proceedings and it bore the responsibility of preparing its case in good time.

4.8 The Respondent faced the most serious allegations of which a solicitor may be accused; dishonesty, recklessness and a lack of integrity and he was entitled to expect that the Applicant would present its case fairly and in accordance with the Tribunal's Rules and its directions.

The Tribunal's Decision

4.9 The Tribunal did not grant the Applicant leave to adduce the late material it sought to rely upon.

4.10 The Applicant's reason for wishing to adduce the evidence was essentially, on the basis that the Respondent would seek to argue that the experts had themselves altered the dates in their reports. This was a speculative contention on the Applicant's part and the Respondent, in his written response to the Applicant dated 25 November 2018 and in his Answer had not sought to make such a claim.

4.11 The Tribunal ruled that the evidence was marginal and not relevant to the points in issue between the parties and to admit it at such a late stage would be unfair and prejudicial to the Respondent.

Factual Background

5. The Respondent, aged 51, was admitted to the Roll on 15 February 1996. He held a practising certificate which is subject to conditions as follows:

    - He is not a manager or owner of any authorised body.

- He may act as a solicitor, but only as an employee where the role has first been approved by the SRA.

6. He was employed at H Solicitors and at the material time he was employed as a senior associate at SAS Daniels LLP ('the Firm').

Findings of Fact and Law

7. The Applicant was required to prove the allegations on the civil standard, that of 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 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

Witnesses

9. The Respondent gave evidence and adopted the contents of his witness statement. He was cross-examined.

10. The Respondents, wife, LS, also gave evidence regarding the Respondent's character. There was no cross-examination.

Overview

11. There was no dispute between the Applicant and Respondent that the dates on the documents referred to in the allegations had been altered, however, the Respondent denied that it had been he who had altered the dates or that he had sought to mislead the defendants in the ways set out in the allegations or at all.

12. It was Respondent's case that with respect to Allegation 1.1 (a) that he should have known that the reports did not exist at the time the Particulars of Claim were sent to the defendants and that in doing so the Respondent accepted that he had breached Principle 6 only.

13. The Respondent denied the remaining allegations in their entirety. It was submitted on his behalf that his conduct had had not engaged the Principles alleged to have been breached.

14. **Allegation 1**

The Applicant's Case

Client WEL

14.1 The Respondent acted for WEL in a personal injury claim in which WEL claimed damages against the Blackpool Teaching Hospitals NHS Foundation Trust ('the NHS Trust') for his alleged negligent treatment in 2013.

14.2 In a letter, dated 15 December 2016, to the NHS Trust it was said that the Respondent had stated, amongst other things, that a medical report and Particulars of Claim were enclosed.

14.3 The Particulars of Claim for WEL's claim, dated 15 December 2016, under the heading "PARTICULARS OF INJURY" stated "*The Claimant is currently 80 years of age* (date of birth redacted) *and suffered injuries as set out in the enclosed Gastroenterologist medical report (condition and prognosis)"*.

14.4 In an email from the NHS Trust, dated 19 December 2016, receipt of the Claim Form and Particulars of Claim was acknowledged but it stated that no medical report had been attached.

14.5 A letter to WEL from the Respondent, dated 20 December 2016, stated "*an appointment has been arranged for you to be examined today at 5.30pm"*. The letter also stated: *"Once I receive Dr I's report I will send a copy to you for your comments"*.

14.6 The WEL matter file contained a medical report, dated 22 December 2016, which referred to WEL being interviewed and examined on 20 December 2016 and an e-mail from the Respondent's firm to R at HS (Solicitors) of 6 February 2017 referred to the fact that a *'further copy'* of the condition and prognosis report was attached.

14.7 The matter file also contained a medical report allegedly from Dr I dated 15 December 2016 and recording the date on which WEL was interviewed and examined as 13 December 2016.

14.8 Ms Sheppard-Jones said that this medical report was not a valid and proper medical report but an altered medical report as it could not have been prepared as stated because WEL's examination by a medical expert did not take place until 20 December 2016. Further, the altered medical report had been attached to the email of 6 February 2017 so as to be consistent with the letter to the NHS Trust of 15 December 2016 and the Particulars of Claim. This had been done by the Respondent in order to create the impression that a medical report was in existence on 15 December 2016.

14.9 Ms Sheppard Jones submitted that the Respondent had:

- purported to serve a medical report on the defendant when he knew or should have known that no such report existed (allegation 1.1(a));

- caused or permitted the medical report to be altered to give the impression that a valid medical report was in existence on 15 December 2016 when that was not the case and WEL was only examined on 20 December 2016 (allegation 1.1(b));

- sought to mislead the defendants by creating the false impression that a valid medical report was in existence on 15 December 2016 when this was not the case and WEL was only examined on 20 December 2016 (allegation 1.1 (c).

14.10 The Respondent's email of 6 February 2017 in which it had been stated *"We wrote further in this matter and can now attach a further copy of the condition and prognosis report as requested"*, was supporting evidence that it was his intention to lead the defendants to believe that a report had been in existence and available on 15 December 2016.

Client KAW

14.11 The Respondent acted for KAW in a personal injury claim in which KAW claimed damages against Stockport NHS Foundation Trust ('the Stockport NHS Trust') for alleged negligent treatment in 2013.

14.12 An email of 8 May 2017 referred to a suggested appointment date with a medical expert, R, on 22 May 2017.

14.13 The Respondent's matter file had contained a letter dated 12 May 2017 to the defendant stating that it enclosed, amongst other things, Particulars of Claim and a condition and prognosis report prepared by R.

14.14 The file contained a signed but undated Particulars of Claim which stated under the heading "PARTICULARS OF INJURY" *"The Claimant is currently 35 years of age* (date of birth redacted) *and sustained the injuries as set out in the medical report of R (Consultant Surgeon) including, inter alia, an acute kidney injury..."*

14.15 It was said that in emails to the defendants 'representatives on 26 May 2017 the Respondent stated: *"The condition and prognosis report served on the Trust was not a signed version and I await the same from the expert and will send onto you"*.

14.16 In an email dated 26 May 2017 to the defendant Stockport NHS Trust the Respondent stated "*I am in contact with HS (solicitors) regarding the condition and prognosis report. An unsigned version was sent to you and I await the signed version which I can send onto you"*.

14.17 An email on the client file dated 30 May 2017 stated "*I recently sent the medical records for Mr [KAW] to you following his appointment with yourself… I do need this report as a matter of urgency so I would be grateful if you could give me an update as to when it can be expected"*

14.18 On 1 June 2017 R emailed the Firm and attached his completed condition and prognosis report. The file contained a copy of the condition and prognosis report which states that KAW was examined on 22 May 2017 and that the report was prepared on 31 May 2017.

The file also contained an email, dated 6 June 2017, from the Respondent to NHS Trust attaching the signed condition and prognosis report for KAW.

14.19 Additionally, the file also contained a medical report in relation to KAW stating that KAW was examined on 15 March 2017 and that the date of preparation of the report was 31 May 2017.

14.20 Ms Sheppard-Jones submitted that the letter of 12 May 2017 was one by which the Respondent purported to serve a medical report on the defendant when he knew or should have known that such report could not have enclosed a condition and prognosis report prepared by R because KAW was only examined by R on 22 May 2017.

14.21 It was submitted that:

- The date of the examination of KAW was confirmed in the medical report as 22 May 2017 and was consistent with the email of 8 May 2017. In his emails dated 26 May 2017 to the defendant the Respondent suggested the medical report was awaiting a signature when he knew or should have known this was not correct (allegation 1.1.(a)).

- The Respondent caused or permitted the date of the examination to be altered in the medical report to give the false impression that KAW was examined earlier than the date he was actually examined on (allegation 1.2(b)).

- By seeking to rely on the altered medical report by sending it to the defendant on 6 June 2017 he knew to contain incorrect information he sought to mislead the defendant (allegation 1.1(c)).

14.22 It was said that the Respondent's conduct with respect to WEL and KAW amounted to the breaches detailed below.

14.23 *Breach of Principle 2*

14.23.1 An honest solicitor acting with integrity would make sure that:

- a report on which he is going to be relying is available on the file;

- a report to which he is referring as an integral part of his case is available on the file;

- he has available and sight of any documents he is attaching to an email.

14.23.2 It was said that a solicitor who purports to serve a medical report on the defendant when he knew or should have known no such report existed at the time and then caused or permitted the date of the examination and/or the date of the medical report to be altered and sought to mislead the defendants by seeking to rely on false medical reports may properly be said to have lacked moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity in breach of Principle 2 of the Principles.

14.24 *Breach of Principle 6*

14.24.1 Principle 6 requires solicitors to behave in a way that maintains the trust that the public places in them and the provision of legal services. This trust depends upon the reputation of the solicitors 'profession as one in which every member "may be trusted to the ends of the earth".

14.24.2 The Respondent's behaviour as set out in allegations 1.1(a), (b), (c) was likely to undermine the trust the public places in solicitors in breach of Principle 6.

The Respondent's Case

Client WEL

14.25 By a letter dated 25 November 2018 the Respondent set out his response to the allegations as they were framed at that date. The Respondent made admissions with respect to Allegation 1.1 and accepted his conduct had breached both Principle 2 and Principle 6

14.26 Following a later change in representation the Respondent submitted an Answer dated 16 August 2021 with respect to the allegations set out in the Rule 12 Statement.

14.27 In his Answer the Respondent relied upon the representations made in the letter to the Applicant of 25 November 2018 save, in one respect that he did not accept that he had breached Principle 2.

14.28 The Respondent maintained that the facts relating to the allegations were historical, dating back to 2016, and he resiled from the admission he had made with respect to client WEL that he accepted purporting to serve a medical report on the defendant when he did not have a copy.

14.29 In making the admission set out in his letter dated 25 November 2018, the Respondent said that "*He has no specific recollection but has to accept that be must have altered the date of the examination and report as there are two copies on the file, with differing dates".*

14.30 In his Answer, the Respondent said that he had made the admission with respect to the allegations made against him in the Applicant's Explanation with Warning Letter dated 20 October 2018 and that this admission should be viewed as equivocal. In reality, the Respondent had had no recollection of the events and the apparent concession made on his behalf, was speculative and unsupported by evidence.

14.31 When cross-examined on this issue, the Respondent told the Tribunal that he had made this particular admission on the advice of those who had represented him at the time.

14.32 The Respondent said that he had been advised to *'admit to something'* so that the matter would not be referred to the Tribunal. The prospect of appearing before the Tribunal had terrified him and he had taken his representative's advice to avoid a trial. He was not able to provide full details of what he had been advised as this was privileged.

14.33 The Respondent now admitted Allegation 1.1 (a) solely on the basis that he purported to serve a medical report on the defendant when he *should* have known no such report existed at the time, contrary to Principle 6 of the SRA Principles 2011.

14.34 The letter dated 15 December 2016 to Blackpool NHS Trust and the Particulars of Claim made no express reference to a specific named and dated medical report, and the Respondent said he could now only speculate that reference to the *'medical report'* was in error, although he had no detailed recollection of the matter.

14.35 The Respondent said that the matters which formed the basis of the allegations had come to light sometime after he had left the Firm, and they had not been generated from a client complaint or a complaint from a defendant. The matters related to a very small number of cases amongst the many he had worked on, and with respect to the very large majority of the cases for which he had had responsibility the Applicant had found no similar errors or anomalies.

14.36 The Respondent said that he had been under significant pressure when he worked for the Firm. Whilst he had not been a partner, he had had to manage a high volume workload in circumstances where he had had sole responsibility for personal injury and clinical negligence work. He was not supported by qualified staff and he had relied upon one legal secretary/para-legal, to assist him.

14.37 The partners had expected him to maintain his billing target and the pressure upon him had eroded his state of wellbeing. Notwithstanding his low ebb at that point, the Respondent accepted that he should have ensured that the letters sent to the defendants in his name had contained the medical reports they had purported to contain.

14.38 In cross-examination, the Respondent denied that he manipulated and changed the dates in the various documents to avoid falling foul of limitation periods and the risk of having the cases struck out on this basis.

14.39 The Respondent further denied that he had caused or permitted the dates of the examination and/or the date of the medical report to be altered and he denied seeking to mislead the defendants as alleged, or at all.

Client KAW

14.40 The Respondent's position was the same as his position with respect to WEL.

14.41 The allegation was admitted on the basis that the Respondent purported to serve a medical report on the defendant when he should have known no such report existed at the time, contrary to Principle 6 of the SRA Principles 2011.

14.42 The Respondent said that whilst the letter dated 12 May 2017 to the Stockport NHS Trust had referred to a *'Condition and prognosis report of R'*, it was to be noted that it did not refer to a dated report, and the Respondent could only speculate that the reference to the report within the letter was an error. The Respondent told the Tribunal that the Firm had used standard letters. The standard wording and paragraphs in the letter would have required amendment to suit the individual case and it was possible that reference to the report had been retained in the letter by error.

14.43 The Respondent accepted that he should have made clear that the report was to follow. The Firm's standard letter serving proceedings usually included mention of a medical report to ensure it was not omitted, and/or as a reminder that such a report was needed for service. If the Respondent had the report, he would, ordinarily, have referred to the report's date in the letter and/or in the Particulars of Claim.

14.44 The Respondent said that as no date was referred to in the letter or in the Particulars of Claim, then this was supportive of his genuine belief that this had been no more than error caused by pressure of work.

14.45 The Respondent said he had not caused or permitted the date of the examination to be altered in the medical report.

14.46 The Respondent denied seeking to mislead the defendant as alleged, or at all.

The Tribunal's Findings

14.47 In accordance with Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019, as amended by The Solicitors (Disciplinary Proceedings) (Amendment) Rules 2020, the Tribunal applied the civil standard of proof.

14.48 The Tribunal reviewed all the material before it and listened with considerable care to the submissions made by Ms Sheppard Jones and Mr Goodwin, the witness evidence, including the testimonials presented to it.

14.49 The Tribunal reminded itself that the burden of proving the allegations rested upon the Applicant alone. The Respondent was not required to prove anything.

14.50 With respect to Allegation 1.1 (a), the Tribunal was satisfied on the balance of probabilities that the Respondent's admissions were properly made in relation to both WEL and KAW and that the conduct admitted by the Respondent had been a breach of Principle 6.

14.51 With regard to the remaining allegation within Allegation 1.1, the Tribunal found that the very detailed forensic analysis of the client files conducted by the Applicant had revealed the Respondent to have been operating within a less than optimal working environment, and that the Respondent had been under significant pressure to perform.

14.52 This was a fact accepted by the Applicant whose case was essentially that in all material respects the Respondent appeared to have been a diligent and caring solicitor but who had acted out of character in the ways set out in the allegations.

14.53 Ms Sheppard Jones had submitted that in many cases involving activity, as alleged here, there was often no direct evidence and that such prosecutions depended upon viewing the circumstances set out in the allegations as a whole and then drawing the relevant conclusions from the factual context of the case. Circumstantial evidence could be compelling evidence and the Respondent had provided no evidence to refute the allegations.

14.54 Mr Goodwin had submitted that there was little or no evidence in this case to enable the Tribunal to find, on the balance of probabilities, that it had been the Respondent who had altered the dates on the reports and that he had intended the defendants to be misled by sending the altered reports to them.

14.55 It was common ground therefore that, in large measure, the allegations depended upon inference to be drawn from the facts.

14.56 The Applicant and Respondent differed, naturally, on the conclusions/inferences to be drawn and the weight the Tribunal should attach to the inferential evidence.

14.57 The Tribunal noted that the Applicant had not relied upon any witness evidence or called any evidence. The Applicant had instead relied upon the documents within the Respondent's own files (which both sides commented and agreed had been in a mess and not in chronological order), and it had called upon him to refute the allegations levelled at him.

14.58 The Tribunal reviewed the evidence and found that that the Applicant's case essentially could be put as follows:

- There was no disagreement that the documents had been altered.
- The Respondent had had sole responsibility for the client matters of WEL and KAW.
- The letter containing those documents or references to those documents had been sent out to the defendants in his name.
- The Respondent had made the alterations to cut corners and to avoid limitation periods which may have resulted in the defendants making applications to strike out.
- There was no other explanation: the documents spoke for themselves.

14.59 The Tribunal found, as a matter of law, that cases very often depend on the fact-finder (here the Tribunal), being able to draw, safely, logical inferences from a series of established facts.

14.60 The issue at the heart of a case dependent upon such evidence is whether a reasonable Tribunal, which has properly directed itself, may conclude on the balance of probabilities that the Respondent is guilty.

14.61 To draw such an inference, the Tribunal had perforce to exclude all realistic possibilities consistent with the Respondent's innocence. It was also a matter of law that before drawing the inference of the Respondent's guilt from circumstantial evidence, the Tribunal had to be sure that there were no other co-existing circumstances which would weaken or destroy the inference.

14.62 In the Respondent's case it was a fact found by the Tribunal that the documents identified by the Applicant had indeed been altered, but the Tribunal did not find that there was any persuasive or determinative evidence that it had been the Respondent who had made the alterations, or, that he had knowingly sent the altered documents to the defendants in order to mislead them. There was no evidence at all as to his motivation for doing so.

14.63 With respect to the suggestion that this was done to avoid the limitation periods the Respondent had said that this had not concerned him unduly as it would have been open to him to apply for an extension of time and, in his experience, he had typically found that those representing defendants in such cases to be reasonable in this regard.

14.64 The Tribunal found that the Applicant had not presented any 'metadata 'which may have shown when and by whom the Firm's computer system had been accessed. Such evidence may have eliminated all other reasonable possibilities, raising the evidential matrix from a circumstantial case against the Respondent to a definitive one.

14.65 The Tribunal found that, within the circumstances of the Respondent's working environment, it could not exclude the possibility that others within the Firm had made the alterations. The Respondent had worked closely with a para-legal who had prepared the letters and sent them out on the Respondent's behalf, and it was worthy of note that the letters to the Blackpool NHS Trust sent in the WEL case and to the Stockport NHS Trust in the KAW case, had not been signed by the Respondent. This gave rise to the question as to whether the Respondent had ever seen and approved the letters before they were sent. The Respondent's signature on the letters would have bolstered the inferential evidence.

14.66 The Tribunal noted that the letters and Particulars of Claim had upon them written annotations, and there was no evidence to show who had made those particular annotations or the reason for them. In the Particulars of Claim sent in the KAW case there was no reference to the medical report being enclosed or attached. The only reference to the report was in the unsigned letter which all accepted had been a standard letter in which certain parts were required to be removed, if not applicable, or relevant to the case at hand.

14.67 With respect to the case of KAW, the Tribunal was not taken to any evidence by the Applicant that the Respondent had actually instructed the expert in this case as the e-mail correspondence in this regard appeared to pass only between the expert and JA, another solicitor at the Firm.

14.68 Whilst it had been postulated that the Respondent had been the only solicitor with responsibility for the files, there was no evidence that he had been the only person who had had access to the files, and it was equally possible that another member of staff had carried out the conduct of which the Respondent had been accused. Indeed, it was a matter of record that the Respondent had left the Firm before the cases concerning WEL and KAW had been settled, and thereafter he had had no control over the files.

14.69 In accordance with the line of reasoning set out above, the Tribunal did not find that there was cogent evidence that the Respondent had caused or permitted the dates to be altered on the reports and no evidence that the reports had in fact been sent to the

defendants or that they had relied on this material to their detriment. There was, therefore, no evidence to suggest that any of the defendant solicitors had been misled.

14.70 Without any cogent evidence as to the mechanism of change to the documents, this would remain something mysterious and unexplained and not the basis of a finding of professional misconduct.

14.71 As to the aspect of Allegation 1.1, which the Respondent had admitted, the Tribunal did not find to the requisite standard that the Respondent's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2..

14.72 The matters brought to light by the Applicant had occurred in only three of the Respondent's many cases it had examined. These isolated incidents were not indicative of the Respondent's deviation from a *'steady adherence'* to an ethical code, such as to justify a finding of lack of integrity.

14.73 The Tribunal found that in accordance with the Respondent's admission to a breach of Principle 6, extraneous factors had caused him to make careless mistakes but he had not lacked integrity when those mistakes were made.

14.74 Having weighed the evidence with respect to the non-admitted portions of Allegation 1.1, the Tribunal found that the evidence set out by the Applicant, and upon which the Applicant invited the Tribunal to draw certain inferences, was insufficient for it to do so, to the requisite standard.

14.75 Allegation 1.1 was proved in part to the extent that the Respondent should have known that no such reports existed at the time and that the Respondent had breached Principle 6 of the Principles.

15. **Allegation 1.2**

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

Client AF

15.1 The Respondent acted for AF in a personal injury claim in which AF claimed damages from her doctors and the NHS relating to matters in 2012 to 2013.

15.2 The file in relation to this matter contained a letter dated 7 October 2016 to the Stockport NHS Foundation Trust which enclosed the Particulars of Claim, amongst other things.

15.3 Particulars of Claim stated under the heading "PARTICULARS OF INJURY" that the "*Claimant is currently 58 years of age (date of birth X) and suffered injuries as set out in the medical report (condition and prognosis) of JSB (Consultant Orthopaedic Surgeon)"*

15.4 An email dated 7 October 2016 from the Respondent recorded that AF could only make an appointment with the medical expert on 21 October 2016. The file contained a copy of the medical report which stated that AF was examined on 21 October 2016 and that the report was prepared on 21 October 2016.

15.5 By an email dated 4 November 2016 the Respondent confirmed receipt of the *"Urgent condition and prognosis report needed for clinical negligence claim for AF"*.

15.6 Ms Sheppard Jones submitted that on 7 October 2016, whilst acting for Client AF the Respondent mislead the defendant, by serving Particulars of Claim which referred to a medical report which created the impression that a medical report was in existence. The Respondent knew/or should have known that no such medical report existed.

15.7 It was said that the Respondent's conduct with respect to AF amounted to the breaches detailed below.

15.8 *Breach of Principle 2*

15.8.1 By sending a letter dated 7 October 2016 to the Stockport NHS Foundation Trust, enclosing Particulars of Claim which created the impression that a medical report was in existence when this clearly was not the case, as the Respondent knew his client had not yet been examined by a medical expert, the Respondent failed to act with integrity in breach of Principle 2 of the SRA Principles.

15.8.2 Further, by sending the above letter and Particulars of Claim out, knowing that they created the wrong impression that a medical report was in existence when it was not, the Respondent may properly be said to have lacked moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity in breach of Principle 2.

15.9 *Breach of Principle 6*

15.9.1 By sending the letter out, knowing that it created the wrong impression that a medical report was in existence when it was not, the Respondent's conduct would be likely to undermine the trust the public places in solicitors in breach of Principle 6.

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

15.10 The Respondent denied the allegation and denied that he acted in breach of Principles 2 and 6.

15.11 The Respondent accepted that AF had been seen by the expert and a report prepared on 21 October 2016.

15.12 The Respondent said that the letter dated 7 October 2016 to the Stockport NHS Foundation Trust had not referred to a medical report as one of the enclosures, and the Particulars of Claim attached to the letter dated 7 October 2016 did not refer directly to a medical report or suggest that it was enclosed.

15.13 The Respondent therefore denied purporting to serve a medical report when he knew no such report existed at the time, and he said that he did not intend to mislead the defendant by referring to a medical report within the Particulars of Claim.

15.14 The Respondent maintained that all he knew when drafting the Particulars of Claim was that a medical report was due from the expert but that it had not yet been produced. The Respondent said that under Civil Procedure Rule PD 16 4.3 there was no strict rule to say what would happen if a medical report was not served.

15.15 Therefore, whilst it was normal practice to serve the medical report with the proceedings, the Respondent said he had not prejudiced his client AF's interests by not doing so and he asserted that he had been acting in AF's best interests by not delaying the commencement of the case.

15.16 That said, even if the defendants had taken a point on this and had applied to strike out the claim, he would have served the report, when it was available, and then would have made an application for relief from sanctions if the defendant had failed to accept the report as being served. In the event nothing of this sort occurred and AF was not prejudiced and nor was the defendant.

15.17 The Respondent said that there was no evidence that it had been him who had altered the date of examination or the date of the report.

The Tribunal's Findings

15.18 The Tribunal noted that the Allegation 1.2 was drafted in the following terms:

> *"On 7 October 2016, whilst acting for Client AF the Respondent mislead the defendant, by serving Particulars of Claim which referred to a medical report which created the impression that a medical report was in existence."*

15.19 The Applicant had called no evidence from any source to show that the defendant in the AF proceedings had been misled: there was no evidence of this at all and nothing upon which the Tribunal could draw a permissible inference that the defendant had been misled.

15.20 The Tribunal found that very little evidence had been presented to it with respect to this allegation. The letter to the Stockport NHS Trust had not been signed; the letter itself had not referred to a report being enclosed, and the Particulars of Claim had been signed by AF personally and not by the Respondent.

15.21 For the reasons set out above with respect to Allegation 1.1 and the Tribunal's findings and observations with respect to the specific evidence relating to this client file the Tribunal did not find Allegation 1.2 proved to the requisite standard.

16. **Dishonesty with respect to Allegations 1.1 and 1.2**

The Applicant's Case

16.1 Ms Sheppard Jones submitted that the Respondent's conduct with respect to Allegations 1.1 and 1.2 had been dishonest, and she referred the Tribunal to the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, namely, that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

> *"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 fact-finder 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."*

Allegation 1.1

16.2 With reference to client WEL the Respondent sent a letter to the defendant on 15 December 2016 purporting to enclose a medical report along with the Particulars of Claim, which also referred to the "enclosed" report.

16.3 At the time the Respondent's client was yet to the examined and the Respondent knew this. WEL was examined on 20 December 2016. The Respondent forwarded a report to the defendant stating *"please find attached a further copy [of the report]"*. This was the first occasion the Respondent had sent a copy of the report to the defendant.

16.4 Further the report was falsely dated 15 December 2016 and the date of the examination was falsely dated 13 December 2016. At the making the false statements, inserting the incorrect date, seeking to imply that a report had previously been sent and seeking to rely upon a false document the Respondent must have known his actions were dishonest.

16.5 With reference to KAW, a medical examination for KAW was arranged on 8 May 2017 and the medical report was dated 31 May 2017. The report was sent to the firm on 1 June 2017.

16.6 The Respondent served Particulars of Claim on the defendants on 12 May 2017, which relied upon and purported to enclose a copy of the report. This was before KAW had undergone a medical examination.

16.7 The Respondent sent an email to the defendants on 26 May 2017 stating that the original medical report had not been signed, and that he was awaiting a signed version, which he would forward. At this time KAW had not undergone a medical examination.

16.8 The Respondent sent an email to the defendants on 6 June 2017 attaching a copy of the report. The report provided to the defendants was dated 31 May 2017 but falsely stated the date of the examination was 15 Match 2017. Whilst acting in this way the Respondent must have known his actions were dishonest.

Allegation 1.2

16.9 Ms Sheppard Jones submitted that the Respondent sought to serve Particulars of Claim, which included a reference to a medical report, on the defendant on 7 October 2016. At this time AF had not yet undergone a medical examination and the Respondent was aware of this, in fact on the same date (7 October 2016) the Respondent arranged for AF to be examined by a medical expert, he must therefore have been aware that a report could not possibly be attached to the Particulars of Claims being filled.

The Respondent's Case re Dishonesty

16.10 The Respondent denied acting dishonestly as alleged, or at all.

16.11 The Respondent said that his motive was always to work in the best interests of clients and as far as he was aware there had been no complaints from the client or the defendant.

16.12 Mr Goodwin said that Respondent was a person of impeccable character, with an unblemished disciplinary and regulatory history over 25 years post qualification experience. As such, his explanation should be given full credit and accepted.

16.13 In accordance with the decision in Donkin v The Law Society [2007] EWHC 414 (Admin) Mr Goodwin presented the Tribunal with over 20 character references attesting to the Respondent's honesty and integrity to demonstrate that the Respondent had no propensity to be dishonest and that the evidence he had given was credible evidence. The combination of these factors made it inherently unlikely that he had acted dishonestly.

The Tribunal's Finding re Dishonesty

16.14 Having found the factual matrix in Allegations 1.1 (a). proved to the requisite standard, namely on the balance of probabilities the Tribunal considered whether the Respondent had acted dishonestly.

16.15 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- First, 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;

- Second, once the actual state of the Respondent's knowledge or belief as to the facts had been established the Tribunal next considered whether her conduct would be thought to have been dishonest by the standards of ordinary decent people.

16.16 The Tribunal considered the Respondent's state of knowledge at the material times and found that the Respondent had been extremely busy, under pressure to bill and he had received little support from qualified colleagues. His wellbeing was said to have been eroded at the material time. The Respondent admitted that he should have been aware of the inaccuracies in the documents sent out in his name but this did not go so far as to indicate that he knew that what had happened was wrong.

16.17 The Tribunal did not find that honest and decent members of the public, aware of all the circumstances in the Respondent's case, would have considered the Respondent's actions to have been dishonest, rather, honest and decent members of the public would have thought his actions to have been nothing more sinister than carelessness brought about by pressure of work.

16.18 Dishonesty in relation to Allegation 1.1 was therefore not proved on the balance of probabilities.

16.19 The Tribunal observed that the character evidence presented to it had been useful but this had been of marginal importance compared to its analysis and assessment of the evidence as a whole.

16.20 Having found no element of the factual matrix proved to the requisite standard in Allegation 1.2, the Tribunal did not then go on to consider whether his actions had been reckless: recklessness having been pleaded in the alternative in Allegation 1.2.

Previous Disciplinary Matters

17. There were no previous matters

Mitigation

18. Mr Goodwin said that the Respondent had not been obliged to give evidence but, to his credit, he had chosen to do so.

19. The Tribunal had not found proved any element or aggravating feature of the allegations other than which the Respondent admitted. No dishonesty, recklessness or lack of integrity had been found.

20. Mr Goodwin said that the Respondent had made a correct admission to a breach of Principle 6 in Allegation 1.1 (a).

21. The Respondent apologised to both the Tribunal and the profession for his mistake and Mr Goodwin asked for the Respondent's error to be placed in the context of 25 years ' unblemished practice as a solicitor, and for which he had showed true remorse. Mr Goodwin reminded the Tribunal of the character references which attested to the Respondent's exemplary character.

22. Mr Goodwin also reminded the Tribunal that whilst the Respondent's Practising Certificate had been subject to conditions, in reality he was not a risk to the public. The most serious of the allegations made against the Respondent had not been proved.

23. Mr Goodwin said that the Respondent was, in all respects, a competent and caring solicitor and that the extent of his proven misconduct had been related to the pressures he experienced at the time and which had been nothing more sinister than mistakes.

24. The Tribunal, Mr Goodwin argued, could mark the seriousness of the misconduct with a fine within the Indicative Fine Band of Level 1 or low Level 2. Mr Goodwin asked the Tribunal to bear in mind the Respondent's limited means when considering the question of sanction.

Sanction

25. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

26. The Tribunal referred to its Guidance Note on Sanctions (8th Edition) when considering sanction. The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

27. 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.

28. In assessing culpability, the Tribunal found that the motivation for the Respondent was a wish to progress his clients 'cases in circumstances where he was under pressure to keep up with his billing targets. Whilst there had been no obvious personal benefit to him he had 'taken his eye off the ball'.

29. There was no evidence that this had been planned misconduct and no suggestion that it had involved a breach of trust. There had been two incidents separated by 6 months and the Tribunal did not find this to be a pattern or a course of ingrained misconduct.

30. The Respondent had been nominally responsible for the files and in that sense he had had direct control and responsibility for the circumstances giving rise to the misconduct.

31. At the relevant time the Respondent had about 20 years 'post qualification experience and it could be argued that he should have maintained better control on material being sent out under his name and he should have examined the documents with greater care.

32. The Respondent had not misled the Regulator or failed to co-operate in a meaningful way with the investigation. The Respondent had been open and frank in his dealings with the Regulator and the Tribunal.

33. Overall, the Tribunal assessed the Respondent's culpability as low.

34. The Tribunal next considered the issue of harm. Whilst there had been a theoretical risk that the defendants could have been misled there was no finding that they had been misled. The harm had been limited in scope and nature and there was no evidence of direct harm to any member of the public.

35. The consequential damage to the reputation of the profession by the Respondent's misconduct was not judged to be significant, although a breach of Principle 6 could not be viewed as inconsequential as the public would trust a solicitor to ensure that documents were accurate before being sent to a recipient. Therefore, in this regard, the Respondent's conduct had been a departure from the complete integrity, probity and trustworthiness expected of a solicitor but not a significant one.

36. The Tribunal assessed the harm caused as low.

37. The Tribunal then considered aggravating factors. There were none. Tribunal had found no dishonesty; there were no criminal findings; no attempt by the Respondent to conceal his conduct or to place the blame on others.

38. With respect to mitigating factors the Tribunal noted that the Respondent had no previous disciplinary findings recorded against him and hitherto he had had an unblemished career.

39. These matters had occurred over 5 years'ago and there had been no repeat of the misconduct. There had been no loss to any party and the Respondent demonstrated genuine insight by recognising the factors which had contributed to the misconduct and had addressed them appropriately in ways which were explained to the Tribunal.

40. In all the circumstances of this case the Tribunal considered the seriousness of the misconduct to be low.

41. Whilst any breach of the Principles is not to be treated lightly the Tribunal concluded that in the circumstances the level of seriousness of the misconduct, and the Respondent's culpability, were low.

42. The Tribunal next considered the appropriate sanction and in doing so it adopted a 'bottom up' approach to find one which would neither be unfair nor disproportionate.

43. Given the admission to a breach of Principle 6 the Tribunal considered that to make no order or to impose a Reprimand would not be appropriate.

44. Whilst the likelihood of future misconduct was low this had not been a minor breach and the public were entitled to trust a solicitor to ensure the accuracy of all documents prepared in support of their case. In this regard the Respondent had fallen short of the standards required of a solicitor.

45. With respect to all the factors in this case the Tribunal determined that a fine at the top end of Level 1 of the Indicative Fine Bands *for conduct assessed as sufficiently serious to justify a fine (rather than a reprimand)* would be fair and proportionate.

46. The Tribunal imposed a fine of £1,500.00 upon the Respondent.

Costs

47. Ms Sheppard Jones stated the quantum of costs claimed by the Applicant was in the sum of £9,884.33.

48. Whilst there was no question that the Applicant had been error in bringing the proceedings, she conceded that there should rightly be some reduction for the matters not proved. However, the hours claimed by the Applicant had been the hours worked by its team of lawyers and paralegals and were not excessive but were reasonable and proportionate in the circumstances of the case.

49. In answer to a question from the Tribunal Ms Sheppard Jones was able to clarify, following a brief adjournment, that VAT would only be applied to her costs as in-house counsel for Capsticks, which firm had taken over the case from the Applicant's in-house counsel at a late stage.

50. With respect to her costs Ms Sheppard Jones told the Tribunal that having checked with supervising partners her costs should be reduced as not all the hours claimed on the Applicant's schedule of costs had been inputted and billed on Capsticks' billing system. Therefore, to prevent a misleading impression being given to the Tribunal it was right that her billable hours be reduced to 23 hours plus the time spent in presenting the case before the Tribunal over the previous 2 days.

51. Mr Goodwin said that whilst he would not be seeking his client's costs the Applicant had not succeeded on the majority of its case and although it was right for the Applicant to be granted a proportion of its costs, he asked the Tribunal to consider closely whether the hours claimed by the Applicant in case preparation was reasonable and proportionate.

<u>The Tribunal's Decision on Costs</u>

52. Having listened with care to the submissions made by Ms Sheppard Jones and Mr Goodwin with respect to costs, the Tribunal considered that it was in a position to summarily assess costs to determine whether they were reasonable and proportionate in all the circumstances of this case.

53. The Tribunal noted the following factors:

- The substantive hearing had taken less time than anticipated: 2 days instead of 3
- There had been no significant dispute of fact between the parties.
- The Applicant had called no witnesses.

- The Tribunal had not found proved the most serious allegations of dishonesty; recklessness and lack of integrity.

- The Respondent would pay his own costs.

54. The Tribunal found the case had been properly brought by the Applicant as it had raised serious issues, including allegations of dishonesty, recklessness and lack of integrity. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.

55. A breach of Principle 6 with respect to Allegation 1.1 (a) had been found which meant that the Applicant had failed to prove the bulk of its case, including the most serious elements of it, to the requisite standard.

56. The Respondent's account had never wavered and ultimately the allegations of dishonesty, recklessness and lack of integrity, the three most serious allegations a solicitor may face in regulatory proceedings, had not been proved to the requisite standard by the Applicant and a hearing listed for 3 days had been determined in 2 days in which only the Respondent and his wife had given evidence.

57. In accordance with the concessions made by Ms Sheppard Jones, and the observations made above, the Tribunal considered that whilst it was appropriate for the Applicant to recover a proportion of its costs, it assessed that, taking into account all the material circumstances, it was reasonable and proportionate for the Respondent to pay the costs of and incidental to this application and enquiry in the sum of £5,000.00 inclusive of VAT.

Statement of Full Order

58. The Tribunal Ordered that the Respondent, ASHLEY SINGER solicitor, do pay a fine of £1,500.00, 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 £5,000.00 inclusive of VAT.

Dated this 9th day of November 2021
On behalf of the Tribunal

A Kellett
Chair