SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12229-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED Applicant

and

MIA BRANCHETTE Respondent

Before:

Mr P. Jones (in the chair)
Ms T. Cullen
Mrs S. Gordon

Date of Hearing: 22 and 23 November 2021

Appearances

Natasha Tahta, barrister of QEB Hollis Whiteman Chambers, 1-2 Laurence Pountney Hill, London, EC4R OEU instructed by Simon Griffiths, solicitor in the employ of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority Ltd ("SRA") were that while in practice as a Solicitor at Capsticks Solicitors LLP ("the Firm"):

1.1. between 8 January 2018 and 3 September 2018, she made statements to representatives of her client, CHS, which were untrue and were likely to mislead them as to the progress of proceedings which she was conducting upon its behalf, and which she knew, or ought to have known, were liable to have this effect at the time she made them. In doing so she breached Principles 2 and 6 of the SRA Principles 2011 (the Principles).

1.2 between 3 September 2018 and 11 September 2018, she made statements to representatives of her employer, Capsticks Solicitors LLP, which were untrue and were likely to mislead them as to the progress of proceedings which she was conducting upon behalf of CHS (a client) and which she knew, or ought to have known, were liable to have this effect at the time she made them. In doing so she breached Principles 2 and 6 of the Principles.

1.3 in addition, allegations 1 and 2 are advanced on the basis that the Respondent's conduct was dishonest or alternatively reckless. Dishonesty or recklessness was alleged as an aggravating feature of the Respondent's misconduct but neither was an essential element in proving the allegations.

Documents

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

- Rule 12 Statement and Exhibit dated 25 July 2021
- Applicant's Schedule of Costs dated 12 November 2021

Preliminary Matters

Application to proceed in the Respondent's absence

3. Ms Tahta referred the Tribunal to Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") pursuant to which the Tribunal could proceed in the absence of the Respondent if satisfied that notice of the hearing was served in accordance with the SDPR. Rule 44 of the SDPR contained the provisions that dealt with service of the proceedings. Ms Tahta submitted that the proceedings had been properly served in accordance with Rule 44, as they were served by email to the Respondent's personal email address. The Tribunal served the proceedings on the Respondent by email on 29 July 2021. Notification of the date of the substantive hearing was included in the Standard Directions sent to the Respondent by the Tribunal. The email address provided by the Applicant for service, was the same as the email address from which the Respondent had previously communicated with the Applicant.

4. On 16 January 2021, the Respondent emailed the Applicant from the personal email address to which the proceedings had been sent. The email related to the investigation into her conduct. The Respondent stated that she had received a bundle of documents relating to the investigation. The Respondent also stated:

> "I will not respond further to any allegations made against me or suffer the humiliation of any tribunal".

5. Ms Tahta referred the Tribunal to email delivery receipts which showed that emails had been delivered, but no read receipts were returned. It was submitted that the delivery receipt notifications evidenced that the Respondent's email address still existed and was receiving emails. On 29 September 2021, the Applicant emailed the Respondent at another email address it held on its system. The Respondent did not respond to that email.

6. Having failed to serve an Answer in compliance with the Standard Directions, the matter was listed for a non-compliance hearing on 1 September 2021. The Respondent did not attend that hearing. Nor did the Respondent attend a Case Management Hearing on 29 September 2021. The Tribunal on that occasion was satisfied that the Respondent had had notice of the hearing, such that it was appropriate to proceed with the hearing in her absence.

7. The Tribunal was referred to GMC v Adeogba [2016] EWCA Civ 162. Ms Tahta reminded the Tribunal that the discretion as to whether to proceed in the absence of the Respondent was one that should be exercised with great care. Fairness to the Respondent was of prime importance, but fairness to the prosecution should also be taken into account. The Tribunal was required to consider (amongst other things):

- whether the Respondent had voluntarily waived her right to appear
- what effect an adjournment would have and the likely length of any adjournment
- the extent of the disadvantage to the Respondent
- the general public interest in the expedient hearing of the trial
- the statutory objective of the Tribunal to protect the public and the reputation of the profession

8. Ms Tahta submitted that there was no good reason not to proceed. The Respondent had not applied for an adjournment of the proceedings, nor had she engaged with the Applicant, as she was required to do.

9. As to the fairness of proceeding in the Respondent's absence, Ms Tahta submitted that the SDPR contained an additional protection for the Respondent under Rule 37 of the SDPR which provided that the Respondent could apply for a re-hearing of the application if she did not attend and was not represented when the Tribunal considered the matter.

10. The Respondent had made it clear in her 16 January 2021 email that she would not engage in the proceedings. In all the circumstances, it was fair for the Tribunal to proceed in the absence of the Respondent.

The Tribunal's Decision

11. The Tribunal found that notice of the proceedings were sent to the Respondent at the email address that she had previously corresponded from. There was also evidence that the email address was still in use. The Tribunal was satisfied that the proceedings had been served in accordance with the Rule 44 of the SDPR.

12. The Tribunal paid significant regard to the comments of Leveson P in Adeogba, namely that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At [19] he stated;

> "… It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

13. Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account."

14. The Tribunal was cognisant of the fact that the principles identified in Adeogba were affirmed by the Court of Appeal in GMC v Hayat [2018] EXCA Civ 2796.

15. The Tribunal noted that the Respondent expressly stated that she would not engage further with the Applicant during the Applicant's investigation, and that she would not engage with any Tribunal proceedings. The Respondent had made no further contact with the Applicant following her email of 16 January 2021, and had not engaged in the proceedings before the Tribunal at any time. In all the circumstances, the Tribunal did not consider that an adjournment would secure the Respondent's attendance. In any event, there had been no application by the Respondent to adjourn the proceedings. The Respondent had been invited by the Tribunal, in its memorandum of 1 October 2021, to "engage with the proceedings sooner rather than later if she intended to do so" and also to inform the Tribunal if there was any matter which had prevented her engagement thus far.

16. The Tribunal was satisfied that in all the circumstances, the Respondent had chosen voluntarily to absent herself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. In the light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence. Accordingly, and after careful consideration, the Tribunal found that it was appropriate to exercise its discretion to proceed with the hearing in the absence of the Respondent.

Factual Background

17. The Respondent was a solicitor, having been admitted to the Roll in September 2014. She was employed by the Firm from 7 August 2017 to 5 October 2018 as an Assistant Solicitor in its litigation department, in the Firm's Leeds office.

18. The Respondent last held an unconditional practising certificate for the 2019/2020 practice year. Her practising certificate was revoked on 15 April 2021 when the Respondent did not apply for her practising certificate to be renewed.

19. The conduct in this matter came to the attention of the SRA when AM, the COLP of the Firm at the time, filed a report dated 13 September 2018 explaining that the Respondent's conduct had come to the Firm's attention when it had been investigating concerns raised by one of its clients regarding delay on a debt recovery matter.

Witnesses

20. No witnesses gave oral evidence.

Findings of Fact and Law

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

22. **Allegation 1.1 - between 8 January 2018 and 3 September 2018, the Respondent made statements to representatives of her client, CHS, which were untrue and were likely to mislead them as to the progress of proceedings which she was conducting upon its behalf, and which she knew, or ought to have known, were liable to have this effect at the time she made them. In doing so she breached Principles 2 and 6 of the Principles.**

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

22.1. Ms Tahta submitted that the allegations related to a time when the Respondent was relatively newly qualified, and was working at the Firm. The Respondent commenced working on the matter in 2017. There followed a series of requests from the client for updates over the course of a year. The Respondent, it was submitted, responded to the update requests by saying she had taken certain actions when there was no evidence that she had. The overwhelming conclusion was that the Respondent stated she had taken action that she had not in fact taken.

22.2 On 1 September 2017, CHS instructed the Firm in relation to a debt recovery matter against VCL. DF allocated the file to the Respondent, who confirmed on 4 September 2017 that she had capacity to take on the matter. On the same date the Respondent emailed the client, confirming that the matter had been passed to her. On 5 September 2017, the Respondent confirmed to colleagues that she had contacted the client and was happy to take the matter forward. The Respondent was the designated

caseholder for the matter. At the material times, the Respondent had responsibility for the conduct of the file.

22.3 On 14 November 2017, CHS emailed the Respondent asking for an update. CHS stated that emails requesting updates had already been sent on 23 October, 3 and 8 November 2017 and had heard nothing substantive. The Respondent provided an action plan (with associated costs). The Respondent explained that given the size of the debt, a statutory demand was recommended.

22.4 On 12 December 2017, CHS instructed the Respondent to issue a statutory demand. The Respondent acknowledged these instructions on 14 December 2017 and stated that she would draft the statutory demand and send to CHS for approval. On 28 December 2017, CHS sent an email to the Respondent asking for "any further news on this".

22.5 The Respondent recorded time on 4 January 2018 for drafting the statutory demand. On 8 January 2018, CHS emailed the Respondent and asked for confirmation that the statutory demand had been "filed". The Respondent replied on the same date stating: "Yes, the stat demand has been served and I will of course let you know when I receive a response". In response, and also on 8 January 2018, CHS emailed the Respondent and asked when the statutory demand had been served and when a response could be expected. No response to that email from the Respondent was located. Subsequent searches by the Firm did not identify any evidence that a statutory demand had been drafted or served.

22.6 On 8 February 2018, CHS emailed the Respondent requesting an update, and explaining that it was assumed that the time for payment had passed. On 13 February 2018, the Respondent stated that she had not received any correspondence in response to the statutory demand and that "unfortunately our scare tactics haven't worked here". The Respondent went on to state that she would chase for payment and threaten with both insolvency and court action. Ms Tahta submitted that in her email, the Respondent implicitly implied that the statutory demand had been served. On the same day, CHS requested a copy of the statutory demand and whether there were time frames for the notice to apply for insolvency. Subsequent searches by the Firm did not identify any evidence that the Respondent chased for payment.

22.7 On 20 March 2018, CHS emailed the Respondent and asking for the current position and the next steps. On 12 April 2018, CHS emailed the Respondent, stating:

> "URGENTLY NEED YOUR RESPONSE TO MY EMAIL REQUESTS FOR UPDATE PLEASE. Please can you reply with a chronology of actions taken".

22.8 On 16 April 2018, a further email was sent to the Respondent asking for a response by the close of business the following day. The Respondent replied by email on 17 April 2018, explaining that the file had been "passed to a colleague ... who has since left … unexpectedly". She also stated that the file had not been handed back to her.

22.9 The Respondent set out in the email a timeline of the events that she asserted had happened. This included the purported service of the statutory demand on 5 January 2018, two "chasers" being sent on 14 February 2018 and 5 March 2018 and

a letter of claim (described as a letter before action) being sent on 28 March 2018. The Respondent stated that responses had not been received to these. The Respondent recommended that proceedings be issued and advised that the court fees for a claim of this value would be capped at £10,000.

22.10 The Respondent it was submitted, was very specific about the dates upon which certain actions were taken. On 3 November 2019, the Respondent replied to an EWW letter from the Applicant of 17 October 2019. The Respondent stated:

> "You will see from my email dated 17 April 2018 that the matter was being dealt with by another member of the team. This individual will have been another property litigation associate, (Solicitor X] who had recently joined the firm. Therefore, although I may have been the individual emailing the client contact, it appears that [Solicitor X] was the lawyer progressing the claim and that the matter had been passed to him.
>
> [The Firm] have advised that it is their practice that if a matter is passed to another fee earner that the client is told of this change. As [Solicitor X] sat next to me in the office, I will have simply asked him to pick up the matter and email the client introducing himself. As I do not have access to the [Firm's] file management system I cannot see whether he did this or whether he progressed the matter.
>
> It is worth noting that [Solicitor X] is no longer an employee at [the Firm]. He did not pass his probation period and was asked to leave the firm. He had not dealt with several matters promptly and had ignored and deleted client emails. When he left the firm, I was asked to pick up all of his matters and it became apparent that he had not done many things that he said he had done or ought to have done. He may also not have done what he should have done on this file."

22.11 Ms Tahta submitted that in fairness to the Respondent, enquires were made as to what was contained in Solicitor X's electronic documents. There was no evidence of any work undertaken on the matter by Solicitor X. More importantly, DF explained that Solicitor X was employed from 3 January to 13 March 2018. He was, therefore, not at the Firm on the date that it was asserted that the letter before action was served on 28 March 2018. Accordingly it would have been impossible for him to have sent the letter before action. Ms Tahta submitted that all of the dates contained in the 17 April 2018 email in which the Respondent asserted that action had been taken were fabricated by the Respondent.

22.12 The subsequent searches by the Firm did not identify any evidence that any of the documents detailed by the Respondent were created or sent, or that the Respondent had even requested the information from the client which would be necessary to prepare either a statutory demand or a letter before action. Further, no evidence was identified demonstrating that the file had been transferred as asserted.

22.13 On 17 April 2018, the Respondent entered into an email exchange with CP in which CP confirmed that an update on this matter was "being chased via Clin" because a response hadn't been received. The Respondent confirmed that she had told the client she would be responding that day.

22.14 On 23 May 2018, the Respondent emailed CHS in response to a voicemail message from the client. In her email the Respondent stated that: "Proceedings have been issued at the court. We now have to wait for the application to be sealed by the court". The Respondent went on to set out timescales and stated that she would let CHS know when the sealed forms were returned and served.

22.15 Subsequent searches by the Firm did not identify any evidence that these proceedings were prepared, sent to the court and/or sealed and returned to the Respondent. Along with the absence of any relevant documentation on the Firm's systems and/or any time recorded by the Respondent for the preparation of these documents, the Firm ascertained:

- no court fees are recorded on the relevant matter ledger (on either client or office account); and

- there was no record of any such claim in the book of claims received as kept by the Queen's Bench Division.

22.16 On 24 May 2017, CHS sent an email to the Respondent referring to telephone messages and emails of that week and noting that "we have provided you with authority to issue proceedings and pay the court fee. This authority was given on 3 May". CHS then went on to ask for confirmation that the proceedings had been issued and served and what the next steps were. The Respondent replied on the same day, attaching the emails of 23 May 2018 which answered the questions raised. In a response also on 24 May 2018, CHS asked for confirmation as to when the papers were sent to the Court and for an indication of when a response would be received.

22.17 On 4 July 2018, CHS emailed the Respondent and stated "You have now had authority to proceed with issue of court proceedings for some time. Please advise current position and next steps with timescales".

22.18 On 12 July 2018, CHS emailed the Respondent and stated that "Despite regular chasers, we have had no update since the below email from you". The email referred to was dated 17 April 2018 detailed above. No reference was made to the emails from the Respondent dated 23 and 24 May 2018. The email went on to state that the Respondent had been given authority to incur the court fee on 5 May 2018 and asked for an update (including guidance as to next steps and when enforcement action could be taken).

22.19 The Respondent replied, by email dated 12 July 2018, stating that she had sent an update to the writer and the writer's colleague (with whom the Respondent had also been corresponding). The Respondent stated: "Proceedings were issued and we have to wait for the application to be sealed by the Court." The Respondent explained that she would serve these once received and then the defendant would have fourteen days (plus a few days for service) to submit their defence. The Respondent concluded by stating that she would chase the court for an update (by telephone and by letter) as she had not heard from them.

22.20 CHS responded by email asking again for confirmation as to when the documents were sent to the Court and the likely timescales for issue, service, and the filing of the defence. The Respondent replied, also on 12 July 2018, stating that documents had been

sent to the Court at the end of May and saying that she would chase for an update. The Respondent also gave brief details as to what the possible next steps could be. Ms Tahta submitted that whilst the Respondent was answering some of the questions asked, however she did not provide specific dates or copies of any documents. Subsequent searches by the Firm did not identify any evidence that documentation was sent to the court at the end of May 2018 (or at all) or that the Respondent chased the Court for an update.

22.21 On 17 July 2018, the Respondent emailed CHS and (referring to a telephone call they had had that morning) stated that "the papers were sent to the court on 21 May". The Respondent went on to state that "So far the court haven't been able to provide an update so I propose to call the court in an attempt to speak to someone more helpful and in addition resend the papers to the court (this may be quicker than waiting for them to locate/update)". Subsequent searches by the Firm did not identify any evidence that (i) documentation was sent to the court on 21 May 2018 by the Respondent, (ii) the Respondent subsequently chased the court or (iii) further documentation was sent as a result of this email exchange.

22.22 On 30 July 2018, CHS emailed the Respondent asking for a further update to the one provided on 17 July 2018. The Respondent was asked (i) whether there had been any confirmation of issued proceedings from the Court, (ii) When the registered delivery of further submission of court proceedings took place and (iii) when CHS were likely to hear further. The Respondent replied by email, dated 31 July 2018, stating that "The papers were sent on 19 July and the court confirmed receipt last week". The Respondent went on to say that she was waiting for the papers to be returned so that she could serve them on the defendant. Subsequent searches by the Firm did not identify any evidence that documentation was sent to the court on 19 July 2018 by the Respondent or that the court had confirmed receipt of papers to her.

22.23 On 3 September 2018 CHS emailed the Respondent and asked for an update as to progress and the timeframe for next steps. The Respondent replied by email dated 3 September 2018 stating that "I have not received a response from the court to my correspondence" and that "I will chase them today and come back to you with an update and time frames as soon as possible". Subsequent searches by the Firm did not identify any evidence that the Respondent had had any correspondence with the court at the time she sent this email or that she corresponded with the court as a result.

22.24 In its report to the SRA 13 September 2018, the Firm stated, amongst other things, that:

- It had been unable to find evidence that either the statutory demand or the proceedings had been issued

- It had interrogated its case management system and had been unable to locate:

  (i) the statutory demand.

  (ii) the chasers of 14 February and 5 March 2018 (referred to in the Respondent's email to CHS of 17 April 2018.

(iii) the letter before action of 28 March 2018 (referred to in the Respondent's email of 28 March 2018).

(iv) the issue of proceedings (referred to in the Respondent's email of 23 May 2018.

- In a telephone call with one of the HR managers dated 11 September 2018, the Respondent stated that she had submitted the Statutory Demand and gave a subsequent location for the electronic document, but no such document had been found. The Respondent also stated that the proceedings had not been served.

- The Firm was unable to find any evidence that the file had been transferred to another fee earner during the material time.

22.25 In an attempt to establish whether the work had been undertaken, the Firm ascertained:

- CHS were not asked to provide the "usual documentation" necessary to complete the statutory demand. This was discovered as when the Firm prepared the demand and the documents needed to do so, save for one, they had not previously been requested

- that no money had been received from the client to pay the court fee of £10,000 for issuing the claim, or paid out of the office account

- the records at the Queen's Bench Division and the Commercial Court were checked and the Firm was advised that there was no record of a claim being issued.

22.26 The Firm also conducted a search all of the Respondent's emails for 5 January, 14 February, and 5 and 28 March 2018 as well as all documents created by her on those dates. There were no communications with the client in those documents or references to the matter involving the claim against VCL by CHS.

22.27 In a witness statement dated 20 January 2021 on behalf of the Firm, it was explained that none of the documents were located on the Firm's electronic system, or on a physical file. The search for documents was initially undertaken on the assumption that the documents existed, but had been incorrectly filed. The statement detailed the searches that had been undertaken, including electronic interrogation and physical searches in various locations, including any material that may have been deleted. The statement also confirmed that as regards the Respondent's assertion that the file had been transferred, the fee earner in question was not employed by the Firm on the days that the letter of claim were purportedly sent or on the date that proceedings were purportedly issued.

22.28 Ms Tahta submitted that the Respondent had conduct of the matter throughout. The only time recorded for drafting was the drafting of the statutory demand. There was no time recorded for the drafting of, amongst other things: correspondence on 14 February, 5 March or 28 March 2018, particulars of claim, a claim form or correspondence with the court (either issuing the proceedings or seeking an update).

22.29 The searches undertaken by the Firm did not discover any evidence that:

- the Respondent had drafted a statutory demand or sent one to VCL.
- the Respondent had drafted a letter of claim or sent one to VCL (on 28 March 2018 or at all).
- proceedings had been drafted in relation to the proceedings against VCL, issued at court and/or served on VCL.
- there had been any correspondence with VCL in relation to either the supposed statutory demand and/or proceedings had been drafted and/or sent.
- there had been any correspondence with the court.
- the issue fee had been received from CHS or paid on its behalf by the Firm.

22.30 Notwithstanding this the Respondent, on repeated occasions, made statements to CHS to the effect that:

- a statutory demand had been prepared and sent to VCL.
- follow up correspondence seeking a response had been prepared and sent to VCL.
- VCL had not responded to this correspondence.
- a letter of claim had been prepared and sent to VCL.
- proceedings had been prepared and issued at the court in May 2018 (with likely timescales provided).
- she would chase the court for an update on these
- proceedings had again been sent to the court again in July 2018 and that the court had confirmed receipt of these.
- she would chase the court for an update on the issue of these.

22.31 As to the Respondent's letter of 3 November 2019, Ms Tahta submitted that the Respondent provided no explanation or details as to any of the evidence or the action that she took. The Respondent had not explained how someone who was not at the Firm was able to send a number of the complained of emails.

22.32 Ms Tahta submitted that the Respondent had repeatedly informed her client that no response had been received to documents allegedly sent and/or that she would chase for a response or an update. In doing so, the Respondent represented and advised her client, either expressly or impliedly, that the delay was caused by a failure to respond to correspondence sent by the Firm, and not by the Firm's failure to progress the matter or send correspondence. The Respondent has made repeated statements to her client

about work she had done in circumstances when she had not done the work (knowing that she had not done so), giving her client the impression that the matter was being progressed when it was not. Such conduct, it was submitted, was in breach of Principle 2.

22.33 Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a solicitor who repeatedly made untrue and/or misleading statements which indicated that procedural steps had been conducted when they had not; and gave the impression that the matter was substantively progressing, when it was not. Ms Tahta drew attention to the fact that VCL had swiftly acknowledged the debt when it was later pursued by a partner with the firm, thus giving rise to an implication that they would likely have responded similarly had indeed a statutory demand or proceedings been served by the Respondent, as she had claimed. Accordingly, the Respondent's conduct was in breach of Principle 6.

The Respondent's Case

22.34 In her letter of 3 November 2019 to the Applicant, the Respondent stated:

> "The matter in question dates back to January 2018. You will appreciate that 22 months have now passed since the commencement of my involvement in the matter.
>
> I was involved in several similar matters during my employment at [the Firm] and these will mostly, if not all, have been acting for [the clients]. Therefore, I honestly cannot recall the details of the matter or provide any confirmation of the actions I undertook or provide you with any dates.
>
> What I can be certain of is that I did not intentionally deceive or lie to the client or [the Firm]. If I told the client an action had been taken, then I will have honestly believed that those steps were taken either by myself or a colleague. There would have been no benefit to me to deceive the client as is being alleged or explanation as to why I would not have progressed the matter.
>
> If the documents are not saved in that file they may have been stored in a number of other locations. There were thousands of [client] Trust matter files where these documents could have been saved.
>
> I have not had the opportunity to try to locate the documents on the internal management system or to talk to the other fee earner involved. This undoubtedly puts me at a huge disadvantage in trying to provide you with the evidence required. It is difficult, if not impossible, to defend myself without access to the computer system.
>
> It is my practice to always print all of the core documents in a matter and keep them in a file. I will have therefore printed the core documents for this matter and put them in a physical file. Therefore, the fact that [the Firm] are unable to locate a file shows that they have not conducted a thorough search or that the file in question has been destroyed either accidentally or on purpose.

> You will see from my email dated 17 April 2018 that the matter was being dealt with by another member of the team. This individual will have been another property litigation associate, (Solicitor X] who had recently joined the firm. Therefore, although I may have been the individual emailing the client contact, it appears that [Solicitor X] was the lawyer progressing the claim and that the matter had been passed to him.
>
> [The Firm] have advised that it is their practice that if a matter is passed to another fee earner that the client is told of this change. As [Solicitor X] sat next to me in the office, I will have simply asked him to pick up the matter and email the client introducing himself. As I do not have access to the [Firm's] file management system I cannot see whether he did this or whether he progressed the matter.
>
> It is worth noting that [Solicitor X] is no longer an employee at [the Firm]. He did not pass his probation period and was asked to leave the firm. He had not dealt with several matters promptly and had ignored and deleted client emails. When he left the firm, I was asked to pick up all of his matters and it became apparent that he had not done many things that he said he had done or ought to have done. He may also not have done what he should have done on this file.
>
> There is an employee of [the Firm] (non-fee earner) with who I had a falling out with during my time at [the Firm]. I appreciate that this is not the forum to discuss this disagreement, but this individual is methodically attempting to harm both my professional and personal life."

22.35 The Respondent explained that it was her belief that the individual: "would do anything to damage my professional life including deleting or destroying documents which could have helped me defend myself. I obviously cannot prove this but I must tell you everything and anything that can help me defend myself and explain the circumstances around the matter".

22.36 The Respondent also expressed that she was "very concerned that if [the Firm] have sight of this letter to you, the partner will in turn share it with her and she will continue her vendetta against me."

22.37 In her email dated 16 January 2021 to the Applicant, the Respondent stated:

> "I have today received a bundle of documents relating to the current investigation against me in respect of the allegation made by [the Firm].
>
> …
>
> I have also had to suffer the personal vendetta against me by an employee of [the Firm].
>
> I cannot endure this long torturous experience any longer.
>
> I have no access to any correspondence or files and so am immediately at a disadvantage. I have neither the resources or energy to fight this case, which I

feel has already been decided against me. This is highlighted by the fact that you have given yourself a year to investigate and now have given me three weeks to respond.

Working as a solicitor was a privilege and honour but I now do not have the love for the profession, confidence needed or ability to work in the sector (as the individual at [the Firm] has promised to black mark me at every firm).

It is therefore with a heavy heart that I will no longer work within the profession and am resigned to the fact that you will remove me from the roll.

I will not respond further to any allegations made against me or suffer the humiliation of any tribunal. I cannot fund any defence or the investigation itself as I am out of work and now have no savings.

I give permission to be removed from the roll with immediate effect."

The Tribunal's Findings

22.38 The Tribunal found, as a matter of fact, that the contemporaneous documents evidenced that each of the complained of statements had been made. The Tribunal considered whether the statements were untrue and likely to mislead as alleged.

22.39 8 January 2018 - The Tribunal found that the representation that the statutory demand had been served was untrue and likely to mislead. The Tribunal noted that the documentary evidence required for creating the statutory demand had not been received or requested by the Respondent. Accordingly, the Respondent was not in possession of the information required to create and serve the statutory demand, and therefore could not have served it as asserted. Further, had the Respondent created and served the statutory demand as she asserted, the Respondent would have provided this to her client when it was requested. The Tribunal found that the Respondent knew that the statutory demand had not been served and, in telling her client that it had, she had knowingly misled her client.

22.40 13 February 2018 – The Tribunal found that the Respondent had not served the statutory demand. Indeed, as detailed above, the statutory demand had not been created. The Respondent knew that she had not served the statutory demand (as she had not even created it). Thus, in telling her client that the 'scare tactics had not worked', she knew that there were no scare tactics as no statutory demand had been sent. Further, the Respondent knew that she could not chase for payment of a demand that had not been served. The Tribunal found that in implying that the statutory demand had been served, and that she was going to chase for payment, the Respondent had knowingly made statements that were untrue and likely to mislead.

22.41 17 April 2018 - The Tribunal found that the Respondent had not passed the file to a colleague as asserted. The searches undertaken by the Firm evidenced that Solicitor X had undertaken no work on the matter. The Respondent had specified dates on which certain actions had been taken in circumstances where there had been no statutory demand served, no chasers sent and no letter before action created and sent to the client. Additionally, Solicitor X was no longer employed by the Firm on the date that the

Respondent asserted that the letter before action had been sent. The Tribunal noted that the Respondent had not recorded any time for the letters of the preparation of the letter before action. Further, the extensive searches undertaken by the Firm did not find any of the documents that the Respondent asserted had been created. The Tribunal found that the Respondent knew that none of those actions detailed in the 17 April 2018 email had been undertaken and also knew that the file had not been passed to her colleague. In asserting otherwise, the Respondent had knowingly made statements that were untrue and likely to mislead.

22.42 23 May 2018 - The Respondent told the client that proceedings had been issued. The Tribunal noted that no Court fees had been paid either from the client account or from the office account on the client's behalf, and no communication from the Court confirming receipt. The Tribunal found that there was no evidence that the Respondent drafted or issued proceedings at any Court. The Respondent, it was determined, knew that there were no proceedings in hand. In telling the client that Court proceedings had been issued, the Respondent had knowingly made a statement that was untrue and likely to mislead.

22.43 12 July 2018 - The Respondent stated that the documents had been sent to Court at the end of May and that she would chase the Court for an update. As detailed above, the Tribunal found that the Respondent had not issued proceedings at Court. Accordingly, no documents had been sent to Court and there was, therefore, nothing to be chased with the Court. In making the representations that she did, the Respondent had knowingly made statements that were untrue and likely to mislead.

22.44 17 July 2018 - The Respondent stated that the documents were sent to Court on 21 May 2018. As detailed above, the Tribunal found that no documents had been sent to the Court in May. Accordingly, in telling her client that the documents had been sent, the Respondent had knowingly made a statement that was untrue and likely to mislead. Further, having not sent the papers, it was misleading and untrue to assert that the papers would be resent.

22.45 31 July 2018 - The Respondent stated that the Court had confirmed receipt of the papers. As detailed above, the Tribunal found that no papers had been sent to Court. Accordingly, the Court could not have confirmed receipt of items that were never sent. In telling her client that the Court had confirmed receipt, the Respondent had knowingly made a statement that was untrue and likely to mislead.

22.46 3 September 2018 - The Respondent stated that having not received a response she would chase the Court. In telling her client that she would chase the court in circumstances where she knew that the Court was not in possession of any application in relation to her client's matter, the Respondent had knowingly made a statement that was untrue and likely to mislead.

22.47 The Tribunal found that the Respondent knowingly made false and misleading statements to her client about the progress of its case. Such conduct, it was determined, failed to maintain the trust the public placed in her and in the reputation of the profession. Members of the public would not expect a solicitor to be repeatedly untruthful with their clients about the progress of their matters, stating that procedural

steps had been taken when they had not. In doing so, the Tribunal was satisfied that the Respondent's conduct was in breach of Principle 6 as alleged.

22.48 The Tribunal considered that a solicitor acting with integrity would not knowingly make false and misleading statements to her clients about the progress of the matter. The Respondent had, over a 9 month period, continuously misled her client as to the progress of the case, repeatedly asserting that the matter was progressing and that steps had been taken when she knew that was not the position. In making the statements that she did, the Respondent had acted without integrity in breach of Principle 2.

22.49 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities.

23. **Allegation 1.2 – between 3 September 2018 and 11 September 2018 she made statements to representatives of her employer, Capsticks Solicitors LLP, which were untrue and were likely to mislead them as to the progress of proceedings which she was conducting upon behalf of CHS (a client) and which she knew, or ought to have known, were liable to have this effect at the time she made them. In doing so she breached Principles 2 and 6 of the Principles.**

The Applicant's Case

23.1 On 3 September DF (the Head of Litigation at the Firm) was sent an email from a member of staff at the Firm stating that the Assistant Director of Finance at CHS was not impressed and asking if there was anything that could be done to stop CHS having to chase for updates.

23.2 DF emailed the Respondent, also on 3 September 2018, attaching the complaint from CHS and asking for an explanation. DF suggested that perhaps, "as before", the client was complaining having forgotten about previous correspondence with the Respondent where updates had been provided.

23.3 The Respondent replied, also on 3 September 2018, saying that she had "already responded to the client and will contact the court formally". She went on to say that "I think it's just a case of the finance team not appreciating the complexities and common delay of the court process". Ms Tahta submitted that the Respondent's response was misleading in circumstances where there had been no delay on the part of the Court as no proceedings had been sent to the Court.

23.4 On 6 September 2018, DF emailed the Respondent (attaching part of the chain of correspondence between the Respondent and CHS dated 12 July 2018) and stating that "We can catch up later re this as the client is waiting for my call. Your email below refers to proceedings being issued – have they been served and please could you forward a copy of them to me asap?"

23.5 The Respondent left the office on the afternoon of 6 September 2018, having been taken unwell. The Respondent did not return to the office thereafter.

23.6 On 10 September 2018 SW, a HR Manager at the Firm, called the Respondent to discuss the matter, the Respondent having been taken ill at work on 6 September 2018. Following the conversation, SW sent an email to (amongst others). In the email SW stated that:

- the Respondent "was very confused and incoherent at times";
- the Respondent had confirmed that she had "filed" a statutory demand on VCL;
- the Respondent "wasn't sure where this would be filed if not on the case file in Visual Files [the Firms Case Management System] but suggested to look on her general file as this is where she would keep documents that haven't been filed. She confirmed she doesn't keep anything on her desk-top";
- when she asked if the Respondent had issued court proceedings against VCL, the Respondent "confirmed that they haven't been served yet".

23.7 Ms Tahta submitted that on 3 September 2018, the Respondent was asked by DF for an update as to the position with the matter file and the proceedings against VCL. In her response, the Respondent stated that: (i) she would contact the court; and (ii) she thought "it's just a case of the finance team not appreciating the complexities and common delay of the court process" and that she would "try to smooth things over with the client".

23.8 Either or both of those statements, it was submitted, implied that there were active proceedings in relation to the matter. The Respondent had also implied that the only reason the client had needed to contact DF was due to a mistake on its part as to the process, and in particular as to delays in court processes. The Respondent knew that these statements were incorrect, that there was no reason to contact the court, the delay was not caused by court processes, and that the client had needed to contact DF (as Head of Litigation) because she had failed to progress its matter.

23.9 On 10 September 2018, SW telephoned the Respondent for the purposes of ascertaining whether a statutory demand had been served on VCL, whether court proceedings had been issued against VCL and (if the answer was yes to either of the above) where were they stored.

23.10 The Respondent informed SW that a statutory demand had been "filed" on VCL. She then went on to give details as to where this might be found. She also, in response to the question as to the issue of court proceedings, said that they had not yet been served (a statement which correlated with her previous statements about the status of the proceedings and which implied that they at least existed).

23.11 As with her statements to DF, the Respondent knew or ought to have known that either or both of these statements were incorrect. The Respondent had not served a statutory demand on VCL, nor had she prepared or lodged proceedings. Any suggestion that these documents could be located somewhere on the Respondent's filing system was therefore clearly misleading.

23.12 Ms Tahta submitted that the Respondent failed to act with integrity in that:

- she knew or ought to have known that she had not progressed the matter and that she had been misleading CHS as to this through a series of statements which suggested that she had.

- CHS had contacted DF because, despite the Respondent's statements, they did not consider the matter to be progressing.

- she knew that DF was responsible for both the Respondent's supervision and ensuring that matters being handled by his team were properly progressed.

- rather than inform DF that, contrary to what she had told the client, the matter had not been progressed and proceedings had not been issued, the Respondent made statements to DF to the effect that the error lay with the client and that she would try to sort this out with them and the court.

- she knew that SW was contacting her for the purposes of ascertaining where the documentation was, and whether it had indeed been progressed as she had told both the client and DF, so that DF/the Firm could deal with the complaint from the client.

- rather than admit to SW that the documentation did not exist and therefore could not be found on the Firm's case management software, she perpetuated the suggestion that she had progressed the matter and the documents were located somewhere on the Firm's systems.

23.13 Additionally, public confidence in the Respondent, solicitors and the provision of legal services was likely to be undermined by a solicitor who, upon receiving a complaint from a client, misled (on more than one occasion) the head of their department (either directly or through correspondence with other individuals employed by their firm) as to the progress of a matter (whether dishonestly in order to avoid admitting their failure to progress the matter and/or conceal their previous statements to the contrary to their client, or recklessly, or simply through gross negligence and manifest incompetence in failing either to progress the matter or to check the position). The Respondent therefore breached Principle 6.

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

23.14 The Respondent denied allegation 1.2 in correspondence with the Applicant. The Respondent's case was as detailed at allegation 1.1 above.

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

23.15 The Tribunal found, as a matter of fact, having regard to the documentary evidence, that each of the complained of statements had been made. The Tribunal considered whether the statements were untrue and likely to mislead as alleged.

23.16 <u>3 September 2018</u> – The Tribunal found that in telling DF that she would contact the Court and suggesting that the client did not understand the complexities and common delay in the court process, the Respondent had knowingly misled DF. Her

correspondence suggested that matters were already being considered by the Court and that any delay was caused by the Court in circumstances where she knew that she had not sent any documents to the Court for processing. The Tribunal found that in knowingly making false statements to DF, the Respondent had made statements that were untrue and likely to mislead.

23.17 10 September 2018 – In a telephone call with SW, the Respondent stated that the statutory demand had been filed and that court proceedings had not been served, thereby implying that court proceedings had been issued. As detailed above, the Tribunal had found that the Respondent knew that no statutory demand had been prepared and no court proceedings had been issued. The Tribunal found that in knowingly making false statements to SW, the Respondent had made statements that were untrue and likely to mislead.

23.18 The Tribunal found that the Respondent knowingly made false and misleading statements to both DF and SW about actions taken on the case. Such conduct, it was determined, failed to maintain the trust the public placed in her and in the reputation of the profession. Members of the public would not expect a solicitor to be untruthful with her colleagues about the progress of a matter, to conceal the failure to progress the matter, stating that procedural steps had been taken when they had not. In doing so, the Tribunal was satisfied that the Respondent's conduct was in breach of Principle 6 as alleged.

23.19 The Tribunal considered that a solicitor acting with integrity would not knowingly make false and misleading statements to her Firm about the conduct of a case. The Respondent had been untruthful about the existence of documentation and where the non-existent documents might be located, and had been untruthful as to the progress made on the case. In making the statements that she did, the Respondent had acted without integrity in breach of Principle 2.

23.20 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities.

24. **Dishonesty**

The Applicant's Case

24.1 Ms Tahta submitted that it was the Applicant's case that the evidence was overwhelming that the Respondent had not created the documents which she told the client that she had, and that the file had not been passed to Solicitor X as asserted. Further she had not issued proceedings with any court, nor had she chased any court for updates. Ms Tahta submitted that the Respondent kept sending emails that gave a false impression of what she was doing to progress the matter. Thereafter, she provided false and misleading information to the Firm when she was asked about the matter.

24.2 Ms Tahta submitted that at the time, the Respondent knew or believed that:

- she had not served a statutory demand on VCL; and/or

- in the context of the questions being asked, her statement that she had not yet served proceedings on VCL inferred that such proceedings had at least been prepared and/or issued; and/or

- she had not lodged proceedings with the court; and/or

- she knew any or all of these documents would not be located on the case management system or elsewhere within the Firm as they did not exist.

24.3 Ms Tahta submitted that on several occasions, over several months, the Respondent told her client that the client's case was moving on, from the supposed service of the statutory demand through to the Court proceedings supposedly being issued, when the Respondent knew that it was not.

24.4 In any or all of the circumstances detailed, the Respondent was dishonest by the standards of ordinary decent people.

The Respondent's Case

24.5 In her correspondence with the Applicant, the Respondent denied that she was dishonest and explained that she did not intentionally deceive or lie to the client or the Firm. The Respondent also explained that if she told the client that an action had been taken, she would honestly have believed that she had either taken those steps herself, or they had been taken by a colleague. The Respondent explained that there was no reason for her not to progress the matter, and that it would have been of no benefit to the Respondent to deceive the client.

The Tribunal's Findings

24.6 As detailed the Tribunal found that the Respondent had knowingly made false and misleading statements to both her client and her employer. She had knowingly misled her client for 9 months, and had then misled her employer in order to conceal the lack of progress made on her client's matter. The Tribunal did not accept that the Respondent was honestly mistaken. Nor did the Tribunal see any evidence that would suggest that someone at the Firm was trying to get her into trouble and had destroyed documents. The Tribunal found that the Respondent had intentionally deceived her client, and that she did not honestly believe that any steps had been taken to progress the matter, whether by her or anyone else. When questioned about the progress by the Firm, the Respondent did not explain that the matter had not been progressed, but continued the deception by suggesting that documents which she knew did not exist might be found in her general file.

24.7 As to the representations made by the Respondent in her communications with the Applicant, the Tribunal did not accept that the Respondent had not intentionally deceived the client and the Firm as to the progress of the case. Further, it was not accepted that the matter had been passed by the Respondent to Solicitor X. It was clear that a number of the assertions made, had been made by the Respondent when Solicitor X was no longer employed by the Firm, thus making it impossible for him to have either made the misleading statements in the communications, or for him to have informed the Respondent that he had taken action, causing her to unintentionally make any misleading statements.

24.8 The Tribunal dismissed the Respondent's suggestion that someone at the Firm held a vendetta against her and so might have deleted documents as fanciful and untenable, lacking any credibility given the total absence of evidence.

24.9 The Tribunal found that the Respondent had deliberately and knowingly misled both her client and the Firm. Ordinary and decent people, it was determined, would consider that a solicitor who had been deliberately untruthful with her client and her firm had acted dishonestly.

24.10 Accordingly, the Tribunal was satisfied on the balance of probabilities that the Respondent's conduct in relation to allegations 1.1 and 1.2 was dishonest as alleged.

Previous Disciplinary Matters

25. None.

Mitigation

26. None

Sanction

27. The Tribunal had regard to the Guidance Note on Sanctions (8th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

28. The Tribunal considered that the Respondent was motivated by her desire to conceal her failing to progress her client's case. The Tribunal found that the Respondent's actions were a planned response to the enquiries made regarding the progress of the case. She had breached the trust placed in her by her client to progress the matter, and her employer who, when the matter was initially investigated, considered that the Respondent had taken the action that she asserted she had. The Respondent had direct control and responsibility for the circumstances giving rise to the misconduct. Whilst the Respondent was not very experienced, her misconduct did not relate to her inexperience.

29. She had caused harm to the client by preventing them from obtaining monies that were owed to them. She had also caused harm to the reputation of the profession as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

30. The Respondent's conduct was aggravated by her proven dishonesty, which was in material breach of her obligation to protect the public and maintain public confidence in the reputation of the profession. The Respondent's conduct was also deliberate calculated and repeated, and had continued over a period of time. She had sought to

conceal her failings by making numerous false and misleading statements. The Respondent, in her communications with the Applicant, had blamed a former colleague for the failings, which she knew were her own. In her communication with the Firm, the Respondent had suggested that the client did not understand the process, when she knew that the issues did not relate to the client's misunderstanding but were caused by her inaction. The Respondent also suggested that the Firm had failed to find documents when she knew that those documents did not exist. The Respondent had continuously and repeatedly failed to conduct herself with the standards of probity and integrity expected of a solicitor.

31. The Tribunal did not find that there were any factors that mitigated the Respondent's misconduct.

32. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand, a fine, suspension or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

33. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction in order to protect the public and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll.

Costs

34. Ms Tahta applied for costs in the sum of £5,770. This took into account a reduction for the shortened hearing time. Ms Tahta referred to the Tribunal's power to order costs pursuant to Rule 43 of the SDPR. Ms Tahta submitted that whilst the Respondent did not contend the allegations, they were not admitted. The times claimed for the preparation and presentation of the case were reasonable, as were the hourly rates claimed. As to the Respondent's ability to pay any costs order, the Respondent had asserted that she could not afford to fund her defence in her email of 16 January 2021. Ms Tahta noted that the Respondent had failed to provide any evidence of her means as she was required to do.

The Tribunal's Decision

35. The Respondent had not provided any evidence of her means or her ability to pay. Standard Direction 7 provided:

> "If at the substantive hearing the Respondent wishes their means to be taken into consideration by the Tribunal in relation to possible sanctions and/or costs, they shall, in accordance with Rule 43(5) SDPR by no later than 4:30 p.m. on Monday 25 October 2021 file at the Tribunal and serve on every other party a Statement of Means including full details of assets (including, but not limited to, property)/income/outgoings supported by documentary evidence. Any failure to comply with this requirement may result in the Tribunal drawing such inference as it considers appropriate, and the Tribunal will be entitled to determine the sanction and/or costs without regard to the Respondent's means. A failure to comply may also cause the consideration of the Respondent's means to be adjourned by the Tribunal to a later date which may result in an increase in costs."

36. The Tribunal did not consider it appropriate to adjourn the consideration of costs to a later date given the Respondent's non-engagement with the proceedings. In assessing costs, the Tribunal did not take into account the Respondent's means, as it had no evidence in relation to her means.

37. The Tribunal considered that the costs claimed were reasonable and proportionate. Accordingly, the Tribunal ordered that the Respondent pay costs in the amount claimed.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, MIA BRANCHETTE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,770.00.

Dated this 8th day of December 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
8 DEC 2021

P Jones
Chair