

The Tribunal's decision dated 25 February 2022 was subject to appeal to the High Court (Administrative Court) by the Respondent and cross-appeal by the Applicant in relation to sanction. The High Court dismissed both the substantive and the cross appeal on 19 July 2023 and the Tribunal's decision remains in force.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12245-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

VICTOR NWOSU

Respondent

Before:

Mrs C Evans (in the chair)

Mr G Sydenham

Mrs L McMahan-Hathway

Date of Hearing:

30 November – 1 December 2021 and 31 January 2022

Appearances

Nimi Bruce, counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

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

JUDGMENT

Allegations

The allegations against the Respondent, Victor Nwosu, made by the SRA were that, while in practice as a solicitor at and owner of Dylan Conrad Kreolle Solicitors (“the Firm”):

1. On 30 April 2018, when interviewing Person A, the Respondent inappropriately:
 - 1.1 Asked Person A to turn around; and/or
 - 1.2 After asking Person A to turn around, said word to the effect of “mmm, I like what I see”; and/or
 - 1.3 Told Person A that she was “pretty”, “very pretty”, “beautiful” and/or “very beautiful”, or words to that effect, on one or more occasions; and/or
 - 1.4 Asked Person A if she had a boyfriend; and/or
 - 1.5 Asked Person A if she had a brother or sisters; and/or
 - 1.6 Told Person A that if she worked for the Firm she would have to wear skirts and/or high heeled shoes, or words to that effect; and/or
 - 1.7 Told Person A that he only employed women and/or only beautiful women worked at the Firm, or words to that effect;

And thereby breached one or more of Principles 2, 6 and 9 of the SRA Principles 2011 (“the Principles”) and one or more of Outcomes 2.4 and 11.1 of the SRA Code of Conduct (“the Code”).

2. In addition, allegations 1.1 to 1.7 are advanced on the basis that the Respondent's conduct was of a sexual nature and/or sexually motivated. These are alleged as an aggravating feature of the Respondent's conduct but are not an essential ingredient in proving the allegations.

Documents

3. The Tribunal considered all of the documents in the case which included:
 - Rule 12 Statement dated 26 August 2021 and Exhibit HVL1.
 - Answer to the Rule 12 Statement dated 29 September 2021.
 - Witness statements:
 - Person A (third statement) dated 3 September 2021.
 - [Person A’s first statement dated 29 October 2019 and second statement dated 13 July 2021 appeared in Exhibit HVL1]
 - Person C dated 7 September 2021.
 - Respondent dated 12 October 2021 and Exhibit CVN1.
 - Kevin Okeke dated 10 October 2021.
 - Sarah Curtis dated 28 October 2021 and Exhibits SC1/SC2.
 - Respondent’s Statement of Means dated 22 November 2021.
 - Applicant’s Schedule of Costs dated 23 November 2021.

Factual Background

4. The Respondent was admitted to the Roll in 2005. At the time of the substantive hearing he was the principal solicitor, Compliance Officer for Legal Practice and Compliance

Officer for Financial Administration of the Firm in the fields of civil and criminal litigation, immigration law, family law, housing and employment law.

5. The Respondent held a practising certificate free from conditions as at the time of the substantive hearing.
6. The Respondent's conduct came to the attention of the Applicant when Person A made a report regarding the same on 1 May 2018. In that report, Person A outlined the Respondent's behaviour towards her during a job interview that occurred on 30 April 2018.
7. The Applicant notified the Respondent of the allegations levelled against him by way of a letter dated 18 February 2019 and sought his response to the same. The Respondent replied in a letter dated 4 March 2019. He denied the allegations in their entirety.

Witnesses

8. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.
9. The following witnesses gave oral evidence:
 - Person A.
 - Person C.
 - The Respondent.

Findings of Fact and Law

10. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Background

11. Person A was advised by Person B of a paralegal/legal assistant position within the Firm. She applied for that position on 24 April 2018 by emailing a covering letter and CV to Person B who in turn forwarded it to the Respondent. Person B told Person A on 25 April 2018 that she had been invited for an interview on 30 April 2018 at 4.00pm. The following WhatsApp conversation between Person A and Person B ensued in that regard:

“... ”

[Person A] I've sent you my CV and Cover letter. Feel free to tell me what you think

[Person B] OMG can you chill please, he's gonna eat this up ...That's literally the strongest cover letter I've ever seen ...Just showed the principal your C.V/Cover letter, he asked me to set up a meeting for Monday 4pm ...he was grinning when he was reading the C.V ...”

12. The allegations all relate to the conduct of the Respondent during that interview with regards to Person A. The Applicant alleged that the particulars set out in Allegations 1.1 – 1.7, both individually and collectively, breached any or all of the SRA Principles and/or Code of Conduct as set out below.
13. The Respondent denied the allegations in their entirety.
14. **Allegation 1 - Inappropriate behaviour**

The Applicant's Case

Person A

- 14.1 Person A confirmed the content of her witness statements dated 29 October 2018 (the “First Statement”), 13 July 2021 (the “Second Statement”) and 3 September 2021 (the “Third Statement”).
- 14.2 Person A stated that she arrived on time for her interview but that the Respondent was running late. The interview did not commence until 4.25 p.m. She entered his office and he introduced himself. The Respondent did not have a copy of her CV and asked if she had one to which she replied that she did not. He printed off a copy of her CV and covering letter which she talked through. The Respondent was behind his desk and Person A was sitting opposite him on the other side of the desk.
- 14.3 At some point during the course of the interview, Person A stated that the Respondent left the room for approximately 10 minutes. During that time, Person A sent messages via WhatsApp to a group comprising her boyfriend and friends in which she commented on the Respondent's behaviour. She did so because she “felt scared” and “so I felt I was not alone”. Some of those messages included:

“... ”

I don't know if I want to work here ...

He saw me 20 minutes late and told me how beautiful I was (repeatedly)...

Didn't have my CV when I arrived so he told me to sell myself ...”

Allegation 1.1 - Asked Person A to turn around

- 14.4 Person A stated that the Respondent then said that she could “take [her] jacket off” and further that she “turn around” which she did. As she was turning around and putting her coat on the hook, the Respondent said “you look smart” which she believed she did.

Allegation 1.2 - “mmm, I like what I see”

- 14.5 Person A stated that she did take her jacket off and “did a twirl” at which point the Respondent said “mmm, I like what I see”. She felt it was inappropriate for him to comment on her attire and it made her feel uncomfortable. Person A stated that the Respondent could only have been commenting on her appearance as he did not have a copy of her CV in front of him at that time, namely the start of the interview. She accepted that the Respondent was not in her line of sight at the time the comment was made.

Allegation 1.3 - “pretty”, “very pretty”, “beautiful” and/or “very beautiful”

- 14.6 Having sat back down (opposite the Respondent), he asked her to “pull [her] chair around the desk” so that she could see his desktop computer and he could show her on the Lawtel website how successful the Firm was. Person A did so and after the Respondent had shown her some cases, he “leaned forward in his chair, crossed his arms over the arm rest ... clasped his hands together and said ‘you’re very pretty, you’re very beautiful’ to which she replied “thank you”. Person A stated that she could not honestly remember how many times the Respondent said those words but she could recall that it was at least once and that it was upsetting, made her uncomfortable and left her feeling objectified

Allegation 1.4 - Asked Person A if she had a brother; andAllegation 1.5 - Asked Person A if she had a boyfriend

- 14.7 Whilst still sitting next to Person A, the Respondent said “do you have a boyfriend?” to which she replied “yes”. The Respondent then asked “do you have a brother” to which she replied “yes”. The Respondent said “okay” and, after a short silence, she then said to the Respondent “why did you ask me that?” to which he replied “I need to know everything about a person who comes to work at the firm”. The conversation reverted to the success of the Firm and the Respondent said to Person A “go back and sit down” which she took to mean in her original position, opposite him.

Allegation 1.6 - Had to wear skirts and/or high heeled shoes; andAllegation 1.7 - Only employed beautiful women/only beautiful women worked at the Firm

- 14.8 The Respondent offered Person A the job. Person A stated that, despite having no intention of taking the role she thanked him but was shocked at the low salary he proposed. She chose not to comment on that during interview as she “knew [she] would not be accepting the position and would not be working at DCKS”.
- 14.9 The Respondent proceeded to say, after the salary discussion, that if she “worked at DCKS [she] would only be able to wear skirts ... skirts and high heeled shoes [because she] would be going to court”. He stated that trousers were not smart and that she would

have to look professional and smart. He concluded that part of the conversation with the statements “only beautiful women work here” and “I only employ beautiful women”.

- 14.10 The Respondent offered Person A the position of paralegal and told her to “come in tomorrow wearing a skirt”. Person A stated that the interview left her scared as it was her first interview for a paralegal position within a law firm. She said that she felt powerless and that the Respondent held all of the power such that if she “said anything he would use it to stop [her] career”. Person A stated that she “felt like a nobody, he was somebody, who would believe me”.

After the interview

- 14.11 Person A sent further messages (both via text and voice message) to the WhatsApp group which included:

[Transcribed voice messages]

“... ”

He asked me if I have a boyfriend. He said that I was very very beautiful. He told me that I have to wear skirts when I come into work, he doesn't like it when women wear trousers. He said that I would only be working for him and nobody else ...

He asked me if I have a fucking boyfriend, what the fuck does that have to do with anything. He'll know I am not working for them, I made it seem like as if I was going to go to work on Wednesday and you know it is going to be amazing and like I am sure that he is amazing and that I am sure that he would have taught me amazing things and that he would have shown me how to be an amazing solicitor and he was going to be willing to pay for my LPC but I am not going to work for someone who me feel that uncomfortable on the first encounter...

And on top of that he was like, can you take your jacket off and take your blazer off and I sat down and he was like, I like what I see...”

[Text messages]

“... ”

HE ASKED ME IF I HAD A BOYFRIEND ...

AND THEN HE SAID ...

“I need to know these things. I need to know everything” ...

I'm never going back ...

I am really upset

It was so uncomfortable ...

He was undressing me with his eyes and he kept leaning forward and I'd lean back ...

And he made me take off my blazer and my jacket and he said "I like what I see"

I felt like an object ...

I felt so small ...

God I'm actually crying ...

He tried to touch me and I had to move back ..."

- 14.12 Additionally, Person A contacted Person C who was a friend, former lecturer and former Magistrate. Messages were sent in the following terms:

"...

It was the worst interview of my life.

Not because I did badly – I did amazingly

But the owner of the firm is disgusting. When I get home, I'll call you and tell you why..."

- 14.13 Following a telephone conversation with Person C Person A reported the Respondent to the Applicant.

The following day

- 14.14 On 1 May 2018 Person A sent an email to the Respondent declining the job offer in the following terms:

"...

After careful consideration, I regret that I must decline your offer. Although you were most encouraging in outlining further advancement possibilities within DCK, I am pursuing other opportunities that are more in line with my career goals.

This is in no small part due to the unprofessional conduct displayed throughout the interview which led to me feeling uncomfortable. This, coupled with the salary you offer has left me with significant doubt that I could pursue a satisfying and professional relationship with you and your firm.

Best wishes for your continued success..."

- 14.15 Person A stated that despite being scared by her experience, she felt that someone had to say something as "it was not on". She reported the Respondent for other women who may be in a similar position and had confidence to do so from the support of her friends.

- 14.16 In cross examination Mr Goodwin essentially put to Person A that she was not telling the truth, had misunderstood what had taken place during the interview and further that her report of the Respondent was motivated by other matters.
- 14.17 It was put to Person A that she was assisted in making the report by Person C. Person A stated that Person C told her to report the Respondent to the Applicant and provided her with emotional support in that regard but that the words within the report emanated from her and her alone. Person A could not recall whether she sent a draft of the report to Person C before submitting it to the Applicant and could not recall any further help having been given. Mr Goodwin took Person A to the witness statement of Person C which Person A confirmed she “had never seen before”. Person A stated that she last spoke to Person C “2 – 3 weeks ago”, they did not discuss the case, she was nervous about the hearing and Person C reassured her that there was “nothing to worry about”.
- 14.18 It was put to Person A that in her report, she failed to mention that the Respondent stated she “looked smart”; a fact which she subsequently referred to in witness statements and her live evidence before the Tribunal. Person A accepted that fact and asserted that she only set out the inappropriate comments made/questions asked in her report to the Applicant. Mr Goodwin suggested it would have been fair and appropriate to have included the “smart comment” in her report. Person A rejected that suggestion and asserted that the report contained the “words [he] used to objectify me”.
- 14.19 Mr Goodwin put to Person A that she had a “proper interest in physical/sexual abuse of women” and that she had a passion in that area; Person A confirmed that to be true. Mr Goodwin put to Person A, and she accepted, that she was dedicated, tenacious and experienced in the field of domestic violence as set out in her CV. Mr Goodwin suggested to Person A that, given her experience and tenacity, had the Respondent acted in the manner that she alleged she “would not have tolerated” it. Person A rejected that suggestion and stated that (a) she was scared/shocked in the interview, (b) she sought the support of her friends as shown in the WhatsApp messages and (c) her position was clear in her email the following day declining the job offer.
- 14.20 Mr Goodwin put to Person A that she did not tell Person B (who alerted her to the paralegal position at the Firm and to whom she sent her CV) what happened in the interview because it did not in fact happen. Person A rejected that suggestion and asserted that she did not tell Person B because (a) it was not his business, (b) he was an acquaintance as opposed to a friend, (c) she was traumatised, (d) Person B remained was employed by the Respondent and (e) she did not “want anything to do with the Respondent or people associated” with him.
- 14.21 Mr Goodwin put to Person A that the reason she declined the job offer was not due to the manner in which the interview was conducted, it was because of the low salary. Person A rejected that suggestion and asserted that she was living with parents, did not pay rent and would therefore have taken the opportunity to work within a law firm despite the low salary had it not been for the Respondent’s conduct. Her reasons for rejecting the offer was the “double whammy” of the Respondent’s conduct and the low salary.

- 14.22 Mr Goodwin put to Person A that there was no suggestion in her report to the Applicant that the Respondent attempted to touch her despite the WhatsApp message she sent after the interview in which she stated "... He tried to touch me and I had to move back ...". Person A accepted that fact and asserted that she did not include it in the report because she was "not sure if [it happened] ... [was] trying to rationalise this ... [was she] bugging out? ... didn't include it because [she] wasn't sure if how [she] thought it happened, happened..."
- 14.23 Mr Goodwin put to Person A that she did not tell Person C about the "touching" at the material time. Person A accepted that fact and asserted that the Respondent did, however, lean forwards in his chair towards her which made her think he "did he" try to touch her. Person A also accepted that "touching" was not contained in any of her witness statements nor did she make that allegation in her oral evidence before the Tribunal. Mr Goodwin put plainly to Person A that she was lying about the "touching". Person A rejected that suggestion, accepted that she could have misinterpreted the situation in the context of what else had occurred but that at the time of sending the WhatsApp message (approximately an hour after the interview) that was how she felt.
- 14.24 Mr Goodwin put to Person A that if she could have misunderstood the "touching" attempt, she could have misunderstood all the other comments made/questions asked by the Respondent. Person A disagreed and stated that she "didn't misinterpret any of that".
- 14.25 Mr Goodwin put to Person A that had she felt uncomfortable during the interview, she had the ability (by virtue of her telephone) to record it rather than send WhatsApp messages when the Respondent left the room. Person A stated that (a) she could not have recorded the interview without the Respondent's consent, (b) it would've been inappropriate to take her phone out during an interview and (c) only did so when the Respondent unexpectedly left the room.
- 14.26 With regards to Allegation 1.1, Mr Goodwin put to Person A that the Respondent did not ask her to take her jacket off, he said that she could take her jacket off which Person A accepted. Mr Goodwin put to Person A that the Respondent did not tell her to turn around; Person A rejected that suggestion.
- 14.27 With regards to Allegation 1.2, Mr Goodwin put to Person A that when the Respondent said "mmm, I like what I see" he was referring to her CV; Person A rejected that suggestion.
- 14.28 With regards to Allegation 1.3, Mr Goodwin put to Person A that the Respondent did not call her "pretty" or "beautiful" in any context; Person A rejected that suggestion.
- 14.29 With regards to Allegations 1.4 and 1.5, Mr Goodwin put to Person A that the Respondent did not ask if she had a boyfriend and/or brother; Person A rejected that suggestion.
- 14.30 With regards to Allegation 1.6 and 1.7, Mr Goodwin put to Person A that the Respondent advised her of the Firm's dress code during the interview which she accepted. Person A did not accept that the Respondent stated employees only had to

look smart. Person A maintained that the Respondent said that she would have to wear skirts, heels and that he only employed beautiful women.

- 14.31 Mr Goodwin put to Person A that “whatever [she] believed, there was scope for misunderstanding and scope for confusion”. Person A stated “but I know what happened and I know I am telling the truth. [The Respondent] and I know what happened. I know how I felt...”

Person C

- 14.32 Person C confirmed the content of her witness statement dated 7 September 2021 and in so doing stated that Person A first contacted her via message shortly after the interview to say that the Respondent had been “disgusting”. Person C believed that she called Person A. During that call, she recalled Person A telling her that the Respondent asked Person A to move her chair towards him, would be required to wear a skirt to work every day and that he would supervise her personally. Person A stated that she was shocked and upset. Person C could not recall, given the passage of time from the incident and when she was asked to provide a witness statement, any further specific comments, but was “aware that he asked whether she had a boyfriend and complimented her on her appearance and stated that she was an attractive woman.”
- 14.33 Mr Goodwin asked Person C when she had last spoken to Person A. Person C stated that the last time in person was on the telephone in 2019. Mr Goodwin asked if she had spoken to Person A “2 – 3 weeks ago” (as Person A had stated in evidence), Person C replied that she had not but that she had sent Person A a YouTube video around that time which Person A replied to on 16 November 2021. Mr Goodwin asked Person C when her last communication was with Person A. Person C stated that she sent a message the night before, it was not about the case and Person A had not seen the message according to the indicator on her telephone that the message had not been read.
- 14.34 Mr Goodwin asked Person C how she came to make a witness statement 3.5 years after the interview. Person C stated that Person A asked if she could give Capsticks her details for that purpose. She agreed, Capsticks contacted her and prepared a draft statement which she reviewed and amended prior to signing. The statement was based on her recollection of the material time and she never discussed her evidence with Person A.
- 14.35 Person C stated that she never told Person A to speak to the Applicant, she advised her to do so and she cannot comment on why Person A construed that advice as a direction to do so. Person C confirmed that Person A did not mention “touching” to her and she only set out in her witness statement that which she could specifically recall 3.5 years after the event.
- 14.36 *Principle 2 (duty to act with integrity)*
- 14.36.1 Ms Bruce submitted that, by virtue of his comments and behaviour towards Person A, the Respondent failed to act with integrity namely moral soundness, rectitude and steady adherence to an ethical code.

- 14.36.2 The Respondent was interviewing Person A for a role within the Firm; his conduct was therefore intrinsically and inextricably linked to his professional work. A solicitor acting with integrity would not, Miss Bruce averred, have abused their position of seniority, authority and power in the manner that the Respondent did. A solicitor acting with integrity would not, Miss Bruce further averred, have abused his position to make uninvited and unwanted comments of a sexual nature in the manner that the Respondent did.
- 14.36.3 Ms Bruce therefore submitted that the Respondent's conduct in relation to any or all of the comments made/questions asked of Person A amounted to a breach of Principle 2.

14.37 *Principle 6 (duty to maintain public trust in you and the profession)*

- 14.37.1 Ms Bruce contended that the Respondent behaved in a manner which undermined public trust in him as a solicitor and in the legal profession, contrary to Principle 6. The Respondent was acting in his capacity as principal of his Firm. He held a status of seniority and expertise. He was interviewing Person A for a junior role within his Firm.
- 14.37.2 Ms Bruce contended that the public would not expect a candidate for a legal position within a legal entity to be treated in an inappropriate and unprofessional manner such that they felt scared of being alone in a room with a solicitor.
- 14.37.3 Ms Bruce further contended that the public would not expect a solicitor to abuse their position in order to make comments of a sexual nature towards a candidate or to act in a manner that was sexually motivated during a job interview.

14.38 *Principle 9 (duty to encourage equality of opportunity and respect for diversity); and Outcome 2.4 (approach to recruitment and employment that encourages equality of opportunity and respect for diversity)*

- 14.38.1 Ms Bruce submitted that the Respondent failed to behave in a manner that encouraged equality of opportunity and respect for diversity, either in his approach to recruitment and employment or at all. His behaviour during the interview with Person A contravened those values by stating that he "only employed beautiful women". The Respondent's comments regarding Person A's appearance, and those of the other women that he employed, as well as his expectation that women wear "skirts and heels" were disrespectful in that they inappropriately objectified women. Asking Person A to turn around whilst stating "mmm, I like what I see" was also disrespectful and amounted to objectification.
- 14.38.2 Ms Bruce further submitted that a solicitor cannot be said to be encouraging equality of opportunity and respect for diversity whilst making unwanted and initiated comments of a sexual nature in a sexually motivated manner.

14.39 *Outcome 11.1 (do not take unfair advantage of third parties either professionally or personally)*

- 14.39.1 Ms Bruce submitted that it was not appropriate for a solicitor, during an interview for a position at their Firm, to (a) ask the candidate to turn around, (b) comment on their appearance or (c) comment on the appearance of others employed at their Firm as none of those matters were relevant to employment at a firm of solicitors.
- 14.39.2 Furthermore, it was not appropriate for the Respondent to advise Person A that she was expected to wear skirts and high heels even if the Firm's dress code policy stated otherwise.
- 14.39.3 Ms Bruce acknowledged on behalf of the Applicant that there may be circumstances in which it would be appropriate for a prospective employer to discuss relevant aspects of a candidates' personal life and/or relationships during an interview. However, the Respondent, denied having asked Person A whether she had a boyfriend and accepted that he would have no reason to ask that question. Ms Bruce submitted that, in any event, that question should be regarded against the context of the other comments made and questions asked by the Respondent, none of which were appropriate or relevant.
- 14.39.4 The gravity of the Respondent's conduct was, Ms Bruce submitted, increased by his position of seniority, authority and power. He was the sole individual interviewing Person A. He owned the Firm in which Person A sought employment. It was the first interview that Person A had with regards to a paid position within a legal practice. Person A was 22 years old. The Respondent was a 48 year old man. They were unknown to each other prior to the interview as it was the first time that they had met.
- 14.39.5 Given all attendant circumstances Ms Bruce contended that the Respondent abused his position of power, seniority and authority and in so doing took an unfair advantage over Person A who was left feeling that she had been taken advantage of.

Submission of No Case to Answer

The Respondent's Submissions

- 14.40 Mr Goodwin made an application that there was no case for the Respondent to answer on the basis that the evidence before the Tribunal was tenuous, inherently weak, vague and inconsistent.
- 14.41 He reminded the Tribunal that the burden of proving the allegations was on the Applicant and that it had to do so by presenting cogent evidence. The standard to which the Applicant had to discharge that burden was the civil standard namely to satisfy the Tribunal that the events described by Person A were more likely than not to have occurred.

- 14.42 Mr Goodwin submitted that the Applicant had not called any compelling evidence. The Applicant relied solely on the evidence of Person A. Person C was not in the interview room at the material time.
- 14.43 Mr Goodwin submitted that the allegations were serious and Re H and others [1996] 1 ALL ER established that the more serious the allegation, the less likely it was that the events occurred and more cogent evidence was required to prove the same. Mr Goodwin acknowledged that principle did not alter the standard of proof, but contended that the inherent improbability of an event having occurred should be weighed in the balance when assessing whether, on balance, it did occur.
- 14.44 Mr Goodwin averred that when the evidence was “50:50” as in this case, essentially Person A’s word as against the Respondent, the Tribunal was under a duty to find the allegations not proved.
- 14.45 Mr Goodwin submitted that there was “no extraneous evidence beyond Person A”. Person A’s evidence revealed inherent weakness and inconsistencies. In her report to the Applicant, she did not mention the “attempt to touch” nor did she mention the Respondent’s comment that she “looked smart”.
- 14.46 Person A accepted under cross examination that the Respondent did not direct her to remove her jacket, rather he said that she “could”. It was Person A’s decision to turn around and take off her jacket following the Respondent’s, what Mr Goodwin described as a “courteous invitation” to do so because the office was warm. The weather was only mentioned by Person A in her third witness statement dated 3 September 2021. Mr Goodwin submitted that it was not referred to either in the initial report or the preceding two witness statements because Person A had not, up until the point of making her third witness statement, considered anything unusual in the Respondent stating that she could take her jacket off.
- 14.47 Mr Goodwin reminded the Tribunal that Person A accepted that the Respondent discussed dress code with her. He submitted that there was an “inherent improbability” that the Respondent stated that she was required to wear a skirt and heels to work.
- 14.48 With regards to Person C’s evidence, Mr Goodwin submitted that there were “stark inconsistencies” with it in comparison to that which Person A said. Person C made plain that she did not “tell” Person A to report the Respondent to the Applicant. Person C stated that she “advised” Person A to report him. That inconsistency undermines Person A’s credibility.
- 14.49 Person A did not tell Person C about the “attempt to touch” and Person A did not mention that fact in her report despite the WhatsApp message she sent on 30 April 2018 to that effect. The message was inaccurate, misleading and untrue which undermined Person A’s credibility.
- 14.50 Mr Goodwin surmised that Person A and Person C’s evidence was weak, vague and inconsistent to such an extent that no Tribunal properly directed could find the allegations proved to the requisite standard.

The Applicant's Submissions

- 14.51 Ms Bruce referred the submission of no case to answer as naïve and one which “harked back to a dark age when the evidence of a woman was not enough”. Ms Bruce submitted that Person A was not required to adduce corroborative evidence, her word was enough to amount to a case to answer if she endorsed, adopted and maintained her position. Person A did that in her live evidence and under cross examination as did Person C.
- 14.52 Despite no requirement of corroborative evidence, Person A had adduced contemporaneous and supportive evidence of her position by way of the contemporaneous WhatsApp messages to her friends. Person A complained to Person C about the Respondent immediately upon leaving the interview. Person A explained to the Respondent in her email declining the job offer her reasons for so doing and reported him to the Applicant the day after the interview. Ms Bruce submitted that Person A had adduced a wealth of corroborative evidence to support her allegations none of which was tenuous, inherently vague or inconsistent.
- 14.53 Ms Bruce reminded the Tribunal of Person A’s evidence as to how she felt at the material time namely, “...I am no-one, he is someone established and powerful, it’s my word against his”. Ms Bruce submitted that notwithstanding those beliefs, Person A came before her regulator to give the evidence that she gave which was to her credit.
- 14.54 Ms Bruce averred that the submission of no case to answer must fail.

The Tribunal's Decision

- 14.55 The Tribunal noted that a “case to answer” was defined in Rule 3(1) of the Solicitors (Disciplinary Proceedings) Rules 2019 as “an arguable case.” This fell to be determined by using the test promulgated in R v Galbraith [1981] 1 WLR 1039 namely:

“(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness’s reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.... There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

- 14.56 The Tribunal was therefore not assessing whether, properly directed, it would find Allegations proved against the Respondent but whether, properly directed at this stage, it could find the allegations proved on a balance of probabilities.

The Tribunal's Decision

- 14.57 In considering whether there was a case to answer the Tribunal confined itself to consideration of the evidence called by the Applicant. It could not, and did not, take into account evidence that the Respondent may elect to give or call. Similarly the Tribunal could not, and did not, speculate as to any evidence that the Applicant could have but did not adduce.
- 14.58 The Tribunal considered the competing submissions of the parties carefully. When considering Mr Goodwin's submissions the Tribunal accepted that the evidence of Person A was crucial in that she was the only person in the room with the Respondent at the material time. The Tribunal assessed her evidence and found it to be consistent from her initial complaint to her friends/Person C, her email to the Respondent on 1 May 2018, her report to the Applicant on 1 May 2018 and all three of her witness statements. Under extensive cross examination by Mr Goodwin, Person A maintained her position; that was to her credit.
- 14.59 The Tribunal did not accept that Person A's evidence was undermined as a consequence of her not mentioning to the Applicant that the Respondent had said she looked "smart" in her initial report. The report to the Applicant was an initiating document which raised concerns, and which invited the Applicant to investigate allegations of potential misconduct. The comment made by the Respondent that Person A looked "smart" did not fall within that remit and therefore the Tribunal was not troubled by that omission. Furthermore, the initial report should not be regarded as the entirety of Person A's evidence. The investigation process was in place to elicit the full extent of the complaint by way of witness statements in this matter and in all allegations levelled against Respondents.
- 14.60 The Tribunal considered the submissions made regarding Person A not reporting to the Applicant what she described to her friends as the Respondent's "attempt to touch" her. Her evidence was consistent in that regard. Her message on the WhatsApp group was sent within an hour of leaving the interview. Person A stated in evidence and maintained under cross examination that she was "bugging out" over the "attempt to touch". She explained that meant that she was questioning herself, doubting herself, "freaking out" and in a frenzy at that point. It was, according to Person A's evidence, for those reasons that she did not mention it to Person C, a conversation she had after the WhatsApp message to her friends referring to the same, or her report to the Applicant, the following day, which only included what she considered to be matters that she was sure of. It would have detrimentally impacted the credibility of Person A if she had made the allegation in her initial report to the Applicant then subsequently resiled from it but she did not. The Tribunal found that her consistent position and explanation in that regard was to her credit as opposed to having undermined her credibility as suggested by Mr Goodwin.

- 14.61 The Tribunal assessed the evidence of Person C and found it to be of limited, if any, assistance. It was predominantly hearsay and the contemporaneous messages relied upon by the Applicant were exhibited by Person A who could speak to them in any event.
- 14.62 The Tribunal did not find the evidence adduced by the Applicant was tenuous, inherently weak, vague or inconsistent. The Tribunal considered that it amounted to an arguable case which the Respondent should answer.
- 14.63 The submission of no case to answer was therefore REFUSED.

The Respondent's Position

Allegation 1 - Inappropriate behaviour

- 14.64 The Respondent confirmed the content of his reply to the "Explanation of conduct" letter from the Applicant dated 4 March 2019, his "Response to the decision to refer" dated 23 March 2021, his Answer to the Rule 12 Statement dated 29 September 2021 and his witness statement dated 12 October 2021. In all of those documents the Respondent denied having behaved inappropriately towards Person A during the interview and therefore had not breached any of the Principles or failed to meet any of the Outcomes alleged.
- 14.65 In broad terms, the Respondent averred that he (a) was a "Solicitor of impeccable character and good standing with (*sic*) unblemished disciplinary and regulatory record", (b) was "selfless and a fighter for social justice, (c) was not a bully or an insensitive person and (d) had been happily married for over 25 years with teenage children.

Allegation 1.1 Asked Person A to turn around

- 14.66 The Respondent denied having told Person A to turn around. He told Person A, as he routinely told visitors, that she could remove her jacket and hang it on the door behind her "out of consideration for her comfort" as his office was usually quite hot. The Respondent asserted that Person A must have misunderstood his statement.

Allegation 1.2 "mmm, I like what I see"

- 14.67 The Respondent accepted that if he had said "mmm, I like what I see" but that was in relation to her CV, which he was viewing on the desktop monitor in front of him, and not her appearance.

Allegation 1.3 - "pretty", "very pretty", "beautiful" and/or "very beautiful"

- 14.68 The Respondent denied having commented to Person A that she was "pretty" or "beautiful" in any respect and asserted that he "had no reason to".

Allegation 1.4 Asked Person A if she had a brother; andAllegation 1.5 Asked Person A if she had a boyfriend

14.69 The Respondent denied having asked Person A whether she had a brother or a boyfriend. The Respondent asserted that, even if he had, those questions would not amount to misconduct nor did they import any sexual motivation or gratification. The Respondent stated, in his evidence in chief, that when conducting an interview he “would always try to know who [he was] dealing with ... so in many interviews [he had] asked about background [as he needed to] know who you are and what if there’s an emergency”.

Allegation 1.6 Had to wear skirts and/or high heeled shoes; andAllegation 1.7 Only employed beautiful women/only beautiful women worked at the Firm

14.70 The Respondent denied having told Person A that she could only wear skirts and/or high heeled shoes. He accepted that there was a discussion regarding suitable office attire but that was in terms of the Firm’s dress code and policy. The Respondent asserted that Person A must “misconstrued what he said to her”.

14.71 The Respondent, in his evidence in chief, specifically referred to the Firm’s Dress Code Memo (“the Memo”) which stated:

“...

Dear Colleagues,

Please note that from henceforth colleagues are only allowed to dress formally to work which includes Smart (*sic*) casual.

Colleagues are allowed to wear Jeans (*sic*) on Fridays only.

For emphasis the following are prohibited:

- Cleavage barring (*sic*) tops
- Crop tops
- Mini skirts and mini dresses

Please note that this is a **Law Firm** and as such colleagues should endeavour to adhere to this strict dress code at all times.

The nature of our profession entails meeting with clients sometimes without prior appointments. We should always be well presented because it is very unprofessional for colleagues to be barring (*sic*) Skin (*sic*) inappropriately like people working in clubs or Strippers (*sic*)...”

14.72 The Respondent denied having told Person A that he only employed beautiful women and/or that only beautiful women worked for him. There were no words, to his recollection, that he used which could have conveyed those sentiments. He asserted that (a) “there was no reason [for him] to make such a statement to her”, (b) it would have been “wholly out of character for him to have spoken such words in the context of a job interview”, (c) he had “never done so nor [would he] ever, (d) it would have been

“entirely inconsistent with the professional approach he has adopted to his practice and interaction with his colleagues and clients since being enrolled in 2005” and (e) the Firm “has a policy against all forms of discrimination and harassment”.

- 14.73 Ms Bruce put to the Respondent that he lacked boundaries with regards to women and that the Memo demonstrated that. The Respondent denied that suggestion and categorised it as absolute nonsense. He referred to the number of female employees, past employees and clients, some of whom had provided character references on his behalf, along with his previous unblemished career in support of his contention.
- 14.74 Mr Goodwin objected to the line of questioning and submitted that, as propensity was not an issue in the case, the questions and answers given were not relevant. Mr Goodwin stated that the line of questioning was “out of bounds”. Ms Bruce submitted that the allegations centred on the Respondent’s conduct towards Person A and the credibility of her and the Respondent. Ms Bruce sought to establish the Respondent’s attitude towards women on the basis of the Memo which the Respondent filed in the proceedings. The Tribunal determined that Ms Bruce was entitled to cross examine the Respondent on a document that he himself relied upon in his defence so long as (a) the questions related to Person A, (b) were specific and (c) did not represent an alleged broad approach on the part of the Respondent demonstrative of the manner in which he interacted with women.
- 14.75 Ms Bruce put to the Respondent that his interaction with Person A left her feeling demeaned. The Respondent stated that his recollection of the interview was that a “young lady came with dreams and aspirations of being a lawyer. [He] encouraged her, [was] impressed by her CV and always had 4 – 6 women working for [him] and they stayed on”. The Respondent further stated that it was “wrong of [Ms Bruce], given the poor evidence of [her] clients, to use this document against me to suggest that [he] had a view about women ... the memo was written to address a complaint”.
- 14.76 Ms Bruce put to the Respondent that the Memo reflected the manner in which he ran his Firm. The Respondent denied that suggestion and reiterated that there had been no prior complaints in that regard. Ms Bruce put to the Respondent that it reflected the manner in which he conducted the interview with Person A. The Respondent asked Ms Bruce “how?”. Ms Bruce put to the Respondent that the wording of the Memo demonstrated a demeaning and degrading attitude towards women. To which the Respondent replied, “I bet you don’t dress like that in your chambers or that you dress like that Ms Bruce”.
- 14.77 Ms Bruce put to the Respondent that, despite no requirement for her to do so, Person A had provided corroborative evidence by way of the WhatsApp messages. The Respondent stated that they were not sent during the interview and that Person A stated in live evidence that she “couldn’t remember” if they were sent during the interview. The Respondent further stated that “there was no evidence of timings other than the timing on the messages”.
- 14.78 Ms Bruce enquired as to whether the Respondent was suggesting that Person A fabricated the messages she had produced to which he replied, “well you’re going too far but I don’t agree with what she said”. Ms Bruce put to the Respondent that the messages backed up Person A’s version of events to which he replied, “her messages

don't corroborate anything, its her statement to others, the messages are false information given to others and nothing to do with me, just like she told [them] that I had touched her when she told you that I hadn't".

- 14.79 Ms Bruce asked the Respondent whether he accepted that Person A's message to Person C after the interview was corroborative. The Respondent replied "only if it the truth but what she's communicating [in that message] is incorrect".
- 14.80 Ms Bruce suggested to the Respondent that Person A's email declining the job offer was corroborative evidence and undermined his defence. The Respondent rejected that suggestion and asserted that "it doesn't undermine [his defence], it backs up her".
- 14.81 Ms Bruce put Person A's evidence to the Respondent that he made her "feel very powerless" to which he replied, "I don't agree. That's obviously what she's said to people but [at the interview] she was bubbly, happy, was interested in taking the job and never showed that she was unhappy". The Respondent further stated that "[you've] got to ask yourself about the character of a person who pretends to be happy, pretends throughout, gives no reason not to accept that as a reality then makes a complaint". The Respondent asserted that when he received the initial complaint, he reached the "reasonable conclusion" that it was motivated by Person A's "upset" regarding the low salary offered.
- 14.82 Ms Bruce asked the Respondent whether he accepted that there was a power imbalance between him and Person A at the interview to given that he owned and ran his own Firm, was a solicitor of 15 years standing, was 48 years old and she was a 22 year old applying for her first legal job. He replied, "people who worked for me are the only people who can attest to [that]. I'm a very humble person, I hoover my own carpet in front of [the] staff. If you knew who I was, you'd know I'm someone who doesn't throw my weight around".
- 14.83 Ms Bruce put to the Respondent that Person A was telling the truth and that he was lying, to which he replied:
- "...You want to put the words of Person A over the words of a solicitor of the Supreme Court, trained, qualified for 15 years, [who] employs six staff? I don't think you're sticking to the evidence of this case. For you to insinuate this is very rude and upsetting. Person A is not someone you can believe, her evidence exposed she was lying. Person A misled the SRA because what she said in evidence [before the Tribunal] is totally different ... [her evidence] is all made up, she made it up as she went along..."
- 14.84 With regards to Allegation 1.1, Ms Bruce put to the Respondent that he did ask Person A to turn around. The Respondent rejected that suggestion and asserted that (a) he did not, (b) that he had no reason to lie, (c) Person A had "lied four times on oath" and (d) "if anyone lied, your client [meaning Person A] did".
- 14.85 With regards to Allegation 1.2, Ms Bruce put to the Respondent that when he said "mmm, I like what I see" it was in relation to her appearance as he did not have a copy of her CV in front of him at that moment in time. The Respondent rejected that

suggestion and asserted that he could “only have been referring to the CV” that he printed out “right at the beginning” because Person A didn’t bring a hard copy with her.

14.86 With regards to Allegation 1.3, Ms Bruce put to the Respondent that he did tell Person A that she was pretty and beautiful. The Respondent rejected that suggestion and asserted that there was “no reason for me to say that, you give me a good reason why I would say that, the interview was in my room, was informal, not in the conference room, people [were] working nearby, [and the comments attributed to him were] clearly untruths and uncorroborated”.

14.87 Ms Bruce asked the Respondent whether he believed that Person A had “weaved a tissue of lies” to which he replied:

“... Person A’s motive was upset regarding the salary [and the allegations were] brought about by malice. Look at the extent to which she and [her] friends demeaned me. She has the power, her female activism, its female activism gone wrong, she has the power, that’s why I am here [because] she’s applied overt activism [and] I am the victim. She’s embarrassed me and brought me here, she has the power. You’ve not been very fair in your cross examination of me, you weren’t fair when Jon Goodwin cross examined [Person A]. You haven’t handled this fairly...”

14.88 With regards to Allegations 1.4 and 1.5, Ms Bruce put to the Respondent that he asked Person A whether she had a boyfriend and a brother. The Respondent rejected that suggestion and asserted that there was “no reason for me to ask her that”.

14.89 With regards to Allegation 1.6, Ms Bruce put to the Respondent that he told Person A that she had to wear “skirts and heels” to the office. The Respondent rejected that suggestion and asserted that he spoke to her about the Firm’s Dress Code, which she may have mistakenly interpreted, the Memo was not shown to Person A during the interview and that he “never asked her to wear any particular clothing”.

14.90 In re-examination, Mr Goodwin asked the Respondent to elaborate on the “four untruths on oath” that he attributed to Person A. The Respondent described them as:

- Person A was facing away from him (hanging up her coat) when he said “mmm, I like what I see” so could not have seen what he was referring to.
- That Person A sent a message to the WhatsApp group that he had “attempted to touch” her but that was not included in her report to the SRA, any of her witness statements or her oral evidence to the Tribunal.
- The distance between them when looking at his desktop monitor was described by Person A in her evidence before the Tribunal as “appropriate” but the suggestion in that regard in her report to the SRA was misleading.
- Failure to mention in her report to the SRA or any of her witness statements that he had commented she looked “smart” yet she accepted that fact in her oral evidence before the Tribunal.

Principle 2 (duty to act with integrity)

14.91 Having denied the factual matrices underpinning Allegation 1.1 – 1.7, the Respondent denied having breached Principle 2.

Principle 6 (duty to maintain public trust in you and the profession)

14.92 Having denied the factual matrices underpinning Allegation 1.1 – 1.7, the Respondent denied having breached Principle 6.

Principle 9 (duty to encourage equality of opportunity and respect for diversity); and Outcome 2.4 (approach to recruitment and employment that encourages equality of opportunity and respect for diversity)

14.93 Having denied the factual matrices underpinning Allegation 1.1 – 1.7, the Respondent denied having breached Principle 9 and having failed to meet Outcome 2.4.

Outcome 11.1 (do not take unfair advantage of third parties either professionally or personally)

14.94 Having denied the factual matrices underpinning Allegation 1.1 – 1.7, the Respondent denied having failed to meet Outcome 11.1.

The Tribunal's Findings

14.95 The Tribunal considered the documentary evidence filed by the parties, the oral evidence of the witnesses and the submissions made. The Tribunal concurred with the parties' submissions that this was essentially a case that rested on Person A's word against the Respondent. For the reasons set out above in relation to the failed submission of no case to answer, the Tribunal gave very limited weight to the evidence of Person C.

14.96 The Tribunal was cognisant of the fact that each limb of Allegation 1 was predicated on the Applicant proving that the comment and/or question was "inappropriate". In reaching its decision, the Tribunal firstly considered whether the Applicant had proven that it was more likely than not that the comment or question occurred, if it so found then the Tribunal proceeded to determine whether or not that comment or question was "inappropriate" to the requisite standard.

14.97 *Allegation 1.1 Asked Person A to turn around*

14.97.1 It was not in dispute between Person A and the Respondent that there was a clothes hanger on the office door which was behind where Person A initially sat with the Respondent seated opposite and his desk in between them. It was not in dispute that Person A removed her jacket and hung it on the hanger behind her. The divergence of evidence was in relation to how she came to do that. Person A first mentioned the Respondent telling her to "turn around" in her initial statement to the Applicant dated 29 October 2018. Under cross examination, Person A accepted that the Respondent stated that she "could"

take her jacket off and what he meant by that was open to interpretation depending upon the context and circumstances.

14.97.2 The Tribunal was not satisfied that it was more likely than not that the Respondent “told” Person A to “turn around” and further that even if he had, it would not have been inappropriate given the context in which may have been said at the outset of the interview.

14.97.3 The Tribunal therefore found Allegation 1.1 NOT PROVED.

14.98 *Allegation 1.2 “mmm, I like what I see”*

14.98.1 It was not in dispute that the Respondent said “mmm, I like what I see”. What was in dispute was that which the Respondent was referring to in saying those words.

14.98.2 Person A stated from the contemporaneous WhatsApp messages on the day of interview, her report to the Applicant, her subsequent witness statements and under extensive cross examination, that the Respondent was referring to her physicality. The Tribunal found Person A to be credible, consistent, reliable and persuasive.

14.98.3 The Respondent asserted that he was referring to Person A’s impressive CV, that he was not looking at Person A and she had her back to him (as she was hanging up her jacket) therefore could not see him or what he was doing when he said “mmm, I like what I see”. The Respondent maintained that position under extensive cross examination. He also laboured the point that he had to print out a copy of Person A’s CV as she failed to attend the interview with a hard copy in hand. The Tribunal considered that the Respondent sought, in his oral evidence, to convey that he was seeing Person A’s CV for the first time during the interview and that it impressed him so much that he said “mmm, I like what I see”. The Tribunal rejected the impression given by the Respondent as (a) the Respondent would have seen the CV before to inform his decision to invite Person A for an interview, (b) the WhatsApp exchange between Person A and Person B made plain that the Respondent had seen the CV prior to him offering Person A an interview and (c) the words used were an extraordinary way to refer to an applicant’s professional credentials in the context of a formal job interview.

14.98.4 Weighing all attendant factors in the balance, the Tribunal found that Person A’s evidence was more likely than not to have occurred. The Tribunal found that the language used in the context of the interview was inappropriate. The Tribunal rejected the Respondent’s evidence and in so doing found that the Respondent lacked integrity, undermined public trust vested in him and in the provision of legal services, failed to encourage equality of opportunity and respect for diversity and further that he took unfair advantage of Person A for all of the reasons set out by Ms Bruce in §14.36-14.39 above.

14.98.5 The Tribunal therefore found Allegation 1.2, breach of Principles 2, 6 and 9 and failure to achieve Outcomes 204 and 11.1 PROVED.

14.99 *Allegation 1.3 “pretty”, “very pretty”, “beautiful” and/or “very beautiful”*

- 14.99.1 Person A stated from the contemporaneous WhatsApp messages on the day of interview, her report to the Applicant, her subsequent witness statements and under extensive cross examination, that the Respondent repeatedly referred to her in the terms set out in Allegation 1.3. It was to Person A’s credit that she could not recall the exact number of times that the Respondent referred to her appearance in this manner. The Tribunal found that she did not seek to exaggerate her evidence and only testified to that which she was sure. In relation to these comments, Person A was sure that the Respondent commented on her physical appearance in the manner described “more than once”. The Tribunal found Person A to be credible, consistent, reliable and persuasive.
- 14.99.2 The Respondent maintained his consistent position that he did not tell Person A that she was “pretty”, “very pretty”, “beautiful” and/or “very beautiful” at any time during the interview. The Tribunal rejected the Respondent’s assertion that Person A was lying and that she had “made up” the allegation because she was “upset” at the low salary he had offered her.
- 14.99.3 Weighing all attendant factors in the balance, the Tribunal found that Person A’s evidence was more likely than not to have occurred and was inappropriate. The Tribunal rejected the Respondent’s evidence and in so doing found that the Respondent lacked integrity, undermined public trust vested in him and in the provision of legal services, failed to encourage equality of opportunity and respect for diversity and further that he took unfair advantage of Person A for all of the reasons set out by Ms Bruce in §14.36-14.39 above.
- 14.99.4 The Tribunal therefore found Allegation 1.3, breach of Principles 2, 6 and 9 and failure to achieve Outcomes 2.4 and 11.1 PROVED.

14.100 *Allegation 1.4 Asked Person A if she had a brother; and Allegation 1.5 Asked Person A if she had a boyfriend*

- 14.100.1 The Tribunal considered Person A’s evidence that the Respondent asked these questions, the WhatsApp text message she sent during the interview to her friends and the WhatsApp voice message she sent to her friends in that regard shortly after the interview all of which alluded to the Respondent having asked her. The Tribunal weighed that evidence against the Respondent’s initial evidence that he did not ask those questions and subsequent concession under cross examination that he “needed to know everything about his employees in case of emergency”. The Respondent’s concession at the hearing chimed with a contemporaneous WhatsApp message sent by Person A to her friends timed at 17:11 hours on the day of the interview in which she stated “I NEED TO KNOW THESE THINGS I NEED TO KNOW EVERYTHING”.

14.100.2 Weighing all attendant factors in the balance, the Tribunal found that Person A's evidence was more likely than not to have occurred and was inappropriate. The Tribunal rejected the Respondent's evidence and in so doing found that the Respondent lacked integrity, undermined public trust vested in him and in the provision of legal services, failed to encourage equality of opportunity and respect for diversity and further that he took unfair advantage of Person A for all of the reasons set out by Ms Bruce in §14.36-14.69 above.

14.100.3 The Tribunal therefore found Allegations 1.4 and 1.5, breach of Principles 2, 6 and 9 and failure to achieve Outcomes 2.4 and 11.1 PROVED.

14.101 *Allegation 1.6 Had to wear skirts and/or high heeled shoes; and Allegation 1.7 Only employed beautiful women/only beautiful women worked at the Firm*

14.101.1 In a WhatsApp voice note sent to her friends on the day of the interview Person A stated:

“He told me that I have to wear skirts when I come in to work, he doesn't like it when women wear trousers.”

14.101.2 In a WhatsApp text message to her friends on 1 May 2019 at 11:32 hours, Person A stated:

“He told me that he only employs beautiful women, and that I would be required to wear a skirt and heels to work. He said the reason for this is because I would be going to court, but I felt otherwise. I was wearing very smart trousers, professional short heels, a white shirt and a black blazer. I felt like my attire was appropriate for the interview, but Mr Nwosu told me that he hated trousers and that he expected me to wear a skirt the next day.”

14.101.3 Person A maintained the veracity of the message and the note under extensive cross examination.

14.101.4 The Tribunal then considered the Respondent's plain denial that he made the comments alleged and assertion that Person A “misconstrued” the discussion that took place regarding suitable office attire. The Tribunal did not accept the Respondent's evidence, particularly given the disgraceful wording of the Dress Code Memo.

14.101.5 Weighing all attendant factors in the balance, the Tribunal found that Person A's evidence was more likely than not to have occurred and was inappropriate. The Tribunal rejected the Respondent's evidence and in so doing found that the Respondent lacked integrity, undermined public trust vested in him and in the provision of legal services, failed to encourage equality of opportunity and respect for diversity and further that he took unfair advantage of Person A for all of the reasons set out by Ms Bruce in 14.36-14-39 above.

14.101.6 The Tribunal therefore found Allegations 1.6 and 1.7, breach of Principles 2, 6 and 9 and failure to achieve Outcomes 2.4 and 11.1 PROVED.

15. Allegation 2 - Sexual conduct and/or sexual motivation

The Applicant's Case

- 15.1 Ms Bruce submitted that in asking Person A to turn around, commenting on her appearance, commenting on the appearance of other women in his employ, advising her how to dress, enquiring whether she had a boyfriend, and a brother were all inappropriate questions. They were inappropriate as they were questions of a sexual nature. They were questions which Person A stated made her feel objectified in witness statements and under cross examination.
- 15.2 Ms Bruce further submitted that the only reasonable inference of the Respondent's motivation for such conduct was sexual motivation in that it was (a) in pursuit of his own sexual gratification or (b) in pursuit of a future sexual relationship.

The Respondent's Position

- 15.3 The Respondent denied the underlying conduct and therefore denied having conducted himself in a sexual manner and/or with sexual motivation.
- 15.4 With regards to Allegation 2, Ms Bruce put to the Respondent that his conduct towards Person A during the interview was predicated on his own sexual gratification. The Respondent rejected that suggestion and asserted that his "conduct was not sexual in nature, [he had] no inclination towards an allegations, [he was] a family man of 25 years, a father, obviously loves [his] wife, [and it was] totally not in [his] character to behave in this manner".
- 15.5 With regards to Allegation 2, Ms Bruce put to the Respondent that his conduct towards Person A during the interview was sexually motivated. The Respondent rejected that suggestion and asserted that was "incorrect because [those] things didn't happen. What she said I said, I didn't say".

Respondent's Closing Submissions

- 15.6 Mr Goodwin relied upon Re H to submit that the more serious the allegation, the less likely it is to have occurred. Mr Goodwin contended that the present case was not about power imbalance, it was about the inherent improbability of the Respondent uncharacteristically acting in the manner alleged by Person A.
- 15.7 Mr Goodwin respectfully reminded the Tribunal that it could not "stray beyond what [was] fair and appropriate" and further reminded the Tribunal of the delay on the part of the Applicant in investigating the Allegations.
- 15.8 Mr Goodwin contended that Person A could be (a) lying, (b) wrong, (c) mistaken or (d) could have taken what was said and what did occur out of context as "just because Person A said it happened does not mean that it happened".

- 15.9 Mr Goodwin reminded the Tribunal of the “four lies” which the Respondent advanced in his defence and summarised them thus:
- 15.9.1 Person A could not have seen what the Respondent was referring to when he said “mmm, I like what I see” as she had her back to him. She was lying to suggest otherwise. The Respondent had maintained throughout the investigation and the Tribunal proceedings that he was referring to her CV.
 - 15.9.2 Stating to her friends that the Respondent “attempted to touch” her yet not making that allegation in her report to the Applicant.
 - 15.9.3 The stark and apparent inconsistency between Person A and Person C with regards to being told to report the Respondent to the Applicant. Mr Goodwin submitted that inconsistency casts uncertainty on the reliability of either of their recollections.
 - 15.9.4 The inference being sought by Person A in initially reporting that the Respondent asked her to “bring her chair closer” then accepting under cross examination that they were seated an “appropriate” distance apart.
- 15.10 Mr Goodwin added a further inconsistency in that Person A stated in her report to the SRA that the Respondent “asked [her] to take off [her] coat”. In her first witness statement Person A stated that the Respondent said that she “could” take off her coat. Mr Goodwin submitted that there was a difference between an instruction and an invitation which was highly material.
- 15.11 Mr Goodwin submitted that, conversely, the Respondent’s evidence was calm, measured, compelling and consistent since his first response to the Applicant in March 2019 to his oral evidence before the Tribunal. His upset and tears during his evidence was understandable and represented the reaction of a man wrongly accused.
- 15.12 Mr Goodwin referred the Tribunal to a number of character references filed on the Respondent’s behalf namely Ms S, Ms A, Ms C, Ms P, Ms T, Ms D, Ms N and Ms G. Mr Goodwin submitted that the references were compelling and persuasive as to the true nature of the Respondent which was wholly inconsistent with the case advanced that he was a sexual predator. The allegations emanated from an isolated incident that 30 April 2018 which lasted a short period of time.

The Tribunal’s Findings

- 15.13 The Tribunal was deeply concerned at the comments made and questions asked by the Respondent of Person A during a formal job interview for a legal position within his Firm. The language used in the Memo revealed outdated attitudinal shortcomings predicated on the objectification of women in a sexual manner. Referring to Person A’s physical appearance in terms of “pretty, beautiful” and “mmm, I like what I see” could only, in the Tribunal’s view, be considered to have sexual connotations. Asserting that women should wear “skirts and heels” were opinions which, in the Tribunal’s view, could only be held for sexual gratification. Enquiring as to Person A’s personal relationships with regards to a boyfriend and whether she had brothers was designed to ascertain the viability or otherwise of a future sexual relationship.

- 15.14 The Tribunal considered the submissions made by Mr Goodwin, in particular the character references that had been filed on the Respondent's behalf to attest to the fact that he was not a "sexual predator". The Tribunal was not required to determine whether the Respondent was a "sexual predator", it was required to determine whether the comments he made and questions he posed to Person A during a job interview on 30 April 2018 were sexually motivated and/or for sexual gratification. The Tribunal determined that they were.
- 15.15 The Tribunal therefore found Allegation 2 PROVED on a balance of probabilities.

Previous Disciplinary Matters

16. None.

Mitigation

17. Mr Goodwin commended the Guidance on Sanctions to the Tribunal urged it to apply the same. Mr Goodwin reminded the Tribunal that the Respondent (a) was a solicitor of nearly 17 years standing, (b) held a previous unblemished regulatory record, (c) co-operated with the Applicant throughout the investigation, (d) co-operated with the Tribunal throughout the proceedings, (e) had been issued with unconditional practising certificates by the Applicant since the receipt of Person A's complaint thus was not considered to pose any risk to the public and (f) remained no risk to the public.
18. Mr Goodwin submitted that the matters found proved related to an isolated incident for a short period of time four years ago. No complaint had been made against the Respondent prior or subsequent to it. With regards to the incident itself, Mr Goodwin contended that related to "inappropriate language" as opposed to "inappropriate touching" and he reminded the Tribunal of the character references filed on the Respondent's behalf.
19. Mr Goodwin submitted that the appropriate sanction given all attendant circumstances was a Level 2 (moderately serious misconduct) fine. Mr Goodwin invited the Tribunal to impose the same having paid due regard to the Respondent's limited financial means.

Sanction

20. The Tribunal referred to its Guidance Note on Sanctions (Ninth Edition; December 2021) when considering sanction.
21. With regards to culpability, the Tribunal found that the Respondent (a) was directly responsible, (b) had direct control over his actions, (c) was 15 years qualified at the material time therefore significantly experienced and (d) was in a position of trust given his seniority over Person A. His initial conduct was found to be spontaneous in that it commenced upon first sight of Person A when she attended for interview. However, his conduct thereafter, throughout the interview, the repeated and multifaceted comments made/questions posed all of which were sexually motivated were deliberate and repeated. The Tribunal considered that the Respondent was highly culpable.

22. There was obvious and significant direct harm caused to Person A by the Respondent's misconduct. She described it as:

"...The interview was quite traumatic for me, it was the first paralegal role that I had ever applied for. It was a friend ... who put me in contact with Dylan Conrad Kreolle Solicitors. I trusted the role and I was so upset that I was treated in the way that I was.

I felt so violated as [the Respondent] was in a position of power as I was in an interview, especially when I was told to turn around. I went home and cried. I felt that I could not go into the profession, I built up my hopes of what it would be like and it was crushing.

I was not going to make a complaint as I thought he was in a position of power and no one would believe me. It was [Person C] who helped me realise I could speak up for myself.

I was so horrified by how he behaved I felt I would be trading in my dignity to work there. I felt like a piece of meat and I was objectified ... I have a first class degree and a masters I worked very hard to get where I was. I am the only woman in my family who has gone to university. I felt very angry as being a lawyer is not about your looks it is about how you contribute to society. I felt very under minded and underappreciated. I also felt undermined by the salary because of my qualifications and I felt devalued..."

23. The Tribunal further found that the Respondent's misconduct caused extensive, direct harm to the reputation of the legal profession. It represented a grave departure from the requisite standards of integrity, probity and trustworthiness that the public was entitled to expect from solicitors.
24. The Respondent's misconduct, and impact thereof, was eminently foreseeable. The Respondent demonstrated a complete lack of insight in that regard and his reliance on the Firm's "Equality and Diversity" policy was not borne out by his abhorrent behaviour.
25. The Tribunal found the following aggravating features, (a) repeated inappropriate comments/questions during the course of the interview, (b) taking advantage of a vulnerable person given the power imbalance, (c) demonstrable lack of insight and (d) conduct which the Respondent knew was a material breach of the duty incumbent on him, as a solicitor of the Supreme Court, to protect the public as well as the reputation of the profession.
26. The Tribunal found the following mitigating features, (a) the misconduct related to a single episode during the interview on 30 April 2018, (b) it was of brief duration (less than an hour), (c) previous unblemished regulatory record, (d) full co-operation and (e) the character references on the Respondent's behalf.
27. Weighing all of the attendant circumstances in the balance the Tribunal assessed the misconduct as so serious that neither No Order, a Reprimand nor a Restriction Order was appropriate. The Tribunal did consider that a financial penalty commensurate with

the seriousness of the misconduct would sufficiently protect the overarching public interest namely the protection of the public, the declaration/upholding of proper standards within the profession and the maintenance of public confidence in the regulation of the profession.

28. The Tribunal rejected Mr Goodwin's assertion that a Level 2 fine should be imposed. The Tribunal categorised the misconduct as "very serious" such that a Level 4 fine reflected the deplorable, unacceptable and discriminatory manner in which the Respondent behaved towards Person A on 30 April 2018. The Tribunal took into account the limited means of the Respondent set out in his "Personal Financial Statement" and ordered that he pay a fine of £20,000.00.

Costs

29. Ms Bruce applied for costs in the sum of £23,500.00.
30. Mr Goodwin averred that which costs were payable in principle, the quantum was neither proportionate nor reasonable. He alluded to the number of fee earners, inevitable duplication of time spent, the simplicity of the case, the limited issues involved and the lack of particularisation on the part of the Applicant with regards to work undertaken to bring the matter to a substantive hearing.

The Tribunal's Decision

31. The Tribunal considered that a case of this nature which necessitated an application for special measures with regards to Person A, the natural consequence of additional resources required to support Person A to give evidence and the sensitive nature of the evidence justified the resources deployed by the Applicant. The costs claimed were found to be reasonable and proportionate.
32. The Tribunal therefore GRANTED the application for costs in full.

Statement of Full Order

33. The Tribunal Ordered that the Respondent, VICTOR NWOSU, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £23,550.00.

Dated this 25th day of February 2022
On behalf of the Tribunal



C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
25 FEB 2022

