SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12261/2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

NICHOLAS JAMES BOHUN Respondent

Before:

Ms A Kellett (in the chair)
Mr M. N. Millin
Mrs S Gordon

Date of Hearing: 17 January 2022

Appearances

Simon Griffiths, solicitor in the employ of the Solicitors Regulation Authority Limited of 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Executive Summary

The Tribunal found all allegations proved in full including that Mr Bohun's conduct in respect of allegation 1.4 was dishonest in breach of Princple 4. The Tribunal found that Mr Bohun, in driving with excess alcohol, had acted contrary to his regulatory obligations. He had failed to uphold the Rule of law when he drove whilst disqualified from doing so. Mr Bohun had failed to inform the SRA of the driving whilst disqualified matter. Further, Mr Bohun had made statements which he knew to be untrue and in doing so, his conduct had been dishonest.

The Tribunal's findings can be found here:

Allegation 1.1
Allegation 1.2
Allegation 1.3
Allegation 1.4

Sanction

Given the Tribunal's findings, it determined that the only proportionate and appropriate sanction was to strike Mr Bohun off the Roll of solicitors. The Tribunal's decision on sanction can be found here.

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority Limited ("SRA") were that:

1.1 On 30 January 2020, he drove a motor vehicle after consuming so much alcohol that the proportion of it in his blood exceeded the prescribed limit, contrary to section 5(1) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988 in breach of one or more of Principles 2 and 5 of the SRA Principles 2019 ("the Principles").

1.2 On 12 October 2020 he drove a motor vehicle whilst disqualified and without insurance contrary to Sections 103(1)(b) and 143 of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988 in breach of one or more of Principles 1, 2, and 5 of the Principles.

1.3 He failed to notify the SRA of the offence detailed in allegation 1.2 and in doing so he breached one or more of paragraph 7.6(a) of the SRA Code of Conduct for Solicitors, RELS and RFLs ("the Code") and Principle 2 of the Principles.

1.4 He made statements to the SRA and to Rubin Lewis O'Brien LLP that he knew, or ought to have known were not accurate, did not reflect the true position and were misleading in that:

1.4.1 On 3 March 2021 he emailed the Firm stating: "I have re-applied for my driver's licence. It seems at the moment, the DVLA is taking ages, so I cannot commit to point 8.1."

1.4.2 On 22 March 2021 he emailed the SRA stating: "I was totally upfront about my conviction, and they have done a full DBS check."

1.4.3 On 23 March 2021 he emailed the SRA stating: "My employer knows, I have no issue with you contacting them."

and in doing so he breached one or more of Principles 2, 4 and 5 of the Principles.

2. In respect of allegation 1.1 above, the Applicant relied on the Respondent's conviction for driving with excess alcohol contrary to section 5(1) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, dated 25 September 2020, as evidence that the Respondent was guilty of that offence, and relied upon the findings of fact upon which that conviction was based as proof of those facts.

3. In respect of allegation 1.2 above, the Applicant relied on the Respondent's conviction for driving a motor vehicle whilst disqualified and without insurance contrary to Sections 103(1)(b) and 143 of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, dated 5 November 2020, as evidence that the Respondent was guilty of that offence, and relied upon the findings of fact upon which that conviction was based as proof of those facts.

Documents

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

- Rule 12 Statement and Exhibit SLS1 dated 13 October 2021
- Respondent's Answer
- Applicant's Schedule of Costs dated 7 January 2022

Preliminary Matters

5. Application to proceed in the absence of Mr Bohun

5.1 Mr Bohun did not attend. Mr Griffiths submitted that service had been effected in accordance with the Solicitors (Disciplinary Proceedings) Rules 2019 ("the SDPR"). Papers were sent to Mr Bohun by email in accordance with Rule 44(1)(b) of the SDPR. On 22 October 2021, Mr Bohun emailed the Applicant confirming that he had received the email and asking that a hard copy of the documents be sent to him. The hard copy was sent and on 23 October 2021, Mr Bohun confirmed receipt of the hard copy of the documents and provided his Answer. Accordingly, it was clear that Mr Bohun was aware of the proceedings.

5.2 In an email to the Applicant dated 15 December 2021, Mr Bohun stated that he would be working on the hearing dates. Mr Griffiths submitted that it could be inferred from that email that Mr Bohun did not intend to attend the hearing. On 13 January 2022, Mr Bohun uploaded his personal financial statement for consideration.

5.3 Mr Griffiths submitted that it was plain that Mr Bohun was aware of the hearing and had chosen not to attend. Accordingly, there was no unfairness in proceeding in his absence. Further, pursuant to Rule 37 of the SDPR, Mr Bohun could apply for a rehearing if there were proper reasons for his non-attendance.

5.4 Mr Griffiths submitted that in all the circumstances, the Tribunal should exercise its discretion to proceed in the absence of Mr Bohun.

The Tribunal's Decision

5.5 The Tribunal was satisfied on the documentary evidence that the proceedings had been served in accordance with Rule 44 of the SDPR.

5.6 The Tribunal paid significant regard to the comments of Leveson P in GMC v Adeogba [2016] EWCA Civ 162, 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."

5.7 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."

5.8 The Tribunal noted that Mr Bohun was fully aware of the proceedings and had stated that he would be working on the dates fixed for the substantive hearing. In his email of 13 January to the Applicant, Mr Bohun, having confirmed that he had joined the Tribunal's electronic bundle, asked that any decision be sent to him by post and not email as he used his email for non-legal work and he did not want "to be in the middle of an application with this case pinging up on both my phone and laptop while I'm in thought on a form or a call." The Tribunal considered that this was further evidence of Mr Bohun's awareness of the proceedings.

5.9 The Tribunal did not consider that an adjournment would secure Mr Bohun's attendance. In any event, there had been no application by him to adjourn the proceedings. Mr Bohun had made no representations about wanting to be represented at the hearing, and had not, as far as the Tribunal was aware, instructed a representative. The Tribunal considered that it was in the public interest to consider the matter in light of the allegations Mr Bohun faced.

5.10 The Tribunal was satisfied that in all the circumstances, the Respondent had chosen not to attend the hearing and had therefore voluntarily absented himself. 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 Mr Bohun'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.

6. Applicant's application to amend allegation 1.3

6.1 Mr Griffiths referred the Tribunal to the letter from South Wales Police dated 31 January 2020 stated that Mr Bohun had not been charged. The letter of 20 May 2020 confirmed that Mr Bohun had now been charged. The correspondence with the Applicant from Mr Bohun was dated 22 May 2020. The only evidence as to when he was charged was no later than 20 May 2020. Having contacted the Applicant on 22 May 2020, Mr Griffiths did not consider that it was proportionate to proceed on the failure to promptly notify the Applicant of the drink drive charge. The application to amend was not prejudicial to Mr Bohun.

The Tribunal's Decision

6.2 The Tribunal agreed that there was no prejudice to Mr Bohun in amending allegation 1.3. The Tribunal considered that in the circumstances it was just and proportionate to amend the allegation. Accordingly, the application was granted. The amended allegation is detailed in the allegations above.

7. Respondent's Application for non-publication of the Judgment

7.1 In his Answer Mr Bohun formally requested that: "… if I am struck off, this is not publicised, because on google, this will be a whole life sentence". The Tribunal considered that this was an application by Mr Bohun for the Judgment to kept private or for his name to be anonymised.

7.2 Mr Griffiths objected to the application. Mr Bohun, he submitted, had failed to give any proper reason for the non-publication of the Judgment.

7.3 The Tribunal considered its Judgment Publication Policy May 2020. The Policy detailed that the Solicitors Act 1974 required that Judgments of the Tribunal be made available for public inspection. In order to facilitate that requirement, the Tribunal published its Judgments on its website unless the Division of the Tribunal which determined a specific case directed otherwise.

7.4 Given that the hearing had taken place in public, the Tribunal did not consider that it was appropriate to anonymise the Judgment, particularly in circumstances where Mr Bohun had not identified any matters which showed that he would suffer exceptional hardship or exceptional prejudice if the Judgment were not anonymised.

7.5 The Tribunal considered that there was no legitimate reason to derogate from the principle of open justice in this case. It was important that the Judgment be published so that members of the public and the profession could see what disciplinary action had been taken and why, helping to maintain confidence in the regulatory and disciplinary regime.

7.6 Accordingly, Mr Bohun's request that the Judgment be private or anonymised was refused.

Factual Background

8. Mr Bohun was a solicitor having been admitted to the Roll in January 2010. He held an unconditional practicing certificate. From 15 September 2020 to 14 October 2020 (when allegations 1.1 and 1.2 occurred) he was employed as a paralegal at Firm 1. From 8 March 2021 to 26 March 2021 (when allegations 1.3 and 1.4 and occurred) he was employed as a solicitor at Firm 2 ("the Firm").

Witnesses

9. No witnesses gave oral evidence.

Findings of Fact and Law

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

Dishonesty

11. The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

12. When considering dishonesty, the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

13. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

14. **Allegation 1.1 - On 30 January 2020, he drove a motor vehicle after consuming so much alcohol that the proportion of it in his blood exceeded the prescribed limit, contrary to section 5(1) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988 in breach of one or more of Principles 2 and 5 of the Principles.**

The Applicant's Case

14.1 On 30 January 2020 Mr Bohun was involved in a road traffic accident after consuming a high level of alcohol. He stated that he hit black ice and his car hit an electric pole. He contacted the police and was arrested. South Wales Police reported the arrest to the SRA on 31 January 2020.

14.2 On 20 May 2020 South Wales Police informed the SRA that the Respondent had been charged with driving with excess alcohol at a level of 306 milligrams of alcohol per 100 millilitres of blood. He was due to appear at Cardiff Magistrates Court on 14 August 2020.

14.3 On 17 July 2020 the Respondent travelled to Egypt and was hospitalised following injuries he sustained as a result of an accident. The court hearing was adjourned until 25 September 2020.

14.4 The SRA Guidance relating to the application of Principle 2 stated that where a criminal offence had been committed, a breach of Principle 2 was likely given the key role that solicitors played in the administration of justice and the high degree of trust placed in solicitors and law firms by the public. Mr Bohun's conviction for driving with excess alcohol was aggravated by the exceptionally high level of alcohol in his blood and the suspended custodial prison sentence. Members of the public, it was submitted, would not expect a solicitor to conduct himself in the manner that Mr Bohun had. Accordingly, his actions damaged public trust and confidence in the profession.

14.5 By virtue of his conviction, Mr Bohun had failed to act with integrity in breach of Principle 5. A solicitor acting with integrity would not have driven a vehicle after consuming so much alcohol that he crashed his car and had such a high level of alcohol in his blood that he was sentenced to a suspended prison sentence.

The Respondent's Case

14.6 In his Answer, Mr Bohun stated that he had not driven into the pole, but that it had fallen as a result of a landslide due to flooding in the local area. He accepted that it was wrong to drink and drive. The Respondent denied that his conduct had brought the profession into disrepute.

14.7 In his Statement, Mr Bohun explained that the offence was committed when he was not practising as a solicitor. He informed the police that he was a non-practising solicitor and knew that the police would inform the SRA. By the time of his conviction, Mr Bohun had obtained work with Firm 1 as a paralegal.

The Tribunal's Findings

14.8 The Tribunal found that Mr Bohun had been convicted of driving a motor vehicle with excess alcohol as alleged and admitted by him.

14.9 The Tribunal noted that the level of alcohol was such that Mr Bohun was a high-risk offender, such that he would be unable to obtain a new licence until he could prove he was fit to drive by passing a medical examination with one of DVLA's appointed doctors. The Tribunal considered that in being convicted and sentenced to a suspended custodial sentence due to the severity of the offence, Mr Bohun had failed to act in way that upheld public trust and confidence in the solicitors 'profession. Members of the public would not expect a solicitor to drive a vehicle when the level of alcohol in his system placed him in the high-risk offender category. Accordingly, the Tribunal found Mr Bohun's conduct breached Principle 2 as alleged.

14.10 The Tribunal found that a solicitor, acting with integrity, would not drive a vehicle whilst so far in excess of the legal limit. In driving as he did, he had posed a significant risk to members of the public. His sentence in the criminal court indicated the seriousness with which his conduct viewed. The Tribunal found that Mr Bohun had failed to adhere to the standards expected of him by the profession. Accordingly, the Tribunal found Mr Bohun's conduct in breach of Principle 5.

14.11 The Tribunal found allegation 1.1proved on the balance of probabilities.

15. **Allegation 1.2 - On 12 October 2020 he drove a motor vehicle whilst disqualified and without insurance contrary to Sections 103(1)(b) and 143 of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988 in breach of one or more of Principles 1, 2, and 5 of the Principles.**

The Applicant's Case

15.1 On 12 October 2020 despite being prohibited from driving, Mr Bohun was driving his vehicle to work at Firm 1 and was arrested and charged with driving whilst disqualified and driving without insurance. South Wales Police informed the SRA on 13 October 2020. He appeared at Cardiff Magistrates Court on 5 November 2020 and pleaded guilty. He was sentenced to 8 weeks custody. He was released from prison on 14 December 2020 and placed on an electronic tag until 30 December 2020. He remained on licence until 24 February 2021 and probation until 30 December 2021 (incident two).

15.2 Mr Griffiths submitted that the SRA Guidance on Principle 1 recognised that a criminal conviction may not necessarily engage a breach of Principle 1 but gave examples of when it might be engaged, including repeated convictions for the same offence and premeditated, deliberate actions to impede or prevent the judicial process. 17 days after being convicted for driving with excess alcohol, on 12 October 2020 Mr Bohun was

driving and subsequently arrested for driving whilst disqualified and having no insurance. In doing so, Mr Bohun failed to uphold the law given he intentionally and wilfully broke it when he drove his car whilst on a driving ban. Such behaviour showed a clear lack of respect for the law and the administration of justice given he was prohibited from driving by a court and did so anyway. Mr Bohun committed a further driving offence within the time that the suspended sentence was in place and just 17 days after being convicted. His conduct was deemed to be so serious that the suspended sentence was activated, and he was sent to prison. Such actions, it was submitted, were not aligned with upholding the rule of law. Accordingly, Mr Bohun had breached Principle 1.

15.3 The public would not expect a solicitor to be driving a vehicle after being prohibited from driving. The offence was aggravated in that it occurred just 17 days after Mr Bohun was prohibited from driving. The public would expect a solicitor to respect the court's decision and adhere to the driving ban. Mr Bohun was issued with a stringent sentence following incident one due to the aggravating factors surrounding the circumstances. The public would not expect a solicitor to drive after being prohibited from doing so by a court and be sent to prison as a result. Such behaviour was not aligned with the public's perception of a solicitor, and was in breach of Principle 2.

15.4 By virtue of his conviction for driving whilst disqualified Mr Bohun failed to act with integrity. A solicitor acting with integrity would not have driven a vehicle following an order of the court preventing him from doing so. The SRA Guidance on integrity included "where there has been a willful or reckless disregard of standards, rules, legal requirements…". Mr Griffiths submitted that a solicitor convicted of driving with excess alcohol and sentenced to a suspended prison sentence and subsequently convicted of driving whilst disqualified and driving with no insurance demonstrated a lack of integrity in breach of Principle 5.

15.5 By virtue of the disqualification, Mr Bohun drove without insurance, putting members of the public at risk. If there had been an accident the innocent party's only recourse would have been to make a claim against Mr Bohun personally or make a claim against the Motor Insurers 'Bureau. He served a prison sentence for the offences and was on probation and licence. A solicitor acting with integrity would not have conducted himself in this manner. Accordingly, Mr Bohun had failed to act with integrity in breach of Principle 5.

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

15.6 Mr Bohun accepted that he had been driving in circumstances where he had been disqualified from driving. In his Answer Mr Bohun explained that he had files that needed to be returned to Firm 1. As he was unable to obtain a taxi, he drove to Firm 1 to return the files. Mr Bohun accepted that he should not have driven. He considered that the return of some of the files was urgent given the matters they related to. That caused him to panic and he wrongly drove knowing that in doing so he could end up being incarcerated.

The Tribunal's Findings

15.7 The Tribunal noted that Mr Bohun knew that he had been disqualified and that he should not have been driving. The Tribunal determined that members of the public would not expect a solicitor to drive a motor vehicle 17 days after he had been disqualified from driving. Accordingly, the Tribunal found that Mr Bohun's conduct was in breach of Principle 2 as alleged.

15.8 Further, members of the profession would not expect a solicitor to drive his vehicle shortly after being disqualified from driving. In driving, Mr Bohun had knowingly and willfully disregarded the order of the Court. The Tribunal noted that Mr Bohun did not accept that he was not insured. The Tribunal further noted that by virtue of his disqualification, he could no longer be insured to drive any vehicle. The Tribunal found that no solicitor acting with integrity would drive in circumstances where they had been disqualified from driving 17 days previously. In doing so, Mr Bohun had acted without integrity in breach of Principle 5.

15.9 As detailed above, Mr Bohun knew that he was disqualified and that he should not have been driving. He also knew that in doing so, he risked the activation of his custodial sentence. Mr Bohun, it was determined, had knowingly and deliberately driven his vehicle when he knew that he was prohibited from doing so. Such conduct, the Tribunal found, failed to uphold the rule of law and the proper administration of justice in breach of Principle 1.

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

16. **Allegation 1.3 – He failed to notify the SRA of the offences detailed in allegations 1.1 and 1.2 and in doing so he breached one or more of paragraph 7.6(a) of the Code and Principle 2 of the Principles.**

The Applicant's Case

16.1 On 19 May 2020, the Investigation Officer ("IO") in the employment of the SRA informed Mr Bohun of the SRA's investigation after receiving a report from South Wales Police about the arrest for driving with excess alcohol. Mr Bohun responded stating he intended to plead that the matter was out of time. In response, the IO asked Mr Bohun to confirm whether he had been charged, when he had been charged and why he had not informed the SRA. Mr Bohun replied on the same day, informing the IO that he had been charged but had not been prosecuted, and that he would inform the SRA if he was convicted as he was innocent until proven guilty. Mr Bohun advised the IO to stop bullying him.

16.2 On 20 May 2020 South Wales Police informed the SRA that the Respondent had been charged with driving with excess alcohol at a level of 306 milligrams of alcohol per 100 millilitres of blood. He was due to appear at Cardiff Magistrates Court on 14 August 2020. On the same date, in response to an email from the IO, Mr Bohun stated he had not informed the IO of his charge as he had not practiced in four years and was not advising clients.

16.3 On 22 May 2020 the IO asked Mr Bohun to explain why he did not inform the SRA he had been charged and to confirm whether or not he was employed. On the same date Mr Bohun confirmed he was not employed but provided no explanation as to why he failed to inform the SRA that he had been charged.

16.4 On 28 May 2020 the IO emailed Mr Bohun noting his failure to confirm why he did not inform the SRA of the charge and asked him to clarify if he was unaware he had to report criminal charges to the SRA. Mr Bohun stated he did not inform the SRA as he did not realise he had to. On 2 October 2020 Mr Bohun informed the IO of the conviction.

16.5 Following incident two, South Wales Police informed the SRA that Mr Bohun had been charged on 13 October 2020. On 27 October 2020 the IO asked Mr Bohun to account for why he did not inform the SRA. Mr Bohun stated that the police told him they would do so. This was despite receiving substantial communication from the IO when he failed to notify the SRA following incident one.

16.6 Mr Griffiths submitted that Mr Bohun was charged with driving whilst disqualified and driving with no insurance but failed to inform the SRA promptly of the charges. This occurred despite Mr Bohun being reminded of his obligation to report any criminal charge shortly following incident one.

16.7 Mr Griffiths submitted that the public would expect a solicitor to inform his regulator if he had been charged with a criminal offence. Criminal offences were serious matters that called into question the trust the public placed in the profession. The public would expect a solicitor to be open and transparent with their regulator and inform them of such incidents particularly as it was a regulatory requirement to do so. In failing to do so, Mr Bohun had breached Principle 2.

The Respondent's Case

16.8 In his Answer Mr Bohun accepted that he was aware that he should have reported being charged for driving whilst disqualified to the SRA. He apologised for not contacting the SRA and explained that at the time he could not face looking at his emails, post or even receiving phone calls. He was depressed following the death of a close family member and was finding things extremely difficult. Mr Bohun further explained that he knew that the SRA would be contacted by the police in relation to the charge.

The Tribunal's Findings

16.9 The Tribunal noted in his Answer, Mr Bohun accepted that he had not informed the SRA that he had been charged for driving whilst disqualified. It was also noted that Mr Bohun accepted that following his conviction for driving with excess alcohol, Mr Bohun was expressly informed of his regulatory obligations pursuant to Rule 7.6(a) of the Code which required:

> "You notify the SRA promptly if you are subject to any criminal charge, conviction or caution, subject to the Rehabilitation of Offenders Act 1974".

16.10 Mr Bohun referred to the matter being reported to the SRA by the police. The Tribunal considered that he knew that he was still required to report this himself. Mr Bohun could not, and knew that he could not, abrogate his responsibility to comply with his regulatory obligations to the police.

16.11 The Tribunal noted that Mr Bohun stated that at the time, he was suffering from depression and was not well enough to communicate with the SRA. Mr Bohun had provided no medical evidence to support that assertion, showing that at the time his health precluded him from complying with his regulatory obligations.

16.12 The Tribunal considered that members of the public would expect a solicitor to report that he had been charged with a criminal offence in line with his regulatory duties, particularly where the failure to report a previous criminal offence had been the subject of correspondence between that solicitor and his regulator. In failing to do so, Mr Bohun had failed to behave in a way that upheld public trust and confidence in the profession and in legal services in breach of Principle 2.

16.13 Accordingly, the Tribunal found allegation 1.3 proved.

17. **Allegation 1.4 – He made statements to the SRA and to Rubin Lewis O'Brien LLP that he knew, or ought to have known were not accurate, did not reflect the true position and were misleading in that: (1.4.1) On 3 March 2021 he emailed the Firm stating: "I have re-applied for my driver's licence. It seems at the moment, the DVLA is taking ages, so I cannot commit to point 8.1." (1.4.2) On 22 March 2021 he emailed the SRA stating: "I was totally upfront about my conviction, and they have done a full DBS check." (1.4.3) On 23 March 2021 he emailed the SRA stating: "My employer knows, I have no issue with you contacting them." and in doing so he breached one or more of Principles 2, 4 and 5 of the Principles.**

The Applicant's Case

17.1 Mr Griffiths submitted that Mr Bohun had made statements to the SRA and to the Firm which he knew, or ought to have known, were not accurate, did not reflect the true position and were misleading.

Statement 1

17.2 Paragraph 8.1 of Mr Bohun's employment contract (the Contract) stated: "You are required to have a motor vehicle available for your own use for the firm's business and you shall ensure that it is fully insured for such a purpose. Such insurance must include cover where another member of staff or a client is being carried as a passenger in your vehicle when being used on firm's business."

17.3 Paragraph 9.1 stated: "Your normal hours of work will be from 9.00am to 5:30pm Monday to Friday each week ...".

17.4 On 3 March 2021 he emailed the Firm stating: "I have re-applied for my driver's licence. It seems at the moment, the DVLA is taking ages, so I cannot commit to point 8.1".

17.5 In his Answer Mr Bohun stated: "To date this year, I haven't made a DVLA application." This was contrary to what he told the Firm, and also contrary to his email to the IO dated 3 August 2021, in which he stated: "I did contact DVLA to request my licence be re-instated and received no reply".

17.6 Mr Griffiths submitted that at the time of sending the email on 3 March 2021 Mr Bohun knew he had been banned from driving for 24 months and the earliest he could reapply for his licence was January 2022 (or July 2021 on the successful completion of the drink-drive course). The email was sent some 7 months into a 24-month ban. Although it may have been possible that an application could have been made to the DVLA, at the time of sending the email he would have known it was highly unlikely that he would be able to apply for his licence at that stage given the ban was for 24 months. By the standards of ordinary people this statement is dishonest as Mr Bohun knew he would be unable to obtain his licence until the ban ended but the email was worded to make the reader believe the licence would be returned once the DVLA were able to process it, but they were taking longer than expected.

17.7 Mr Bohun knew he would not be able to fulfil Paragraph 8.1 of the Contract as he was unable to drive. He did not tell the Firm about his convictions which would have enabled them to make an informed decision as to whether they deemed him suitable for the role given the role required the candidate to be able to drive and to enable them to decide if they deemed his character suitable given his convictions. In those circumstances, Mr Bohun was dishonest by the standards of ordinary decent people therefore breached Principle 4 of the Principles.

17.8 Members of the public would expect Mr Bohun to be honest with his employer, and to provide accurate information. Members of the public would not expect a solicitor to make purposely misleading statements intended to disguise the fact that he could not drive due to having been disqualified for driving with excess alcohol. In doing so Mr Bohun had acted in breach of Principle 2. Further, in sending an email that was deliberately misleading, Mr Bohun had failed to act with integrity in breach of Principle 5.

<u>Statement 2</u>

17.9 In an email to the IO dated 22 March 2021, Mr Bohun stated:

> "I started with my new employer 2 weeks ago. As the conviction is spent and I had not heard from you, I did not mention the investigation, because until today, I had no idea you were still investigating. Having said that, I was completely upfront about my conviction, and they have done a full DBS check.
>
> If you would like me to inform Person 2 head of HR, I am happy enough to do so.
>
> Please bear in mind it has taken me months to get new employment, so I am at your mercy to retain it."

17.10 Mr Griffiths submitted that the email was inaccurate and misleading. It led the reader to believe that Mr Bohun had been open and honest with the Firm about his convictions and they had still deemed it appropriate to retain him so had conducted a DBS check. This was not the case. The Firm were completely unaware of the convictions until the DBS was returned to them and detailed the convictions. As a result of the DBS and his lack of openness, Mr Bohun was dismissed immediately. In those circumstances, his conduct was dishonest by the standards of ordinary decent people and therefore breached Principle 4 of the Principles.

17.11 Such conduct also demonstrated a lack of integrity in breach of Principle 5, and failed to uphold public trust and confidence in the profession in breach of Principle 2.

Statement 3

17.12 On 23 March 2021 Mr Bohun emailed the IO stating:

> "..my employers know, so I have no issue with you contacting them. I don't want to loose (sic) my practice (sic) certificate. What I don't understand is why I am being investigated, when the Courts of England and Wales have already dealt with the situation, and I have already paid the victim surcharge.
>
> The offences were not committee (sic) during my employment, were not Client related and were not A class offences, i.e., Murder, rape, Violent crime, fraud or bringing the profession into disrepute – what I did was not reported in the press and does not come up on social media. In fact, the DRB (sic) check is now clear…"

17.13 That email was sent in response to an email from the SRA dated 23 March 2021 informing him that the Firm would be made aware of the SRA investigation against him and a Notice would be prepared. Mr Griffiths submitted that Mr Bohun's email was designed to make the reader believe he had informed the Firm of the SRA investigation into his convictions.

17.14 In an email dated 9 April 2021 sent by the Firm to the SRA, the Firm confirmed that it was only became aware of the SRA investigation after the disciplinary meeting on 26 March 2021. During that meeting Mr Bohun informed the Firm that he was being investigated by the SRA and that the Firm was aware of this as it had been told by Person 1. The attendees at the disciplinary meeting stated that they were unaware. Mr Bohun explained that he had told Person 1. Person 1 stated that he would inform the Firm.

17.15 Mr Bohun emailed Person 1 on 27 March 2021 placing the blame onto him for not informing the Firm of his convictions. Person 1 responded stating:

> "Nick under no circumstances did I ever say not to declare anything. I always said honesty is the best policy and I have recorded calls to this effect. I never declared your spent convictions as I'm not allowed to declare them it is down to you when completing the forms. I have never said that they were informed.

> I did declare your unspent convictions to [another firm] and they were fine with it as I'm under a duty to tell them as they were unspent. You informed me that your convictions were spent at the time of the Firm."

17.16 Mr Griffiths submitted that Mr Bohun had taken no responsibility for his actions, continuing to divert the blame to others when it was his responsibility to inform his employer of his convictions and the SRA investigation. Mr Bohun knew that the Firm was not aware of the SRA investigation when he made Statement 3. In those circumstances, his conduct was dishonest by the standards of ordinary decent people and therefore breached Principle 4 of the Principles.

17.17 Such conduct also demonstrated a lack of integrity in breach of Principle 5, and failed to uphold public trust and confidence in the profession in breach of Principle 2.

The Respondent's Case

17.18 In his Answer, Mr Bohun stated that Person 1 had provided all of the information relating to both convictions to the Firm. The Firm was aware that Mr Bohun was unable to drive. He did inform the Firm that he would re-apply for his licence. His role at the Firm was not a driving role.

17.19 Mr Bohun explained that during discussions with the Firm, it was agreed that he could take a taxi to work for the first two weeks and thereafter he would be working from home. He attended the office for the third week (also using a taxi to attend work) so as to become familiar with the new IT system.

17.20 Mr Bohun explained that the Firm's willingness to find hotel accommodation for him evidenced that the Firm was aware that he was unable to drive. It also led him to believe that Person 1 had informed the Firm of the convictions.

17.21 Mr Bohun further explained that he was unaware that his convictions were not spent. He believed that his conviction became spent at the conclusion of his custodial sentence. Mr Bohun denied that his conduct was in breach of any Principles. He also denied that his conduct was dishonest.

The Tribunal's Findings

17.22 Statement 1

17.22.1 The Tribunal found that Mr Bohun knew that he was disqualified from driving. Further, he knew that even if he did re-apply for his licence, he would not be entitled to drive until July 2021 at the earliest (assuming that he successfully completed the drink-drive course and passed the medical examination he was required to undertake). The Tribunal found that in telling the Firm that he had re-applied for his licence and that the delay was due to the DVLA, Mr Bohun had deliberately sought to mislead the Firm into believing that he was entitled to drive and could thus fulfill his contract terms. Further, Mr Bohun made the statement in the knowledge that he had made no application for his licence as detailed in is Answer.

17.22.2 The Tribunal found that in knowingly and deliberately making a misleading statement to the Firm, Mr Bohun had failed to uphold public trust and confidence in the profession. Members of the public would not expect a solicitor to make deliberately misleading statements in order to secure and retain employment. In doing so, Mr Bohun's conduct was in breach of Principle 2 as alleged. Further, a solicitor acting with integrity would not knowingly and deliberately make a false and misleading statement to his employer. Accordingly, the Tribunal found that Mr Bohun had failed to act with integrity in breach of Principle 5.

17.22.3 The Tribunal found, as detailed above, that Mr Bohun knew that he was not entitled to obtain his licence as a result of his disqualification. Mr Bohun also knew that he had not re-applied for his licence, and that DVLA had not delayed in returning his licence. Members of the public would consider that it was dishonest to deliberately and consciously make inaccurate and misleading statements. Accordingly, the Tribunal found that Mr Bohun's conduct was dishonest in breach of Principle 4.

17.23 Statement 2

17.23.1 The Tribunal found that the contemporaneous documentary evidence showed that Mr Bohun made the statement complained of. It was clear that the Firm were not aware of his convictions at the time. The Firm only became aware of the convictions once the results of the DBS check had been received. The day after receiving the DBS report, the Firm arranged a disciplinary meeting with Mr Bohun to discuss his failure to disclose his convictions. The Tribunal considered that the swift action taken by the Firm after receipt of the DBS report demonstrated that the Firm was not aware of the convictions contrary to Mr Bohun's assertion.

17.23.2 Further, to offer to assist with finding hotel accommodation was not evidence that the Firm was aware of the convictions. It evidenced that the Firm were aware that Mr Bohun was unable to drive at that time. The Firm had, by that stage, received the email from Mr Bohun stating that he had re-applied for his licence which was delayed due to DVLA. Thus the Firm would have believed that Mr Bohun was unable to drive because he did not have his licence, not that he was prohibited from driving following a criminal conviction.

17.23.3 It was Mr Bohun's case that Person 1 had informed the Firm of his convictions. Person 1 stated that he had not. The Tribunal accepted the explanation provided by Person 1 that he had not disclosed the convictions to the Firm as Mr Bohun had stated that the convictions were spent. The Tribunal noted that it had been Mr Bohun's case that he (mistakenly) thought that the convictions were spent.

17.23.4 The Tribunal noted that whilst Mr Bohun asserted that the Firm knew of the convictions, at no time did he assert that he told the Firm about his convictions.

17.23.5 The Tribunal found that Mr Bohun knew that he had not been "completely upfront" about his convictions as stated in his email dated 22 March 2021. He had not told the Firm about his convictions, and had misled the Firm into believing that he was unable to drive as was waiting for his licence to be sent by DVLA.

17.23.6 In telling the SRA that he had been upfront with the Firm about his conviction when that was not the case, Mr Bohun had failed to uphold public trust in the profession in breach of Principle 2. Members of the public would expect a solicitor to make accurate and truthful statements to his regulator during the course of an investigation into his conduct. Further, members of the profession would not expect a solicitor to make misleading statements to the regulator during the course of an investigation into his conduct. A solicitor acting with integrity would not have asserted that he had been upfront with his employer when he knew that his employer believed that he was awaiting his licence, also knowing that he had not told his employer about his disqualification from driving. Accordingly, the Tribunal found that Mr Bohun had failed to act with integrity in breach of Principle 5.

17.23.7 As detailed, the Tribunal found that Mr Bohun had not told the Firm about his convictions and knew that he had not done so. He therefore knew that he had not been completely upfront with the Firm, contrary to what he stated in his email to the SRA. The Tribunal found that members of the public would consider that it was dishonest to knowingly send an inaccurate and misleading email to the regulator. Thus the Tribunal found Mr Bohun's conduct to be dishonest in breach of Principle 4.

17.24 Statement 3

17.24.1 The Tribunal found that the contemporaneous documentary evidence showed that Mr Bohun made the statement complained of. It was plain that the Firm were not aware of the investigation into Mr Bohun's conduct until it held the disciplinary meeting with him following receipt of the DBS report. Further, in his email to the IO dated 22 March 2021, Mr Bohun stated: "I did not mention the investigation, because until today, I had no idea you were still investigating."

17.24.2 Accordingly, in his email of 23 March 2021, when he stated that his employers knew, Mr Bohun was aware that the Firm did not know, as he had not told them. In telling the SRA that his employers were aware of the investigation when he knew they were not, Mr Bohun had failed to behave in a way that upheld public trust and confidence in the profession. For the reasons detailed at statement 2 above, the Tribunal found that Mr Bohun's conduct was in breach of Principles 2 and 5.

17.24.3 The Tribunal found that Mr Bohun had asserted that his employers were aware of the investigation in circumstances where he knew they were not, having failed to tell them. The Tribunal found that members of the public would consider that it was dishonest to send an email to the regulator in the knowledge that assertions within the email were inaccurate and misleading.

Accordingly, the Tribunal found that Mr Bohun's conduct was dishonest in breach of Principle 4.

17.25 The Tribunal thus found allegation 1.4 proved.

Previous Disciplinary Matters

18. None.

Mitigation

19. None.

Sanction

20. The Tribunal had regard to the Guidance Note on Sanctions (9th 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.

21. The Tribunal considered that as regards allegation 1.4, Mr Bohun was motivated by his desire to conceal his criminal convictions and retain his employment. The Tribunal found that his actions were a planned response to the enquiries made regarding his disclosure of his convictions and the SRA investigation. He had breached the trust placed in him by the Firm to be open and frank about the reasons he was unable to drive. Mr Bohun had direct control and responsibility for the circumstances giving rise to the misconduct.

22. He had 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"."

23. His conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. Mr Bohun's conduct was deliberate and repeated. He had sought to conceal his failure to disclose his convictions and the ongoing SRA investigation by making inaccurate and misleading statements. Mr Bohun had sought to blame Person 1 for failing to tell the Firm, and had sought to abrogate his responsibility for informing the Applicant of his driving whilst disqualified conviction to the police. Mr Bohun had failed to conduct himself with the standards of probity and integrity expected of a solicitor.

24. In mitigation, Mr Bohun had had a previously unblemished career. However, the Tribunal did not find that there were any additional factors that mitigated Mr Bohun's conduct.

25. Given the serious nature of its findings, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand 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."

26. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring Mr Bohun in line with the residual exceptional circumstances category referred to in the case of Sharma. Whilst Mr Bohun had referred to being unwell and having difficult personal circumstances at the time, he had not provided any medical evidence in support. 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

27. Mr Griffiths applied for costs in the sum of £6,173.00. This included a reduction in the original amount claimed to reflect the shortened hearing time.

28. The Tribunal considered the statement of means submitted by Mr Bohun. It noted that he owned a property that was not subject to any mortgage. It also noted that whilst Mr Bohun claimed that he was unable to pay any costs order, he stated in his Answer that he and his "very supportive girlfriend are going to have a holiday swimming with wild bore (sic) in the Bahamas" as he owed her a treat.

29. The Tribunal considered that the costs claimed were reasonable and appropriate. It was aware that the costs department at the SRA would take a fair and pragmatic approach as regards any costs recovery. The Tribunal determined that in the circumstances it was reasonable, fair and proportionate to order that Mr Bohun pay the costs claimed.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, NICHOLAS JAMES BOHUN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,173.00.

Dated this 24th day of February 2022
On behalf of the Tribunal

A Kellett
Chair