

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12275-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

OMOLARAMI AKINDIJI

Respondent

Before:

Mr B Forde (in the chair)

Ms A E Banks

Dr A Richards

Date of Hearing: 15 February 2022

Appearances

Victoria Sheppard-Jones, barrister of Capsticks LLP for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that whilst in practice as a Legal Services Manager at Corby Borough Council:
 - 1.1. Between 22 November 2018 and 28 November 2018, the Respondent pursued a course of conduct whereby she submitted, or caused to be submitted, two invoices for payment to the accounts department of Corby Borough Council, in respect of Alfa Topco Limited, which contained information that she knew, or ought to have known, was misleading and in doing so breached Principles 2 and 6 of the SRA Principles 2011.
 - 1.2. On 6 December 2018, during an interview with her line manager and the Head of Internal Affairs and Counter-Fraud at Cambridgeshire County Council, regarding an allegation of fraud made against her, the Respondent provided information that was untrue and in doing so breached Principles 2 and 6 of the SRA Principles 2011.
2. Allegations 1.1 to 1.2 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the conduct alleged but was not an essential ingredient required to prove the Allegations.

Documents

3. The Tribunal considered all the documents in the case which included an electronic bundle of documents on CaseLines, which the Respondent had sight of.

Preliminary Matters

4. Application to proceed in absence
 - 4.1. The Respondent did not attend the hearing and was not represented. In her Answer she had stated that she would not be attending the hearing. This had been repeated in correspondence sent to the Tribunal on the morning of the hearing. The Respondent had referred to health issues in relation to her non-attendance but had not provided any medical evidence.
 - 4.2. Ms Sheppard-Jones applied for the case to proceed in the Respondent's absence pursuant to Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR"). Ms Sheppard-Jones submitted that the Tribunal could be satisfied that the Respondent had been served with notice of the hearing. The Respondent's intention not to attend had been communicated on more than one occasion.
 - 4.3. Ms Sheppard-Jones submitted that the Respondent was aware of the hearing and had decided not to attend. An adjournment would not resolve the issue as the Respondent had made her decision. It was therefore appropriate to proceed.

The Tribunal's Decision

- 4.4. The Tribunal considered the representations made by the Applicant. The Respondent was aware of the date of the hearing and SDPR Rule 36 was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as

set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

“In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

- (i) the nature and circumstances of the defendant’s behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
- (ii) ...;
- (iii) the likely length of such an adjournment;
- (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
- (v) ...;
- (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
- (vii) ...;
- (viii) ...;
- (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
- (x) the effect of delay on the memories of witnesses;
- (xi) ...;”

4.5 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted 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 that 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”.

4.6 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 interests of the public also taken into account”.

4.7 The Respondent had emailed the Tribunal on the morning of the hearing and within that email she had stated as follows:

“Concerning proceeding with the trial please do I think the matter has dragged on long enough. I had noted all parties I won’t be attendance a while ago, and we shouldn’t waste courts time or money.”

After making a brief reference to health issues she had continued:

“and there are bigger dishes to fry than attending a hearing which I am aware that the outcome will be that I will be struck off.”

4.8 The Tribunal was satisfied that the Respondent had made a clear and settled decision. She had invited the Tribunal to proceed in absence and had not applied for an adjournment. The Tribunal concluded that an adjournment would not result in her attendance and there was no medical evidence which would justify such a step. The Respondent faced serious allegations and there was a clear public interest in the matter being heard without further delay. The Tribunal therefore granted the application to proceed in absence.

5. Late service of documents

5.1 At 7pm the day before the hearing the Respondent had served a witness statement, an exhibit and a personal financial statement. In accordance with the Standard Directions, the witness statement should have been served by 29 December 2021, the exhibits by 23 December 2021 and the personal financial statement by 18 January 2022. Ms Sheppard-Jones objected to the witness statement and personal financial statement being admitted at this late stage. She did not object to the exhibit being admitted as this material was already contained in the Applicant’s exhibits.

5.2 Ms Sheppard-Jones submitted that no good reason had been given for the late service of these documents and that there was potential prejudice to the Applicant in that it was not able to respond to points raised in either document. Ms Sheppard-Jones confirmed that there was nothing substantially new in the witness statement and that although it made reference to disclosure, no application for disclosure had been made.

The Tribunal’s Decision

5.3 The Tribunal did not consider it acceptable for documents to be filed the evening before a substantive hearing, in breach of the Tribunal’s directions and without any explanation. However, the Tribunal did not find that the Applicant was prejudiced by their admission. On balance, out of an abundance of fairness to the Respondent, the Tribunal decided that it would allow the documents to be adduced.

Factual Background

6. The Respondent was admitted to the Roll on 17 June 2013. At the time of the hearing she did not hold a practising certificate. At the time of the conduct alleged, she held a practising certificate free from conditions.

7. The conduct took place whilst the Respondent was employed by Corby Borough Council (“the Council”) as Legal Services Manager. The Respondent had commenced that role in August 2018, having previously been employed on a temporary contract

from March 2018. On 3 January 2019 Person A, the Respondent's line manager, made a report to the SRA that the Respondent had set up her husband's business, Alfa Topco, on the Council's creditor system and had attempted to arrange payments to that company for services that the Council had not received.

Allegation 1.1

8. In November 2018 the Respondent had submitted two invoices, each for £1,550 plus VAT, to be processed for payment in relation to services purported to have been provided by her husband's company, Alfa Topco.
9. Alfa Topco was incorporated on 3 February 2014. The nature of business was described at Companies House as "Information technology consultancy activities". The sole director was listed as Akinkunmi Akindiji, the Respondent's husband. On a date prior to 13 November 2018, the Respondent had made an internal request for Alfa Topco to be added to the Council's approved list of creditors. This request was approved and actioned on 13 November 2018. The Respondent did not advise the Council of her husband's relationship to the company.
10. The nature of the services provided by the company were initially described in the invoices as "Legal Consultancy". As a result of queries raised internally, the description was amended on three occasions. This initially included the words "agency fees", which was handwritten. This amendment was then removed and the invoices were re-submitted with the original description of "Legal Consultancy". When a query was once again raised as to the nature of the service provided, a final amendment was made to include the words, "providing legal advice/drafting in relation to property matters".
11. The Applicant relied on email exchanges between the Respondent and her husband in November 2018. The Applicant's case was that these demonstrated that they were attempting to utilise Alfa Topco as a legal recruitment agency. The Respondent sent several CVs to her husband and asked him to follow up with the prospective candidates.
12. In the course of the internal Council investigation and the SRA investigation the Respondent had provided various accounts as to what service the invoices related to. Her first account, that the invoices related to work undertaken by a candidate placed by Alfa Topco, was later admitted by her to be a lie. In later accounts the Respondent had stated that an invoice related to another candidate, who in fact was never placed with the Council and that one or both invoices in fact related to Alfa Topco searching for candidates and undertaking background checks on the same.
13. The invoices for Alfa Topco were not paid as Person C was able to get the payments stopped.
14. As part of her induction upon joining the Council, the Respondent signed an induction checklist confirming that, in week one of her employment, she had read the Code of Conduct that was issued with her offer letter. Paragraphs 30 to 32 of the Code of Conduct stated as follows:

- “30. An employee who places orders, awards contracts or supervises contractors and has previously had or currently has a relationship in a private or domestic capacity with contractors they deal with in the course of their Council duties should declare that relationship with their line manager.
31. An employee in their official relationship with contractors and potential contractors must not conduct themselves in such a manner so as to convey that they are in a position of giving favour or in their conduct seek a gift, loan, or reward in order to convey an advantage to a contractor or potential contractor.
32. In general, an employee is obliged to declare their interest in a relationship when it becomes apparent that said relationship may bring them into conflict with their responsibilities to the Council or may give the impression to others of a potential conflict.”
15. The “Corby Borough Council Contract Standing Order” policy in force at the material time stated “Where an Officer has a potential conflict of interest with a Supplier from whom a Quotation/Tender is being sought, the Officer must declare this immediately to the Procurement department and/or Monitoring Officer, as appropriate. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010”.
16. Person C conducted a search of Respondent’s work email account and discovered email exchanges between the Respondent and her husband between 15 November 2018 and 20 November 2018. In those emails, the Respondent provided her husband with CVs for potential candidates that the Council may wish to employ and asked that he approach them to check their availability. Some of these CVs appeared to have been provided to the Respondent by another agency that the Council used.
17. One of the email exchanges between the Respondent and her husband related to Person E, whom the Respondent stated in the emails she would like to employ as a contractor with the Council. She requested that her husband contact Person E to make the necessary arrangements for him to start work with the Council. Person E raised concerns about working through Alfa Topco and emailed the Respondent to say, “I have received the contract from your preferred agency Alfa Topco Limited, however this had to be rejected. Do let me know if you are happy to contract through my original agency, Sellick Partnership and I will liaise with them over the terms of engagement”. Instead of recruiting Person E through a different agency, the Respondent advised Human Resources that she would no longer be requiring their services and that she had informed them of the same.
18. The Respondent was interviewed on 6 December 2018 by Person C. During the interview the Respondent stated that her husband “works with” Alfa Topco, as one of three directors. The Respondent said that she liaised with “James Akin” at Alfa Topco and not her husband. She said she “tried to ensure an arm’s length approach” and was not dealing with her husband directly.

19. The Respondent stated that she believed everyone knew about her connection to the company and that she did not know that she was required to declare it. The Respondent provided an explanation that Alfa Topco had been added to the list of the Council's approved creditors because the company was placing Person E in work and the Council would therefore pay a "finder's fee". However, she said that did not go ahead and instead Alfa Topco placed Person D with the Council. She said that Person D had previously been working at the Council through Venn Group but that contract had finished and Alfa Topco had contacted the Respondent and said that Person D was available again. Person D subsequently provided a statement in which she stated she had never heard of Alfa Topco.
20. The Respondent had stated on more than one occasion in the interview that there had been no invoice in respect of Person E. However, she had then stated that such an invoice had been emailed to her by Alfa Topco. When the apparent inconsistently was put to her she had stated: "Sorry, that must have been incorrect. I received an email from Alfa Topco with an invoice for [Person E] so that it would be ready for when he started". The Respondent had stated that Person E was not taken on was because having "checked his references I decided that no, I would not take him on". In fact the reason Person E did not take up work with the Council was because he would not do so through Alfa Topco and the Respondent therefore told Human Resources that he was no longer required.
21. The Respondent was suspended from work at the conclusion of the interview and she submitted her written resignation the following day.
22. On 8 December 2018, the Respondent emailed a letter to Person C in which she denied committing any fraud. She stated that she had not received any training in relation to declarations of interest and that her line manager had advised her to use different agencies if the usual suppliers could not assist. She repeated that Alfa Topco had provided her with the details of Person E and that an invoice was submitted for him in relation to a "finder's fee" but it was not processed as the Respondent did not in fact go on to place Person E in any work.
23. The Respondent had been sent an 'Explanation with Warning' ("EWW") letter by the SRA, which she replied to on 8 November 2019. In that reply Respondent again referred to a lack of training as to why she failed to declare an interest in Alfa Topco and repeated that Person A had encouraged her to recruit people to post from other agencies and had not advised her that she would have to declare an interest in any firms she used. The Respondent stated that all the invoices would ultimately have had to have been authorised by Person A.
24. The Respondent stated that the first invoice related to work undertaken by Alfa Topco in searching for candidates, the costs incurred in trying to fill the posts and ongoing background check on candidates and that the second invoice was a "one of fee for placing [Person E]". The Respondent denied that the second invoice had been submitted and stated that both invoices would have been discussed at her "1-1" with Person A.

25. The Respondent said she was “gravely sorry for the distress I caused my colleague [Person D]”. The Respondent went on to say “I am sorry I lied in my [letter] sent via email of 8th December 2018.” The Respondent did not elaborate on what these lies were.
26. The Respondent also stated in her response to the EWW letter that she did deal with her husband at Alfa Topco and that he was in fact “James Akin”. The Respondent stated that she had been scared in the interview. The Respondent stated that she said that she provided her husband’s company with CVs because, she “wanted/favoured my husband’s company carry out some background checks on them so I no longer had to waste my time on candidates that would not be satisfactory or who were no longer available to be placed”.
27. The Respondent stated that her working conditions and the “type of manager” she had should be taken into consideration. The Respondent referred to health issues that she had been experiencing at the time. The Respondent stated that she only did what she thought would be best for the Council in reducing costs and denied any monetary gain for herself.
28. On 27 May 2021, the Respondent provided a response to the Notice Recommending Referral to the Tribunal. In that response she relied on her reply to the EWW letter. However, in respect of the invoices, she “I must stress once again the invoices were not connected to [Person E] work at the Council as he did not even start work at the Council.” In respect of the alleged lies told in her interview, she stated that “I believe I did specify where I lied in my email sent to [the SRA], and also my state of mind.”

Allegation 1.2

29. This Allegation related to the Respondent’s interview on 6 December 2018. The Applicant’s case was that the Respondent had told the following seven lies:
 - “Alfa Topco then told me that [Person D] was available and I wanted her to finish the work she had been doing so we used them (Alfa Topco) for that instead”.
 - In response to “So what was the £1,000 invoice for?” the Respondent stated, “[Person D’s] work”.
 - “Whilst [Person D] was working ... I received some negative feedback from the service about [Person D’s] work so I spoke to Alfa Topco and told them we would need to return their invoice and would not process it for payment”.
 - “I tried to ensure an arm’s length approach and was not dealing with my husband directly”
 - In response to “I understand that there are actually two invoices which have been submitted - for £1,550.00 each - whilst you have been telling me that there was only one for £1,000.” the Respondent stated, “I understood that there was one but I cannot say if there were five, six, or seven. [Person B] has dealt with these”.

- In response to, “so how long did [Person D] work for the Council under Alfa Topco?” the Respondent stated, “It is my understanding that she worked the full two weeks.”
- In response to “Is James Akin any relation of yours or your husband’s?” the Respondent stated, “No”.

Findings of Fact and Law

30. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

31. Allegation 1.1

Applicant’s Submissions

- 31.1 Ms Sheppard-Jones submitted that it was entirely misleading to suggest that preliminary sourcing and background checks, if it was undertaken at all, amounted to services that could be invoiced twice as “Legal Consultancy” at a value of £1,550.00 plus VAT. In submitting, invoices for payment that she knew, or ought to have known, contained misleading information, the Respondent failed to act with integrity. Ms Sheppard-Jones referred the Tribunal to Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 in respect of the test for integrity. The invoices did not relate to work undertaken by Person D, as Person D had denied the same and the Respondent had since admitted that such an assertion was a lie. The further assertion that the invoices related to background checks undertaken by Alfa Topco, was not supported by the evidence. Ms Sheppard-Jones submitted that a solicitor acting with integrity would only submit invoices that reflected work undertaken, at an agreed cost. In all the circumstances, the Respondent acted without integrity in the course of conduct she pursued in attempting to have invoices, that contained misleading information paid.
- 31.2 Ms Sheppard-Jones submitted that the conduct also amounted to a breach of Principle 6 as the trust the public placed in the profession was undermined by a solicitor submitting misleading invoices for payment.
- 31.3 Ms Sheppard-Jones further submitted that the Respondent had acted dishonestly and she reminded the Tribunal of the test as set out in Ivey v Genting Casinos [2017] UKSC 67.
- 31.4 Ms Sheppard-Jones submitted that the Respondent’s training record showed that she had received the appropriate training in relation to declarations of interest. Ms Sheppard-Jones submitted that the Respondent’s failure to declare the interest in Alfa Topco was deliberate. Ms Sheppard-Jones submitted that regardless of training, a solicitor in her position and with her experience would have, or ought reasonably to have known that her actions were inappropriate.

- 31.5 Ms Sheppard-Jones submitted that the email exchanges between the Respondent and her husband demonstrated that the Respondent was sending work to her husband's company, rather than Alfa Topco providing a service to the Respondent and the Council. Ms Sheppard-Jones submitted that the emails regarding Person E were particularly relevant as they demonstrated that Person E did not want to work through Alfa Topco.
- 31.6 Ms Sheppard-Jones submitted that the Respondent knew that Alfa Topco did not place any candidate with the Council because she was the one liaising directly with her husband. The Respondent had admitted that her assertion that the invoices related to Person D was a lie and Ms Sheppard-Jones submitted that this was further evidence that the Respondent knew that the invoices were misleading because she knew that her husband had not provided her with a service as invoiced. Ms Sheppard-Jones submitted that ordinary decent people would consider this to be dishonest.

Respondent's Submissions

- 31.7 In her Answer, the Respondent set out her professional background and the circumstances in which she began work for the Council. The Respondent stated that her training and induction, to the extent she had any, had been inadequate and that it made no reference to needing to make a declaration before adding Alfa Topco as a creditor. The Respondent stated that she was not asked any questions or asked to make any declarations and she believed she had followed all the correct protocols.
- 31.8 The Respondent described the work undertaken by Alfa Topco as follows:
- “24. Alpha Top Co carried out works and incurred costs from the instructions given by Corby Borough Council. As Exhibits 4a-f. shows CV's it received, list of names/candidates that they contacted and vetted invoices from well-known and used online employment websites which specifically mentioned Corby Borough Council.
 - 25. Retained Recruitment Costs are usually paid in three parts: Up-front; Upon producing a shortlist and when the placement is made. It is clear from Exhibit 4a-f that Alpha Top Co had satisfied the first 2 and if any of the candidate's placement went through, they would have satisfied the last part.”
- 31.9 The Respondent confirmed that she had submitted two invoices and had amended them at the request of Person B. The Respondent further stated as follows:
- “31. I acted honestly in my actions. If my intent as [Person A] had suggested otherwise to the SRA in his report application, I had ample opportunities to submit more invoices, however only 2 invoices were submitted and amended and resubmitted to reflect the work that they had done.
 - 32. I believe I have followed Corby Borough Council's procurement process, Alpha Top Co was an approved creditor of the Council, I had authority to enter into an agreement with Alpha Top Co, I entered into a commercial sound agreement with Alpha Top Co in the best interest of

the Council. Alpha Top Co carried out works in accordance with the agreement and invoices were submitted reflecting the works carried out.

33. I expressed to [Person A] that why would I be motivated by financial gain because the risks would outweigh the return. Why would I jeopardise my legal licence and my unblemished reputation for a few pounds when I would make more money going back to locuming if money was a motive. Alternatively; take up an offer with the neighbouring Council where I had a meeting with the Chief executive to discuss taking over the role Legal Service Manager role there. I was simply motivated by succeeding in this new promotion, I wanted to bring stability to the team who had over 3 legal service managers within a short period of time and wanted to impress my manager having full knowledge of his bullying [sic] tactics when it came to people, he did not like.
34. I have admitted to the SRA that I lied about [Person D] and that I would like to apologise for any distress and inconvenience caused to her.”

31.10 The Respondent then set out her reasons for this lie, which included a number of details of her personal circumstances and a series of allegations of inappropriate behaviour on the part of Person A. The Respondent made reference to having been separated from her husband and argued that this was another reason why there was not a conflict of interest.

31.11 The Respondent stated that the matter had been reported to the Police, who “found that I have not done anything wrong.”

The Tribunal’s Findings

31.12 The Tribunal was satisfied on the balance of probabilities that the Respondent had submitted two invoices for payment from Alfa Topco. This was evidenced by her email to Person B dated 22 November 2018 which contained the subject heading “invoices to be processed please” and clearly had two invoices attached. This was followed by a further email from the Respondent to Person B on 28 November 2018 in which she again attached the two invoices.

31.13 The invoices variously described the work as “Legal Consultancy” and “providing legal advice/drafting in relation to property matters”. There was no evidence that Alfa Topco had provided any such services and so the invoices were wholly misleading. In reality, Alfa Topco appeared to be involved in recruitment, including attempting to encourage candidates to join the Council through Alfa Topco even though they were already signed up with other agencies. These attempts were unsuccessful and no candidates were placed with the Council through Alfa Topco. The Tribunal was therefore satisfied on the balance of probabilities that the invoices were misleading.

31.14 The Tribunal then considered whether the Respondent knew or ought to have known they were misleading. The Tribunal considered the internal interview in which the Respondent had stated as follows:

“As a legal professional, did you not think you should have declared this?”

As I have just said, this was my first permanent role and I did not know that I needed to declare it. I had tried to ensure an arm’s length approach and was not dealing with my husband directly. I dealt with James Akin.

So if you had any email correspondence with the company, who would that have been with?

James Akin. I have not corresponded via my husband.”

- 31.15 The Respondent had subsequently admitted that James Akin and her husband were one and the same person. It was clear therefore that what the Respondent had stated in the interview was false. The Respondent had also stated that her husband was one of three directors, when the evidence from Companies House was that he was the sole director. The Respondent would not have made false statements in that interview unless she knew that the invoices had been misleading and was trying to conceal the true nature of her connection to Alfa Topco. The Respondent had also amended the invoices on two occasions to try to justify them, something that would not have been necessary had she not known them to be misleading in the first place.
- 31.16 The Tribunal noted the Respondent’s comments concerning inadequate training and rejected them on the basis that they were contradicted by the evidence. The witness statement of the Human Resources business partner set out in detail all the training that the Respondent had received and the documents provided to her. The Respondent had not challenged the evidence of this witness and the Tribunal accepted it. In any event, the Respondent would not have required a high level of training to know that it was wrong to submit misleading invoices for payment.
- 31.17 The Respondent’s subsequent attempts to explain matters were contradictory and not supported by the evidence. This was further evidence that the Respondent knew that the invoices had been misleading and had been struggling to explain why she had submitted them.
- 31.18 Although the Tribunal could have drawn an inference from the Respondent’s failure to give evidence, it did not need to in this case as the contemporaneous documentary evidence was clear. The Tribunal attached very little weight to the Answer or the Respondent’s witness statement as she had not allowed that evidence to be tested in cross-examination. The Tribunal noted that the evidence of the witnesses from the Council was both unchallenged and consistent.
- 31.19 The Tribunal found the factual basis of Allegation 1.1 proved on the balance of probabilities.

Principle 2

- 31.20 In considering whether the Respondent had lacked integrity it applied the test set out in Wingate and Evans and Malins. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

31.21 The Respondent had clearly failed to act with scrupulous accuracy as she had knowingly submitted two misleading invoices in the anticipation that they would be paid to her husband’s company from public funds for work that he had not done. The Tribunal was satisfied on the balance of probabilities that the Respondent had failed to act with integrity and it found the breach of Principle 2 proved.

Principle 6

31.22 It followed as a matter of logic that the public’s trust in the profession would be undermined when a solicitor in a senior position at a local authority was submitting misleading invoices for payment. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Dishonesty

31.23 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: 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 knowledgeable 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.”

31.24 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

- 31.25 In assessing the Respondent's state of knowledge, the Tribunal found that the Respondent was aware that the invoices were misleading, for the reasons set out above. The Respondent was aware that Alfa Topco was a company owned by her husband and she also knew that she had invented the name 'James Akin' to conceal that he was in fact her husband.
- 31.26 The Respondent was aware from her training that presenting misleading invoices and failing to declare the interest in Alfa Topco was a breach of Council procedures as well as a breach of her professional obligations.
- 31.27 The Respondent's witness statement raised issues of disclosure, but in the absence of an application for disclosure, these were of no relevance.
- 31.28 The Tribunal acknowledged that the Respondent was of good character and took that fully into account. Notwithstanding the Respondent's good character, the Tribunal was satisfied on the balance of probabilities that her actions would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved.

32. Allegation 1.2

Applicant's Submissions

- 32.1 Ms Sheppard-Jones submitted that by telling lies during an investigation, the Respondent had failed to act with integrity. A solicitor acting with integrity would ensure that they answered the questions as honestly and truthfully as possible. Ms Sheppard-Jones further submitted that the Respondent had breached Principle 6 on the basis that public confidence in the profession was undermined by solicitors telling lies during investigations and interviews into serious allegations, such as fraud.
- 32.2 Ms Sheppard-Jones further submitted that as Respondent had admitted that she told lies in the interview on 6 December 2018, it could be inferred that she knew she was acting dishonestly and that ordinary, decent people would consider the telling of lies to be dishonest.

Respondent's Submissions

- 32.3 The Respondent did not make specific submissions in relation to Allegation 1.2, though it was inferred from her Answer that she accepted that one lie had been told. The Respondent's recently served witness statement did not take matters further and was mainly focussed on issues of disclosure of documents from the Council.

The Tribunal's Findings

- 32.4 The Tribunal took each of the statements that were said by the Applicant to be untrue in turn.

“Alfa Topco then told me that [Person D] was available and I wanted her to finish the work she had been doing so we used them (Alfa Topco) for that instead”.

- 32.5 The Respondent had accepted in her response to the EWW letter that this was not true. This was also confirmed by the witness statement of Person D. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

In response to “So what was the £1,000 invoice for?” the Respondent stated, “[Person D’s] work”

- 32.6 Again, the Respondent had admitted that this was a lie and that was supported by Person D. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

“Whilst [Person D] was working ... I received some negative feedback from the service about [Person D’s] work so I spoke to Alfa Topco and told them we would need to return their invoice and would not process it for payment”.

- 32.7 The Tribunal was satisfied that all aspects of this statement were false. Person D had not been working for the Council and so there would have been no feedback, negative or otherwise, about such work. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

“I tried to ensure an arm’s length approach and was not dealing with my husband directly”

- 32.8 This was patently a false statement as the Respondent had claimed to be dealing instead with a ‘James Akin’ who was in fact one and the same person as her husband. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

In response to “I understand that there are actually two invoices which have been submitted - for £1,550.00 each - whilst you have been telling me that there was only one for £1,000.” the Respondent stated, “I understood that there was one but I cannot say if there were five, six, or seven. [Person B] has dealt with these”

- 32.9 As the Tribunal had found above, two invoices were submitted including by email on 22 and 28 November 2018. The suggestion that the Respondent “understood” that there was only one was false as she had submitted the invoices only a few days before her internal interview. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

In response to, “so how long did [Person D] work for the Council under Alfa Topco?” the Respondent stated, “It is my understanding that she worked the full two weeks.”

- 32.10 For the reasons already stated above, this was false, as Person D had not been placed with the Council. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

In response to “Is James Akin any relation of yours or your husband’s?” the Respondent stated, “No”.

32.11 As stated above, ‘James Akin’ was an invention and emails purporting to come from him were in fact from the Respondent’s husband. The Tribunal was satisfied on the balance of probabilities that what the Respondent had stated was untrue.

32.12 The Tribunal therefore found the factual basis of Allegation 1.2 proved.

Principle 2

32.13 The Respondent was required, as a solicitor, to answer the questions put to her as part of a fraud investigation truthfully and accurately. Instead, she had told a series of lies that had the potential to mislead the investigator and deflect attention from herself. The Tribunal was satisfied that this demonstrated a clear lack of integrity and it found the breach of Principle 2 proved on the balance of probabilities.

Principle 6

32.14 As with Allegation 1.1, the only logical conclusion was that the trust the public placed in the profession would be undermined by a solicitor seeking to mislead a fraud investigator. It found the breach of Principle 6 proved on the balance of probabilities.

Dishonesty

32.15 The Tribunal considered the Respondent’s state of knowledge at the time she gave the untrue answers.

32.16 The Tribunal noted that the events that were the subject of the interview had all taken place very recently, a matter of days and weeks previously. This was not, therefore, a case of forgetfulness or genuine mistake due to the passage of time. The Respondent had been directly involved in all of these matters and therefore had full knowledge of the truth of the situation. It therefore followed that the Respondent was aware that what she was telling the investigator was repeatedly untrue. The Respondent had accepted that she had told “lies” though she only specified those in relation to Person D. It was clear from the evidence, however, that she knew that all the matters particularised in Allegation 1.2 were false. The Respondent had referred to health issues in her Answer and witness statement but had provided no medical evidence of those or that would show that the health issues caused her to make false statements.

32.17 The Tribunal was satisfied on the balance of probabilities that the Respondent’s actions in telling these lies would be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty proved.

Previous Disciplinary Matters

33. There was no record of any previous findings at the Tribunal.

Mitigation

34. The Tribunal noted the points made in the Respondent's Answer and witness statement. The Respondent did not present any specific mitigation beyond that.

Sanction

35. The Tribunal had regard to the Guidance Note on Sanctions (December 2021). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
36. In assessing culpability, the Tribunal considered this case to involve a substantial breach of this trust. By submitting the two invoices for payment when the person who would receive payment was not properly registered with the Council, due to the Respondent failing to declare an interest, risked reputational damage to the Council.
37. The Respondent's actions were pre-mediated and repeated in that more than one invoice was submitted for payment. The Respondent's lies about the situation were prolonged. Although the misconduct was not particularly sophisticated, it was nevertheless planned.
38. The motivation for the misconduct was clearly financial gain on the part of Alfa Topco, the sole director of which was the Respondent's husband.
39. In assessing harm, as noted above, there was a risk of harm to the reputation of the Council and the potential risk of the financial loss of public funds had the invoices been paid. The reputation of the profession was seriously undermined by such conduct. The Respondent was an experienced solicitor in a position of significant responsibility and within a short period of time after joining the Council she had gone against all that she would have been taught by way of training.
40. The misconduct was aggravated by the fact that when challenged the Respondent offered multiple contradictory explanations that included blaming her line manager, lack of systems, lack of knowledge and poor health. The Tribunal rejected all of those explanations as none of them were supported by any evidence. The Respondent had demonstrated no insight into her conduct and insofar as there were admissions made in her correspondence with the SRA, these contained contradictions.
41. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:
- “34. there is harm to the public every time 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”.”
42. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation

of the profession demanded nothing less. The Tribunal had regard to Sharma and noted that the circumstances in which such a sanction was not imposed were exceptional, described in Sharma as “a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.

43. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

“First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”

44. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James. The Respondent had not advanced any such circumstances and the Tribunal identified none from the material before it. The only appropriate and proportionate sanction, therefore, was that the Respondent be struck off the Roll.

Costs

45. Ms Sheppard-Jones applied for costs in the sum of £23,550.00. Ms Sheppard-Jones submitted that this reflected a reasonable amount of work undertaken at the equivalent of a reasonable hourly rate, acknowledging that 10 hours could be deducted to reflect the hearing having taken one day rather than two.

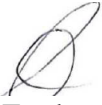
The Tribunal’s Decision

46. The Tribunal considered the Cost Schedule provided by the Applicant and it accept that the Applicant had to prepare the case to cater for the scenario in which the Respondent had chosen to attend.
47. It was right to make a modest reduction to reflect the reduced hearing time and it therefore assessed the costs at £22,000.
48. The Respondent’s personal financial statement was neither complete nor signed. It did not include details, for example, of the Respondent’s income. The Tribunal attached no weight at all to the personal financial statement and therefore found no basis to reduce the costs further. The Tribunal made an order for costs in the sum of £22,000.

Statement of Full Order

49. The Tribunal Ordered that the Respondent, OMOLARAMI AKINDIJI solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,000.00.

Dated this 15th day of March 2022
On behalf of the Tribunal

A handwritten signature in black ink, appearing to be 'B Forde', written in a cursive style.

B Forde
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
15 MAR 2022