# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12301-2022

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

DUNCAN PETER BURTWELL Respondent

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Before:

Ms T Cullen (in the chair)
Mr P Lewis
Mrs L McMahon-Hathway

Date of Hearing: 30 March 2022

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**Appearances**

There were no appearances as the matter was dealt with on the papers.

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# JUDGMENT ON AN AGREED OUTCOME

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**Allegations**

1. The allegations made against Mr Burtwell in a Rule 12 Statement dated 1 February 2022 were that whilst in practice as a solicitor at Scott-Moncreiff and Associates Ltd ("the Firm") he:

1.1 Between 19 June 2019 and 22 October 2019 failed to disclose to instructed counsel, the defendant and the court, a document ("the warrant") which was in his possession and which was relevant to proceedings where he was instructed on behalf of Client A and in doing so breached any or all of Principles 1, 2 and 6 of the SRA Principles 2011 ("the 2011 Principles") and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011 ("the 2011 Code of Conduct").

1.2 On 21 June 2019 signed a witness statement which was filed in court proceedings and served on the other party in litigation, which was misleading in that it omitted to mention the fact that the warrant was available evidence in his possession at that time and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles and failed to achieve Outcome 5.1 of the 2011 Code of Conduct.

1.3 On 29 November 2019 signed a witness statement which was filed in court proceedings and served on the other party in litigation, which was misleading in that it contained inaccurate statements as to his knowledge and possession of the warrant and in doing so breached any or all of Principles 1, 2, 4 and 5 of the SRA Principles 2019 and paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019.

1.4 In addition, allegations 1.1 and 1.2 were advanced on the basis that Mr Burtwell's conduct was dishonest.

**Admissions**

2. Mr Burtwell admitted all of the allegations including the aggravating feature of dishonesty.

**Documents**

3. The Tribunal considered all the documents contained within an electronic bundle prepared and agreed by the parties.

**Background**

4. Mr Burtwell was admitted to the Roll in 2004 and was a consultant solicitor at the Firm between 27 March 2017 and 16 March 2020. At the date of the Rule 12 Statement he had a practising certificate with conditions attached preventing him from acting as a manager or owner of an authorised body or from being a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) and allowing him to act as a solicitor only as an employee when the role had first been approved by the SRA.

5. The concerns arose following a self-referral dated 16 March 2020 which was followed by a report from the Firm dated 18 March 2020.

**Application for the matter to be resolved by way of Agreed Outcome**

6. The parties invited the Tribunal to deal with the Allegations in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

7. The proposed sanction was that Mr Burtwell be struck off the Roll of Solicitors.

**Findings of Fact and Law**

8. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to Mr Burtwell'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.

9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Burtwell's admissions were properly made.

10. The Tribunal considered the Guidance Note on Sanctions (9th Edition/December 2021). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

11. Mr Burtwell had admitted serious misconduct involving misleading the court and dishonesty which struck at the heart of what the public would expect of a solicitor, namely that they "*may be trusted to the ends of the earth*" as per Bolton v Law Society [1994] 1 WLR 512.

12. The allegations spanned a period of several months and the conduct was not momentary. The Tribunal did not consider that this case belonged to the narrow category where exceptional circumstances meant that a lesser sanction may be appropriate notwithstanding the finding of dishonesty. The parties had accepted this the Statement of Agreed Facts and Outcome.

13. The Tribunal found that the proposed sanction was appropriate, proportionate and in accordance with the Sanctions Guidance. The seriousness of the conduct and maintaining public confidence in the profession and its reputation required no lesser sanction than Mr Burtwell be removed from the Roll of Solicitors.

**Costs**

14. The parties agreed that Mr Burtwell should pay costs in the sum of £15,000. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered that Mr Burtwell pay costs in the agreed sum.

**Statement of Full Order**

15. The Tribunal ORDERED that the Respondent, DUNCAN PETER BURTWELL, 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 £15,000.

Dated this 8th day of April 2022
On behalf of the Tribunal

T Cullen
Chair

**Case No: 12301-2022**

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL**

**IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)**

**AND IN THE MATTER OF:**

**SOLICITORS REGULATION AUTHORITY LIMITED**

Applicant

and

**DUNCAN PETER BURTWELL**

Respondent

**(SRA ID 293324)**

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# STATEMENT OF AGREED FACTS AND OUTCOME

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## Introduction

1. By a statement made by Louise Culleton on behalf of the Solicitors Regulation Authority ("the SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 1 February 2022, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made Standard Directions on 3 February 2022. There is a substantive hearing listed for 4 – 5 May 2022

2. By his Answer dated 2 March 2022, the Respondent has admitted all of the allegations in the Rule 12 Statement.

## Admissions

3. The Respondent, Duncan Peter Burtwell, admits that, whilst practising as a solicitor at Scott-Moncrieff and Associates Ltd ("the Firm") (adopting the numbering of the allegations in the Rule 12 Statement):

    1.1. Between 19 June 2019 and 22 October 2019 failed to disclose to instructed counsel, the Defendant and the court, a document ("the warrant") which was in his possession and which was relevant to proceedings where he was instructed on behalf of Client A

and in doing so breached any or all of Principles 1, 2 and 6 of the SRA Principles 2011 ("the 2011 Principles") and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011 ("the 2011 Code of Conduct").

1.2. On 21 June 2019 signed a witness statement which was filed in court proceedings and served on the other party in litigation, which was misleading in that it omitted to mention the fact that the warrant was available evidence in his possession at that time and in doing so breached any or all of Principles 1, 2 and 6 of the 2011 Principles and failed to achieve Outcome 5.1 of the 2011 Code of Conduct.

1.3. On 29 November 2019 signed a witness statement which was filed in court proceedings and served on the other party in litigation, which was misleading in that it contained inaccurate statements as to his knowledge and possession of the warrant and in doing so breached any or all of Principles 1, 2, 4 and 5 of the SRA Principles 2019 and paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019.

2. In addition, allegations 1.1 and 1.2 are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

**Agreed Facts**

4. The following facts and matters, which are relied upon by the SRA in support of the allegations are agreed between the SRA and the Respondent.

*Professional Details and Background*

5. The case concerns issues arising from the conduct of the Respondent which came to light following a self-referral dated 16 March 2020 which was followed by a report from the Firm dated 18 March 2020.

6. The Respondent was admitted to the Roll in 2004 and was a consultant solicitor at the Firm between 27 March 2017 and 16 March 2020. He has a practising certificate with conditions attached preventing him from acting as a manager or owner of an authorised body or from being a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) and only allowing him to act as a solicitor only as an employee when the role has first been approved by the SRA. The Respondent has no previous regulatory history.

7. In summary, the self-referral from the Respondent reported a failure to disclose a document relevant to a court hearing. It further stated that he had used ambiguous

language in a subsequent statement made to the court when describing the chronology in respect of the document in question.

8. On 18 March 2020, the SRA received a report from the Firm in respect of concerns they had following an internal investigation in relation to a different matter. The Firm also indicated that they had discovered that the Respondent had misled the court with a false witness statement in June 2019 (the subject of the Respondent's self-referral). The witness statement claimed that a certain piece of evidence in a case was not in his possession when, in fact, it was.

9. The Report from the Firm stated that the Respondent had admitted to his supervisor in an email of 18 February 2020 that he had filed the misleading witness statement on purpose.

10. In a further email dated 6 May 2020, in response to questions posed by the Investigation Officer of the SRA, the Respondent stated that he did not accept any breach of the Code of Conduct and that he had made the self-referral out of "an abundance of caution". He stated that in relation to the statement referred to, he believed it to be correct at the time of making it.

11. An investigation was then commenced by the SRA and evidence obtained. In response to the Notice dated 12 August 2021, the Respondent submitted representations dated 23 August 2021 where admissions were made to the allegations involving the misleading witness statements on the Client A matter, including that such conduct was dishonest.

*The facts and matters relied upon in support of the allegations*

*Allegations 1.1, 1.2 and 1.3 - The failure to disclose to instructed counsel, the defence and the court, the warrant which was in the Respondent's possession and which was relevant to the proceedings for Client A and providing misleading statements to the court dated 21 June and 29 November 2019.*

12. Between April 2017 and February 2020, the Respondent acted for Client A in respect of a claim against Hampshire Constabulary for injuries sustained during the execution of a warrant at Client A's home on 8 February 2017.

13. A warrant had been issued by Basingstoke Magistrates Court for police and mental health professionals to attend Client A's home and, if appropriate, detain him ("the warrant"). A copy of the warrant was required to assist with the claim and was relevant to establish if the warrant was executed lawfully.

14. Client A's sister, Person B, was the point of contact for Client A and she appears to have handled the claim on his behalf.

15. As early as 28 June 2017, Person B informed the Respondent that she had found a copy of the warrant at her brother's home folded in half on his doormat at the front door. There were also further communications between the Respondent and Person B about the warrant in June 2017.

16. Subsequently, on 15 May 2019, the Respondent emailed Person B asking if she had a copy of the warrant. She replied on 16 May 2019 in the affirmative and the Respondent replied on the same date asking her to send a copy of whatever she had regarding the warrant.

17. On 12 June 2019, the Respondent emailed Person B again about the warrant, stating that the wording of the warrant was very important due to an upcoming court hearing on 1 July 2019 and he asked her to make efforts to find the warrant and send it to him as soon as possible.

18. Person B replied on 17 June 2019 saying that she had a copy of the warrant and would send it and the Respondent replied asking her to email it as soon as possible. Person B sent the warrant in the post to the London office of the Firm marked for the attention of the Respondent. She had made a copy of the warrant which she kept.

19. There is also a file note made by the Respondent of a telephone call on 18 June 2019 indicating that Person B had located the copy of the warrant and that it was '*in the post next day delivery*' with commentary about the timing of the warrant.

20. On 19 June 2019 the Respondent received an email from Person C, a member of office staff at the Firm. Attached to the email was a scanned copy of the warrant that had been received into the Firm by post.

21. It is therefore clear that by 19 June 2019, the Respondent was in possession of the warrant, which he has subsequently admitted.

22. Indeed, in emails between the Respondent and Person C on 19 June 2019, the Respondent asked Person C - '*Please can you re-scan just the warrant and try for maximum contrast/legibility? Thanks*'.

23. On 21 June 2019 at 13.15, Person B sent an email to the Respondent which again described how she found the warrant on the floor of her brother's address and included further details.

24. At 16.22 on 21 June 2019, the Respondent sent an email to Ms Hill QC and Mr Wagner, counsel instructed in the matter, to advise that he had received a response from Person

B. The email was largely a cut and paste of Person B's email of earlier that day, but with certain parts of Person B's email excluded, including a pertinent paragraph indicating details from the warrant:

> *'This means they timed the warrant for when they closed the cage door as it is timed 3.25 pm and it was when he was in the cage that they posted it through the door. I found it on the floor'*.

25. On that same date of 21 June 2019, the Respondent signed a statement which was prepared for the forthcoming hearing on 1 July 2019 and is the subject of Allegation 1.2, but is relevant here for the simple fact, as alleged at 1.2, that in that statement the Respondent omitted to mention that the warrant was in his possession.

26. Instead, the Respondent stated under a heading of '*The warrant*' that '*The existence of a warrant does not preclude the Defendant from liability unless the Defendant can show that the warrant was executed lawfully. Firstly, therefore it is for the Defendant to prove that the actions of its officers were within the terms of the warrant. It is noted that the Defendant is not in possession of any copy of the warrant and can only surmise its content*'. Later in the statement, the Respondent states - '*The Court will also need to hear the evidence of the Claimant's sister… as to the circumstances in which she later found a copy of the warrant'*.

27. This indicates the relevance and significance of the warrant and why it was important for the parties to be able to know the contents of the warrant, the absence of which was being relied upon by the Respondent on the Claimant's behalf. Further, Ms Hill QC explains in her witness statement that she had not initially relied on the apparent absence of the warrant in the original Particulars of Claim that she had drafted, but it was the Respondent's statement that relied on the absence of the warrant, and which effectively brought the issue of the apparent absence of the warrant into the proceedings for the first time. This was then relied on by Mr Wagner in his skeleton argument and Ms Hill QC explains that the submission that was made by Mr Wagner that the Defendant had not produced the warrant and could not therefore show that there was a lawful power to detain, could not properly have been made if in fact the Claimant's counsel team had been in possession of the warrant.

28. The impression left by the 21 June 2019 statement is that the warrant – at that stage – was not available, otherwise it should have been disclosed, and its absence could not have been relied upon on behalf of the Claimant. The Respondent's statement of 21 June 2019 was inaccurate and misleading because he actively omitted to state that at this date the warrant had been located; the warrant was in his possession; and it was available evidence to the court.

29. In response to the SRA's Notice, the Respondent stated in respect of the warrant and withholding/not disclosing it:-

> *"I deliberately did not raise the issue with Counsel, because I wanted to protect Counsel from being required to disclose the existence of a copy of the warrant, if directly asked about it at the hearing. I believe that this belief may be a hangover from my background as a criminal defence solicitor where I picked up the idea that the solicitor acts as gate-keeper towards Counsel.*
>
> *On the morning of the application hearing, I recall that Counsel emailed over to me his proposed Skeleton argument. I recall noting that Counsel proposed to rely on the Defendant not being in possession of the warrant significantly more than I had anticipated. This was further referred to in a follow-up phone call, where my recollection is that he said effectively that this was our strongest point. This caused me significant misgivings and I remember panicking somewhat when speaking to Counsel. I recall at this point feeling the childish wish that we did not get "caught" on this issue, and that once we were through the hearing we could move on with correcting the position. On reflection, obviously at this point I should have disclosed to Counsel that we now had the warrant. My response however, was weak, not wishing to put Counsel under pressure at the last minute by requiring him to fundamentally revise how he proposed to defend the application. This was a ridiculous position to adopt of course and once again displays inadequate thought-processes at the time as well as doing Counsel's skill a disservice. It also evidences weakness of mine in being unwilling to back out of a situation the severity and foolishness of which I was slowly beginning to dawn on me."*

30. Thus a further opportunity had presented itself to the Respondent, upon receipt of Mr Wagner's Skeleton Argument on 1 July 2019, when he could and should have mentioned to Mr Wagner that he, in fact, had the warrant and could have provided it to counsel for their advice on disclosure, at a minimum, and yet he failed to do so.

31. As a result, the hearing on 1 July 2019 at Basingstoke County Court before District Judge Nichols, proceeded on the basis that the warrant was not available in evidence and this is indeed what was summarised as the Claimant's position by DJ Nichols in his judgment of 17 July 2019, where he stated: *'The Defendant must show that its actions were within the terms of the warrant and they cannot do that because it is not available in evidence'.* At paragraph 28, DJ Nichols went on to say:-

> *"It is not in issue that the claimant was detained (imprisonment). Indeed the claimant accepts that there was a warrant, even though the terms of the warrant are not admitted. The particulars of claim do not specifically put the defendant to proof of the terms of the warrant, but to my mind it is clear from the fact that there is a claim for*

*false imprisonment that the terms of the warrant are required to be proved. Mr* [redacted] *submitted that this an issue which will be decided on a balance of probabilities. That that is so could be said to justify dismissal of the application without further ado."*

32. This demonstrates the significance of the apparent absence of the warrant, in circumstances where the Respondent had possession of a copy, and perhaps particularly so when the Defendant appeared to be under the impression that a copy of the warrant was no longer available and were unaware that a copy of the warrant had been posted through the door.

33. There were further communications about the warrant in August and September 2019 between the Respondent and Person B and the circumstances of the warrant having been posted through her brother's door.

34. Between 11 to 14 October 2019, the Respondent, Mr Wagner and Ms Hill QC communicated by email about the prospects of Client A's claim. The non-existence of the warrant is discussed in these emails by Mr Wagner:

*"I think our strongest argument is that the onus is on the Defendant to prove the detention was lawful. The police have been unable to disclose the warrant purportedly made under s.135. If there was no warrant, or the warrant was defective, or the warrant was executed unlawfully, there was no lawful authority to detain, in which case there was a false imprisonment. For the purposes of the strike out, it is at least arguable that without being able to conclude there was a warrant and if so, what it said, it is not possible to safely conclude there was no false imprisonment as the court cannot reach a conclusion on the content or execution of the warrant."*

35. On 15 October 2019, at 09:41 Person B received an email from the Respondent saying that he could not locate the warrant and asking for it to be resent. At 10.06 the Respondent then emailed Mr Wagner and Ms Hill QC stating: *'Just to note that the warrant has in fact been located. I am waiting for a copy of it but understand that the wording is as you would expect'.* Person B sent a scanned copy of the warrant by email at 17:44. At 10.20, Ms Hill QC replied to the Respondent stating, *'Noted re the warrant, which does not help - I think if we have come into possession of it we are duty bound to disclose*'.

36. Given what is set out above, this was entirely inaccurate as the Respondent had already received the warrant by 19 June 2019 and had clearly viewed it and was aware of its contents both from the document itself and the detailed emails from Person B.

37. It was then only on 22 October 2019, at 09.54, that the Respondent emailed Ms Hill QC and Mr Wagner, attaching a copy of the warrant and stating: *'H I [sic] note that you are clear that we are obliged to disclose this now?'* At 10.17, Mr Wagner responds in the affirmative. At 19.42, Ms Hill QC emails the Respondent and Mr Wagner, saying: *'Agreed – and can I ask how we have this now? Did our client find it at home?'* On 23 October 2019, the Respondent responded, not answering the question directly, stating *'[Person B] has said all along that she was confident that she had it somewhere am not sure if was at [Client A's] home or at hers'*.

38. On the 22 October 2019, the Respondent also sent an email attaching a copy of the warrant to the Defendant, Hampshire Constabulary, stating *'We now have a copy of the warrant, which has been located by our client…'*.

39. It is clear from the above chronology that the Respondent:

    39.1. had withheld, and not disclosed to the relevant parties, the warrant when it came into his possession on 19 June 2019, or shortly thereafter;
    39.2. omitted to mention it in his witness statement dated 21 June 2019;
    39.3. failed to correct the impression that he did not have the warrant subsequently despite Mr Wagner's skeleton argument which he was provided with on 1 July 2019 before the hearing, where its relevance was made clear and emphasis was placed on it;
    39.4. further to that, following DJ Nichols' judgment and during further communications with counsel, where the warrant was referred to, still failed to mention that he had the warrant until October 2019;
    39.5. made out as if it had only just been located by Person B and received by him in emails to Counsel on 15 and 22 October 2019 and the Defendant on 22 October 2019, when he informs them that he had the warrant. This was again misleading as to the reality of it having been in his possession since 19 June 2019.

40. Ms Hill QC, in her statement, confirms that she was not aware that the Respondent had a copy of the warrant until on or shortly before 22 October 2019.

41. As part of the proceedings, the Respondent then provided a signed statement of truth dated 29 November 2019 in support of an application to amend the Particulars of Claim. In this statement, the Respondent claimed that the copy of the warrant had recently been located and provided by the Claimant. At paragraph 19, the Respondent stated that at the time of the strike out application being heard, 1 July 2019, that this warrant was not available. The Respondent also stated that the application was being made in good time following the Claimant providing him with a copy of the warrant on 22 October 2019.

42. For the reasons set out above, that was entirely untrue and misleading.

43. On 3 September 2020, judgment was handed down by HHJ Parkes QC, sitting at Winchester County Court. The hearing was an appeal by the Defendant (Chief Constable of Hampshire Constabulary) against the decision of DJ Nichols at the hearing on 1 July 2019 to dismiss the Defendant's application for summary judgment. The judgment refers to the Respondent's witness statements dated 21 June 2019 and 29 November 2019 and sets out that it appears that the Respondent did have a copy of the warrant before the hearing on 1 July 2019 and had not disclosed it to the court or his counsel Mr Wagner. HHJ Parkes states: '*These facts raise very serious questions as to whether the court may have been misled by [the Respondent], both at the 1 July hearing (by implied representation that he did not have a copy when in fact he had, and by withholding a document of the highest relevance) and in the statement made on 29 November'.*

*Subsequent communications/admissions to the Respondent's supervisor*

44. On 14 and 15 February 2020, on the Respondent's request to discuss Client A's matter with Person D, his supervisor at the Firm, the Respondent in telephone calls with Person D indicated that he had not disclosed the warrant at the strike out hearing in July 2019, despite being aware that Person B had a copy of the warrant and therefore that the warrant was not disclosed to the Defendant until October 2019, after the hearing. In a file note Person D noted the following:-

> *"Therefore, the Defendant, the court and our counsel were not aware that the client/Duncan had a copy of the warrant.*
>
> *DB advised that the Defendant made an application to strike out the false imprisonment element of the claim on the basis that the warrant gave the power to enter the client's property and detain him under the mental health act. DB advised that all parties accepted that the police obtained a warrant via the NHS Trust who had made the application to the court for the warrant.*
>
> *The issue was not whether a warrant existed but the contents of the warrant. It appeared to be generally accepted by all parties including the judge hearing the application that the warrant probably took the form of the pro forma usually used by NHS Trusts.*
>
> *Neither the police nor the NHS Trust retained a copy of the warrant hence its absence was an issue generally and particularly in respect of the Defendant's strikeout application.*
>
> *Duncan advised, that following his service of the disclosure of the warrant in October 2019 the Defendant (inevitably) raised this as an issue when responding to the client's*

*application to amend the particulars of claim to include a new allegation of defective service of the warrant as captured by police body worn cameras.*

*….*

*DB admitted that his approach might well have been a criminal defence approach (DB is a former criminal defence solicitor) rather than a civil litigation approach, which requires full and frank disclosure of such evidence at the very earliest opportunity.*

*I advised DB that as soon as the client advised that she had a copy of the warrant, even before receiving it from the client, DB was under a duty to notify the Defendant, Counsel (Adam Wagner) and most importantly the court, as DB's primary duty is to the court.*

*I said that the duty to disclose starts with the pre-action protocol provisions in respect of the letter of claim of the letter of response and once proceedings have been issued and served the court's jurisdiction (green light) commences and the duty to the court includes a duty to make such disclosure under the circumstances ahead of such a hearing, irrespective of any direction for disclosure under Part 31"*.

45. On 18 February 2020, at 09.58, the Respondent emailed Person D and attached a draft statement. Within this draft statement, the Respondent on behalf of the Claimant rejected '*any insinuation that he had the warrant and withheld it from the Court and the Defendant for the purposes of some perceived litigation advantage*'. His statement goes on to:

    45.1. state that Person B had informed him that she had posted the warrant to his offices on 18 June 2019; but that despite this, he was not aware of the offices' receipt of the warrant and formed the view that it was lost;
    45.2. provide an explanation of the Firm's procedure when receiving physical post. He states that all post is scanned and emailed to the relevant fee earner before the hard copy post is sent.
    45.3. state that he had been unable to locate a copy of an email with a scan of the warrant attached.
    45.4. state that the warrant may have been sent to a previous office of the Firm.
    45.5. state that at the time of the strike out hearing on 1 July 2019 he believed that the warrant had been lost. He confirms that he did not make the parties aware of these developments as he felt it was immaterial as no copy was available to assist the court.
    45.6. state that following enquiries he had searched the file and discovered that the warrant had in fact been unwittingly withheld by him since 18 June 2019.

46. On 18 February 2020 at 13.41, the Respondent sent a further draft witness statement to Person D. In his email the Respondent stated that he had re-drafted the statement and

that he had "*retrieved the scan of the warrant from back in June so must have had it all along and I have to admit that I did consciously withhold it. I feel sick just thinking about it*". In this statement, the Respondent confirms that Person B had provided a copy of the warrant on 18 June 2019 and that he ought to have disclosed the warrant immediately but did not. He states that he had formed the view, wrongly, that the Defendant's application was weak and it was not his duty to strengthen their application contrary to his own client's interests. He further seeks to explain that the misapprehension of his duties might in part be explained by his background as a criminal defence solicitor but ultimately accepts that he was fundamentally wrong about this.

47. In a meeting held with Person D, Person E (Practice Director) and Person F (Managing Director) on 6 March 2020, the Respondent confirmed that he had not advised counsel before the July hearing that he was in fact in possession of the warrant. He also confirmed that when he received counsel's Skeleton Argument ahead of the hearing, which referred to the absence of the warrant, he should have informed counsel at that stage that he had the warrant. The following is also noted:-

> "*DB said that at the time of providing his witness statement to the court in advance of the hearing in July 2019 he genuinely believed that he did not have a copy of the warrant.*
>
> *In response Person E referred to DB's email to Person D of 18.02.2020 in which DB admits that he did "consciously withhold it.*"

48. The Respondent in his first draft witness statement on 18 February 2020 and in the meeting on 6 March 2020 thus appears to have been seeking to minimise his wrongdoing and attempting to justify or explain away his failure to disclose the warrant and the misleading statement provided to court in respect of the warrant. This is in despite the chronology – and his own admissions as set out below clearly showing the reality of his knowledge and possession of the warrant and the active and conscious decision to not disclose it and withhold it from relevant parties and the court.

*The Respondent's response to the SRA*

49. In his response following the Notice of 12 August 2021, the Respondent indicated admissions to having given witness statements to the court dated 21 June and 29 November 2019, which were misleading. The alleged breaches of the Principles and Outcomes were also admitted as was dishonesty in respect of his conduct as alleged on the Client A matter. The Respondent indicates that he fully accepts responsibility for his dishonesty and misconduct and then seeks to set out an explanation. The Respondent appears to have been personally aggrieved at the conduct of the other side in the course of the litigation, he appears to have lost objectivity having become frustrated at their tactics

and by the fact that the court was sympathetic to the Defendant and the Defendant's tactics which he was not impressed by.

50. Fairly full excerpts of the Respondent's response are set out here as an insight into his state of mind position in respect of the allegations:

    50.1. *The fateful decisions made by me at this point were made in haste [the listing of 1 July 2019 was originally for a CCMH but the Defendant filed an application for strike out judgement of Client A's claim and the listing of this application therefore arose artificially quickly and left me with little time to prepare]*.

    50.2. *The content of the warrant had no relevance to the argument, which was at a conceptual level. The warrant has assumed massive importance in the issue of my misconduct, but so far as the application itself was concerned, its existence or otherwise, at this point, I considered to be a minor point* .

    50.3. *Upon considering the Defendant's application I prepared an 11 page statement in response. In that statement in one observation I noted that the Defendant was not actually in possession of a copy of the warrant, which was a true statement. However, I accept that the statement is misleading because I failed to mention that we were in possession of a copy*.

    50.4. *Upon sight of the warrant, I unfortunately decided that I was not going to disclose it to the Defendant for the purposes of the hearing. I suspect this response was partly informed by the Defendant's attitude and conduct of the claim so far… I viewed the Defendant's conduct as being obstructive and designed to ratchet up costs to the point where my client's funding would be withdrawn and we would not be able to continue with the claim. I decided that my usual conciliatory and constructive approach to litigation was not an effective response to the way that the Defendant was conducting its defence and I decided therefore that I needed to act against my own instincts in standing up for my client*.

    50.5. *Withholding the warrant at this point was intended to be a temporary measure solely for the purposes of the hearing. In retrospect, this was wrong; it was inevitably going to be discovered*.

    50.6. *I recognised though that I certainly was bound not to mislead the court, and therefore that in disclosing it to the court I would have to disclose it to the Defendant. I decided to withhold the warrant, which I believed (but possibly did not know for certain) meant that I was misleading the court and thereby acting dishonestly*.

    50.7. *In the mid-afternoon of the working day before the hearing the Defendant served a skeleton argument for the hearing. I noted that the Defendant's argument was premised on the warrant being presumed lost. Again, for the purposes of the application, I did not consider that the Defendant's skeleton argument required me to disclose the warrant to the Defendant. However, clearly the pleading rendered my failure to mention the existence of the warrant doubly misleading*.

50.8. *Obviously I was aware of my overriding duty not to mislead the court. I considered that it was not misleading to point out that the Defendant was not in possession of the warrant and I hood-winked myself into thinking that my position was legitimate and that you cannot lie by omission, which in reality is what I was doing. While of course I accept that the statement is dishonest, I also consider that factors at play in my decision were that my thought processes were muddled* .

50.9. *I deliberately did not raise the issue with Counsel, because I wanted to protect Counsel from being required to disclose the existence of a copy of the warrant, if directly asked about it at the hearing. I believe that this belief may be a hangover from my background as a criminal defence solicitor where I picked up the idea that the solicitor acts as gate-keeper towards Counsel*.

50.10. *On the morning of the application hearing, I recall that Counsel emailed over to me his proposed Skeleton argument. I recall noting that Counsel proposed to rely on the Defendant not being in possession of the warrant significantly more than I had anticipated. This was further referred to in a follow-up phone call, where my recollection is that he said effectively that this was our strongest point. This caused me significant misgivings and I remember panicking somewhat when speaking to Counsel. I recall at this point feeling the childish wish that we did not get "caught" on this issue, and that once we were through the hearing we could move on with correcting the position*.

50.11. *On reflection, obviously at this point I should have disclosed to Counsel that we now had the warrant. My response however, was weak, not wishing to put Counsel under pressure at the last minute by requiring him to fundamentally revise how he proposed to defend the application. This was a ridiculous position to adopt of course and once again displays inadequate thought-processes at the time as well as doing Counsel's skill a disservice. It also evidences weakness of mine in being unwilling to back out of a situation the severity and foolishness of which I was slowly beginning to dawn on me. I was not at the hearing and in fact went away on holiday the next day for the next month*.

50.12. *Judgement [sic] was delivered on 18th August 2019. On reading the judgement [sic] I saw that the District Judge had formed the view that the absence of the warrant alone was arguably enough for the rejection of the Defendant's application, (albeit that the District Judge proceeded to respond to the legal arguments made before refusing the application) and I realised that my failure to disclose the warrant was a significantly more serious matter than I had allowed myself to think previously.*

51. In explaining the two drafts of the statement he prepared once he had raised the issue with Person D, the Respondent describes it in the following terms:

*"This was 8 months after the event and I had become muddled in my recollections as I struggled with reality and the mis-recollection of events that my guilty conscience*

*had created for me. The first draft contains my mistaken belief that the warrant as originally sent by [redacted] had been lost. The second draft was prepared following enquiries I had made with Person C who worked in the Scott Moncrieff office. He was able to confirm for me that I had definitely been in possession of the warrant back in June 2019 and forwarded me the relevant email. I recall to this day the physical sensation of my jaw dropping when I read the email from him telling me this. I then immediately re-drafted the statement admitting my misconduct."*

52. In relation to the statement of 29 November 2019, the Respondent states:

*"This was an application to amend the Particulars of Claim, which came about in circumstances that I referred to earlier and which was made in response to the Defendant's decision to appeal the judgement. As referred to previously, in my own mind, the prospects of the claim largely depended upon the success of this application. I am not at all sure that it was necessary for the purpose of the application to have sought to mislead the court as to the date when I came to knowledge / possession of the warrant. Nevertheless, that is what I did. As described in my self-referral to the SRA, I used "ambiguous" language in the statement supporting this application. I hoped that the term "recently" was sufficiently vague that it was capable of referring to the original date of 18th June when the warrant came into my possession as well as 22nd October 2019. The reference to the warrant not previously being "available" in my own mind was capable of referring to the fact that while I certainly knew of the existence of the warrant, I half-believed that I had not physically been in possession of it at the time. While it is correct that in fact, I had been in possession of the warrant in June, when making the statement, I was not sure of this and deliberately made no effort to verify the position either way. The statement contained an attempt to mislead the court and is dishonest. My own view is that I was reckless as to whether the statement was true or not and in proceeding to adduce the statement notwithstanding, I was acting recklessly and in bad faith. This lack of certainty suited my guilty conscience and may represent further self deception on my part. I accept of course that regardless of the dishonesty of the statement, it is wholly improper to adopt such a cavalier attitude to statements adduced in court."*

**Mitigation**

53. The following points are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

53.1. The Respondent fully accepts responsibility for his dishonesty and misconduct. His mitigation provided does not minimise his culpability, but to assist the decision maker's understanding of how and why he acted.

53.2. His client's claim was becoming frustrated by the Defendant's litigation tactics which was causing delays in the progression of the claim and causing his client to incur further costs and these were becoming disproportionate. His client was publicly

funded and the Respondent was becoming concerned that at some point the Legal Aid Agency were going to refuse to allow any further costs to be incurred, at which point his client's claim would be in jeopardy.

53.3. The Court listed the Claimant's claim for CCMH for 1 July 2019, to which the Defendant filed an application for a strike out of the Claimant's claim for false imprisonment and requested that the CCMH of 1 July 2019 be used to consider the application. The Respondent submits that therefore, the existence of the warrant was of minor importance in relation to the Defendant's legal argument.

53.4. The Respondent's failure to disclose the existence of the warrant in his 11-page witness statement, for the 1 July 2019 hearing, was partly informed by the Defendant's attitude and conduct in the claim so far. The Respondent decided that his usual conciliatory and constructive approach to litigation was not an effective response to the way that the Defendant was conducting its defence and he decided therefore that he needed to act against his own instincts in standing up for his client.

53.5. The Respondent acknowledges that his own knowledge and understanding, as to whether or not he was obliged to disclose the warrant to the court and Defendant, was inadequate and confused and his decision was made in haste. However, at the time he was preparing for 1 July 2019 hearing the warrant was not of primary significance and was at the back of his mind.

53.6. When the Respondent saw the Deference's skeleton argument he hood-winked himself into thinking that his position, to withhold the existence of the warrant, was legitimate and that you cannot lie by omission, which in reality this was what he was doing.

53.7. He considered obtaining supervision on the correct course of action and discounted this because he needed to act quickly to respond to the Defendant's application and he had no confidence that he would be able to obtain the necessary supervision in time. He describes his relationship with his supervisor as "dysfunctional".

53.8. He did not raise the issue with Counsel, because he wanted to protect Counsel from being required to disclose the existence of a copy of the warrant. The Respondent believes that this stems from him practice in criminal defence where the solicitor acts as "gate-keeper" towards Counsel.

53.9. When he received Counsel's skeleton, on the morning of the hearing, he recalls that he did not wish to get "caught" on issue of the existence of the warrant and thought that he could correct the position after the hearing. He acknowledges that this was an inadequate thought-process and it was a "ridiculous position" to adopt.

53.10. The hearing was held in the Claimant's favour and the Defendant obtained permission to appeal the decision, the Respondent therefore decided that any action, to disclose the warrant would be academic.

53.11. The Respondent's working circumstances at the relevant time were working remotely and relying on office staff to scan incoming post and email it to him to file and then post him the hard copy. The Respondent acknowledges that he had an

extensive amount of outstanding filing and therefore he was unable to locate the hard copy warrant even if he did receive it in the post.

53.12. The Respondent lacked formal training to deal with disclosure obligations. He spent 2004 to 2009 as a criminal defence solicitor and when he moved to civil actions against the police he became effectively a "self-taught civil litigator". He was lacking of formal supervision, which was "laissez-faire" style. His Firm was virtual where everyone works remotely and therefore no one at the firm knew him as a person and therefore would not have noted whether he appeared to be struggling with his caseload and decision-making. He emigrated from London to the Republic of Ireland in 2013 with his partner and three children, due to economic reasons. Since his move to the Firm in 2017 he was also a de facto sole carer of his children until his partner finished their full-time studies in September/October 2019. He was not a natural carer and he found it difficult, due to his isolation (from his own family and professionally) in retrospect he considers it likely that he was depressed as he was struggling professionally, socially and personally.

**Agreed Outcome**

54. The Respondent admits all of the above allegations and agrees:

54.1. To be struck off the Roll of Solicitors;

54.2. To pay costs to the SRA agreed in the sum of **£15,000.00**

**Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance**

55. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanctions" (9th edition), states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see* ***Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)****)*."

56. In **Sharma [2010] EWHC 2022 (Admin) at [13]** Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

> *"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll … That is the normal and necessary penalty in cases of dishonesty…*
>
> *(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances …*
>
> *(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary … or over a lengthy period of time … whether*

*it was a benefit to the solicitor … and whether it had an adverse effect on others…"*

57. The Applicant has considered the relevant factors, including the nature, scope and extent of the dishonesty itself, whether it was momentary or over a lengthy period of time, whether it was a benefit to the solicitor and whether it had an adverse effect on others. In this regard it is submitted that:

    57.1. The Respondent was fully culpable for the conduct. The Respondent had an obligation to the court, to the Defendant and to counsel instructed on his client's behalf to furnish them with the full information, to disclose the warrant and certainly not to mislead them by act or omission as to his knowledge and possession of the warrant. He signed statements of truth to witness statements to the court which either gave the impression that the document was not in his possession or sought to make out that he had only received it at a much later date than he in fact had received it.

    57.2. The Respondent knew he had a continuing duty to disclose the warrant and throughout his response to the Notice indicates times where he had to reason with himself whether he should disclose the warrant or not.

    57.3. To allow the court, the Defendant and counsel, instructed on behalf of Client A, to be under a misapprehension as to the existence or whereabouts of the warrant first of all led to certain legal arguments being pursued which would not have been had the warrant been disclosed as it should have been. The fact that the warrant was in his possession was actively and consciously withheld by the Respondent from the court, the Defendant and counsel who were all therefore working on the basis that no warrant existed/that no one had possession of it at the time, when the Respondent knew this was not the case.

    57.4. Furthermore, it led to a Judge making certain rulings as a result, which would not have been the case had the warrant been available at that time.

    57.5. Ordinary decent people would consider the Respondent's conduct to be dishonest.

58. The Respondent admits that his conduct was dishonest and does not assert that exceptional circumstances which might justify a departure from the inevitable consequence of striking off arise in this case.

59. The Applicant considers that, in the context of the admitted misconduct, an immediate strike-off is the only appropriate sanction and will have an appropriate effect on public confidence in the legal profession and adequately reflects serious misconduct. The Parties consider that, in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest. These were serious acts of dishonesty and the case plainly does not fall within the small residual category where striking off would be a disproportionate outcome. Accordingly, the fair and proportionate outcome in this case is for the Respondent to be struck off the Roll of Solicitors.

Signed:

**Louise Culleton, Barrister, Capsticks LLP**

**On behalf of the Solicitors Regulation Authority**

**Date: 28 March 2022**

Signed

(DUNCAN PETER BURTWELL)

Date: 25.3.22