SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12316-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

ISIDORE IKECHUKWU CHUKWUDOLUE Respondent

Before:

Mr E Nally (in the chair)
Ms H Appleby
Dr S Bown

Date of Hearing: 15 May 2023

Appearances

Michael Collis, counsel in the employ of Capsticks LLP, 1 St Georges Road, London SW19 4DR for the Applicant.

Hugh O'Donoghue counsel of Mountford Chambers, 13 Ely Place London EC1N 6RY for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Chukwudolue by the Solicitors Regulation Authority Limited ("SRA") were that while in practice at Moorehouse Solicitors ("the Firm"), he:

1.1. Between July 2017 and September 2018, failed to submit Client A's claim to the Employment Tribunal, contrary to her instructions and in doing so breached all or any of Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and Outcome 1.2 of the SRA Code of Conduct 2011 ("the Code").

1.2 Between August 2017 and April 2018, sent the following false and/or misleading messages to Client A:

(a) "No. But I'm putting in the application to the Employment Tribunal next week";

(b) "Yes. Will let you know when I hear from the Tribunal"; and

(c) "The position with your case is that I am still waiting to hear from the Employment Tribunal. I have called them several times and was told that they have an immense backlog due to the fact that they are flooded with many cases."

and in doing so breached all or any of Principles 2, 4, 5 and 6 of the Principles.

1.3. On or around 24 January 2019, submitted, or caused to be submitted, a claim form to the Employment Tribunal, on behalf of Client A, despite no longer being instructed by Client A and in doing so breached all or any of Principles 2 and 6 of the Principles.

1.4. On 8 November 2019, submitted, or caused to be submitted, false and/or misleading documents to the SRA, namely:

(a) A Client Care letter/letter of engagement dated 11 July 2017;

(b) A typed Attendance Note dated 11 July 2017;

(c) A handwritten Attendance Note dated 11 July 2017;

(d) A handwritten Attendance Note dated 13 October 2017;

(e) A typed Attendance Note dated 7 January 2019; and/or

(f) A typed Attendance Note dated 17 January 2019

and in doing so breached all or any of Principles 2, 6 and 7 of the Principles.

2. In addition, allegations 1.2, 1.3 and 1.4 above were advanced on the basis that Mr Chukwudolue's conduct was dishonest. Dishonesty was alleged as an aggravating feature of his misconduct but proof of dishonesty was not required to establish the allegations or any of their particulars.

Executive Summary

3. Mr Chukwudolue admitted all of the allegations he faced, including that his conduct had been dishonest as alleged. The Tribunal found all the allegations proved including that his conduct had been dishonest, save allegation 1.2(a). The Tribunal's findings can be accessed here:

- Allegation 1.1
- Allegation 1.2
- Allegation 1.3
- Allegation 1.4

Sanction

4 The Tribunal determined that given the serious nature of the misconduct the appropriate and proportionate sanction was to strike Mr Chukwudolue off the Roll of Solicitors. The Tribunal's sanction and its reasoning on sanction can be found here:

- Sanction

Documents

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

- Rule 12 Statement and Exhibit LF1 dated 16 March 2022
- Respondent's Answer and Exhibits dated 2 May 2022 (as amended on 23 May 2022)
- Applicant's Reply dated 6 May 2022
- Applicant's Skeleton Argument dated 10 May 2023
- Respondent's Skeleton Argument dated 7 May 2023
- Applicant's Schedule of Costs dated 4 May 2023

Preliminary Matter

6. Mr Collis applied for Client A to be anonymised in the proceedings and in the final Judgment. The Applicant had considered the approach to be taken following the decision in Lu v SRA [2022] EWHC 1729 (Admin). The Applicant considered that the findings in Lu did not alter the longstanding position that clients should be anonymised in order to protect the confidential relationship between a solicitor and their client, as there were no clients in Lu. Further, there were personal details that related to Client A's health that were relevant to the allegations and the Tribunal's deliberations.

7. Mr O'Donoghue confirmed that there was no objection to the anonymisation of Client A.

8. Client A was not attending to give evidence as she was no longer required for cross-examination by Mr Chukwudolue. The Tribunal agreed that as Client A was a client of Mr Chukwudolue, her position could be distinguished from the position of those who had been anonymised in Lu. The Tribunal determined that in all the circumstances, it was appropriate to anonymise Client A in these proceedings. Accordingly, the application for the anonymity of Client A was granted.

Factual Background

9. Mr Chukwudolue was a solicitor, having been admitted to the Roll in June 2008. At the material time, he was employed by the Firm.

Witnesses

10. No witnesses provided oral evidence during the proceedings. The written evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

11. The Applicant was required 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 Mr Chukwudolue'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.

Dishonesty

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

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

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

Integrity

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

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

15. **Allegation 1.1 - Between July 2017 and September 2018, failed to submit Client A's claim to the Employment Tribunal, contrary to her instructions and in doing so breached all or any of Principles 4, 5 and 6 of the Principles and Outcome 1.2 of the Code.**

Allegation 1.2 - Between August 2017 and April 2018, sent the following false and/or misleading messages to Client A: (a) "No. But I'm putting in the application to the Employment Tribunal next week"; (b) "Yes. Will let you know when I hear from the Tribunal"; and (c) "The position with your case is that I am still waiting to hear from the Employment Tribunal. I have called them several times and was told that they have an immense backlog due to the fact that they are flooded with many cases"; and in doing so breached all or any of Principles 2, 4, 5 and 6 of the Principles.

The Applicant's Case

15.1 Following a disciplinary hearing that took place on 30 June 2017, Client A was notified on 11 July 2017 that she had been dismissed. On the same day, Client A attended the Firm's offices where she was introduced to Mr Chukwudolue who was the person that dealt with employment matters.

15.2 Mr Chukwudolue advised Client A that:

- She should follow the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice disciplinary procedure;
- She had been unfairly dismissed and had been subject to racial discrimination;
- He would submit the claim to ACAS on her behalf;
- There was a three-month limit in filing a claim; and
- She should look for a new job, so it would not appear to the court as though she was simply seeking compensation.

15.3 Whilst at the Firm's offices on 11 July 2017, Client A signed (i) a Conditional Fee Agreement with the Firm relating to her claim against Firm D, (ii) a 'Personal Details

& Consultation Form'; and (iii) a 'Confirmation of Instruction & Letter of Authority to Act'. She also agreed to pay £300 to the firm, which was paid in two instalments.

15.4 Mr Chukwudolue asked client A to provide relevant documents to the Firm. Client A did so on 14 July 2017. Client A stated that she did not receive a client care letter from Mr Chukwudolue and/or the Firm.

15.5 On 13 July 2017, Mr Chukwudolue forwarded an email from ACAS to Client A. On 20 July 2017, Client A discovered that she was five weeks pregnant. She informed Mr Chukwudolue of this news.

15.6 On 24 July 2017, Client A received notification from Firm D that her appeal against her dismissal would take place on 11 August 2017. Client A informed Mr Chukwudolue of this development via a text message on the same day. Although he stated that he would call her later that day, Mr Chukwudolue did not do so.

15.7 Client A both kept Mr Chukwudolue informed of the appeal hearing on the day that it took place and informed him of the outcome of the hearing (which had been unsuccessful) when it was known to her.

15.8 On 17 August 2017, Client A texted Mr Chukwudolue in the following terms:

> "Good morning :)
> I have forwarded yesterday e-mail to you with appeal decision".

15.9 Mr Chukwudolue acknowledged receipt on the same day.

15.10 On 22 August 2017, Client A texted Mr Chukwudolue asking whether he had heard anything from ACAS. Mr Chukwudolue replied the same day:

> "No. But I'm putting in the application to the Employment Tribunal next week".

15.11 On 9 September 2017, Client A sent Mr Chukwudolue a chasing text message as follows:

> "Good morning.
> I have not heard from you, just wondering how things are going regarding my case. Regards".

15.12 Client A did not receive a response to this message.

15.13 On 24 September 2017, Client A attended hospital after suffering a miscarriage. Client A states that she did not inform Mr Chukwudolue of her loss and was unable to recall if she informed anyone at the Firm. Mr Collis submitted that it was of note that in a chronology of her contact with Mr Chukwudolue and the Firm, prepared by Client A on 7 December 2018, there was no recorded contact around this time in which this news would have been communicated.

15.14 On 25 October 2017, Client A sent a further text message seeking an update on her case:

> "Good morning
> Just to ask how things are progressing?
> Have a good day".

15.15 The same day, the 25 October 2017, Mr Chukwudolue replied as follows:

> "Yes. Will let you know when I hear from the Tribunal".

15.16 On 13 November 2017, Client A joined an agency and undertook work allocated to her by the agency. On 15 December 2017, Client A sent Mr Chukwudolue a further text message, seeking an update on her case. Client A did not receive a response. When she contacted the Firm, she was informed that Mr Chukwudolue was abroad. Client A attended the Firm's offices where she had a phone call with Mr Chukwudolue. He told her that she should be patient, that the phone call was very expensive, and that he would contact her once he was back in the UK.

15.17 On 15 January 2018, Client A commenced full-time employment.

15.18 On 22 February 2018, Client A was forced to send a further chasing message to Mr Chukwudolue in the following terms:

> "Hello.
> Just wonder if there is any progress in case…. its been 6 months.
> Regards [Client A] :)"

15.19 Mr Chukwudolue replied that same day to say:

> "Hello [Client A], I will call you this evening please. I'm in court waiting for my hearing time. Will finish by 5pm" [page 26 of LF/1].

15.20 Mr Chukwudolue did not telephone Client A as he claimed he would [page 3 of LF/1].

15.21 On 29 April 2018, Client A sent an e-mail to Mr Chukwudolue, making it clear that she was unhappy with the level of service she was receiving. The e-mail contained the following passages:

> "Last time I heard from you was on 13 July 2017, saying you have registered my case with ACAS. Later on you have informed me, that you do not want to wait for ACAS early Conciliation to respond and soon after 22 August 2017 you send me text message saying you plan to place an application (ET1 form?) to the Employment Tribunal directly within the next week. It has now been 10 months and I'm not aware as if this application was placed at all and if there is any progress of my case. I understand that standard waiting time very different depending on the area and how busy the employment is (standard time 4-6 month). But in my case I did not receive any Notice of Acknowledgment as if was submitted in 1st place.
>
> I would also like to mention that I have tried to get in touch with you but with no success. In December and via last text message in February 2018 you said that you will call me but till today I have not heard from you"

15.22 Mr Chukwudolue replied the next day. He stated (amongst other things):

> "I am really sorry that you have had cause to concern. I can confirm that I am not ignoring you and I did not see any of your calls. The position with your case is that I am still waiting to hear from the Employment Tribunal. I have called them several times and was told that they have immense backlog due to the fact that they are flooded with many cases."

15.23 Following the e-mail exchange between Client A and Mr Chukwudolue at the end of April 2018, Client A sent an e-mail to Mr Chukwudolue on 27 July 2018 requesting a copy of her application to the Employment Tribunal. Client A never received a response to this e-mail.

15.24 On 6 August 2018, Client A sent a text message to Mr Chukwudolue, pointing out that she was still waiting for a response to her e-mail. Again, no response was sent to Client A.

15.25 In light of the lack of response from Mr Chukwudolue, Client A sent a complaint to the Firm via text in which she stated:

> "Im writing to you in regards to my case. I came to your office 14months ago and since I have not heard a thing.
> I have e mailed and txted Mr. Chukwudolue but no response at all.
> I do not believe for 14 months court has not contact him yet.
> I requested any documents regarding my case, acknowledgement forms to be send to me and also no sign of it.
> I see it all this as a very unprofessional approach. I feel very disappointed and let down.
> Awaiting someone to contact me and explain properly what is going on please."

15.26 Client A did not receive a response to this text message, so she sent a further message on 22 August 2018. On 24 August 2018, Client A received a voicemail from Mr Chukwudolue asking her to exercise some patience.

15.27 On 9 September 2018, Client A sent a further e-mail to Mr Chukwudolue in the following terms:

> "I have received and listened to your voice mail massage you have left me and still I did not get any answers to my questions i sent you through an e mail.
>
> The only thing I can hear is you saying that i am angry. I am not angry i am just disappointed and dissatisfied with all what is happening.
>
> As i mentioned in my previous e mail i would appreciate if you could send me copies of all forms and other papers which were submitted for my personal view so i can be aware where i stand and how my case is progressing.

> I feel like you do not deal with my case at all, that you do priorities other cases 1st. You even said yourself that you could not find my mobile number, due to the fact that my documents are somewhere in dark corner getting dusted.
> I came to you 14 months ago because i was looking for help and you reassured me you can do it…if you feel like you are to (sic) busy and cannot deal with it maybe is better you give me back all and I go somewhere else."

15.28 Mr Collis submitted that it was Client A's intention, when she sent that e-mail, to obtain the case documents and take her case to another firm of solicitors.

15.29 On 17 September 2018, Client A sent a text message to Mr Chukwudolue, informing him that she would be attending the office. Mr Chukwudolue replied that same day, as follows:

> "Hi [Client A], good morning. Unfortunately I'm not in the country at the moment. I travelled last Thursday as I had an urgent family situation. But I hope to be back by next weekend. Kindly exercise patience until I come back please".

15.30 Client A attended the Firm on 21 September 2018, to voice her complaint, but was only able to leave a message as there was no-one at the Firm who could deal with it. A voicemail was left for Client A on the same day, but Client A was unable to access it. A further voicemail was left for Client A on 24 September 2018, following which, Client A sent a text message to Mr Chukwudolue:

> "Hope you are ok.
> I have heard your voicemail.
> Unfortunately I work Saturdays, could not pick up.
> The only think I want to know is, if you sent off my case to court.
> I do not mind to wait, if the court is backlog and we have to queue.
> But how can i be sure anything was done if you have not send me anything since last year"

15.31 Mr Chukwudolue replied, via text message, that same day to say:

> "But you don't pick my calls so I can explain?
> Anyways please have patience when I come back, I will sit down with you and give you all the information you want".

15.32 Client A stated that this was the last point of contact she had with either Mr Chukwudolue or the Firm.

<u>Allegation 1.1</u>

15.33 Mr Collis submitted that Mr Chukwudolue was instructed to pursue a claim at the Employment Tribunal on Client A's behalf at the initial conference on 11 July 2017. Despite receiving those instructions, the Claim Form was not filed until 24 January 2019 after which point Client A had instructed Trust Legal.

15.34 The failure to file the claim form when instructed to do so, put Client A's potential claim against her former employer significantly outside of the three-month time limit

in which such a claim should have been filed at the Employment Tribunal. Furthermore, this occurred despite Client A sending text messages and e-mails to Mr Chukwudolue, chasing the progress of her case. In failing to file Client A's claim, Mr Chukwudolue failed to act in the best interests of Client A and failed to provide a proper service to her. On that basis, it was asserted that he breached Principles 4 and 5 of the Principles.

15.35 Further, in failing to carry out a relatively simple instruction from a client and submit an application form to the Employment Tribunal when instructed to do so, and when paid a fee for providing that service, Mr Chukwudolue failed to behave in a way that maintained public trust in the profession. Such conduct was in breach of Principle 6 of the Principles.

15.36 Outcome 1.2 of the Code required solicitors to provide services to clients in a manner which protected their interests. The failure to file Client A's claim when instructed to do so put her outside the three-month time limit for claims at the Employment Tribunal, and thus amounted to a failure to achieve Outcome 1.2.

Allegation 1.2

15.37 Mr Collis submitted that Mr Chukwudolue sent three messages to Client A which were false and/or misleading, in that they gave the impression that either her claim was about to be filed at the Employment Tribunal, or it had in fact already been filed, when of course no such claim was filed until 24 January 2019:

15.38 On 22 August 2017, Mr Chukwudolue stated: "No. But Im putting in the application to the Employment Tribunal next week".

15.39 On 25 October 2017 he stated: "Yes. Will let you know when I hear from the Tribunal".

15.40 On 30 April 2018, he stated: "The position with your case is that I am still waiting to hear from the Employment Tribunal. I have called them several times and was told that they have immense backlog due to the fact that they are flooded with many cases".

15.41 Mr Collis submitted that the clear and unambiguous meaning of these message was to imply to Client A that her claim was about to be submitted (the message on 22 August 2017), or that her claim had been submitted and Mr Chukwudolue was waiting to hear back from the Tribunal (the 25 October 2017 and 30 April 2018 messages). Mr Collis submitted that whilst there was nothing false in the message of 25 October 2017, it was designed to create a misleading impression. The message of 30 April 2018 was both false and misleading in circumstances where Mr Chukwudolue did not submit the claim until 24 January 2019.

15.42 Any ambiguity in the messages could be determined by an examination of where they fell in the course of correspondence between Mr Chukwudolue and Client A. It was clear that the messages were intended as an update for Client A on the progress of her case.

15.43 The 22 August and 25 October 2017 messages were sent in direct response to queries from Client A regarding the progress of the claim.

15.44 The 30 April 2018 message was sent by Mr Chukwudolue in response to challenges made by Client A regarding the progress of the claim. It was clear that in the email, Mr Chukwudolue intended to give Client A the impression that her claim had in fact been submitted. Mr Collis submitted that, in all the circumstances, the Tribunal could conclude that the three messages were false and/or misleading.

15.45 A solicitor acting in the best interests of their client and/or providing a proper standard of service would have drawn to the client's attention the fact that the application had not been submitted and offered to undertake remedial action. Instead of acting appropriately, Mr Chukwudolue chose to give Client A a false impression as to the status of her application at the Employment Tribunal in breach of Principles 4 and 5 of the Principles.

15.46 Members of the public would expect a solicitor to give a client correct and accurate information as to the status of an application they had been instructed to submit on a client's behalf. In failing to act in that manner, Mr Chukwudolue breached Principle 6 of the Principles.

15.47 A solicitor acting with integrity (i.e., with moral soundness, rectitude and steady adherence with an ethical code) would not have sent false and/or misleading messages to a client to give the impression that progress was being made with their case, when that was not the real position. It was not known why Mr Chukwudolue did not submit Client A's claim to the Employment Tribunal until 24 January 2019, when her texts and e-mails clearly indicated that she was expecting this to take place as early as August 2017. Whatever the reason, a solicitor acting with integrity would have explained to their client that this claim had not been submitted. Instead, Mr Chukwudolue chose to mislead Client A and leave her with the false impression that either her claim was about to be submitted, or it had in fact been submitted, when that was demonstrably not the case. Such conduct lacked integrity in breach of Principle 2 of the Principles.

Dishonesty

15.48 Mr Collis submitted that Mr Chukwudolue misled Client A; she was led to believe that her claim to the Employment Tribunal was about to be submitted by virtue of the 22 August 2017 message, and that it had in fact been submitted by the 25 October 2017 and 30 April 2018 messages. In the circumstances and given that Mr Chukwudolue was responding to a number of text messages sent by Client A, the Tribunal could conclude that Mr Chukwudolue knew the true position when he sent those messages and that it was not an oversight.

15.49 The deliberate provision of misleading information to a client, ostensibly to conceal the fact that instructions have not been acted upon, would on any view be considered dishonest by the standards of ordinary decent people.

15.50 If the Tribunal concluded that these were false and/or misleading messages, it was difficult to envisage how this could be anything other than a deliberate attempt, on Mr Chukwudolue's part, to mislead Client A. Thus, it followed from this that such conduct would be viewed as dishonest.

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

15.51 Mr Chukwudolue admitted allegations 1.1 and 1.2 in their entirety, including that his conduct as regards allegation 1.2 was dishonest.

The Tribunal's Findings

Allegation 1.1

15.52 The Tribunal found allegation 1.1 proved on the facts and the evidence. The Tribunal determined that Mr Chukwudolue's admissions were properly made.

Allegation 1.2

15.53 The Tribunal considered each of the messages sent.

15.54 The message dated 22 August 2017, expressed a future intention by Mr Chukwudolue, to lodge the claim with the Employment Tribunal. The Tribunal determined that it was required to consider the intention of Mr Chukwudolue at the time he sent the message. Mr Collis had submitted that if there was any ambiguity as to the intent in that message, the context of the chronology demonstrated that it was intended as an update to Client A on the progress of her case.

15.55 The Tribunal was not satisfied that the Applicant had evidenced that as at 22 August 2017, Mr Chukwudolue did not intend to submit the claim to the Employment Tribunal the following week. There was no evidence that the statement was false. Further, there was no evidence that Mr Chukwudolue intended to mislead Client A as to the status of her claim at that time.

15.56 Accordingly, notwithstanding the admission made, the Tribunal did not find that in sending a message stating that he intended to submit the claim the following week, Mr Chukwudolue's conduct was in breach of the Principles as alleged. It followed that such conduct was not dishonest.

15.57 The Tribunal noted that during the course of his submissions, Mr Collis stated that whilst the message dated 25 October 2017 was not false, it was misleading. The Tribunal agreed with that assessment. In telling Client A that he would "… let you know when I hear from the Tribunal", Mr Chukwudolue intended to give Client A the misleading impression that he had submitted the claim when he had not. Accordingly, and notwithstanding Mr Chukwudolue's admissions, the Tribunal found that the 25 October 2017 message was misleading, but that it was not false.

15.58 It was clear that the email response to Client A dated 30 April 2018 was both false and misleading. Mr Chukwudolue knew that he had not submitted the claim and thus was not waiting to hear from the Tribunal. Nor had he called the Employment Tribunal "several times" to ascertain the progress of her claim. The Tribunal found that the admissions made by Mr Chukwudolue in this regard were appropriate in light of the facts and the evidence.

15.59 The Tribunal found that Mr Chukwudolue had breached the Principles as admitted and that his conduct had been dishonest as admitted.

15.60 Accordingly the Tribunal found allegation 1.2 proved including that Mr Chukwudolue's conduct had been dishonest, save that it did not find that the 22 August 2017 text was false and/or misleading. Nor did it find that the 25 October 2017 text was false.

16. **Allegation 1.3 - On or around 24 January 2019, submitted, or caused to be submitted, a claim form to the Employment Tribunal, on behalf of Client A, despite no longer being instructed by Client A and in doing so breached all or any of Principles 2 and 6 of the Principles.**

The Applicant's Case

16.1 On or around 30 November 2018, Client A contacted Truth Legal and subsequently instructed them to obtain her file of papers from the Firm, with a view to pursuing a claim for professional negligence against the Firm.

16.2 The Client Care letter from Truth Legal to Client A was dated 3 December 2018. This supported the assertion that Client A indeed instructed Truth Legal on or around 30 November 2018.

16.3 On 18 December 2018, Trust Legal issued a further Client Care letter to Client A, but this time headed: "Your claim for professional negligence against Moorehouse Solicitors". The letter stated, amongst other things: "I hope that Truth Legal can help you to resolve the situation that has arisen due to the appalling conduct of Moorehouse Solicitors".

16.4 On 16 January 2019, Truth Legal sent an e-mail to the generic e-mail address of the Firm. Attached to this e-mail were (i) a letter, dated 16 January 2019, informing the Firm that they had recently been instructed by Client A, and requesting that her file of papers relating to her claim for unfair dismissal was forwarded to them; and (ii) a signed authority from Client A, dated 28 December 2018.

16.5 Eight days after the date of this e-mail, and just over eighteen months after Client A's first encounter with Mr Chukwudolue, a Claim Form was filed on her behalf at the London Central Employment Tribunal on 24 January 2019. Mr Chukwudolue was identified as her representative and his e-mail address appeared on the first page of the claim form.

16.6 Mr Collis submitted that there were four points of significance which arose from the Claim Form:

- Client A's date of birth was incorrectly provided as 1 January 1978. This date was entirely incorrect namely, it contained the wrong day, month and year of Client A's birth.

- The end date of Client A's employment was incorrectly stated as 30 October 2018, when she was dismissed on 11 July 2017 and her appeal against that dismissal was rejected on 16 August 2017;

- The Form suggested that Client A had not obtained another job since her dismissal despite her having undertaken agency work from 13 November 2017 and then obtaining full-time employment on 15 January 2018; and

- The explanation for the Claim Form being submitted out of time was that:

> "Although the claimant received ACAS Early Conciliation Certificate in July, she was newly pregnant at the time of these events and the stress of attending hospital appointments etc, has resulted that the claimant may be slightly out of time. The claimant therefore submits that it just and equitable to extend time bearing in mind the seriousness of the acts committed by the employer."

16.7 Mr Collis noted that at no point anywhere on the Claim Form was there any reference made to Client A's miscarriage.

16.8 On 29 January 2019, five days after the Claim Form was received by the Employment Tribunal, the Firm replied to Truth Legal's 16 January 2019 letter, purporting to enclose, "…client's file of papers as requested." The file that was received by Truth Legal was notably missing the following documents:

- Any client care letter/letter of engagement;

- Attendance Notes; and

- Any form of correspondence and/or contact with Client A, including letters, emails and texts.

16.9 Although the cover letter was dated 29 January 2019, Truth Legal did not receive the papers until 7 February 2019. The Claim Form submitted by Mr Chukwudolue was included in the bundle of papers sent to Truth Legal. Having received the papers, Truth Legal wrote to the Central London Employment Tribunal on 14 February 2019, making it clear that Client A no longer instructed the Firm and had not given instructions for Mr Chukwudolue to submit the Claim Form on her behalf.

16.10 On 15 February 2019, Truth Legal reported Mr Chukwudolue and the Firm to the SRA. The letter stated (amongst other things):

> "The reason for reporting is because Mr Chukwudolue has recently filed an ET1 Claim Form with the Central Employment Tribunal without our client's authority and therefore appears to be trying to mislead the Tribunal.
>
> Our client was previously a client of Moorehouse and instructed Mr Chukwudolue to file the claim with the Tribunal back in 2017. She has had no recent contact from him and was led to believe that the claim had been filed within the 3-month time limit when it had not been.
>
> The claim has now been filed over 15 months out of time seemingly in response to our request for Moorehouse's file of papers and in a misguided attempt to rectify the situation."

16.11 It was the Applicant's case that the 24 January 2019 Claim Form was only filed at the Employment Tribunal after Mr Chukwudolue received the 16 January 2019 e-mail from Trust Legal. At that stage, Mr Chukwudolue was no longer instructed by Client A, and the submission of this claim form must have been in a misguided attempt to conceal the inactivity on his part since July 2017.

16.12 Mr Collis submitted that some event occurred in January 2019 which prompted Mr Chukwudolue to file the Claim Form some eighteen months after he was first instructed by Client A. The only event that could have prompted the filing of the Claim Form in January 2019 would have been the receipt of the documents from Trust Legal.

16.13 It followed, inevitably, that Mr Chukwudolue submitted a Claim Form to the Employment Tribunal on behalf of Client A when he was no longer instructed by her. The only possible reason for a solicitor acting in such manner would be, as asserted above, a desperate and misguided attempt to conceal the failure to do so in the previous eighteen months.

16.14 Mr Collis submitted that in filing the Claim Form when he knew he was no longer instructed, Mr Chukwudolue had damaged the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the Principles.

16.15 Further, notwithstanding that filing of the Claim Form was precisely what Client A had previously wanted Mr Chukwudolue to do on her behalf, the filing of the Claim Form on 24 January 2019 when he was no longer instructed by Client A demonstrated a lack of integrity on the part of Mr Chukwudolue. A solicitor acting with integrity would have responded appropriately to a request from a client to transfer their papers to another firm. Mr Chukwudolue, instead, chose to file a Claim Form, which was significantly out of time, to try and make it appear that he had carried out the work requested by Client A. Accordingly, his conduct lacked integrity in breach of Principle 2 of the Principles.

Dishonesty

16.16 Mr Collis submitted that that the filing of the Claim Form on 24 January 2019 was done by Mr Chukwudolue solely to try to conceal his eighteen months of inactivity. Such conduct would be viewed as dishonest by ordinary and decent people.

16.17 This was not simply a question of Mr Chukwudolue filing an out-of-time Claim Form; this was a calculated act after Mr Chukwudolue learnt of Client A's intention to transfer her case to another firm. The only possible explanation for Mr Chukwudolue filing in those circumstances must have been to make it appear that he had in fact acted in accordance with his client's instructions. It followed that such an act of deception would almost inevitably be judged as dishonest by the standards of ordinary and decent people.

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

16.18 Mr Chukwudolue admitted allegation 1.3 in its entirety, including that his conduct had been dishonest.

The Tribunal's Findings

16.19 The Tribunal found allegation 1.3 proved on the facts and the evidence. The Tribunal found Mr Chukwudolue's admissions to have been properly made, including that his conduct had been dishonest.

17. **Allegation 1.4 – On 8 November 2019, submitted, or caused to be submitted, false and/or misleading documents to the SRA, namely: (a) A Client Care letter/letter of engagement dated 11 July 2017; (b) A typed Attendance Note dated 11 July 2017; (c) A handwritten Attendance Note dated 11 July 2017; (d) A handwritten Attendance Note dated 13 October 2017; € A typed Attendance Note dated 7 January 2019; and/or (f) A typed Attendance Note dated 17 January 2019; and in doing so breached all or any of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

17.1 On 29 May 2019, the SRA wrote to the Principal of the Firm in relation to the complaint that had been received from Truth Legal on 15 February 2019. The letter summarised the concerns that had been raised, and requested a response by 14 June 2019, along with confirmation that Client A's complete file had now been sent to Truth Legal. On 16 June 2019, the Firm emailed a letter dated 13 June 2019 which asserted the following (amongst other things):

- That during the initial conference with Client A on 11 July 2017, it had been agreed that she would finish her negotiations with her former employer before deciding whether to bring a claim against them;

- That Client A had attended their offices on 17 January 2019 and instructed the Firm to proceed with her claim at the Employment Tribunal. It was on the understanding that they were still instructed by Client A that they submitted the claim form; an

- That Client A's file of papers had already been transferred to Truth Legal;

17.2 In the section of the letter headed, "Conclusion", the following claims were made:

> "…. we reject the allegation that we misled [Client A] as to the progress of her claim. The reality is that the text message exchanges between [Client A] and Mr Chukwudolue does not reflect the sequence of events with regards to [Client A]'s instructions. [Client A]'s initial instruction was for us to hold on until she concludes negotiations with her employers before she can decide on her options; whether to lodge her claim at the Employment Tribunal or the County Court".
>
> "… [Client A] kept attending our offices without booking appointment and keeps giving us contradictory instructions as to whether she wishes to pursue her claim at the Employment Tribunal or County Court."
>
> "The issues raised in respect of [Client A]'s case, namely, the delay in filing her case out of time was caused by [Client A]'s personal circumstances at the time

and was also largely to the fact that [Client A]'s manner of communication. She was giving us confused and contradictory instructions and most times she refused to answer her phone so as to enable us obtain further instructions neither did she contact us when required to book appointments. Also, despite our advice, [Client A] could not make a clear decision as to whether she intends to pursue her claim at the Employment Tribunal or the County Court".

"With regards to acting without [Client A]'s instructions, [Client A] attended our offices without appointment first on 07 January 2019 and then on 17 January 2019 to inform Mr Chukwudolue that he should file her claim with the Employment Tribunal though she was advised that this will be almost 18 months out of time".

17.3 On 5 July 2019, in response to the 13 June 2019 letter, the SRA e-mailed the Firm with additional queries arising from the account provided.

17.4 On 6 August 2019, Truth Legal sent a Letter of Claim under the Professional Negligence Pre-Action Protocol. The letter repeated the assertions made about Mr Chukwudolue and the Firm's handling of Client A's case. Significantly, the letter made the point that notwithstanding an email to the Firm from Truth Legal identifying a number of documents missing from Client A's file, nothing further had been received from Mr Chukwudolue and the Firm.

17.5 On 8 November 2019, the Firm sent to the SRA a letter, along with a file of case papers for Client A. This letter was clearly intended as a response to 5 July 2019 e-mail from the SRA. The letter drew to the SRA's attention the following documents which were contained within the copy of Client A's file that was provided on that same day:

- An initial Attendance Note, dated 11 July 2017;
- A client care letter, dated 11 July 2017;
- An Attendance Note, dated 7 January 2019, relating to a conference that allegedly took place with Client A from 13:05 to 14:20; and
- An Attendance Note, dated 17 January 2019, relating to a conference that allegedly took place with Client A from 15:37 to 16:09

17.6 In addition to the three Attendance Notes referred to above, the copy of Client A's file provided to the SRA on 8 November 2019 also contained the following Attendance Notes:

- An Attendance Note, dated 2 August 2017;
- An Attendance Note, dated 13 October 2017;
- An Attendance Note, dated 21 February 2018;
- An Attendance Note, dated 22 February 2018;
- An Attendance Note, dated 6 August 2018;
- An Attendance Note, dated 17 September 2018;
- An Attendance Note, dated 23 September 2018;

- An Attendance Note, dated 24 September 2018; and
- An Attendance Note, dated 28 September 2018.

17.7 None of those documents were included with the copy of Client A's file that was received by Truth Legal on 7 February 2019. Furthermore, the documents were not subsequently sent on to Truth Legal, despite efforts to obtain from Mr Chukwudolue and the Firm any documents that might have been outstanding from Client A's file.

17.8 Despite the assertions in the 13 June 2019 letter in relation to Client A's date of birth, none of these Attendance Notes recorded a date of birth for Client A.

17.9 On 28 November 2019, the SRA wrote to Mr Chukwudolue raising further queries following on from the 8 November 2019 letter. On 2 January 2020, a response to the 28 November 2019 letter was sent to the SRA. Although the letter purported to emanate from the Firm, the use of the first person in the opening paragraphs of the letter suggested that it was in fact sent by Mr Chukwudolue.

17.10 The specific queries raised in the 28 November 2019 letter to Mr Chukwudolue were addressed. Mr Chukwudolue explained:

- The evidence that he was instructed on a consultancy basis only to advise on the appeal was within the 11 July 2017 Attendance Note and client care letter;

- In relation to whether he had updated Client A after the 22 August 2017 text message to her suggesting that her claim would be submitted to the Employment Tribunal next week, it was asserted: "I believe I did advise [Client A] during one of my telephone conversations with her that I am yet to put her claim before the Employment Tribunal. Also during my attendance with her on 7th January 2019, [Client A] during this meeting was fully advised that I have not yet put in her application before the Employment Tribunal";

- In relation to whether the 25 October 2017 text message sent to Client A was misleading, Mr Chukwudolue stated: "I cannot recall exactly under what context I sent this message to [Client A] but it will appear that my message in this regard is more of an oversight or at the very least reckless than misleading. I will respectfully ask that you note the time [Client A] sent this message (which is before office opening hours: 08:29). I believe I may have responded to avoid a prolonged discussion"; and

- In relation to the request to provide the properties of the electronic record for the 17 January 2019 Attendance Note, Mr Chukwudolue stated: "Unfortunately, we do not have a system that records metadata or any other electronic means/properties of saving documents. Our attendance notes are usually typed up, printed off and the stored in the client's physical file."

17.11 The letter provided additional comment on the topic of whether Mr Chukwudolue knew of Client A's new employment. Perhaps somewhat confusingly, Mr Chukwudolue stated:

> "Tellingly, I have come to realise that the real reason why [Client A] failed to attend her appointments and also failed most time to pick up my calls was because as I have learnt from reading [Truth Legal]'s letter of 6 August 2019 to [Firm H], [Client A] found another employment shortly after her dismissal (which she failed to disclose to me / denied disclosing to me) and has been at that employment foe 18 months from the till date [Truth Legal] letter. See paragraph 5.5 of [Truth Legal] letter to [Firm H] dated 6 August 2019. This confirms what I have always stated that [Client A] informed me that she has gotten another job. I would rely on my previous responses on this subject".

17.12 Mr Collis submitted that it was unclear from that passage whether Mr Chukwudolue was trying to assert that he only learnt of Client A's new employment upon reading the 6 August 2019 letter, or if he had previously been informed of that fact by Client A. Either way, it did not change the fact that (i) the 24 January 2019 Claim Form falsely stated that Client A had not obtained employment; and (ii) that contradictory statements had been provided on this topic in correspondence.

17.13 Mr Collis submitted that, for the avoidance of doubt, it is the Applicant's case that all the documents sent to the SRA on 8 November 2019, which were not present in Client A's file that was received by Truth Legal on 7 February 2019 (i.e. the Client Care letter and all the Attendance Notes) were documents that were retrospectively created by either Mr Chukwudolue or the Firm at some point in 2019. Had this not been the case, then presumably they would have featured in the copy of the file that was received by Truth Legal on 7 February 2019, or they would have been sent onto Truth Legal in response to their numerous requests for documents that they believed might have been missing from Client A's file. Instead, the first time that these documents were circulated was on 8 November 2019. It was also of note that Mr Chukwudolue has been unable to provide the document properties of any these documents which would include the date and time that they were created on the Firm's computer system. It was not clear what word processing system Mr Chukwudolue was using to create these documents which now prohibited him from providing such basic information as the date the document was created or the date the document was last saved.

17.14 However, Allegation 1.4 only related to the documents received by the SRA on 8 November 2019 which related to contact between Client A and Mr Chukwudolue which Client A asserted did not happen. Where Attendance Notes related to telephone calls that did appear to have taken place, the Applicant did not seek to rely upon those documents in this Allegation, notwithstanding the position that they must have been retrospectively created documents.

17.15 The 8 November 2019 letter to the SRA was, of course, a response to the 5 July 2019 and 25 October 2019 e-mails from the SRA to the Firm. It was accepted, therefore, that the author of the 8 November 2019 may very well have not been Mr Chukwudolue himself. It was, however, the Applicant's position that Mr Chukwudolue submitted, or caused to be submitted, the documents that featured in this Allegation. Mr Chukwudolue must have been aware that the Principal of the Firm had been asked to provide a response to the SRA. Whilst potentially not directly responsible for the provision of false and/or misleading documents to the SRA, it was the Applicant's position that these documents were submitted by Mr Chukwudolue for the purpose of provision to the SRA during its investigation and, potentially, provision to the legal

advisors representing the Firm's insurers as part of the professional negligence case being brought by Truth Legal against the Firm.

17.16 Mr Collis detailed the Applicant's case in relation to each of the documents referred to in the allegation:

11 July 2017 Client Care letter

17.17 Mr Collis submitted that it was not the Applicant's case that the conference with Client A and Mr Chukwudolue did not in fact take place on 11 July 2017; it was the Applicant's position that this document falsely summarised the instructions that were provided by Client A that day.

17.18 The letter suggested that Client A provided instructions to Mr Chukwudolue in a manner consistent with that described by Mr Chukwudolue in his pleadings, namely that Client A would wait and see how the negotiations with her former employer developed before deciding whether to bring a claim at the Employment Tribunal. Mr Collis submitted that the notion that Client A provided those instructions was undermined by her persistent requests to Mr Chukwudolue for an update on the progress of her case.

17.19 It was of particular note that nowhere in the e-mails or text messages that passed between Mr Chukwudolue and Client A did Mr Chukwudolue make the point that they had not been instructed to file a claim on behalf of Client A; a point one would expect a solicitor to make if the basis for their instruction was as set out in the 11 July 2017 Client Care letter.

17.20 Furthermore, the 11 July 2017 Client Care letter was never sent to Client A, it did not feature in the copy of her file that was received by Truth Legal on 7 February 2019, nor was it sent onto them following their requests for any missing documents. The first time to which any reference is made to it is in the 8 November 2019 letter to the SRA.

17.21 This document, on the face of it, would appear to provide a cast-iron response to the criticism that Mr Chukwudolue had not filed a claim form on behalf of Client A when instructed to do so back in July 2017. Yet for some reason, despite being aware of Client A's criticisms of him from March 2019 (the point at which the Employment Tribunal sent onto him the February 2019 documents from Truth Legal and Client A), no reference was made to it until the 8 November 2019 letter.

17.22 Mr Collis submitted that in all the circumstances, the Tribunal could conclude that this document did not accurately represent Client A's instructions to Mr Chukwudolue, and on that basis, it was a false and/or misleading document.

11 July 2017 Typed and Handwritten Attendance Notes

17.23 The handwritten Attendance Note dated 11 July 2017 referred to the Client Care letter being typed up, and the contents of this document being discussed with Client A. Client A did not accept that this took place, and maintained that she never saw, nor learnt of the existence of this letter, until the case had progressed to the SRA.

17.24 Mr Collis suggested that the Tribunal may wish to consider the likely time to type up a five-page document such as the Client Care letter and consider whether a solicitor would in fact have kept a client waiting while such an activity took place, rather than typing up the letter after the conference, and then sending a copy to the client.

17.25 Furthermore, the handwritten Attendance Note recorded Client A giving instructions that were consistent with the content of the Client Care letter. As set out above, Client A denied that such instructions were given to Mr Chukwudolue on 11 July 2017. Furthermore, it would make little sense for her to sign a CFA with Mr Chukwudolue on 11 July 2017, if she had not, as she claimed, instructed him to bring a claim on that date.

17.26 The typed Attendance Note dated 11 July 2017 contained a summary of instructions from Client A that was consistent with the Client Care letter. As set out above, it was the Applicant's case that these were not the instructions provided by Client A to Mr Chukwudolue.

17.27 Mr Collis noted that it was also perhaps somewhat unusual for a solicitor to have prepared two Attendance Notes from the same client conference; one handwritten and one typed, particularly when the typed one read as a completely separate and different document to the handwritten one.

17.28 As with the Client Care letter, it was not entirely clear why Mr Chukwudolue made no reference to this typed Attendance Note in any of his correspondence with the Employment Tribunal, with Truth Legal, with Client A or with the SRA, until it was forwarded to the SRA on 8 November 2019.

17.29 As with the Client Care letter, it was submitted that the Tribunal could conclude that the handwritten Attendance Note was false and/or misleading in that the contents of Client Care letter were not provided to Client A. As for the typed Attendance Note, it was the Applicant's case that the instructions provided by Client A recorded in that document did not in fact accurately state the instructions provided by Client A on 11 July 2017.

<u>13 October 2017 Attendance Note</u>

17.30 This handwritten Attendance Note suggested that Client A attended the Firm's offices on 13 October 2017 and informed Mr Chukwudolue that she had suffered a miscarriage.

17.31 Client A's position is that did she not attend Mr Chukwudolue's offices and speak to him on 13 October 2017 which would make this a false and/or misleading document.

17.32 Support for Client A's assertion that this conference did not take place could be obtained from the following:

- There was no reference to this face-to-face contact with Mr Chukwudolue in the fairly detailed chronology provided by Client A on 7 December 2018;

- The Attendance Note referred to Mr Chukwudolue being, "very cautious about asking her about the progress of her appeal." However, Client A had informed him that her appeal had been unsuccessful in August 2017;

- The final comment on this Attendance Note read, "…client to update me." This did not appear to sit too comfortably with the 25 October 2017 text message from Client A to Mr Chukwudolue (the first documented contact between Client A and Mr Chukwudolue after the 13 October 2017), in which she was chasing Mr Chukwudolue for an update; and

- If Mr Chukwudolue knew of Client A's miscarriage, as this Attendance Note would suggest, it was unclear why there was no reference to this event in the Claim Form that was submitted on 24 January 2019.

7 and 17 January 2019 Attendance Notes

17.33 Mr Collis submitted that these Attendance Notes were fabricated in an attempt by Mr Chukwudolue to justify his filing of the Claim Form on 24 January 2019 when he had already received notification that Client A had instructed Truth Legal. He relied on the following matters in support of that contention:

- Client A denied attending the Firm's offices on 7 and 17 January 2019. She was in fact working on those days.

- In December 2018, Client A had already instructed Truth Legal in relation to a professional negligence claim against Mr Chukwudolue's employer. It would make no sense for her, following that, to attend Mr Chukwudolue's offices and instruct him to file a claim on her behalf.

- The 7 January 2019 Attendance Note contained the following passage, "Client apologised for not returning my calls and maintaining contact with us". These sentiments were at direct odds with (i) the content of Client A's communication with Mr Chukwudolue and the Firm; and (ii) her decision, by that date, to instruct Truth Legal to bring a claim for professional negligence against the Firm.

- The 7 January 2019 Attendance Note contained the following passage, "Client also stated that she has been looking for work but she is yet to find one". Client A had, of course, obtained full-time employment on 15 January 2018. There would be no reason for her to provide demonstrably false information to Mr Chukwudolue on 7 January 2019.

- The 7 January 2019 Attendance Note contained the following passage, "Advised client that we are yet to file her claim as from our records, her last instructions were that she was still negotiating with her employer". Again, this was demonstrably false. Client A had communicated to Mr Chukwudolue the outcome of her appeal hearing in August 2017. Since that date, she had been chasing Mr Chukwudolue and the Firm, by text message and e-mail, for an update on how her claim at the Employment Tribunal was progressing.

- The 7 January 2019 Attendance Note contained the following passage, "Advised client that as we did not have her authority to file her claim out of time, I had to wait for her to get back to me". This was at direct odds with Client A's attempts to contact Mr Chukwudolue and obtain an update on the progress of her claim, as demonstrated by the text messages and emails she sent to him.

- At no stage in any of the text messages or e-mails sent by Mr Chukwudolue to Client A between July 2017 and September 2018, in response to her attempt to obtain an update from him, did Mr Chukwudolue suggest that he was still waiting for clear instructions from Client A as to whether she wished to proceed with her claim. Instead, quite the opposite; Allegation 1.2 of course identifies three messages from Mr Chukwudolue to Client A which were misleading about the progress of her case.

- The 7 January 2019 Attendance Note contains two paragraphs dealing with the extent to which Client A's case would be out of time for filing, how it would require a "very strong" argument to persuade the Tribunal to accept the claim, and how there would need to be "exceptional reasons" for the Tribunal to accept it. These passages seemed to be inconsistent with the pithy reference to the claim being, "slightly out of time" and the fact that this was caused by pregnancy and hospital appointments that appeared in the Claim Form itself.

- The 17 January 2019 Attendance Note referred to Client A's miscarriage being the grounds that were to be relied upon to obtain an extension of the time limit to file. There was no reference anywhere in the January 2019 Claim Form to Client A's miscarriage.

- The Claim Form provided incorrect information as to (i) Client A's date of birth; (ii) the date when her employment came to an end; and (iii) her current employment status. Had Mr Chukwudolue genuinely seen Client A on 17 January 2019, and only at that stage obtained instructions from her to file this Claim Form, one would have thought that at that stage he would have made sure that he had the correct information from Client A to be able to answer these questions on the Form.

- On 16 January 2019, Truth Legal sent its e-mail to the Firm informing them of Client A's request that her papers been transferred to them. Had Mr Chukwudolue genuinely seen Client A the following day, and obtained instructions from her that he was in fact still to act on her behalf and file the Claim Form, one would expect the 16 January 2019 correspondence from Truth Legal to have been discussed. Nowhere in the 17 January 2019 Attendance Note is there any reference to the incoming documents from Truth Legal, and Mr Chukwudolue obtaining clear confirmation from Client A that, notwithstanding these documents, she did still want Mr Chukwudolue and the Firm to represent her.

- Had Client A had a change of heart since her instruction of Trust Legal in December 2018, and she did, as of January 2019, require Mr Chukwudolue to act for her in her employment matter, one would expect (i) correspondence from her to the Employment Tribunal confirming that position; and (ii) a cessation of her claim for professional negligence against the Firm. Instead, exactly the opposite occurred. Documents were sent to the Employment Tribunal from Truth Legal and Client A

indicating that Mr Chukwudolue did not have instructions to file the January 2019 Claim Form, the claim for professional negligence continued, and Truth Legal took the step of reporting the matter to the SRA.

- If, as Mr Chukwudolue claimed, Client A had attended his offices on 7 and 17 January 2019, and provided him with instructions on 17 January 2019 to file a claim on behalf of her, it must have come as a surprise to Mr Chukwudolue to receive the February 2019 documents from Truth Legal and Client A from the Employment Tribunal on 14 March 2019. One might expect a properly instructed solicitor to take one or both of the following steps (i) contact their client and ascertain what had happened since their last contact; and/or (ii) provide a response to the Employment Tribunal that protected their reputation, given the gravity of all the allegations that would being levelled against them. Instead, Mr Chukwudolue made no effort to contact Client A and e-mails the Employment Tribunal on 2 April 2019 simply to confirm that Truth Legal were now acting for Client A. It was not until the 13 June 2019 letter to the SRA (so nearly three months since Mr Chukwudolue first became aware of Client A's accusations against him), that an assertion was put forward that Mr Chukwudolue had received instructions from Client A on 17 January 2019.

17.34 Mr Collis submitted that the submission of these documents, or at the very least, Mr Chukwudolue causing these documents to be submitted to the SRA represented breaches of Principles 2, 6 and 7.

17.35 The retrospective creation of these documents and the onward submission of them to the SRA could have only occurred to provide some support for Mr Chukwudolue's stance in relation to the criticisms of his conduct by Client A. Fabricating documents to suggest instructions were given, when they were not, or that contact took place with a client when it did not, on its own represented a departure from the ethical standards of the profession. To then ensure that these documents were forwarded to a regulator undoubtedly represents a breach of Principle 2 of the Principles.

17.36 The public would expect and trust a solicitor to engage openly and frankly with their professional regulator. Failure to do so and submitting false documents to try and support a possible defence, would undoubtedly damage the public's trust in the profession. Accordingly, Mr Chukwudolue had breached Principle 6 of the Principles.

17.37 Principle 7 required a solicitor to deal with their regulator in an open, timely and cooperative manner. Provision of false and/or misleading documents was almost the exact opposite of the behaviour required by Principle 7.

Dishonesty

17.38 Mr Collis submitted that the documents were first created and then provided to the SRA solely in order to bolster Mr Chukwudolue's defence to the criticisms he faced. It was difficult to envisage a set of circumstances in which knowingly submitting, or causing to be submitted, false and/or misleading documents to the SRA could be anything other than dishonest. In this particular case, it would appear that this had been done by Mr Chukwudolue to lend weight to his claims about the instructions he received from Client A, and his contact with her. Mr Chukwudolue sought to deceive his regulator as

to those instructions and the contact he had with a client. It followed that this conduct could be nothing other than dishonest.

The Respondent's Case

17.39 Mr Chukwudolue admitted allegation 1.4 in its entirety, including that his conduct was dishonest.

The Tribunal's Findings

17.40 The Tribunal found allegation 1.4 proved on the facts and the evidence. The Tribunal found Mr Chukwudolue's admissions to have been properly made including that his conduct was dishonest.

17.41 Accordingly, the Tribunal found allegation 1.4 proved including that Mr Chukwudolue had acted dishonesty.

Previous Disciplinary Matters

18. None

Mitigation

19. Mr O'Donoghue submitted that the Tribunal should take into account that Mr Chukwudolue's admissions had saved any witnesses from being called to give evidence in the proceedings. He had displayed a responsible attitude to all relevant witnesses and had had due regard to the Tribunal's resources.

20. Mr Chukwudolue was not a senior member of staff, and had, at all times, been under the supervision of the sole practitioner. He had been employed by the Firm to undertake immigration cases on a fee sharing arrangement.

21. Whilst the Tribunal's findings were such that Mr Chukwudolue had committed serious misconduct, the amount of money involved was small. Client A had paid £300 to the Firm. Mr Chukwudolue had made no personal financial gain from his misconduct.

22. Mr O'Donoghue reminded the Tribunal that the purpose of sanction was to protect the public and the reputation of the profession from future repetition of wrongful actions. The Tribunal was referred to paragraph 9 of its Guidance Note on Sanctions (10th Edition – June 2022) which stated that when considering sanction, "the Tribunal should have regard to the principle of proportionality, weighing the interests of the public with those of the practitioner." In SRA v Dar 2019 EWHC 2831 (Admin) the court emphasised the need for a holistic approach to sanction and the imposition of a sanction that was no more than that which was necessary.

23. Mr O'Donoghue submitted that where there were exceptional circumstances, as there were in this matter, the Tribunal should not strike a Respondent off the Roll. In this case the correct balance between the protection of Mr Chukwudolue's rights and those of the public was to impose a suspension. Such a sanction would be proportionate and appropriate in this case. In Maistry v SRA (unreported) Cranston J determined that the

Tribunal should impose the least severe sanction for misconduct. Mr O'Donoghue did not suggest that sanctions such as a Reprimand, or fine were appropriate sanctions. It was accepted that Mr Chukwudolue's misconduct had been serious, however it was a one-off incident that had taken place over a short period of time. It had started out as innocuous but had grown into something more serious.

24. Whilst the Tribunal had found the allegations proved, it did not find allegation 1.2 proved in its entirety. Client A, it was submitted, must have been aware for some time that something was not right and that she had not received satisfactory answers; she continued to retain Mr Chukwudolue for an inordinately long time.

25. The failure by Mr Chukwudolue to submit the Claim Form was negligent. It became an issue in conduct as a result of the time he took and his failure to own up to his negligence. He panicked as he was under mental strain at the time and experiencing difficult personal circumstances.

26. The Tribunal, it was submitted, should take account of the fact that Mr Chukwudolue had never been in trouble before and was not likely to commit professional misconduct in the future; it could be safely assumed that the misconduct was a "flash in the pan".

27. As to his personal situation, Mr Chukwudolue was a family man and had 4 financially dependent children. He had accepted his culpability for the misconduct and had admitted all of the allegations he faced.

28. In his statement in mitigation, Mr Chukwudolue explained that he had decided to admit all the allegations after careful reflection. He apologised to Client A for his actions and any damage he might have caused. His failure to file the Claim Form was mainly due to his difficult personal circumstances. As regards his communication with the SRA, he now realised that he should have been upfront with the SRA from the outset. He panicked as he had had no prior dealings with the SRA. Mr Chukwudolue explained that it would not be in the public interest to strike him off the Roll and that to do so would have serious consequences for his children who would indirectly suffer as a result.

29. Mr O'Donoghue referred the Tribunal to Mostyn J's comments in Lawson v SRA [2015] EWHC 1237 (Admin):

> "… an SDT will not shut its ears to all mitigation, or follow a modern day Black Act approach. There is still scope for mercy to drop as the gentle rain from heaven and for it to season justice."

30. Mr O'Donoghue reminded the Tribunal that its discretion, as regards sanction, was unfettered.

Sanction

31. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction,

it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

32. The Tribunal determined that whilst there was seemingly no initial motivation for failing to submit the Claim Form to the Employment Tribunal, thereafter Mr Chukwudolue was motivated by his desire to conceal his failings. He had fabricated attendance notes in order to support his previously held position that Client A had not instructed him to submit the claim when she had. He had also obtained witness statements from colleagues which stated that Client A had attended the office when he knew that she had not. Such conduct did not happen spontaneously. He had breached the trust placed in him by Client A to deal with her case in an appropriate way and had wholly failed to act in her best interests. Mr Chukwudolue was solely responsible for the circumstances giving rise to the misconduct. He was a well experienced solicitor. He had deliberately and calculatedly sought to mislead the SRA. The Tribunal assessed Mr Chukwudolue's culpability as being extremely high.

33. The harm caused to the reputation of the profession was immense. The Tribunal found that the misconduct amounted to a gross departure from the standards of integrity, probity and trustworthiness expected of a solicitor. The harm caused to the reputation of the profession was entirely foreseeable, as was the harm caused to Client A. As a result of Mr Chukwudolue's conduct, Client A was unable to pursue her claim at the employment Tribunal. Further, he had extraordinarily fabricated documents, so as to evidence that Client A had not instructed him to file the claim, in order to conceal his own failings. Such conduct, the Tribunal found, was extraordinary and an extremely serious breach of trust towards Client A.

34. Mr Chukwudolue's misconduct was aggravated by his proven and admitted dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

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

35. His conduct was deliberate, calculated and repeated over a period of time. He had sought to conceal his wrongdoing by fabricating documents, which he then sent (or caused to be sent) to the SRA. Whilst he had made late admissions, he had, in his pleadings echoed the position in the fabricated documents namely that he had not committed misconduct as the failure to file the Claim Form arose from Client A's failure to instruct him to do so.

36. In mitigation, the Tribunal noted Mr Chukwudolue had a previously unblemished career. It also took account of the references provided on his behalf together with the other documents contained in his mitigation bundle.

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

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

38. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Mr Chukwudolue off the Roll of Solicitors.

39. The Tribunal then assessed whether there were any exceptional circumstances that would mean that such a sanction was disproportionate. In line with Sharma, the Tribunal considered the nature, scope and extent of Mr Chukwudolue's dishonesty, including the length of time over which it had occurred, whether it was of benefit to him, and whether it had an adverse effect on others. It also considered the evidence in mitigation provided by Mr Chukwudolue.

40. The Tribunal's Guidance Note on Sanctions stated at paragraph 55:

> "Where dishonesty has been found mental health issues, specifically stress and depression suffered by the solicitor as a consequence of work conditions or other matters are unlikely without more to amount to exceptional circumstances."

41. Mr Chukwudolue had admitted that his conduct had been dishonest, and the Tribunal had found those allegations proved. The Tribunal found that the mitigation provided by Mr Chukwudolue and the submissions made on his behalf did not amount to exceptional circumstances. His dishonesty had continued over a period of time and had had an adverse effect on Client A. He had committed a number of dishonest acts in order to conceal his failings.

42. Whilst the mitigation provided by and on behalf of Mr Chukwudolue had been noted, the difficulties described did not relate to the dishonesty. Accordingly, the Tribunal did not find that there were exceptional circumstances such that striking Mr Chukwudolue off the Roll would be disproportionate or unfair.

Costs

43. Mr Collis applied for costs in the sum of £23,550.00. £1,350 were the SRA's internal investigation costs. Capsticks costs were £18,500 + VAT. The costs, it was submitted, were reasonable and proportionate. The fixed fee was based on the nature and complexity of the hearing. Those costs were not altered by the amended hearing time. The Applicant had provided a breakdown of the hours spent for the preparation and presentation of the case. Even taking into account the significantly reduced hearing time, the notional hourly rate was £57.21, as the Applicant had spent 253 hours preparing and presenting the matter. This figure also took into account the Applicant's disbursement for a medical report that was not deployed in the proceedings.

44. Mr Collis referred the Tribunal to Rule 43(4) which stated (amongst other things) that the conduct of the parties and whether allegations were defended reasonably was a matter that the Tribunal would take into account when determining costs. Mr Chukwudolue, it was submitted had, up until the last working day before the hearing, unreasonably defended the allegations. He had provided documents to support the false narrative created by him to conceal his misconduct. He had also procured witness statements to support that false narrative. Accordingly, it was submitted, the costs claimed were reasonable and should be paid by Mr Chukwudolue in full.

45. Mr O'Donoghue accepted that Mr Chukwudolue was liable for the costs. The issue to be determined was his ability to pay any costs ordered. His monthly expenditure exceeded his monthly income by in excess of £400 per month and thus Mr Chukwudolue had no ability to pay the level of costs claimed.

46. Further, and in any event, the time claimed by the Applicant was excessive with numerous individuals working on the case when that was unnecessary. Mr O'Donoghue submitted that given Mr Chukwudolue's limited means, the Tribunal should take a rounded approach and Order that he pay 50% of the amount claimed.

47. The Tribunal was mindful of the findings in Barnes v SRA [2022] EWHC 677 (Admin) in which it was held that no Order for costs should be made where it was unlikely, on any reasonable assessment of a Respondent's current or future means, that he would ever be able to satisfy the Order. The Tribunal noted that Mr Chukwudolue's means were such that he had a significant deficit each month. He resided in a rental property and thus did not have any equity in a property.

48. The Tribunal considered that the costs claimed by the Applicant were reasonable and proportionate, such that the quantum claimed should not be subject to any reduction. However, taking into account Mr Chukwudolue's lack of means (that position having not been challenged by the Applicant), and the findings in Barnes, the Tribunal considered that there was no reasonable current or future prospect of Mr Chukwudolue being able to pay any costs within a reasonable time. Accordingly, the Tribunal determined that it was appropriate to make No Order as to costs.

Statement of Full Order

49. The Tribunal Ordered that the Respondent, ISIDORE IKECHUKWU CHUKWUDOLUE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that there be no Order as to Costs.

Dated this 12th day of June 2023
On behalf of the Tribunal

E Nally
Chair