SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12373-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ANDREW PAUL ROSE Respondent

Before:

Mrs C Evans (in the chair)
Mr A Horrocks
Mr A Pygram

Date of Hearing: 9 and 10 November 2023

Appearances

Matthew Edwards, barrister of Capsticks LLP for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The Allegations against Mr Rose were that, while in practice as a solicitor at Chan Neill Solicitors LLP ("the Firm"):

1.1 On or around 2 November 2018 he filed a claim form ("original claim form") with information he knew or ought to have known was incorrect;

PROVED

1.2 On or around 1 May 2019 he amended the original claim form to show a higher level of claim and court fee ("amended claim form") and served it on the Defendant without informing them that the original claim form had been amended and/or without paying the appropriate court fee;

PROVED

And in so doing, he breached any or all of Principles 1, 2, 4 and 6 of the SRA Principles 2011 ("the 2011 SRA Principles") and Outcome 5.1 and 5.6 of the SRA Code of Conduct 2011 ("the 2011 Code").

PROVED SAVE FOR OUTCOME 5.1 AND 5.6 IN RELATION TO ALLEGATION 1.2

2. In addition, Allegations 1.1 and 1.2 were advanced on the basis that his conduct was dishonest. Dishonesty was alleged as an aggravating feature of his misconduct but was not an essential ingredient in proving the Allegations.

PROVED

Executive Summary

3. Mr Rose was acting for Client A in a substantial claim for pain, loss and expense arising out of dental treatment. Client A had not put Mr Rose in funds to pay the appropriate Court fee to lodge such a claim. Mr Rose therefore filed the claim based on a significantly lower sum, which in turn required a much lower fee to be paid. The claim form was therefore incorrect and Mr Rose knew it to be so.

4. Mr Rose subsequently amended the claim form himself to show a higher claim figure and court fee and served what was now a falsified document on the Defendant. The proceedings continued until Mr Rose was about to leave the Firm and was handing over his files almost two years later.
5. Mr Rose admitted the Allegations.

Sanction

6. Mr Rose was struck off the Roll and was ordered to pay £15,000 in costs.

Documents

7. The Tribunal considered all of the documents in the case which were contained in an agreed electronic bundle.

Preliminary Matters

8. Application to anonymise Client A and the Defendant in the civil proceedings.

8.1 Mr Edwards applied for an order that Client A remain anonymised in the proceedings and in the written judgment on the basis that she was a former client and as such enjoyed the protection of legal professional privilege (LPP), which she had not waived.

8.2 The Defendant was not a former client, but Mr Edwards advanced the application for the Defendant also to be anonymised on the basis that there was a risk of 'jigsaw' identification of Client A if the Defendant was named. Mr Edwards submitted that a simple internet search of the Defendant's name would be likely to reveal Client A's identity, thus risking a breach of LPP.

8.3 This application was supported by Mr Rose.

8.4 The Tribunal noted that in relation to former clients, the starting point was to consider whether LPP had been waived or not. In circumstances where it had not been waived, it was absolute and must be respected, as emphasised in Williams v SRA [2023] EWHC 2151 (Admin). The Tribunal therefore granted the application in respect of Client A. It followed from this that any 'jigsaw' identification of Client A would render the Tribunal's decision to anonymise her entirely ineffective. The Tribunal accepted there was a risk of such identification. It was under a duty to protect Client A's LPP and it therefore granted this application in respect of the Defendant as well as Client A.

Factual Background

9. Mr Rose was admitted to the Roll on 15 November 2001. At the time of the hearing, he did not hold a practising certificate and had not done so since 2021.

10. Mr Rose had joined the Firm in January 2005. Michael Chan was the managing partner of the Firm and Mr Neill was a senior consultant with the Firm. Mr Rose practised primarily in the personal injury department of the Firm. At time of the events in question he was a senior associate. Mr Rose resigned from the Firm on 11 January 2021 and his last working day was 1 April 2021. The matters giving rise to the Allegations came to light in the days immediately prior to his last day at the Firm. The Firm commenced disciplinary proceedings against Mr Rose, which resulted in his dismissal for gross misconduct.

11. Mr Rose had acted for Client A in their claim for pain, loss and expense arising from dental treatment provided by the Defendant, who was represented by Dental Protection, to Client A between 30 April 2015 and 25 July 2015. Client A engaged the Firm's services on 19 May 2017.

Allegation 1.1 – Original Claim Form

12. In October 2018, Mr Rose drafted a claim form and sent it to the Court for solicitor service. It was received on 26 October 2018 and issued on 2 November 2018. It recorded the brief details of the claim as *"a claim for compensation for injuries suffered due to the negligent treatment of the Defendant between 30th April 2015 and 25th July 2015"*. The value of the claim was recorded as *"currently limited to £5,000 with a claim for injury in excess of £1,000"*. The second page included a declaration of truth under which Mr Rose's name had been typed with a signature appearing underneath.

13. The value of the claim was in fact significantly in excess of £5,000 and potentially exceeded £500,000.

14. On 9 July 2021 the Investigation Officer at the SRA ("the IO") contacted Mr Rose about this matter. Mr Rose replied on 14 August 2021 with an initial response, in which he said:

> *"At some point (and I can't remember when exactly), it became common practice to get a claim issued by paying the minimum court fee and then amending it later on. I don't remember anything specific in terms of being told to do so. I can only say that this would only have become something I did because I was told to do so. As a result, it became normal practice to me, to send a claim off to the court for issue to comply with a limitation deadline for a lower figure than the claim was worth, as I did in this case.*
>
> *However, if I could avoid doing this, then I obviously would but as a last resort this often happened. In this specific case, as I recall, I had already obtained an extension of time for limitation and couldn't get hold of/get a response from the Defendant's legal representative/claim handler to my requests for a further extension and the response I got from the client to my request for the correct fee was that she didn't have the money.*
>
> *I knew also that my firm didn't have the money to pay such a large fee. I knew this because I would receive emails every month from the partners about what I was going to bill and Mr Neil was often saying to me, how tight the firm's finances were. I considered borrowing the money myself and paying it myself but I was already in so much debt that I didn't think this was an option either. This meant it seemed to me that this was the only option namely to get the claim issued for the lower amount.".*

15. The Firm was made aware of Mr Rose's initial response and denied there was a common practice of issuing claims at a lower level.

16. In relation to this file, the Firm stated "Mr Rose had advised the client that the fee would be £10,000 and the client had indeed confirmed her agreement to the court fees required and was willing to make the payment. I am therefore unable to comprehend why Mr Rose chose to issue at such a low level…".

17. In response to the Notice Recommending Referral to the Solicitors Disciplinary Tribunal ("SDT") dated 18 February 2022, Mr Rose wrote:

"It should be noted, that in around October 2018, I asked the client for the correct Court fee of £10,000 but she did not/was not able to send it to me. I therefore asked the Defendant for a further extension of time regarding the commencement of proceedings but despite chasing emails, telephone calls and messages could not get a response from them.

There I was left with no option but to commence Court proceedings, I considered borrowing the £10,000 myself but I was, as previously mentioned, heavily in debt and didn't feel that I could therefore borrow anymore..."

The only option left was to pay the Court fee using the firms [sic] money. However, I knew from the emails I received every month from Mr Neill, asking me what I was going to bill, that the firm were not in a position to pay the £10,000 either…"

"I decided therefore to issue at the lowest level possible for a personal injury claim of up to £5,000 to keep the Court fee to the lower level possible of £205. This was in order to minimize the impact on the firm's finances, whilst making sure the client's claim was protected in terms of limitation."

Allegation 1.2 – The Amended Claim Form

18. On 1 May 2019 Mr Rose sent a claim form to the Defendant. The covering letter written by him stated that "the claim form was received by the Court on 26 October 2018." The claim form enclosed had an issue date of 2 November 2018 with the same issue date and reference number as appeared on the claim form referred to in Allegation 1.1.

19. The amended claim form now recorded the value of the claim as being "in excess of £200,000 with a claim for injury in excess of £1,000". The court fee was noted as £10,000.00. The County Court seal was visible on the face of the claim form along with a solicitor service stamp. The second page included the declaration of truth under which Mr Rose's name was typed with a signature appearing underneath.

20. Apart from the details above, the amended claim form was identical to the original claim form. The amendments made were not made in accordance with Practice Direction 17 of the CPR. In the form in which it was served to the Defendant there was nothing on the face of the amended claim form to indicate to the Defendant that any amendments had been made. The amended claim form also indicated that the higher court fee had been paid when in fact it had not been.

21. It was only after matters subsequently came to light when Mr Rose was about to leave the Firm that the Defendant became aware of the original claim form having been amended.

22. Following the sending of the amended claim form to the Defendant the proceedings took their normal course. They were still ongoing when Mr Rose handed in his notice from the Firm on 11 January 2021 and the handover process began. This file was one of the last to be handed over, on 31 March 2021.

23. Mr Chan told the SRA that he first looked at the partial file on 29 March 2021. He noted that *"the draft directions filed by [Mr Rose] included a provision for Client A to be permitted to increase the statement of value to "greater than £200,000", whereas the Defendant's draft did not …"*. When Mr Rose attended the office on 31 March 2021 with the remaining files Mr Chan asked him *"whether DPS [Dental Protection Society] had agreed to this change in the statement of value given the value stated in the Claim Form"*. In response Mr Rose had told Mr Chan that *"the version of the Claim Form served on DPS had a greater statement of value"*. Mr Rose explained that he had *"changed [the original claim form] prior to service"* and that there had been no application to make the amendment. On 1 April 2021 Mr Rose confirmed to Mr Neill that he had altered the claim form before serving it on the Defendant and that he had not kept a copy of the altered document, either electronically or in hard copy. The version on the file was the original claim form as issued by the court and the version held by the Defendant was the amended claim form. The court held the original claim form.

24. At this point, the Firm made an application to the court to amend the original claim form. On 18 May 2021 the court acceded to this application and the claim form was amended by court order. The Defendant initially raised no objection to that which had occurred. However thereafter, the Defendant sought to have the proceedings struck out as a result of the amended claim form served by on 1 May 2019. This application was heard on 25 April 2022.The Judge found in the favour of the Defendant and held that there was no valid service and therefore no service of the claim form and the proceedings by Client A should be struck out.

25. Following the report to the SRA, Mr Rose provided an initial response on 14 August 2021 in which he stated:

> *"in terms of what my former employers have reported about my conduct, I am sorry to say that what they have said is essentially accurate with the only difference being that the altered claim form stated that the claim exceeded £100,000 rather than £200,000".*

26. Mr Rose stated that it was difficult for him to recall what happened between sending the claim form issued in October 2018 and serving it in May 2019 describing *"being extremely busy (as I always was)."*

27. In relation to the amendment, Mr Rose stated:

> *"I then recall suddenly one day in early May 2019, the thought coming into my head that the deadline for service of the claim form was up. I checked the file and realised it was that day. I was stuck. I didn't know what to do. For reasons that I can go into if you need me to…my relationship with the partners was such that I did not feel I could go to them about the situation. I panicked and did the only thing I could think of and altered the claim form and sent it to the Defendant's solicitors and hoped that somehow the claim would settle and it would be ok. I knew it was wrong but it seemed to me the only way at the time I could protect the client's claim. I suppose therefore the short answer to why I did it, is that I did it, to protect the client and her claim. As I say I knew it wasn't right but it seemed to me in that moment to be the only thing I could do".*

28. Mr Rose concluded his initial response by stating:

> *"I acknowledge that what I did was wrong and I should never have done it. I am sorry for all those that have had to deal with what I did and I deeply regret doing it. I did it to try and protect the client's claim and I didn't address the issue with my firm because I hoped I could resolve the claim without the need to do so and out of fear of what the partners might say and do.*
>
> *I appreciate that given what I have done, it may be that you feel it is no longer appropriate for me to practice as a Solicitor and that I will be struck off. If it is your decision then I will of course accept it with great sadness and with the only conciliation being that the client has not suffered from what I have done"*.

29. Mr Rose admitted he had acted dishonestly and with a lack of integrity.

30. The Firm denied the suggestion that Mr Rose was not properly supported during his 16 years of employment with them.

Findings of Fact and Law

31. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Rose'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.

32. **Allegation 1.1**

32.1 The Tribunal noted that the initial decision to refer to the Tribunal did not refer to the matters that were the subject of Allegation 1.1, and invited Mr Edwards to address this point. Mr Edwards explained that upon the decision being taken to refer Mr Rose to the Tribunal, the Applicant's solicitors Capsticks had been instructed to prepare the proceedings. This involved a full review of matters and the conduct at Allegation 1.1 was properly considered to amount to the breaches pleaded in the Rule 12 Statement.

32.2 In relation to the Allegation itself, the Tribunal noted that Mr Rose had fully admitted the factual basis of Allegation 1.1 together with the breaches of Principles 1, 2, 4 and 6 and Outcomes 5.1. and 5.6. The Tribunal was satisfied that these admissions were properly made and supported by the evidence placed before it. The act of putting information on a claim form and lodging it at court knowing it to be incorrect was inconsistent with the proper administration of justice and was not in the client's best interests.

32.3 When considering whether Mr Rose had lacked integrity, the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

32.4 Mr Rose had filed a claim form that he knew was inaccurate, in order to avoid payment of the correct court fee which he knew could not be paid at that stage. In his witness statement, Mr Rose had explained that the client had not paid the £10,000 fee at that stage:

> *"Clearly looking back now, I wish I had at least asked the partners for the money and/or talked to them about it. Sadly, for reasons that would take too long to explain, I no longer felt I could do that and so instead I requested from our account's person a cheque for the lowest court fee possible and stated the value I did on the claim form that reflected that fee."*

32.5 The Tribunal noted that Mr Rose had explained that this took place against the backdrop of a recent bereavement. Nevertheless, the Tribunal was satisfied on the balance of probabilities that Mr Rose had lacked integrity by filing the form containing the inaccurate information. His admission to the breach of Principle 2 was therefore properly made and found proved. It followed from this finding that Principle 6 was also breached as the trust the public placed in Mr Rose and the profession was clearly undermined by such actions.

Dishonesty

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

> *"the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

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

- Firstly, the Tribunal established the actual state of Mr Rose's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

32.8 In assessing Mr Rose's state of knowledge, the Tribunal had already found that Mr Rose knew the contents of the claim form to be incorrect. He knew that he had paid the wrong fee in that the claim itself was for a sum that required a much higher fee. Mr Rose had initially suggested that this was an accepted practice but provided no evidence for that in the Civil Procedure Rules and he had later accepted that he did not know where he would have got such an idea from. Further, in his initial response to the SRA on 14 August 2021 Mr Rose had stated that doing this would be a "last resort", which demonstrated that he knew this was not a proper procedure to adopt. The Tribunal also noted that Mr Rose had not challenged the evidence of Mr Chan or Mr Neill. Neither had been required to attend for cross-examination and so their evidence, that it was not accepted practice, was evidence the Tribunal could, and did, accept in full. Mr Rose was a highly experienced solicitor who had been working in this field for almost 20 years. The Tribunal was satisfied that he would have known that completing the form with inaccurate information was not acceptable.

32.9 The Tribunal found that Mr Rose's conduct would be considered dishonest by the standards of ordinary decent people. His admission of dishonesty was therefore properly made and proved on the balance of probabilities.

33. **Allegation 1.2**

33.1 The amendment of the claim form for service on the Defendant compounded and continued the misconduct found in relation to Allegation 1.1. Mr Rose, again, admitted this Allegation in full. With the exception of Outcomes 5.1 and 5.6, the Tribunal was satisfied that those admission were properly made and it found the factual basis of Allegation 1.2, together with the breaches of Principles 1, 2, 4 and 6.

33.2 Outcome 5.1 required Mr Rose not to attempt to deceive or knowingly or recklessly mislead the court and Outcome 5.6 required Mr Rose to comply with his duties to the Court. Mr Rose had clearly failed to achieve these Outcomes in relation to Allegation 1.1 as a solicitor's duty to the Court required all documents lodged with the Court to be accurate and the Tribunal had found that he had sought to mislead the Court by providing inaccurate information about the value of the claim. The SRA had not, however, pleaded a coherent case that serving an amended version of that form on the Defendant, without having gone through proper processes set out in the CPR, engaged these particular Outcomes. In particular, Mr Rose did not at that stage say anything to or lodge anything at court. Having regard to the burden of proof, the Tribunal found the failure to achieve Outcomes 5.1 and 5.6 not proved in relation to Allegation 1.2.

<u>Dishonesty</u>

33.3 The Tribunal did not need to repeat its findings in relation to Allegation 1.1 but noted that this was the context in which Allegation 1.2 had to be considered. Mr Rose knew

that the original claim for was inaccurate and he knew he had not gone through the appropriate procedure to amend it. Instead, he had amended it himself, thus generating what amounted to a false document in order to mislead the Defendant. There was no suggestion that anyone else had amended that form and so Mr Rose would have had full knowledge of what he was doing.

33.4 The Tribunal again found that Mr Rose's conduct would be considered dishonest by the standards of ordinary decent people. His admission of dishonesty was therefore properly made and proved on the balance of probabilities.

Previous Disciplinary Matters

34. There were no previous findings at the Tribunal.

Mitigation

35. Mr Rose told the Tribunal that he accepted that what he had done was wrong and he deeply regretted his actions. Mr Rose acknowledged that his actions would ordinarily lead to a strike-off, based on Solicitors Regulation Authority v Sharma [2010] EWHC 2022. However, he urged the Tribunal not to impose such a sanction and submitted that exceptional circumstances applied, which he invited the Tribunal to take into consideration.

36. Mr Rose told the Tribunal that he had found himself in a very difficult position and had not known how to deal with it. At the outset, he had panicked, and momentarily lacked judgment, resulting in the wrong decision being taken. There had been no personal benefit to him and at all times he had been trying to help the client and the firm.

37. Mr Rose referred the Tribunal to his medical report that he had served. There had been a number of health issues that he was dealing with in the lead-up to his actions. His mother had been very unwell for some time and had subsequently passed away and his father's health had also been poor. Mr Rose had found this period extremely difficult and had not fully appreciated at the time how much of a toll it had taken on him.

38. The medical report had also referred to difficulties at work at the time. Mr Rose told the Tribunal that his relationship of trust with the partners had been significantly undermined to the extent that he felt he could not go and ask for help. This had meant that he did not speak to them about this case before issuing the proceedings. Mr Rose told the Tribunal that there were no formal reviews and no processes to monitor his well-being. Mr Rose went on to tell the Tribunal that he had tried to get the Defendant's solicitors to agree an extension of time, but they had refused. Whilst he did not criticise them for this stance, it had nevertheless exacerbated matters.

39. Mr Rose told the Tribunal that he had tried to make amends for what he had done. This had included paying the court and counsel's fee when an application was made to try to rectify the matter.

40. Mr Rose told the Tribunal that he had fully co-operated with the SRA and had made full admissions.

41. Mr Rose stated that he was currently a trustee of a charity and he believed he would be unable to continue in that role if he was struck off. He told the Tribunal that he had gone into the profession to help the public and that, although he had lost sight of that in this moment, this remained his primary objective. Mr Rose told the Tribunal that he was willing to undergo re-training and to be subject to a suspension or restriction order to enable him to return to practise in the future.

42. Mr Edwards, in a brief response to the mitigation, reminded the Tribunal of Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin). He also reminded the Tribunal that some of the mitigation, principally concerning the Firm, contradicted the undisputed evidence in this case, including that of Mr Neill.

Sanction

43. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

44. In assessing culpability, the Tribunal concluded that Mr Rose's motivation for the misconduct was to get himself out of a problem, that problem being that Client A had not put him in funds in respect of the Court fee. Mr Rose was mindful that not filing the claim jeopardised it progressing, but he ought to have either insisted that the client pay the fee or have spoken to the partners at his Firm.

45. The misconduct was planned in that the decision to incorrectly complete the claim form initially did not happen spontaneously. Following the lodging of that form, there were several months during which Mr Rose could have rectified that situation but he did nothing to depart from that initial action. The decision to amend the form and then serve that falsified claim form on the Defendant was described as a moment of panic but came several months later and it would also have taken a degree of planning to create the amended form.

46. Mr Rose was in a position of trust by reason of his role as a solicitor and this was breached by reason of his misconduct. However, there was no additional breach of trust beyond that.

47. Mr Rose had direct control and responsibility for the circumstances. Nobody had asked him to act in this way and he had chosen not to seek the assistance of the Firm in dealing with the problem he faced. Mr Rose was a highly experienced solicitor, having qualified in 2001. In this context, the fact that he did not have file reviews on a regular basis did not reduce his culpability, as a solicitor of that level of experience would not require file reviews to remind them that misleading the Court and falsifying documents was completely inappropriate.

48. In relation to the harm caused, the client was impacted as her claim was struck out on the basis that the claim form had never been validly served. The reputation of the profession was clearly damaged in circumstances where a solicitor knowingly submitted a claim form that was incorrect, then falsified it in order to mislead the other side in litigation, ultimately resulting in the claim being struck out.

49. The misconduct was aggravated by the dishonesty as referred to above. It was deliberate and took place on two occasions. The first instance of misconduct was made worse by the second, several months later, in that the falsification was intended to conceal the lodging of the inaccurate claim form. Mr Rose knew that he was in material breach of his obligations. The Tribunal recognised that he had no previous findings.

50. The misconduct was mitigated by the fact that Mr Rose had paid the costs of counsel and the court fee in relation to the unsuccessful defence of the strike out application. It took place on one file in a previously unblemished career. The misconduct occurred during a period of personal difficulty in that his parents were suffering from ill health (at various times). The Tribunal was satisfied that Mr Rose had shown genuine insight and contrition. He had made full and frank admissions to the SRA at an early stage and had co-operated with it throughout.

51. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the reputation of the profession. The misconduct was at the highest level and the usual sanction where misconduct included dishonesty would be a strike-off. The Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "*a small residual category where striking off will be a disproportionate sentence in all the circumstances …"*. The relevant factors when considering this included 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.

52. In James at [101], Flaux LJ set out the basis on which question of exceptional circumstances was assessed:

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

53. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James.

54. The nature and scope of the dishonesty was not a single episode, but took place in two parts, several months apart. As noted above, the falsification of the form was done in order to conceal Mr Rose's earlier wrongdoing. The decision-making process required to do this pointed away from it being a 'moment of madness'. By amending the form in the way he did, he continued the deception that had originated from his initial completion and filing of the form in November 2018, some six months earlier. The Tribunal had found that Mr Rose was entirely culpable in this matter.

55. The Tribunal accepted that there was no personal benefit to Mr Rose from his actions, but they did have an adverse effect on the client and the Firm.

56. The Tribunal accepted Mr Rose's deep regret and contrition and was satisfied that there was no risk of repetition now or in the future. The Tribunal recognised that Mr Rose had faced difficult personal circumstances in relation to the poor health of his parents and the loss of his mother. The Tribunal was sympathetic to the situation that Mr Rose faced in that regard. Following James, however, the Tribunal was unable to establish a clear link between those matters and the decision to lodge the inaccurate claim form and the subsequent decision to falsify it several months later.

57. The mitigation surrounding the working environment was not supported by the evidence of Mr Neill and Mr Chan, neither of whom had been required to attend for cross-examination. The work environment described by Mr Rose was not toxic or exceptional and the Tribunal noted that Mr Rose was not newly qualified nor a junior employee.

58. Taking all the factors into account, the Tribunal was unable to conclude that the circumstances present at the time when the two acts of dishonesty took place were exceptional. The only appropriate sanction that could protect the reputation of the profession was that Mr Rose be struck off the Roll.

Costs

Applicant's Submissions

59. Mr Edwards applied for costs in the sum of £19,449.60 including VAT taking into account that the hearing had not lasted the whole of the two days initially anticipated.

60. Mr Edwards told the Tribunal that this matter had originally been undertaken on a fixed-fee basis by Capsticks, but that this had changed to hourly rates as of 1 November 2023. The fixed fee had been £22,200 but this had been reduced so as to ensure no overall increase in costs to Mr Rose. Mr Edwards invited the Tribunal to consider whether the overall costs were reasonable. 170 hours had been spent on the case and this worked out at a notional hourly rate of £92.

61. The Tribunal noted that there appeared to have been a possible element of duplication as there had been a different barrister instructed earlier in the proceedings. Mr Edwards accepted that this would be the case and would be relevant to reviewing the case papers, preparing for a CMH and reading in to prepare for submissions.

Respondent's Submissions

62. Mr Rose took no issue with principle of paying costs but did query whether all the work done was proportionate. Mr Rose submitted that this was not a particularly complicated case, though he accepted that there had been some adjournments and a degree of additional work relating to the medical evidence.

63. The key areas where Mr Rose submitted there should be a reduction included;

- Reviewing and drafting – he submitted that two hours would be more appropriate;
- Briefing Counsel;
- Reviewing the exhibit bundle;

- Time spent dealing with witnesses – there was a reference to 4 witnesses but only two statements were served;
- Drafting and reviewing witness statements;
- Conference with Counsel;
- Correspondence with Mr Rose;
- Telephone communication with Mr Rose;
- Preparing the anonymity application;
- Reviewing Mr Rose's answer;
- Review of medical evidence;
- Preparation for the substantive hearing.

64. Overall, Mr Rose submitted that the total hours ought to be 98 rather than 170.

65. Mr Rose had not submitted a statement of means and did not argue that he was unable to pay the costs, though he indicated that he would seek to arrange a payment plan with the SRA in due course.

The Tribunal's Decision

66. The Tribunal was satisfied that it was appropriate to make an order for costs in favour of the SRA, the Allegations having been proved.

67. The Tribunal decided that the appropriate way to assess those costs was summarily rather than referring it for detailed assessment. The overall level of costs claimed and the difference between the parties on the appropriate amount was relatively small and so it would be disproportionate to refer the costs for detailed assessment.

68. The Tribunal took account of the submissions of Mr Rose and Mr Edwards and had regard to the factors in Rule 43(4) of the Solicitors (Disciplinary Proceedings) Rules 2019. The costs claimed already reflected the hearing taking less time than anticipated. Mr Edwards had, fairly and properly, conceded that there had been some element of duplication of Counsel's time caused by the switch in Counsel during the proceedings.

69. The Tribunal recognised that Mr Rose had made full admissions at an early stage, namely his initial response to the SRA's letter to him about these matters. The Tribunal agreed that this was not a particularly complicated set of facts or issues. There were witness statements from two witnesses which were not long. The decision had been taken to refer the matter to the Tribunal on 12 April 2022 but the Rule 12 Statement was not served until 7 September 2022.

70. The Tribunal decided that some reduction was justified based on the hours undertaken, which were disproportionate in the circumstances of this case, the lack of complexity of this fully admitted matter and the duplication.

71. The Tribunal made a reduction of approximately 10 hours for excessive time spent on preparation and approximately 8 hours for duplication together with some reduction in the overall costs to take account of the straightforward nature of the case. The Tribunal decided to reduce the total costs to £15,000 including VAT in total. This reflected a reasonable and proportionate sum to be paid.

72. Mr Rose had not submitted that he was unable to pay the costs and so no further reduction fell to be considered based on his means.

Statement of Full Order

73. The Tribunal Ordered that the Respondent, ANDREW PAUL ROSE 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 £15,000.00.

Dated this 6th day of December 2023
On behalf of the Tribunal

C Evans

C Evans
Chair