

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12375-2022

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

RESPONDENT AE

Respondent

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Before:

Mr R Nicholas (in the chair)

Ms A E Banks

Mr D Kearney

Date of Hearing:

21-22 June & 18-19 October 2023

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## Appearances

Michael Collis, counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

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## JUDGMENT

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## **Allegations**

1. The Allegations against the Respondent AE, made by the SRA, are that, whilst practising as a solicitor, she:
  - 1.1 Between 22 October 2018 and November 2018, created false and/or misleading documents in relation to both purported representation provided to and purported prison visits held with the following individuals:
    - Granville Freckleton;
    - Jamie Pile;
    - Damilare Oduwale; and
    - Person B

and in doing so breached Principles 2 and 6 of the SRA Principles 2011 (“the Principles”).

PROVED.

- 1.2 On or around 26 November 2018, produced false and/or misleading DIS1 Notice of Report forms and/or handwritten notes for the following individuals:
  - Granville Freckleton;
  - Jamie Pile;
  - Damilare Oduwale; and
  - Person B

and in doing so breached Principles 2 and 6 of the Principles.

PROVED.

## **Dishonesty**

2. In addition, Allegations 1.1 and 1.2 above are advanced on the basis that the Respondent’s conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent’s misconduct but proof of dishonesty is not required to establish the Allegations or any of their particulars.

PROVED.

## **Executive Summary**

3. The procedural background to the case was unusual in that a number of pre-hearing applications were made and determined at Case Management Hearings on 2 November 2022, 10 January 2023 and 23 May 2023.
4. The case was listed for substantive hearing on 1 February 2023 which did not proceed and which was transformed into a further Case Management Hearing. All of the applications and the aborted substantive hearing were predicated on the ill health of Respondent AE and the impact of proceedings on her health.

5. Independent medical evidence, and supplementary evidence, had been obtained from Dr Milner (instructed by the Applicant) throughout the proceedings. Respondent AE had been granted anonymity as a protective measure pending final determination at the substantive hearing.
6. The case was re-listed as a substantive hearing on 21 – 23 June 2023 at which it was determined that:
  - The unopposed reasonable adjustment permitting Respondent AE to participate in the proceedings via email questions and responses was appropriate given the medical evidence recommending this approach. The substantive hearing could proceed in her absence on that basis.
  - Further medical evidence was required from Dr Milner, given her answers to questions posed by the Tribunal in her oral evidence before it, in order for the Tribunal to determine Respondent AE's outstanding applications for (a) anonymity in the proceedings, (b) the substantive hearing to be determined in private and (c) non-publication of the final judgment.
7. Dr Milner attended the resumed substantive hearing on 18 October 2023 having filed updated medical evidence. She answered questions from the Tribunal pertaining to the condition of Respondent AE, the impact of publishing her name in the proceedings, the hearing convening in public and the publication of a judgment which named her or contained information which could lead to identification.
8. Dr Milner made plain that the express and/or indirect identification of Respondent AE put her at "significant risk" of "serious harm". Given the unchallenged medical evidence, the Tribunal determined that Respondent AE should remain anonymised, the substantive hearing should be conducted in private and the published judgment should not name Respondent AE or, as far as practicable, contain any information which could lead to her identification.
9. The Allegations were predicated on Respondent AE's fabrication of cases and clients, including the production of documents to suggest that she had provided representation to these individuals, along with the claiming of travel expenses for visits to these "clients."
10. Respondent AE made full admissions to the Allegations in her Answer to the Rule 12 Statement but asserted that there were exceptional circumstances (pertaining to health issues) such that an indefinite period of suspension was the appropriate sanction as opposed to an Order striking her from the Roll of Solicitors.

### **Sanction**

11. The Tribunal rejected Respondent AE's assertions that exceptional circumstances existed and in so doing Ordered that Respondent AE be [Struck Off the Roll of solicitors](#). The Tribunal took into account the limited means of Respondent AE and imposed an Order that she do pay a contribution to the Applicant's costs in the sum of £6,000.00.

## Documents

12. The Tribunal considered all of the documents contained in the electronic substantive hearing bundle which included:
- Rule 12 Statement dated 8 September 2022 and Exhibit HVL1.
  - Answer to the Rule 12 Statement (undated) and Exhibits A - D received by the Tribunal on 7 October 2022.
  - Reply to the Answer dated 24 October 2022 and email communications between the parties dated 7, 17 and 20 October 2022.
  - Respondent AE's "supplemental statement" (undated) received by the Tribunal on 21 December 2022.
  - Applicants Schedule of Costs dated 23 January 2023.
  - Respondent AE's Statement of Means dated 15 November 2022 and supporting financial documents.

## Preliminary Matters

13. *Applicant's application to proceed in the absence of Respondent AE*

### Applicant's Submissions

- 13.1 Mr Collis referred the Tribunal to the procedural history of the case and the medical evidence filed which made plain that the Respondent (a) was not fit to attend the substantive hearing in person, (b) was not fit to attend the substantive hearing via remote means and (c) could participate in the proceedings by way of written submissions filed during the course of the proceedings. Mr Collis reminded the Tribunal of the decision it had made at previous Case Management Hearings namely to the reasonable adjustment of allowing the Respondent to respond in writing to any question/issue that arose during the hearing.
- 13.2 Mr Collis referred the Tribunal to emails from Respondent AE dated 9 October 2023 and 16 October 2023 in which she stated:

*"... I can confirm that my position on the hearing remains the same. I am happy to support with written responses to questions posed during the hearing..."*

*... I will not be attending the hearing later this week..."*

### Respondent's Submissions

- 13.3 Respondent AE maintained her position that (a) she was not able to attend the substantive hearing, (b) she was content for the substantive hearing to proceed in her absence and (c) she would answer any questions the Tribunal may have of her in writing via email.

### The Tribunal's Decision

- 13.4 The Tribunal carefully considered the unopposed application to proceed in Respondent AE's absence against the backdrop of unchallenged medical evidence which supported

the same. Cognisant of the overarching public interest in determining allegations expeditiously and mindful of the fact that Respondent AE agreed with the hearing proceeding in her absence with the reasonable adjustment of making written submissions if required, the Tribunal GRANTED the application to proceed in Respondent AE's absence.

14. *Respondent AE's application for anonymity in the proceedings*

Respondent's Submissions

- 14.1 Respondent AE sought anonymity in the proceedings in terms of not being named either on the Cause List or in the final judgment. Her application was predicated on health grounds and Respondent AE relied upon the medical evidence of Dr Milner.
- 14.2 Dr Milner gave oral evidence to the Tribunal and answered questions from the Panel. Dr Milner accepted that any professional facing allegations of misconduct are likely to suffer from stress and/or low mood. Dr Milner stated that Respondent's AE's condition was in a different category given the other personal circumstances that she faced at the time of the allegations and since they came to light. Dr Milner categorised Respondent AE as being at serious risk of significant harm if she were named in the proceedings and/or publication of any information which may lead to her identification.

Applicant's Submissions

- 14.3 Mr Collis submitted that, contrary to the Applicant's previous opposition to the application, the application for anonymity was not opposed. The change in position was borne out of the development of the medical evidence provided by Dr Milner in reports dated 4 August 2023 and 31 August 2023 as well as Dr Milner's oral evidence on 21 June 2023 and 18 October 2023.

The Tribunal's Decision

- 14.4 In determining the unopposed application, the Tribunal considered Rule 35(9) of the SDPR provides the Tribunal with the power to:

*"... make a direction prohibiting the disclosure or publication of any matter likely to lead to the identification of any person whom the Tribunal considers should not be identified..."*

- 14.5 The Tribunal paid significant regard to the principles promulgated in:

Yassin v GMC [2015] EWHC 2955:

*"... there is a general interest in the public being able to know the identities of those who have been subject to disciplinary proceedings..."*

Cranston J

Lu v SRA [2022] EWHC 1729 (Admin):

*"... the creeping march of anonymity and redaction." He went onto state: "The justice system thrives on fearless naming of people, whether bit part players or*

*protagonist. Open reporting is discouraged by what George Orwell once called a 'plague of initials'. Clarity and a sense of purpose are lost. Reading or writing reports about nameless people is tedious.*

*The applicable principles are clear at the highest level. The common law principle of open justice is well known..."*

Kerr J

- 14.6 The Tribunal considered the countervailing principle that derogation from the fundamental principle of open justice could be derogated from in circumstances where there was a real or significant risk of a violation of an individual's rights under the European Convention on Human Rights as result of their identity being published.
- 14.7 Respondent AE, and the unchallenged medical evidence relied upon, advanced the position that she would be at real and significant risk of serious harm as regards her health (Article 2 ECHR) and private life (Article 8 ECHR) if she were named in the proceedings.
- 14.8 The Tribunal had robustly questioned Dr Milner on 21 June 2023 as it was concerned at the ambiguity contained within the medical reports. Cognisant of the high bar which had to be met in order to derogate from the fundamental principle of open justice, the Tribunal adjourned the substantive hearing for Respondent AE to be further assessed by Dr Milner.
- 14.9 When the hearing resumed on 18 October 2023, Dr Milner had re-assessed Respondent AE, supplementary medical reports had been filed and Dr Milner was robustly questioned by the Tribunal as to their content. Dr Milner unequivocally maintained that the risk to Respondent AE was real and significant as regards self-harm and suicide. Dr Milner couched her assessment of risk as 8-9/10 in terms of probability. The Tribunal was satisfied that the balance weighed in favour of Respondent AE's Article 2 Right to life (on the grounds of health). In so doing, the Tribunal determined that to name Respondent AE either on the Cause List or in the judgment would amount to a violation of her Convention rights.
- 14.10 The Tribunal therefore GRANTED the application for anonymity.
15. *Respondent's application for the hearing to be heard in private*

#### Respondent's Submissions

- 15.1 Respondent AE first applied for the substantive hearing (first listed in February 2023) to be heard in private on 30 January 2023 on the ground that a public hearing would detrimentally impact her health. The application was reiterated in relation to subsequent case management hearings and the second listing of the substantive hearing in June 2023. All applications were predicated on the grounds of ill-health and personal circumstances.

- 15.2 Dr Milner testified on two occasions in support of Respondent AE’s application. Dr Milner stated that the ill-health of Respondent AE and her personal circumstances were inextricably linked to the admitted misconduct. Dr Milner maintained that there was a “risk of serious and/or significant harm if the hearing [proceeded] in public.”

### Applicant’s Submissions

- 15.3 Mr Collis submitted that, contrary to the Applicant’s previous opposition to the application, the application for anonymity was not opposed. The change in position was borne out of the development of the medical evidence provided by Dr Milner in reports dated 4 August 2023 and 31 August 2023 as well as Dr Milner’s oral evidence on 21 June 2023 and 18 October 2023.

### The Tribunal’s Decision

- 15.4 In determining the unopposed application, the Tribunal considered Rule 35(2) of the SDPR 2019 which permits an individual to apply to the Tribunal for a hearing to be conducted in private on grounds of either:

- exceptional hardship; and/or
- exceptional prejudice.

- 15.5 The Tribunal paid significant regard to the principles promulgated in:

Lu v SRA [2022] EWHC 1729 (Admin):

*“... I am also concerned that the test for sitting in private in rule 35 of the SDPR, exceptional prejudice or hardship, including in cases where no application is made by the person affected, is out of tune with the common law principle of open justice and with the case law on balancing article 8 and article 10 rights. I hope the issue and the rule will be looked at again to avoid further difficulties of the kind that have arisen in this appeal...”*

Kerr J

SRA v Spector [2016] 4 WLR 16:

*“... In the Leveller case the House of Lords recognised that the open justice principle was intended to advance the administration of justice and if, in particular circumstances, the administration of justice would be hampered rather than assisted by full openness, then the common law itself allowed a departure (Leveller at p.450). Nonetheless, the starting point is full openness and it is only if an exception (even a limited exception, such as allowing a witness to be anonymous) is required in the interests of the administration of justice that some limitation is justified. In some contexts at least, curtailment of open justice may also be necessary to avoid a violation of a person’s rights under the European Convention on Human Rights - see Re S (A Child) (Identification Restrictions on Publication) [2005] 1 AC 593. Either way, I agree with Simler J who in BBC v Roden [2015] ICR 985 said at [34] that what*

*was required was a judgment between these competing demands, not the exercise of a discretion...*”

Nicol J

- 15.6 The Tribunal was experienced in balancing the competing interests, between the need for open justice and an individual’s right to privacy in certain situations, by proceeding in public but entering into private session when matters relating to health and/or sensitive personal matters were being heard. Such an approach ordinarily addressed the competing interests of open justice and the Respondent’s rights under the European Convention on Human Rights.
- 15.7 On the present facts, Respondent AE’s health and personal circumstance were advanced as the reason for the admitted misconduct. The unequivocal and unchallenged medical evidence of Dr Milner supported that contention. Dr Milner went further in her evidence to state that consideration of the allegations in public would pose a serious and significant risk Respondent AE’s health. The Tribunal construed that to amount to exceptional hardship. Given the nexus between Respondent AE’s health, personal circumstance and admitted misconduct the Tribunal determined that the hearing should proceed in private.
- 15.8 The Tribunal therefore GRANTED the application.
16. *Applicant’s application for anonymity in respect of Prisoner A and Person B*

#### Applicant’s Submissions

- 16.1 The Rule 12 Statement anonymised two individuals referred to as “Prisoner A” and “Person B”. Mr Collis sought an order from the Tribunal under Rule 35(9) to allow for the continued anonymisation of these individuals in the proceedings before it.
- 16.2 As the Rule 12 Statement identified, the Applicant’s case against Respondent AE related to her creation of fictitious clients and her purported provision of assistance and advocacy to those fictitious clients in their prison adjudication hearings.
- 16.3 “Prisoner A” and Person B” were genuine individuals who, at various stages, were serving prisoners within the prison system.
- 16.4 Mr Collis averred that it was highly likely that Respondent AE recycled details from genuine cases in which she acted in order to create the details for the fictitious cases for which she submitted paperwork. It therefore followed that a real and genuine risk that Prisoner A and Person B were former genuine clients Respondent AE existed.
- 16.5 Mr Collis acknowledged the criticisms advanced by Kerr J in Lu v SRA [2022] EWHC 1729 (Admin) as regards the approach to anonymisation at the Tribunal, but contended that did not alter the long-standing position that clients of solicitors were entitled to anonymisation in proceedings before the Tribunal. To do otherwise ran the risk of (i) breaching legal professional privilege; and (ii) deterring clients from referring their solicitors to the Applicant in the first place.



- 16.6 Mr Collis accepted that, unusually, he could not positively assert that Prisoner A and Person B were in fact clients of Respondent AE, he submitted that, given the nature of the allegations and the evidence upon which they were predicated, it was highly likely that they were. Mr Collis therefore submitted that both individuals were entitled to be treated by the Tribunal in the same way it would actual clients.
- 16.7 Mr Collis therefore invited the Tribunal to make an order under Rule 35(9) granting anonymisation to Prisoner A and Person B.

#### Respondent's Submissions

- 16.8 Respondent AE did not file any submissions in response to the application.

#### The Tribunal's Decision

- 16.9 The Tribunal accepted Mr Collis' submissions that Prisoner A and Person B were highly likely to have been clients of Respondent AE at one time. In so finding, the Tribunal accepted that they should be treated in the same manner as confirmed clients. Clients have the benefit of legal professional privilege which is absolute unless waived by the client. In circumstances where (a) it is highly likely that the individuals were clients and (b) no such waiver of privilege has been given, the Tribunal was not required to balance competing interests of client confidentiality and open justice.
- 16.10 The Tribunal therefore GRANTED the application.

#### **Factual Background**

17. Respondent AE was admitted to the Roll of Solicitors in April 2011. At all material times she was employed by the Firm as a Consultant Prison Law Solicitor. Her period of employment ran from 22 October 2018 to 12 December 2018.
18. Concerns regarding Respondent AE's conduct were first reported to the Applicant by the Firm on 17 January 2019 which broadly stated that:
- Respondent AE role was to represent prisoners in adjudication and parole hearings;
  - That towards the middle of November 2018, she had submitted files for billing which stated that she had represented a number of prisoners at various prisons on adjudication hearings;
  - The volume of adjudications that she had apparently been instructed on in a relatively short period of time was a cause for concern;
  - Enquiries had been made with the prisons in question which suggested that the documents contained within the Firm's files were not genuine;
  - Respondent AE was called to a meeting on 5 December 2018 with the Firm, but provided no explanation for this conduct;
  - The Firm dismissed her in a letter dated 12 December 2018.

19. Consequently, the Applicant embarked on an investigation which culminated in a Notice recommending referral to the Tribunal being produced on 24 February 2022.
20. As part of its investigation, the Applicant obtained a witness statement from the Head of Department at the Firm. That statement, confirmed Respondent AE's position within the Firm and the fact that she checked on all files prior to Bills being raised to the Legal Aid Agency ("LAA"). It broadly stated that:
  - In November 2018, a number of adjudication files to bill had been prepared by Respondent AE;
  - The higher fixed fee had been claimed on all of them which was unusual;
  - Respondent AE was "... paid for one day a week in the office as per her contract (sic) and the rest of her income was calculated as a percentage of her billing/income she generated for the company. As she was not salaried, her income was reliant on files she billed through [REDACTED]. It was therefore in her interest to bill as much as possible";
  - There were no charge sheets in the files;
  - Respondent AE claimed disbursements against the Firm and the LAA;
  - Enquiries made by the Firm on 19 November 2018 to the prisons in question suggested that the documents within these files had been falsified;
  - By way of an email dated 26 November 2018, the Firm requested a meeting with Respondent AE;
  - Respondent AE subsequently produced the charge sheets for these individuals. They were all typed, which was unusual as they were normally handwritten by prison officers;
  - At that meeting, it was put to Respondent AE that the files were not genuine and that she had made false claims against the Firm and the LAA. Respondent AE admitted the same and requested that she was not reported to the Applicant;
  - Respondent AE was dismissed from the Firm on 12 December 2018.
21. In a supplementary statement, dated 2 September 2022, the Firm clarified a number of points previously made namely:
  - The term "charge sheet" was in reference to the form "DIS1";
  - The DIS1 forms were usually handwritten by officers; it was very rare to see a typed version;
  - It was good practice to retain both copies of the DIS1 and DIS2 (information sheet) on the file;

- When billing the LAA for prison adjudications, there was a lower standard fee of £203.95. In the event that the profit costs billed reached £357.06, the LAA paid out a higher fee limit of £564.16;
  - The Firm’s case management system, “DPS Outlook Office”, permitted users to see how much work had been completed and how much more was required to progress the case into the next fee bracket;
  - The LAA only paid mileage or fuel expenses up to a maximum of 100 miles for a return journey. Anything incurred over and above that 100 mile maximum would be paid to the solicitor in question by the Firm (at the rate of 30p per mile), based on the figures provided by the solicitor in the CDS time recording note;
  - Aside from one day a week, when Respondent AE was contracted to attend the office, her income would be based on a percentage of profits from her billing;
  - There were no handwritten notes present on the files when they were reviewed;
22. The Applicant’s investigation focused on four of the files which Respondent AE had submitted for billing, exemplified below, upon which the Allegations were framed.

### **Witnesses**

23. The Tribunal did not receive any oral evidence as to the allegations. The written evidence of 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. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of Dr Milner. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

### **Findings of Fact and Law**

24. 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 the Respondent’s rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- 25. Allegation 1: - Creation of false/misleading documents relating to purported representation and purported prison visits**

#### Applicant’s Submissions

##### *Granville Freckleton*

- 25.1 The file relating to a client allegedly called “Granville Freckleton” contained the following documents which, when reviewed, caused concern:

<b><u>Document</u></b>	<b><u>Contents</u></b>
25.10.18 Telephone Attendance – Call In	Note of a telephone call from “Granville Freckleton” requiring representation for an Independent Adjudication hearing
25.10.18 letter	Letter to Mr Granville Freckleton at HMP Ashfield, thanking him for his telephone call and asking him to complete and return various documents
“Prep Note”	Asserts that the “ <i>sufficient benefit test</i> ” was completed for Mr Freckleton on 25.10.18.
CRM1	A Client’s Details Form, providing the name of “Granville Freckleton” and a date of birth of 7.6.1978. The current address is provided as HMP Ashfield.
CRM3	An Application for Advocacy Assistance for Mr Freckleton, purportedly signed and dated on 26.10.18. The application relates to an Adjudication Hearing scheduled to take place on 8.11.18
30.10.18 letter	Client Care letter to Mr Granville Freckleton at HMP Ashfield
1.11.18 letter	Letter to the Governor of HMP Ashfield requesting a copy of the paperwork relation to the Independent Adjudication matter for Granville Freckleton.
1.11.18 Telephone Attendance – Call Out	Note of call from Respondent to prison regarding Mr G Freckleton. Hearing date confirmed for 8 November and prison stated client’s paperwork would be forwarded.
1.11.18 Telephone Attendance – Call In	Note of call from Mr G Freckleton asking if forms had been received from prison.
5.11.18 Telephone Attendance – Call In	Note of call from Mr G Freckleton, in which he is said to have requested confirmation of the hearing and he was told the 5.11.18. The Note records that the client’s instructions were taken to draft, “...written reps” and that a conference would be arranged for the day of the hearing.
5.11.18 Telephone Attendance – Call Out	Note of call to prison to arrange conference before the hearing.
Prep Note	5.11.18 Prep Note, suggesting that 30 minutes had been spent drafting written representations
8.11.18 letter	Introduction of Legal Visitor letter to HMP Ashfield, purportedly relating to an anticipated visit by the Respondent to “Mr G Freckleton” on 8.11.18 at 9am
Prep Note	Provides a summary of contact with “Mr G Freckleton” on 8.11.18
12.11.18 letter	Letter purporting to provide an outcome report for a 9.11.18 Adjudication Hearing
14.11.18 fax coversheet	Blank fax coversheet, dated 14.11.18

16.11.18 CDS Time Recording Note	Time recording sheet relating to representation allegedly provided to Granville Freckleton on 16.11.18. This document referred to 186 miles being covered.
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25.2 The documents referred to above contained a number of omissions and internal inconsistencies in that:

- The 5 November 2018 Telephone Note referred to the hearing taking place on 5 November 2018, in circumstances where most of the other documents suggested that a hearing occurred on 8 November 2018;
- The 12 November 2018 outcome letter referred to the hearing taking place on 9 November 2018, in circumstances where most of the other documents refer to a hearing on 8 November 2018;
- The CDS Time Recording Note referred to an attendance on Mr Freckleton on 16 November 2018, in circumstances where all other documents refer to the hearing being on either 8 or 9 November 2018;
- The 1 November 2018 letter and fax both referred to attaching a signed letter of authority from the client in circumstances where no copy of any such document was on the file;
- The 5 November 2018 “Prep Note” referred to drafting written representations on behalf of the client in circumstances where there was no copy of any such written representations on the file, nor was there a copy of a letter or a fax to suggest that such a document was forwarded onto HMP Ashfield;
- The file did not contain a copy of the DIS1 (charge sheet), DIS2 (information sheet), or any handwritten notes from the hearing.

25.3 Further, HMP Ashfield confirmed that (i) there had never been a prisoner by the name of Granville Freckleton at HMP Ashfield; and (ii) no solicitor bearing the name of the Respondent visited HMP Ashfield in 2018.

25.4 Mr Collis therefore submitted that all the documents contained within this file were false documents, created by Respondent AE to give the impression that she had prepared for and provided representation to a client, when that client simply did not exist.

*Jamie Pile*

25.5 The file relating to a client allegedly called “Jamie Pile” contained the following documents which, when reviewed, caused concern:

<u>Document</u>	<u>Contents</u>
29.10.18 Telephone	Note of a telephone call from “Mr J Pile”, requesting help with an adjudication hearing at HMP Aylesbury. Contained a reference

Attendance – Call In	to Respondent AE having previously provided representation to this person.
29.10.18 letter	Letter to Mr Jamie Pile at HMP Aylesbury, thanking him for his telephone call and asking him to complete and return various documents. This letter ascribes a Prison Number to Jamie Pile of A6589AH.
CRM1	A Client’s Details Form, providing the name of “Jamie Pile” and a date of both of 22.8.1986. The current address was provided as HMP Aylesbury.
CRM3	An Application for Advocacy Assistance for Mr Pile, purportedly signed and dated on 1.11.18. The application related to an Adjudication Hearing scheduled to take place on 9.11.18
“Prep Note”	Asserted that the “sufficient benefit test” was completed for Mr J Pile on 1.11.18.
1.11.18 letter	Client Care letter to Mr Jamie Pile at HMP Aylesbury
1.11.18 letter (sent by fax)	Letter to HMP Aylesbury (sent by fax) purporting to attach signed authority from Jamie Pile and requesting a copy of his paperwork.
2.11.18 Telephone Attendance – Call Out	Note of alleged telephone call to HMP Aylesbury for an update on Mr J Pile’s adjudication hearing. Indicates hearing should be on 9.11.18.
2.11.18 Telephone Attendance – Call In	Note of an alleged telephone call from Jamie Pile regarding the forms he had filled in
5.11.18 Telephone Attendance – Call Out	Note of an alleged telephone call to, “...the OCA dept” during which the hearing is confirmed as 9.11.18
5.11.18 Telephone Attendance – Call In	Note of an alleged telephone call from Jamie Pile in which he was told that the hearing would be on 9.11.18 and that a conference would take place prior to the hearing. Instructions were apparently taken to compile written representations.
6.11.18 Telephone Attendance – Call Out	Note of an alleged telephone call to HMP Aylesbury to arrange a conference with Jamie Pile prior to his hearing.
6.11.18 Prep Note	Note claiming written representations had been prepared for client.
8.11.18 Telephone Attendance – Call In	Note of alleged telephone call from Jamie Pile during which he sought confirmation of the details of the hearing and it was agreed that in the conference the written representations would be reviewed.
9.11.18 Letter	Letter of introduction to Governor of HMP Aylesbury for Respondent to visit Jamie Pile on 9.11.18.
9.11.18 Attendance Note	Attendance Note relating to a hearing that occurred on 9.11.18.
13.11.18 Letter	Letter to Jamie Pile confirming outcome of 9.11.18 Independent Adjudication hearing.

16.11.18 CDS Time Recording Note	Five separate time recording sheets relating to representation allegedly provided to Jamie Pile on 16.11.18.
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25.6 The documents referred to above contained a number of omissions and internal inconsistencies in that:

- The 1 November 2018 letter purportedly attached a signed authority from Jamie Pile in circumstances where there was no such signed authority on the file;
- Reference was made to written representations in a 5 November 2018 Telephone Attendance Note, a 6 November 2018 Prep Note, an 8 November 2018 Telephone Attendance Note and the 9 November 2018 Attendance Note in circumstances where none of those written representations appeared on the file; and
- The file did not contain a copy of the DIS1 (charge sheet), DIS2 (information sheet), or any handwritten notes from the hearing.

25.7 Further, HMP Ashfield confirmed that (i) there had never been a prisoner by the name of Jamie Pile at HMP Aylesbury; and (ii) the prisoner number attributed to Jamie Pile in the correspondence in the file produced by Respondent AE related to another prisoner.

25.8 Mr Collis therefore submitted that all the documents contained within this file were false documents, created by Respondent AE to give the impression that she had prepared for and provided representation to a client, when that client simply did not exist.

*Damilare Oduwale*

25.9 The file relating to a client allegedly called “Damilare Oduwale” contained the following documents which, when reviewed, caused concern:

<u>Document</u>	<u>Contents</u>
22.10.18 Telephone Attendance – Call In	Note of a telephone call from Damilare Oduwale at HMP Bedford, requesting representation at an independent adjudication hearing. Contained a reference to Respondent AE having previously provided representation to this person.
22.10.18 Letter	Letter to Mr Damilare Oduwale at HMP Bedford, thanking him for his telephone call and asking him to complete and return various documents. This letter referred to Mr Oduwale’s prison number as A9803DA.
CRM1	A Client’s Details Form, providing the name of “Damilare Oduwale” and a date of birth of 15.01.1986. The current address is provided was HMP Bedford.
CRM3	An Application for Advocacy Assistance for Damilare Oduwale, purportedly signed and dated on 23.10.18. The application related to an Adjudication Hearing scheduled to take place on 26.10.18

24.10.18 Telephone Attendance – Call In	Note of a telephone call from Damilare Oduwale seeking confirmation that the funding forms has been received. Respondent AE informed him that they had and that she would (i) contact the prison to confirm the details for the hearing; and (ii) book a conference with the client prior to the hearing to discuss the written representations.
Prep Note	Asserted that the “sufficient benefit test form” was completed for Mr D Oduwale on 24.10.18.
Prep Note	Asserted that file opening forms and label were completed for Mr D Oduwale on 24.10.18.
24.10.18 Letter	Client Care letter to Mr Damilare Oduwale at HMP Bedford.
24.10.18 Letter	Letter to HMP Bedford, purporting to attach signed authority from Mr Damilare and requesting a copy of his paperwork.
24.10.18 Telephone Attendance – Call Out	Note of an alleged telephone call to prison to confirm date of hearing. Confirmation given that hearing will be on 26.10.18 at 10am.

25.10 The documents referred to above contained a number of omissions and internal inconsistencies in that:

- The 24 October 2018 letter to HMP Bedford purported to attach a signed authority from Damilare Oduwale in circumstances where no such authority appeared on the file.
- Reference was made to written representations in two 25 October 2018 Telephone Attendance Notes a 25 October 2018 Prep Note and the 26 October 2018 Attendance Note in circumstances where none of those documents appeared on the file.
- The 26 October 2018 Attendance Note only made reference to the client having pleaded not guilty in circumstances where the 14 November 2018 outcome letter suggested that a guilty plea had been entered; and
- The file did not contain a copy of the DIS1 (charge sheet), DIS2 (information sheet), or any handwritten notes from the hearing.

25.11 Further, HMP Ashfield confirmed that (i) there was no record of anyone in the prison system by the name of “Damilare Oduwale”; (ii) Prisoner A (an individual with a very similar name to that of “Damilare Oduwale”) was previously within the prison system, up until 9 May 2017, but he was never an inmate at HMP Bedford; (iii) Prisoner A did not have the date of birth and prison number (A9803DA) used by Respondent AE for Damilare Oduwale; and (iv) Respondent AE did not visit HMP Bedford in 2018.

25.12 Mr Collis therefore submitted that all the documents within this file were false documents, with one exception. Mr Collis accepted that the 24 October 2018 Prep Note which related to Respondent AE having completed file opening forms and labels was correct in that a file was. However, all of the other documents within the file related to preparation and representation provided to a client that simply did not exist.



*Person B*

25.13 The file relating to Person B contained the following documents which, when reviewed, caused concern:

<u>Document</u>	<u>Contents</u>
22.10.18 Telephone Attendance – Call In	Note of a telephone call from Person B requiring representation for an Independent Adjudication hearing at HMP Chelmsford
22.10.18 letter	Letter to Person B at HMP Chelmsford, thanking him for his telephone call and asking him to complete and return various documents. The prison number provided for Person B in that letter was A0845LP.
CRM1	A Client’s Details Form, providing the name of Person B and a date of birth of 6.4.1958. The current address was provided as HMP Chelmsford.
CRM3	An Application for Advocacy Assistance for Person B, purportedly signed and dated on 24.10.18. The application related to an Adjudication Hearing scheduled to take place on 29.10.18
“Prep Note”	Asserted that the “ <i>sufficient benefit test</i> ” was completed for Person B on 25.10.18.
25.10.18 letter	Client Care letter to Person B at HMP Chelmsford
25.10.18 Telephone Attendance – Call In	Note of call from Person B asking if funding forms had been received from prison.
25.10.18 Telephone Attendance – Call In	Note of call from Person B during which receipt of the forms was confirmed. Discussion of a further call in which Respondent AE would take instructions in order to prepare representations for the hearing.
25.10.18 letter (sent by fax)	Letter (sent by fax) to HMP Chelmsford requesting a copy of the paperwork relation to the Independent Adjudication matter for Person B. NB. The original date on that letter was 14 November 2018, but it had been changed in handwriting to 25 October 2018.
25.10.18 Telephone Attendance – Call Out	Note of call from Respondent AE to prison regarding paperwork for Person B. Respondent AE allegedly informed that hearing would be on 29 October at 10am and told that the client’s paperwork would be sent by fax.
25.10.18 Telephone Attendance – Call In	Note of call from Person B during which instructions were taken.
26.10.18 Telephone Attendance – Call Out	Note of call to prison to confirm the date of the hearing as 29 October and to request that the Respondent’s name was put down on the list.
26.10.18 Telephone Attendance – Call Out	Note of call to prison to arrange conference before the hearing.

26.10.18 Telephone Attendance – Call In	Note of a call from Person B to confirm the details for the hearing. Instructions were taken in order to draft representations.
Prep Note	26.10.18 Prep Note, suggesting that 30 minutes had been spent drafting written representations
29.10.18 letter	Letter of introduction to Governor of HMP Chelmsford regarding Respondent’s visit to Person B on 29 October 2018.
Prep Note	29 October 2018 Prep Note purporting to relate to a conference and hearing with Person B on 29 October.
6.11.18 letter	Letter purporting to provide an outcome report for a 29.10.18 Adjudication Hearing
16.11.18 CDS Time Recording Note	Five separate time recording sheets relating to representation allegedly provided to Person B on 16.11.18.

25.14 The documents referred to above contained a number of omissions and internal inconsistencies in that:

- The 25 October 2018 letter (sent by fax) to HMP Chelmsford purports to attach a signed authority from Person B in circumstances where no such signed authority appeared on the file;
- Reference was made to written representations in the 25 October 2018 Telephone Attendance Note, a 26 October 2018 Telephone Attendance Note and the 26 October 2018 Prep Note in circumstances where none of those representations appear on the file;
- The 25 October 2018 letter to HMP Chelmsford was originally dated 14 November 2018 and was subsequently amended by hand to 25 October 2018. It remained unclear why anyone genuinely writing a letter on 25 October would inadvertently date it 14 November;
- The CDS Time Recording Notes for Granville Freckleton, Jamie Pile and Person B all referred to representation/attendance that allegedly occurred on 16 November 2018. None of those three files claimed that a hearing did in fact take place on 16 November 2018. Moreover, there remained the obvious logistical impossibility of attending and representing three different prisoners in three different prisons on the same day;
- The file did not contain a copy of the DIS1 (charge sheet), DIS2 (information sheet), or any handwritten notes from the hearing.

25.15 Further, HMP Ashfield confirmed that (i) there was a prisoner at HMP Chelmsford by the name of Person B in June 2015, but not in 2018; (ii) The prison number for the Person B that was a genuine inmate at HMP Chelmsford in June 2015 did not match the prison number provided by Respondent AE for the “Person B” she had allegedly represented in October 2018 (A0845LP); and (iii) the prison number provided by Respondent AE for Person B in October 2018 is not a genuine prison number.

25.16 Mr Collis therefore submitted that given there was no client by the name of Person B who was represented by Respondent AE in October 2018, all the documents within the file by that name suggesting that representation was so provided was false.

### *Principle Breaches*

25.17 **Principle 6** required Respondent AE to behave in a way that maintained the trust the public places in her and in the provision of legal services. Mr Collis submitted that Respondent AE produced a series of false documents across four separate files which gave the impression that she had been advising and representing four separate clients on a prison adjudication matter, when no such case had in fact existed.

25.18 Mr Collis further submitted that Respondent AE's conduct was aggravated by virtue of the fact that:

- The production of those documents could have led to both the LAA making payments for cases that did not exist and also the Firm (insofar as the CDS Time Recording Notes for both Granville Freckleton and Damilare Oduwale given that both claimed mileage in excess of 100 miles) making payments to Respondent AE for disbursements that were not in fact incurred;
- Respondent AE created documents which suggested that the level of work on those cases would take them out of the lower standard fee limit of £203.95 and place them in the higher fee limit bracket which would lead to the LAA paying £564.00;
- Given the nature of the Respondent AE's contractual arrangements with the Firm, there was an obvious financial benefit to her in seeking to (i) bill the LAA for work that had not in fact taken place; and (ii) bill that work at a higher level than normal.

25.19 Mr Collis therefore contended that the creation of documents which suggested that work had been carried out in circumstances where it had not was precisely the type of conduct that undermined public trust in Respondent AE and in the provision of legal services in contravention of Principle 6.

25.20 **Principle 2** required Respondent AE to act with integrity. Mr Collis submitted that Respondent AE deliberately created documents which suggested that she had conducted work in circumstances where she had not. It was held in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, that integrity connotes adherence to the ethical standards of one's own profession. Mr Collis contended that a solicitor acting with integrity (i.e., with moral soundness, rectitude and steady adherence with an ethical code) would not have created false documents to suggest that work had been conducted, when that work had not taken place in contravention of Principle 2.

### Respondent's Submissions

25.21 Respondent AE admitted the factual matrix of Allegation 1 in its entirety and, in so doing, having breached Principles 2 and 6.

### The Tribunal's Decision

25.22 The Tribunal determined that the admissions were properly made in circumstances where, by virtue of the extensive correspondence between the parties, Respondent AE was plainly aware of the likely consequences of admitting the same.

25.23 The Tribunal therefore found, on the basis of the evidence before it and the admissions made, Allegation 1.2 proved in its entirety on a balance of probabilities.

### **26. Allegation 2: - Production of false and/or misleading report forms and/or handwritten notes**

#### Applicant's Submissions

26.1 The Firm received Respondent AE's files for billing in November 2018. Respondent AE was first notified of those concerns on 20 November 2018. She was subsequently emailed on 26 November 2018 to request a meeting. That 26 November e-mail alluded to concerns that the files would fail an audit due to: (i) overly aggressive billing; (ii) lack of any handwritten notes; (iii) lack of evidence as to the charges; and (iv) lack of evidence from the prison confirming that the adjudications took place. Further, it requested that Respondent AE bring any of the items set out at (i) – (iv) above with her to the meeting.

26.2 Consequently, Respondent AE produced the following documents:

<u>"Client"</u>	<u>Document</u>	<u>Content</u>
Granville Freckleton	DIS1	Typed charge sheet relating to Granville Freckleton
Granville Freckleton	Handwritten document	Handwritten notes purporting to relate to a hearing for, " <i>Freckleton @ HMP Ashfield</i> ". Details suggest that charges related to a fight with a cell mate by the name of " <i>Hardy</i> ".
Jamie Pile	DIS1	Typed charge sheet relating to Jamie Pile
Jamie Pile	Handwritten notes	Notes purporting to relate to representation provided to Jamie Pile on 9.11.18. Details suggest that Pile's charges related to a fight with an individual by the name of " <i>Hardy</i> ."
Damilare Oduwale	DIS1	Typed charge sheet relating to Damilare Oduwale
Damilare Oduwale	Handwritten notes	Notes of representation allegedly provided to Damilare Oduwale on 26.10.18. Reference is made to (i) written representations being put in front of adjudicator; and (ii) cell mate " <i>Raza Ahmed</i> " giving evidence.
Person B	DIS1	Typed charge sheet relating to Person B
Person B	Handwritten document	Handwritten notes purporting to relate to a hearing for Person B at HMP Chelmsford on 29 October 2018. Contains reference to going through representations

	with client and the fact that the client faced four charges.
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- 26.3 The “new” documents, produced by Respondent AE, after the Firm had reviewed the files that had been submitted for billing, contained a number of inconsistencies with the documents that had already been produced and anomalies with regards the cases of Freckleton and Pile in that:
- The handwritten notes for Granville Freckleton suggested that the client pleaded guilty to two out of three of the charges, in circumstances where both the Prep Note and the 12 November 2018 letter suggested that the client was found guilty of two of the three charges, with no reference to guilty pleas;
  - The Independent Adjudication hearing for Jamie Pile allegedly took place at HMP Aylesbury on 9 November 2018 and related to a fight with an individual by the name of “Hardy”. That was a day after the alleged Independent Adjudication hearing for Granville Freckleton at HMP Ashfield on 8 November 2018, which also related to a fight with an individual by the name of “Hardy”;
  - The handwritten notes for Damilare Oduwale referred to the cell mate, “Raza Ahmed” giving evidence, whereas the 26 October 2018 Attendance Note suggested that it was just prison officers that gave evidence.
- 26.4 As with the documents that were originally in those four files, Mr Collis submitted that the “new” documents provided by Respondent AE were also false; they purported to relate to charges faced by clients, and representation provided on their behalf, when those “clients” simply did not exist.
- 26.5 Respondent AE subsequently admitted to the Firm that the files were not genuine and that they amounted to false claims against the Firm and the LAA.

#### *Principle Breaches*

- 26.6 Mr Collis submitted that when challenged by the Firm about the client files and documents contained therein, Respondent AE elected to produce yet further false documents in the form of fabricated DIS1 forms and handwritten notes.
- 26.7 Mr Collis averred that Respondent AE’s conduct in relation to Allegation 1.2 was slightly more egregious than the initial creation of false documents in that it represented an attempt on the part of Respondent AE to conceal her initial wrong-doing as particularised in Allegation 1.1. (presumably) in an attempt to legitimise the original documents.
- 26.8 Mr Collis contended that in so doing Respondent AE undermined public trust in her and in the provision of legal services, contrary to Principle 6, and acted without integrity, contrary to Principle 2.

### Respondent's Submissions

26.9 Respondent AE admitted the factual matrix of Allegation 1 in its entirety and, in so doing, having breached Principles 2 and 6.

### The Tribunal's Decision

26.10 The Tribunal determined that the admissions were properly made in circumstances where, by virtue of the extensive correspondence between the parties, Respondent AE was plainly aware of the likely consequences of admitting the same.

26.11 The Tribunal therefore found, on the basis of the evidence before it and the admissions made, Allegation 1.2 proved in its entirety on a balance of probabilities.

## **27. Allegation 2: - Dishonesty**

### Applicant's Submissions

27.1 Mr Collis reminded the Tribunal of the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 namely:

*“... 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...”*

27.2 Mr Collis submitted that Respondent AE must have known that the documents she was creating were false. It was inconceivable that she could have genuinely believed that she had in fact represented clients in the terms set out in the various documents she produced, when those individuals simply did not exist. Further, Respondent AE admitted that she had created false documents in her exchange with the Firm.

27.3 Moreover, there was an obvious potential financial benefit to Respondent AE in creating those documents. The terms of her employment with the Firm meant that she would be paid a percentage of the work that she billed, which gave her an obvious financial incentive to claim that she had carried out work when she had not in fact done so.

27.4 Mr Collis contended that the deliberate creation of false documents to suggest that work had been carried out, when it had not in fact happened, would on any view be considered dishonest by the standards of ordinary decent people particularly in circumstances where, in so doing, Respondent AE would make a financial gain.

- 27.5 Mr Collis averred that the dishonest conduct was perpetuated by Respondent AE by the further creation of false documents in an attempt to conceal the original false documents on “client” files.
- 27.6 Mr Collis therefore submitted that the aggravating feature of dishonesty in relation to Allegations 1.1 and 1.2 were made out.

#### Respondent’s Submissions

- 27.7 Respondent AE admitted having acted dishonestly in relation to Allegations 1.1 and 1.2.

#### The Tribunal’s Decision

- 27.8 The Tribunal determined that the admissions were properly made in circumstances where, by virtue of the extensive correspondence between the parties, Respondent AE was plainly aware of the likely consequences of admitting the same.
- 27.9 The Tribunal therefore found, on the basis of the evidence before it and the admissions made, Allegation 2 proved in its entirety on a balance of probabilities.

#### **Previous Disciplinary Matters**

28. None.

#### **Mitigation**

29. Respondent AE, by way of an email to the Applicant dated 14 November 2022, made plain that she admitted the allegations levelled against her but asserted that exceptional circumstances existed at the material time such that she should not be sanctioned to an Order Striking her from the Roll of Solicitors as one would expect in cases of proven dishonesty.
30. The exceptional circumstances relied upon by Respondent AE were borne out of her medical condition at the material time which led to her “reckless and self-destructive behaviour”. Respondent AE stated that her motivation “was not personal gain”.
31. With regards to harm caused, Respondent AE submitted that:

*“... The level of harm caused by my acts was limited as my motivation was for the acts to be identified quickly to fulfil my desire to self- destruct. My actions were identified by the firm within a short time period and thus limited in their impact. I would also purport that the financial scale of my acts was of a small nature in the context of their potential implications on my earnings and career. I.e. (sic) a reasonable person of sound mind would have not risked their career for such little gain...”*

32. As regards mitigating features, Respondent AE prayed in aid the medical report obtained by the Applicant during the course of the proceedings and the supporting documents which she had filed and served regarding her medical condition. Respondent AE asserted that:

*“... [her] actions were a singular event caused by [health condition] and [her] previous legal career was unblemished ...*

*... Through the SRA’s procedure [she had] been open, frank and co-operative with the investigating body despite the challenges associated with my [medical condition] ...”*

33. Given the factors set out above and her medical condition at the material time, Respondent AE submitted that the exceptional circumstances were compelling and that striking off, whilst appropriate, would be an unjust sanction to impose. She added:

*“... [She had] no intention of resuming a legal career in the foreseeable future due to the impact on [her] health. [She] did have a personal aim to provide pro-bono legal support to vulnerable clients during [her] retirement years and an indefinite suspension would leave that option open to [her] if the appropriate conditions are met...”*

### **Sanction**

34. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction and applied the principle promulgated in Bolton v The Law Society [1994] 1 WLR 512 namely:

*“§14 Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors...”*

Master of the Rolls Sir Thomas Bingham

35. In assessing culpability, the Tribunal determined that Respondent AE was solely responsible in her planned and repeated misconduct. She was motivated by financial gain given that a percentage of her income from the Firm was generated from expenses claimed. Respondent AE made the false claims initially then sought to make good the same by the fabrication of documents subsequently. It was a concerted effort on her part for which she was directly responsible. She acted in breach of trust as a reasonably experienced solicitor. Respondent AE’s culpability was high.



36. In assessing harm caused direct harm to the Firm who were, by virtue of the misconduct, at risk of losing their legal aid contract. Respondent AE caused harm to the profession by her dishonest misconduct. All of the harm was eminently foreseeable, and the Tribunal determined that it was at the highest level of seriousness.
37. Aggravating factors identified by the Tribunal were (a) admitted dishonesty, (b) misconduct that was deliberate, calculated and repeated, (c) the misconduct took place over a period of time (October – November 2018), (d) Respondent AE sought to conceal her misconduct by subsequently fabricating false documents when challenged (Allegation 1.2) and (e) Respondent AE must have known that her misconduct was in material breach of obligations to protect the public and the reputation of the legal profession.
38. Mitigating features were the open and frank admissions made to the Firm and the Applicant following the second tranche of false documents created by Respondent AE and the fact that she previously held an unblemished regulatory history.
39. Weighing all of the factors set out above, the Tribunal determined that the admitted misconduct was at the top end of the spectrum as regards seriousness such that the appropriate and proportionate sanction was an Order Striking Respondent AE from the Roll of Solicitors.
40. Having reached that conclusion, the Tribunal considered the exceptional circumstances advanced by Respondent AE. In so doing, it applied the principles promulgated in:

Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)

“§13 *It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll ... That is the normal and necessary penalty in cases of dishonesty ... (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ... (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary ... or over a lengthy period of time ... ; whether it was a benefit to the solicitor ... and whether it had an adverse effect on others...*”

Mr Justice Coulson

SRA v James; SRA v MacGregor; SRA v Naylor [2018] EWHC 3058 (Admin)

“§112 *It is of course correct that issues of stress and depression (or other mental health issues) should be taken into account by the SDT in assessing whether there are exceptional circumstances ... However, the presence of such mental health issues cannot, without more, amount to such “exceptional circumstances”. The effect of the contrary approach would be that exceptional circumstances would no longer be a narrow residual category of case, but much more the norm...*”

41. In so doing, the Tribunal determined that the mitigation advanced by Respondent AE did not amount to exceptional circumstances such that an Order Striking her from the Roll could be categorised as disproportionate.

## **Costs**

### Applicant's Application

42. Mr Collis applied for costs in the sum of £23,550.00 as particularised in the Applicant's Schedule of Costs dated 23 January 2023.

### Respondent's Position

43. Respondent AE filed and served a Statement of Means dated 15 November 2022 appended to which were:
- Bank statements from June until November 2022.
  - A Chartered Accountant Report dated 9 December 2021 for the year ended 5 April 2021.
  - An undated excel spreadsheet relating to invoices raised in 2022 – 2023.

### The Tribunal's Decision

44. The Tribunal considered the costs claimed to by the Applicant to be reasonable and proportionate in circumstances where significant work had been undertaken as a consequence of Respondent AE's ill health. The Applicant had expended significant time and cost in securing medical evidence and ensuring that Respondent AE was able to participate as fully as she was able to do in the proceedings.
45. The Tribunal noted the date of Respondent AE's Statement of Means (November 2022) and the appended bank statements. Those documents revealed average earnings in the region of £6,000.00 in her last year of working. She did not appear to have worked as a solicitor since March 2022. The Tribunal formed the view that she was of extremely limited means.
46. Given Respondent AE's impecuniosity, the Tribunal determined that she should pay a contribution to the Applicant's costs in the sum of £6,000.00.

## **Statement of Full Order**

47. The Tribunal Ordered that RESPONDENT AE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,000.00.

Dated this 7<sup>th</sup> day of December 2023  
On behalf of the Tribunal

*R Nicholas*

R Nicholas  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**7 DEC 2023**