

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12393-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

DANIEL PAUL HUGH HUTCHINGS Respondent

Before:

Mrs C Evans (in the chair)

Mr G Sydenham

Mr A Lyon

Date of Hearing: 21-22 February 2023

Appearances

Nimi Bruce, barrister of Capsticks LLP for the Applicant.

Gregory Treverton-Jones KC, barrister of 39 Essex Chambers, instructed by Clyde & Co for the Respondent.

JUDGMENT

Allegations

1. The allegations against Mr Hutchings were that on 7 February 2020:
 - 1.1. Whilst at a club in Dover Street W1 (“the club”), he approached Person A, a solicitor previously unknown to him but who had also attended the Society of Construction Lawyers (“SCL”) lunch, and on two separate occasions, he made comments to Person A about her appearance including words to the effect of:

- 1.1.1. “you’re really fit, aren’t you?”; and/or
- 1.1.2. “you’ve got a great bum”; and/or
- 1.1.3. “look at your tits”; and/or
- 1.1.4. “look at your boobs”;

[Allegation proved.](#)

- 1.2. He touched Person A, including placing one or more of his hands on or around her waist area on one or more occasions;

[Allegation proved.](#)

- 1.3. He ignored Person A’s repeated attempts to make clear to him that his actions were unwanted, by words and conduct, namely by removing his hand from her waist and telling her that she did not consent to him touching her in this way and to him making such comments.

[Allegation proved.](#)

2. His actions and each of them, as described in paragraph 1, were sexually motivated.

[Allegation proved.](#)

3. His conduct amounted to a breach of Principles 2 and/or 5 of the SRA Principles 2019.

[Allegation proved.](#)

Executive Summary

4. Mr Hutchings attended a professional event at a club in Central London. While he was at that event, he sexually harassed Person A as set out in the Allegations. Mr Hutchings admitted most of the Allegations but denied that his conduct lacked integrity or that his actions had been sexually motivated.
5. Mr Hutchings chose not to give evidence. The Tribunal found the Allegations proved in full.

Sanction

6. Mr Hutchings was [fined](#) £30,000 and ordered to pay £18,000 in costs. The fine would have been £52,000 but was reduced to take account of his means.

Documents

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

Preliminary Matters

8. Amendments to R12

- 8.1 Ms Bruce applied to make a small number of minor amendments to the Rule 12 Statement to correct typographical errors and to bring further clarity to Allegation 1.3. This application was not opposed by Mr Treverton-Jones and was granted by the Tribunal.

9. Anonymity in respect of Person A and Witness B

- 9.1 Ms Bruce applied for Person A and Witness B to be anonymised during the hearing and in the Tribunal's written Judgment. This was due to the nature of the Allegations. This application was not opposed by Mr Treverton-Jones. The Tribunal was satisfied that this was entirely appropriate in a case involving Allegations of this nature. The reader of the Judgment would have no difficulty in understanding the issues in the case or the Tribunal's reasoning as a result of these witnesses being anonymised. The application was therefore granted.

10. SRA application to make submission on Sanction

- 10.1 At the outset of the hearing Ms Bruce indicated that she would seek to address the Tribunal on sanction in due course. The Tribunal dealt with the issue once it had made its findings and before it heard mitigation. The Tribunal indicated its provisional view, which was that it was helpful for either or both of the parties to take it to relevant aspects and elements of case law that might assist it in deciding on sanction. What was less helpful was to hear submissions, particularly from the SRA, about where it said the case ought to land. The decision on sanction ultimately was one that fell squarely to the Tribunal.
- 10.2 The Tribunal invited submissions before making a decision on this point.

Applicant's Submissions

- 10.3 Ms Bruce told the Tribunal that she had prepared written submissions on sanction but, at Mr Treverton-Jones' request, had not uploaded them until this preliminary point had been resolved.
- 10.4 Ms Bruce submitted that the question of sanction had always been, and remained, a matter for the Tribunal. Ms Bruce reminded the Tribunal that any submissions made by the SRA were of no greater status than those made by a Respondent. Ms Bruce submitted that the SRA should be entitled to make positive submissions as to where the sanction, in its view, lay. Ms Bruce suggested that the Tribunal had previously agreed to allow the SRA to make submissions of this nature in appropriate cases. Ms Bruce

submitted that this was clearly such a case. The SRA was not a “supine observer” to the proceedings and it regulated in the public interest.

- 10.5 Ms Bruce submitted that as an alternative, she could remove the sections of her written submissions that made a positive submission on sanction and would draw the Tribunal’s attention to certain guidance and cases. The worst possible scenario was one in which the Tribunal did not hear from the SRA at all.

Respondent’s Submissions

- 10.6 Mr Treverton-Jones opposed Ms Bruce’s application.
- 10.7 Mr Treverton-Jones submitted that he agreed with the Tribunal’s provisional view. The SRA’s role was to lay out the facts in a neutral manner and it was for the Tribunal to decide on sanction. If the Tribunal, as an organisation, had agreed to the SRA making submissions as a matter of policy, this should be set out in a publicly available document.
- 10.8 Mr Treverton-Jones submitted that Ms Bruce was seeking to make a variety of arguments and that it was “completely unprecedented” for it to be allowed to make wide-ranging submissions on sanction.

The Tribunal’s Decision

- 10.9 The Tribunal’s procedures and policies were contained in the SDPR 2019, any Policy Notes/Practice Directions issued by the Policy Committee and in published Guidance Notes – the Guidance Note on Sanction (10th Edition – June 2022) being the relevant such document for these purposes. All of the documents referred to above are publicly available documents which reflected policy made in accordance with the Tribunal’s rules.
- 10.10 Rule 41 of the SDPR dealt with the question of sanction and made no reference to the SRA having a right to make submissions on sanction. The Guidance Note on Sanction also made no reference to this. There were no Policy Notes/Practice Directions that supported Ms Bruce’s submission.
- 10.11 The Tribunal therefore considered that, while the SRA was entitled to ask to make a submission, it was not entitled to be allowed to make the submission as of right. It would be a matter for each panel of the Tribunal to determine whether or not to hear from the SRA on sanction and to specify the areas of assistance that the SRA could offer. In this case the Tribunal remained of the view that it may be helpful for the SRA to draw the Tribunal’s attention to relevant case law and guidance, but it would not be assisted by a positive submission on what sort of sanction should be imposed.
- 10.12 Following the announcement of its ruling on this point, Ms Bruce uploaded her written submissions, with four paragraphs redacted. There then followed a dispute between Ms Bruce and Mr Treverton-Jones as to whether or Ms Bruce had complied with the Tribunal’s ruling. The Tribunal did not consider that it needed to make a determination of that issue. It would allow Ms Bruce to read her redacted submissions into the record in the interests of transparency. To the extent that the Tribunal considered that any part

of the submissions went beyond the scope of what was helpful to the Tribunal, they would be disregarded.

- 10.13 In the event, the Tribunal was not assisted by Ms Bruce's submissions and it paid no regard to them when it considered sanction. The reason for this was that Ms Bruce's document consisted of; first-instance decisions of the Tribunal, which were not binding, were by their nature, very fact specific and in any event were referred to by Mr Treverton-Jones and so the Tribunal could form its own view about their relevance; internal SRA guidance and enforcement strategies, which were also not binding on the Tribunal, which was independent of the SRA; and guidance and case law from other jurisdictions, which were also not binding on the Tribunal and which, by their nature, dealt with matters in a different context and background to the matter before this Tribunal.

Factual Background

11. At the material time Mr Hutchings, who was admitted to the Roll in 2010, was employed as a solicitor at Taylor Wessing LLP ("the Firm"). On 7 February 2020, he attended a lunch hosted by the SCL, a professional body of practitioners in the construction law field and thereafter attended an event organised by a number of construction law barristers' chambers at a club in Dover Street W1 and attended by many of the guests from the SCL lunch. Mr Hutchings and Person A were both members of the SCL, but were not known to each other.
12. The SCL is a professional body that puts on an event each year called the SCL lunch in order to provide its members with the opportunity of socialising and networking together. There were usually about 1,500 members and guests at the lunch consisting of legal practitioners and experts in the field of construction law. It had become customary for many of those who wanted to go on socialising and networking to attend a post-lunch event and arrangements had been made for the event to take place at the club, with the provision of a private area in the basement from about 4:00 pm or 5:00 pm until it opened to the public at 10:00pm. The costs of the event, including drinks, was shared between a number of barristers' Chambers. Person A was a guest of Hardwicke Chambers.
13. There was no formal guest list, but security at the club was asked to check with guests that they had been to the SCL lunch and were not simply passers-by.
14. Person A arrived at the club between about 7-8pm, having attended the SCL lunch. Person A spoke with Witness B at the club. Witness B was a paralegal with whom she had worked at a previous firm. Witness B stated that Mr Hutchings, who was dressed in a business suit, approached them and appeared to want to join the conversation. Mr Hutchings introduced himself, including telling Person A and Witness B that he worked for Taylor Wessing.
15. Mr Hutchings was drunk and unsteady on his feet. He was described by Person A as having seemed to "fixate" on her. While making the comments set out in Allegation 1.1, he was pointing to and staring at Person A's breasts and bottom. Person A told Mr Hutchings that she did not want to hear such things and that he was acting inappropriately, that they were at an SCL event, surrounded by legal professionals and

that he should know better. Mr Hutchings put his hand on or around Person A's waist on several occasions. On each occasion, she removed the Respondent's hand from her body, telling him that she did not consent to him touching her. Despite her attempts to make him desist, "this did not stop him, [and] he seemed to find that funny".

16. After a few minutes, Person A steered Mr Hutchings in the direction of the bar in order to try to get rid of him and get him away from Witness B. Witness B was sufficiently troubled by what she was seeing that she asked a colleague whether she should intervene. She stated that:

"He...kept putting his hands on her shoulder and arm to steady himself and was leaning in closely to her face when she was speaking. I do not know how many times he did this ... I do remember [the Respondent] asking [Person A] if she had a boyfriend and her replying that she did. I also heard Person A ask the Respondent not to touch her and to keep his hands to himself. I think she repeated this a number of times although I don't recall the exact words she said. Person A did all this whilst smiling and removing the Respondent's hand off her only for him to repeat it a few minutes later."

17. Witness B stated that she felt that Person A had shown "more patience and tolerance than I would have done in the situation".

18. Mr Hutchings approached Person A for a second time. He made further comments about her and put his hand on her waist. Person A removed his hand each time and she told him that his comments were unwelcome. Person A also told Mr Hutchings that she did not want him to touch her. Witness B stated:

"I next recall seeing Person A standing at the bar opposite the booth area. I saw [the Respondent] further approach her. I remember deciding to try and block him out by also approaching and talking to [Person A] whilst ordering a drink.

I then recall that the Respondent followed us back to the booth area where he...continued to be... "handsy". By this I mean he kept putting his hands onto Person A's shoulders, arm or waist".

19. Following this second incident, Person A and Witness B moved to a separate Karaoke room. They were then approached for a third time by Mr Hutchings when they came out of the room. Having returned the room, Mr Hutchings then approached again and Person A and Witness B eventually had to move to a completely different floor of the club that was by then open to general members of the public.

20. On 10 February 2020, Person A sent an emailed complaint to the then Chairperson of the SCL. The matter was reported to the SRA in July 2020.

21. Mr Treverton-Jones told the Tribunal that Mr Hutchings admitted the factual basis of Allegations 1.1, 1.2 and 1.3 and did not contest the evidence of Person A or Witness B, or indeed any of the evidence presented by the SRA. Mr Hutchings further admitted the breach of Principle 2, but denied the breach of Principle 5 (integrity) and denied that his conduct was sexually motivated.

Findings of Fact and Law

22. 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.
23. The written and oral submissions of the parties on the contested issues are summarised below, followed by the Tribunal's findings.
24. **Allegations 1.1, 1.2 and 1.3**
- 24.1 These Allegations were admitted Mr Hutchings. The Tribunal was satisfied that these admissions were properly made based on the evidence presented by the SRA. The Tribunal found these Allegations proved on the balance of probabilities.
25. **Allegation 2 – Sexual Motivation**
- 25.1 This Allegation was denied by Mr Hutchings.

Applicant's Submissions

- 25.2 Ms Bruce submitted that the definition of 'sexual motivation' was set out in Basson v GMC [2018] EWHC 505 (Admin), which defined it as conduct which was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship. Ms Bruce submitted that either or both limbs applied in this case.
- 25.3 Ms Bruce reminded the Tribunal of the evidence that Mr Hutchings had appeared to be "fixated" on Person A and would not leave her alone. Ms Bruce submitted that the words he used, which included what he thought of her and made reference to intimate parts of her body, the nature of the repeated touching, and his refusal to desist, despite her repeated attempts to persuade him to stop, both individually and in combination, could only sensibly lead to the conclusion that his behaviour was either in pursuit of sexual gratification or of a future sexual relationship or both.
- 25.4 Ms Bruce did not accept any suggestion that 'sexual motivation' may only apply to actions and not to words. Ms Bruce submitted that the proper approach was to decide which parts of Allegation 1 it found proved and then to apply its judgment on Allegation 2 to the totality of the facts found proved.
- 25.5 Ms Bruce also rejected any suggestion that 'sexual motivation' was limited to a practitioner/patient relationship in healthcare regulation.

Respondent's Submissions

- 25.6 Mr Treverton-Jones accepted that the words used were "sexualised" but on their own did not fall within the relevant tests in decided cases. He also referred to Basson and

submitted that “a word or action must be made either (a) in pursuit of the statement-maker’s own sexual gratification or (b) in pursuit of a future sexual relationship”. Mr Treverton-Jones submitted that “(a) applies to actions rather than words, and cannot apply to comments. As for (b), bearing in mind the public context in which the comments were made, and the Respondent’s consumption of alcohol, it is most unlikely that (b) applied - these were crass and inappropriate comments, but cannot fairly be described as sexually motivated in the sense understood above”.

- 25.7 Mr Treverton-Jones further submitted that Mr Hutchings’ actions, taken at their highest, did not qualify for a finding of sexual motivation. He referred to the following section of Witness B’s evidence:

“9. At some point whilst stood at the booth area, I do not recall the time, I saw that another man had joined from up the stairs and was talking to [Person A]. As far as I remember the man was dressed in a business suit. I recall him wearing a white shirt but cannot recall with any certainty any other details. I shall refer to this man for the rest of this statement as Man A.

10. It appeared to me that Man A was intoxicated. He looked unsteady on his feet and swayed from side to side. Although I didn’t hear everything that he was saying to [Person A], from what I did hear, his speech appeared slurred as he tried to talk but a lot of what he said appeared to me to be largely incoherent.

11. He did seem to focus entirely on [Person A]. I do not recall him paying any attention to or saying anything to me, my colleague...or the two solicitors from [another firm].

12. As I have said, I was probably two of my arms lengths away from [Person A] and Man A. I could see that his presence was making [Person A] uncomfortable. His unsteadiness on his feet meant he was kept putting his hands on her shoulder or arm to steady himself and was leaning in closely to her face when speaking. I do not know how many times he did this. I did not fully hear nor recall exactly what was being said, but one thing I do remember was Man A asking [Person A] if she had a boyfriend and her replying that she did.”

- 25.8 Mr Treverton-Jones described this evidence as crucial, in that it reflected the high point of Mr Hutchings’ actions and was evidence that he was using his hands to steady himself. In those circumstances, Mr Treverton-Jones submitted that it was impossible to conclude that Mr Hutchings’ actions were sexually motivated. Mr Treverton-Jones accepted that Mr Hutchings had been described as “handsy” by Witness B, but there was no assertion that he has used his hands in a sexually motivated manner. Mr Treverton-Jones submitted that Person A’s version of events had changed to some extent through her various witness statements, and that Witness B’s evidence was therefore “decisive”.

- 25.9 Mr Treverton-Jones submitted that Mr Hutchings had consumed far too much alcohol and was therefore unlikely to have formed any proper intention sufficient to justify the term ‘sexually motivated’ conduct.

25.10 In relation to Mr Hutchings placing his hand around Person A's waist, Mr Treverton-Jones told the Tribunal that Mr Hutchings belief was that at the first encounter he touched Person A's arms and shoulder, and at the second encounter he put his arm around her waist. He accepted that both events were unwanted by Person A. Mr Treverton-Jones referred the Tribunal to the following section of Mr Hutchings Response to the SRA's Reply to his Answer (B4, paragraph 9b):

“He denies that his placing his hand on the waist of the complainant was sexually motivated - it was a clumsy and no doubt counter-productive attempt to de-escalate the situation as appears to be accepted by the semi-independent witness”.

25.11 On a broader point, Mr Treverton-Jones submitted that the question of 'sexual motivation' was of little or no relevance. Mr Treverton-Jones submitted that it was Mr Hutchings' conduct that was relevant and not "Complex questions of psychological motivation" given that it was accepted that the words and actions were unwanted and inappropriate.

25.12 Mr Treverton-Jones submitted that there was a danger in applying concepts from different regulatory spheres, such as doctors. Doctors routinely had permission to touch patients and so intent was relevant to determining any allegation of inappropriate touching. This could be contrasted with lawyers, who did not need to touch their clients. Mr Treverton-Jones therefore submitted that the Tribunal did not need to determine this issue, but if it did then it should dismiss Allegation 2.

The Tribunal's Findings

25.13 The Tribunal considered the unchallenged evidence of Person A and Witness B. It also had regard to Mr Hutchings' Answer, Response to the Reply to his Answer and his Witness Statement.

25.14 The evidence of Person A had not been contested and so the Tribunal was entitled to attach full weight to that evidence. In contrast, Mr Hutchings' evidence had not been agreed by the SRA and, had he given evidence, he would have been cross-examined. Mr Hutchings had exercised his right not to give evidence. The effect of that was that his account and explanations could not be tested. This substantially reduced the weight that the Tribunal attached to that evidence. The Tribunal did not, however, draw an adverse inference from Mr Hutchings' decision not to give evidence.

25.15 The Tribunal did not accept the submission to the effect that the question of sexual motivation was irrelevant and should not be considered. The existence, or otherwise, of sexual motivation was an important factor in assessing the seriousness of the conduct – conduct that could take the form of words, actions or both.

25.16 In considering all the Allegations, the Tribunal had regard to Mr Hutchings' unblemished reputation in the profession. This was relevant to his credibility and to the issue of propensity.

The words used (Allegation 1.1)

25.17 The Tribunal considered the words used as described in Allegation 1.1. The Tribunal did not accept the submission that they could not be sexually motivated – whether they were or not was a matter on which the Tribunal could make a finding.

25.18 The Tribunal noted that Mr Hutchings had made repeated references to a number of intimate areas of Person A’s body. He had made those remarks in an approving way, which indicated he found Person A attractive. Mr Hutchings had also asked Person A if she had a boyfriend. Witness B recalled this.

25.19 The Tribunal noted the following parts of Person A’s evidence:

“It became clear to me that [Mr Hutchings] seemed to fixate on me. Rather than taking about work or profession related matters, he made comments about me and my body.”

“The Respondent came up to me and quite immediately started commenting on my appearance and started putting his hand around my waist, touching my back and my bum.” The relevance of this section of Person A’s evidence is that his comments began immediately. The Tribunal accepted that the touching that was alleged by the SRA related to Person A’s waist, not her back or her bottom.

25.20 Mr Hutchings’ Answer did not directly address the issue of sexual motivation, though he accepted that his words were inappropriate. Mr Treverton-Jones, on his behalf, accepted the words were “sexualised”, but drew a distinction between that and ‘sexual motivation’.

25.21 The Tribunal found this to be the clearest case of sexual harassment. There was no other reason for Mr Hutchings to ask Person A, who he had never met before, whether she had a boyfriend. There was no other reason why he would make remarks about her body or why he would point and stare at those areas of her body. The Tribunal, applying the test in Basson, was satisfied on the balance of probabilities that Mr Hutchings made those remarks in pursuit of sexual gratification and in pursuit of a future sexual relationship.

The actions (Allegation 1.2)

25.22 The Tribunal was entitled to assess Mr Hutchings physical actions in the context of the verbal comments that he was making at the time.

25.23 The Tribunal noted the following parts of Person A’s evidence:

“I remember that DH put his hand on or around my waist several times. Each time I removed his hands from me, telling him each time that I did not consent to him touching me.”

“Every time he touched me, I removed his hands and told him that I did not consent to him touching me. When he said things about my body, I did tell him that I did not want to hear such things.”

25.24 The Tribunal noted the following parts of Witness B's evidence:

"He did seem to focus entirely on [Person A]."

"As I have said, I was probably two of my arms lengths away from [Person A] and Man A. I could see that his presence was making [Person A] uncomfortable. His unsteadiness on his feet meant he was kept putting his hands on her shoulder or arm to steady himself and was leaning in closely to her face when speaking. I do not know how many times he did this. I did not fully hear nor recall exactly what was being said, but one thing I do remember was Man A asking [Person A] if she had a boyfriend and her replying that she did."

"I then recall that Man A followed us back to the booth area where he showed no signs of sobering up and continued to be what I would describe as 'handsy'. By this I mean he kept putting his hands onto [Person A's] shoulders, arm or waist."

25.25 The Tribunal noted that the touching of Person A's arm and shoulder was not pleaded part of the Allegations and therefore was not alleged to be sexually motivated. The conduct that was said to be sexually motivated in relation to Allegation 1.2 was the touching of Person A's waist.

25.26 In his Witness Statement, Mr Hutchings stated:

"As far as the alleged touching is concerned, as explained in my Representations dated 29 April 2022, based on the evidence that I have now seen, specifically the statement of Witness B, I do not believe that I touched Person A's waist during this first encounter. I think that it is more likely that the only touching during this first encounter was to Person A's arms and shoulder and that it was not sexually motivated but was to steady myself. Nonetheless, while again I do not remember Person A telling me specifically that she did not consent to the touching to Person A's arms and shoulder, I do not dispute that it was unwanted and uninvited by her."

"I recall that this first encounter ended when Person A led me away from the area and I was left with the feeling I had caused annoyance and irritation. I recall also that I saw Person A again at some point, although I can't remember how long this was after the first encounter. I remember that I was attempting to try and improve on my perception of how the first encounter ended as I did not like the fact I had annoyed someone I had only just met. Again, I believe this was a fairly brief interaction which lasted a few minutes which, again, accords with Person A's recollection."

"I do seem to recall that I put my hand on Person A's waist during this [the second] encounter. As I have explained in the Representations, this was not sexually motivated but was an attempt improve and de-escalate the situation. Again, I do not recall Person A removing my hands and telling me that she did not consent to being touched in this way but I accept that the touching was not invited by her and was unwelcome."

- 25.27 The Tribunal found that Mr Hutchings' explanation that he was trying to "de-escalate" was inconsistent with the evidence of Person A and Witness B. The Tribunal considered this explanation to be implausible given the context in which the action took place. Mr Hutchings had used the words described in Allegation 1.1 and had been staring and pointing. If he had been attempting to de-escalate the situation that he had created, there were several ways he could have done so that did not involve making any physical contact with Person A. Mr Hutchings could have apologised for his behaviour or simply respected Person A's wishes and left her alone. Instead, he continued with his sexualised language and repeatedly touched Person A around the waist despite Person A being clear that she did not want him to do this.
- 25.28 The Tribunal was entirely satisfied on the balance of probabilities that Mr Hutchings' actions in touching Person A on the waist were sexually motivated in that he was seeking sexual gratification or a sexual relationship with Person A.

The continuation (Allegation 1.3)

- 25.29 The Tribunal, having already found that the words and actions in Allegations 1.1 and 1.2 were sexually motivated, found as a matter of logic that the continuation of those actions after being told to desist was similarly motivated.

26. Allegation 3 - Integrity

- 26.1 This Allegation was denied by Mr Hutchings.

Applicant's Submissions

- 26.2 Ms Bruce referred the Tribunal to Solicitors Regulation Authority v Wingate [2018] 1 WLR 3969 and to Beckwith v SRA [2020] EWHC 3231 (Admin). Ms Bruce submitted that there was "a sufficient nexus between the Respondent's conduct and the context in which it took place so that it can properly be said to touch upon both his practice as a solicitor and the standing of the profession".
- 26.3 Ms Bruce submitted that there was a clear link between the party at the club and the more formal SCL lunch. The event continued to be an opportunity for lawyers and their guests to continue to network and to socialise with each other.
- 26.4 Ms Bruce noted that those organising the party at the club had taken steps to ensure it was exclusive to those who had attended the SCL lunch and it was funded by a number of barristers' chambers. Ms Bruce reminded the Tribunal that Mr Hutchings was wearing a business suit and introduced himself with reference to the firm he worked at.
- 26.5 Ms Bruce submitted that in attending the event at the club, Mr Hutchings was continuing to involve himself in a marketing event. This was not an evening spent at a nightclub in the course of his private life.
- 26.6 Ms Bruce submitted that it was implicit in the provisions in the SRA Code of Conduct that a solicitor, in his interactions with another solicitor at a professional event or quasi professional event, was under a duty to treat them with respect. Ms Bruce further submitted that in subjecting Person A to such remarks and touching her, despite Person

A making it clear that she did not consent to them, Mr Hutchings had failed to act with integrity. A solicitor acting with integrity towards another solicitor at an event such as this one, would not have behaved as the Respondent did, if he were adhering to the obligation to act with integrity.

Respondent's Submissions

- 26.7 Mr Treverton-Jones submitted that there were now four separate layers of professional misconduct; strict liability, ordinary professional misconduct, lack of integrity and dishonesty. Mr Treverton-Jones posed the question as to what was the difference between ordinary professional misconduct and that accompanied by a lack of integrity.
- 26.8 Mr Treverton-Jones submitted that when looking at this question, the issue was professional integrity. This included relations with clients and staff. Mr Treverton-Jones submitted that the SRA allege a lack of integrity “in more or less every case”.
- 26.9 Mr Treverton-Jones submitted that this was an event open to lawyers who happened to be members of the SCL. After the lunch was some networking, after which some of the members went to the nightclub where there were also other members of the public. Mr Treverton-Jones submitted that it could not be described as part of Mr Hutchings’ professional life or dealings. This was a social occasion at which people were letting their hair down. Mr Hutchings had not broken any specific rule in Code of Conduct. A lay person would not conclude that Mr Hutchings had behaved with a lack of integrity on the evening in question, even if they would be critical. This event was not an occasion at which the requirements of the professional conduct rules to behave with integrity applied in the same way as when a solicitor was engaged in professional dealings.

The Tribunal's Findings

- 26.10 The Tribunal had regard to Beckwith and noted [54] in particular in relation to a solicitor’s private life:

“There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person’s private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 [the Principle relating to integrity under the 2011 Code, now reflected in Principle 5 of the 2019 Code] or Principle 6 [the Principle relating to the trust the public places in the individual and the profession under the 2011 Code, now reflected in Principle 2 of the 2019 Code] may reach into private life only when conduct that is part of a person’s private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor’s profession. Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular

outcry is not proof that a particular set of events gives rise to any matter falling within a regulator's remit.”

26.11 The Tribunal examined the nature of the event carefully. It had begun with the SCL lunch, a very large event for SCL members and guests. It was a professional event that was organised by SCL, barristers' chambers and solicitors. The Tribunal read the statement of Mr Cowup, then a clerk at one of the chambers that organised the event. He described the SCL lunch as an annual event. It was followed by networking. This had previously taken place in several pubs, but as from the 2017 event onwards, it was agreed that the chambers would collaborate and organise the networking at one venue. In his Witness Statement he said:

“This was rather than the same clients having to go from pub to pub to network with the various chambers. We (the chambers) were trying to look after mutual clients and so we set that up.”

26.12 Mr Cowup knew of the club and made the necessary arrangements. Each chambers put £500 behind the bar.

26.13 Mr Cowup stated:

“11. People attending the event at Mahiki [the club] would be attendees of the SCL lunch and maybe clerks, barristers, solicitors or experts who couldn't make the lunch. As mentioned above it was set up as a follow on from the SCL lunch so that there would be an expected association with construction law; lawyers, experts, clerks. It was not just a general invite to the whole of the legal profession. Whilst I was not at the 2020 event I believe that in other years there would have been possibly a couple of hundred people at the Mahiki event.”

26.14 This was consistent with the evidence of Person A. Person A described the lunch as a “large formal event”. In relation to the event at the club, she stated:

“My understanding was that this was a post lunch after event and Keating Chambers had reserved a private area of the club so guests could continue to socialise and network in a less formal setting. I believe that any of the guests of the annual lunch were able to attend the Mahiki after lunch function if they wished.”

26.15 This was corroborated by Witness B's account. The Tribunal also noted that Mr Hutchings had been wearing a business suit and had introduced himself to Person A by reference to his firm. The event had been organised by sets of chambers and was directly linked to attendance at the SCL lunch, which itself was organised by a professional body.

26.16 The Tribunal was satisfied that the event in the club was part of a professional work event and as such, fell within matters related to Mr Hutchings' professional practise. In those circumstances, Principle 5 was engaged.

26.17 In considering whether Mr Hutchings had lacked integrity, the Tribunal had regard to Wingate. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one’s own profession”.

- 26.18 The Tribunal found that using the language that Mr Hutchings did, together with the touching and the fact he would not take ‘no’ for an answer, in circumstances where his words and actions were sexually motivated, was a significant departure from the ethical standards of the profession. There had been no apology from Mr Hutchings during the event. Mr Hutchings had been at this event in his capacity as a solicitor engaging with other professionals. His behaviour had been appalling in circumstances where the public would expect solicitors to behave professionally. The Tribunal also noted that the SCL had considered the matter to be serious, which was an indication as to how the conduct would be viewed more widely.
- 26.19 The Tribunal was satisfied on the balance of probabilities that Mr Hutchings had lacked integrity and it therefore found the breach of Principle 5 proved. Mr Hutchings had already admitted the breach of Principle 2 and the Tribunal was satisfied that this admission was properly made.

Previous Disciplinary Matters

27. There were no previous findings at the Tribunal.

Mitigation

28. Mr Treverton-Jones told the Tribunal that Mr Hutchings offered a heartfelt apology to the Tribunal and the SRA but most importantly to Person A and Witness B. Mr Hutchings was “mortified” about what he had done and he knew it must have been annoying and upsetting.
29. Mr Treverton-Jones submitted that in every respect other than his behaviour on that night, Mr Hutchings was a decent, kind and likeable young man.
30. Mr Treverton-Jones submitted that no two cases were the same but that the Tribunal would wish a degree of consistency in its decisions. Mr Treverton-Jones had uploaded a schedule of previous decisions of the SRA and the Tribunal. Mr Treverton-Jones submitted that this case merited no more than a “modest fine”. Having determined where the incident fell on the scale, which Mr Treverton-Jones submitted was at, or very close to, the bottom of the it, he invited the Tribunal to look at the personal mitigation and decide where that should reduce the level of fine. Mr Hutchings had an unusual amount of powerful personal mitigation which could result in a significant reduction.
31. Mr Treverton-Jones invited the Tribunal to keep in mind that the duration of these incidents was short – less than five minutes in total. There was one victim and the nature of the contact had been limited. There had been no touching of intimate areas and no predatory conduct. Person A had not been at risk and had not perceived herself to be so. This took place in a crowded nightclub and Person A was able to move away with Witness B. there was also a group of men present who could have stepped in if required.

32. Mr Treverton-Jones told the Tribunal that there was no suggestion of any abuse of power and it was entirely absent in this case. He further noted that neither Person A nor Witness B had considered that they had an obligation under the SRA Code of Conduct to report Mr Hutchings to the SRA initially. The first complaint had been made to the SCL.
33. Mr Treverton-Jones submitted that Mr Hutchings had made early, full and frank admissions and had not tried to hide behind what he could not remember. He had done all he could to ensure that Person A and Witness B had not needed to give evidence. Mr Hutchings' admissions were sincere, and he had insight into what he had done wrong. He had addressed and reduced his alcohol consumption. The Tribunal was also referred to a medical report. That medical report had concluded that there was no chance of a repeat of this behaviour.
34. Mr Treverton-Jones told the Tribunal that Mr Hutchings had suffered "devastating" career consequences. He had lost his chance of promotion and had subsequently lost his job. He had joined a new firm but had need to begin building his career from scratch. If he was to be suspended, he would lose his job.
35. Mr Treverton-Jones referred the Tribunal to the character references that he had uploaded. These were from people who knew Mr Hutchings well.
36. Mr Treverton-Jones urged the Tribunal to impose a fair and proportionate sanction and resist the SRA's encouragement to take a more serious view.
37. Mr Treverton-Jones made a number of criticisms of Ms Bruce's document and the way in which he considered she had dealt with the issue. For the reasons set out under 'preliminary matters', the Tribunal did not need to make a determination on those matters and so those submissions are not set out here.

Sanction

38. The Tribunal referred to its Guidance Note on Sanctions (10th Edition – June 2022) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering Mr Hutchings' culpability, the level of harm caused together with any aggravating or mitigating factors.
39. In assessing culpability, the Tribunal had found that the motivation was sexual. While initially spontaneous, Mr Hutchings had been persistent. The Tribunal accepted that there was no evidence of a constructed effort to encounter Person A initially.
40. In relation to breach of trust, the public placed its trust in solicitors to behave properly, particularly at professional events. There was therefore always such a duty, but there was no additional duty in this set of circumstances. There was no evidence that Person A was vulnerable and Mr Hutchings was not in a position of seniority as they did not work together.
41. Mr Hutchings had direct control and responsibility for circumstances of these matters. It was his responsibility not to get himself so intoxicated that he behaved in such a manner. He was an experienced solicitor.

42. The Tribunal recognised that Mr Hutchings had engaged with the SRA in a timely fashion, noting that he was not contacted for around a year about these matters, and he had not sought to mislead the SRA.
43. In assessing harm, the Tribunal had regard to the fact that Person A had felt compelled to move to another area of the venue in order to avoid another encounter with Mr Hutchings. Person A had been on the receiving end of wholly inappropriate comments, touching and a refusal to desist when told to do so. Witness B had described herself as “stunned” by what was going on.
44. There was also harm to the reputation of the profession of a solicitor behaving in this way at a work event in particular. This was a clear departure from integrity and that inevitably damaged how the public viewed the profession.
45. The misconduct was aggravated by the fact that it was deliberate and repeated. It involved sexual harassment including touching. The Tribunal accepted that the touching was not of intimate areas. Mr Hutchings ought to have known that his behaviour was in material breach of his obligations.
46. The misconduct was mitigated by the fact that although there was more than one encounter, each was of very short duration in the context of a previously unblemished career. The Tribunal took full account of the character references which had been submitted and recognised that Mr Hutchings was otherwise held in high regard. Mr Hutchings had taken steps to address his consumption of alcohol, which undoubtedly had played a part in his decision making on the evening in question. Mr Hutchings had co-operated with the SRA and had made partial admissions. He had been entitled to deny the element of the allegation that related to sexual motivation, but it did demonstrate that his insight was not complete. The Tribunal had found this to be a clear case of sexual motivation on the facts.
47. The Tribunal found that making ‘no order’ or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability, the potential for significant harm, the fact that these were not simply minor breaches of regulation and the protection of the public and the reputation of the legal profession required a greater sanction.
48. The Tribunal considered whether a financial penalty would be a sufficient sanction in this matter. Having determined that a fine or reprimand was insufficient, the question was whether the protection of the public or the reputation of the profession justified a suspension or a strike-off. The Tribunal did not consider that a strike-off was necessary in this case. The Tribunal considered carefully whether a short period suspension would be appropriate in this case. On balance, the Tribunal was satisfied that the reputation of the profession or the protection of the public did not, in this case, justify a suspension from practice. In reaching this conclusion, the Tribunal took account of the fact that the sexual harassment took place over a relatively short period of time and was not at the highest end of the scale of severity, within the context of sexual misconduct. The Tribunal also accepted that there had not been a power imbalance or an abuse of position in this case. There were no resulting criminal proceedings.

49. The Tribunal, as indicated above, had not been greatly assisted by references to first-instance decisions. However, the Tribunal did note that there was nothing in its guidance or from any decision of the Administrative Court applicable to this jurisdiction that required a Respondent to be suspended in cases of this nature. On balance, the Tribunal was satisfied that the appropriate and proportionate sanction was a fine.
50. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. This was significantly serious misconduct, for all the reasons already set out in this Judgment. There was a clear need, having regard to the reputation of the profession and to the protection of the public, for the Tribunal to send the message that this sort of behaviour was completely unacceptable. Members of the public, including other professionals, should be able to attend professional events without being concerned that they would be subjected to sexual harassment by a solicitor. The appropriate level of fine to reflect this misconduct was £52,000.
51. The Tribunal then considered Mr Hutchings' means, based on the detailed information he had provided to the Tribunal. The Tribunal had regard to Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin) and the importance of making a "reasonable assessment of the current and future circumstances" in relation to a Respondent's ability to pay. The Tribunal also had in mind that there would likely be an order made in respect of costs and so it had regard to the principle of totality. Taking all those factors into account, the Tribunal reduced the level of fine to £30,000.

Costs

52. Ms Bruce sought an order for costs in the sum of £18,000. This reflected a reduction from the original sum claimed of £22,200 to take account of the reduced hearing time and to remove a disbursement that related to advice taken from leading counsel. The majority of the sum claimed represented a fixed-fee, with a notional hourly rate in this case of £100.
53. Mr Treverton-Jones calculated that taking into account the reductions, the claim by the SRA ought to have been approximately £15,000. Mr Treverton-Jones did not take issue with that sum, though he claimed that the way it was calculated was "opaque". He reminded the Tribunal of the financial sacrifices Mr Hutchings had already had to make to remain in the profession and he invited the Tribunal to be merciful.
54. The Tribunal considered that the costs claimed were entirely reasonable. It noted that £15,000 plus VAT worked out at £18,000 and so there was not, in reality, a significant difference between the parties on this issue. The Tribunal had reflected Mr Hutchings' means when considering the level of fine to impose and it did not consider that further reduction was required in respect of costs. It therefore ordered that he pay £18,000 in costs as claimed by the SRA.

Statement of Full Order

55. The Tribunal Ordered that the Respondent, DANIEL PAUL HUGH HUTCHINGS, solicitor, do pay a fine of £30,000.00 such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00.

Dated this 30th day of March 2023
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
30 MAR 2023

C Evans
Chair