

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12403-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

KAYLEIGH O'DONNELL

Respondent

Before:

Mr P Lewis (in the chair)

Mrs F Kyriacou

Mr R Slack

Date of Hearing: 1 March 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Kayleigh O'Donnell, made by the SRA were that, while in practice as a Solicitor at Pinney Talfourd ("the Firm"):
 - 1.1 On or around 29 January 2021, sent a letter to Clients A and B which:
 - 1.1.1 Contained a false assertion that the Office of the Public Guardian ("OPG") had been in possession of Client A and B's registration documents for several months;

And in doing so breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the Principles") and Outcome 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code").
 - 1.1.2 Was capable of giving a misleading impression as to the reason for the completion of a further registration form.

And in doing so breached any or all of Principles 2 and 5 of the Principles and Outcome 1.4 of the Code.
 - 1.2 On or around 29 January 2021, sent a letter to Client C which was capable of giving a misleading impression as to the reason for the completion of a further registration form. And in doing so breached any or all of Principles 2 and 5 of the Principles.
2. In addition, allegations 1.1.2 and 1.2 above are advanced on the basis that Ms O'Donnell's conduct was reckless. Recklessness was alleged as an aggravating feature of Ms O'Donnell's misconduct but was not an essential ingredient in proving the allegations.
3. Ms O'Donnell admitted all the allegations.

Documents

4. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit LF1 dated 11 November 2022
 - Answer
 - Applicant's Reply to the Answer dated 26 January 2023
 - Respondent's further Answer
 - Statement of Agreed Facts and Outcome dated 24 February 2023

Background

5. Ms O'Donnell was a solicitor having been admitted to the Roll in September 2012. At the material time, Ms O'Donnell was employed by the Firm as a Senior Associate. The matter which forms the basis for Allegation 1.1 came to the attention of the SRA on 26 March 2021 following a report from the Firm. On 12 July 2021, following an internal investigation, the Firm issued a written warning to Ms O'Donnell for her conduct.

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

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

Findings of Fact and Law

7. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Ms O'Donnell'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.
8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Ms O'Donnell's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanctions (10th Edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal found that Ms O'Donnell had attempted to conceal her errors from her clients. She informed Clients A and B that their forms had been with the OPG for several months when she knew that was not the case. Further, her letter to Client C, sought to mislead Client C into believing that it was due to a change in the OPG's processes that required new forms to be signed, rather than informing Client C that Ms O'Donnell had submitted the wrong form. Given Ms O'Donnell's admission that her conduct had been dishonest, the Tribunal determined that sanctions such as a Reprimand, Fine and Suspension did not adequately reflect the seriousness of that misconduct. The Tribunal determined that striking Ms O'Donnell off the Roll was proportionate and appropriate in all the circumstances. The Tribunal did not find (and indeed it was not submitted) that there were any exceptional circumstances that would justify a lesser sanction. Accordingly, the parties having agreed that the appropriate sanction was a strike off, the Tribunal approved the proposed sanction.

Costs

10. The parties agreed that Ms O'Donnell should pay a contribution of £5,000 for the Applicant's costs. The Tribunal assessed the agreed sum to be reasonable. Accordingly, the Tribunal approved costs in the agreed sum.

Statement of Full Order

11. The Tribunal Ordered that the Respondent, KAYLEIGH O'DONNELL, 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 £5,000.00.

Dated this 15th day of March 2023
On behalf of the Tribunal

A handwritten signature in black ink, appearing to be 'P Lewis', written over a faint horizontal line.

P Lewis
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
15 MAR 2023

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No: 1243-2022

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

KAYLEIGH O'DONNELL

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a statement made by Lyndsey Jayne Farrell on behalf of the Solicitors Regulatory Authority Limited ("the SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 11 November 2022 ("the Rule 12 Statement"), the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent, set out below. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.
2. The Respondent is prepared to make admissions to all Allegations in the Rule 12 Statement, as set out in this document.

Admissions

3. The Respondent admits all the Allegations made against her in the Rule 12 Statement, namely:

"1. The Allegations against the Respondent, Kayleigh O'Donnell, made by the SRA are that, while in practice as a Solicitor at Pinney Talfourd ("the Firm"):

1.1. On or around 29 January 2021, sent a letter to Clients A and B which:

1.1.1. Contained a false assertion that the Office of the Public Guardian ("OPG") had been in possession of Client A and B's registration documents for several months;

And in doing so breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the Principles") and Outcome 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code")

1.1.2. Was capable of giving a misleading impression as to the reason for the completion of a further registration form.

And in doing so breached any or all of Principles 2 and 5 of the SRA Principles 2019 ("the Principles") and Outcome 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code").

1.2. On or around 29 January 2021, sent a letter to Client C which was capable of giving a misleading impression as to the reason for the completion of a further registration form.

And in doing so breached any or all of Principles 2 and 5 of the Principles.

Recklessness

- 2. In addition, Allegations 1.1.2 and 1.2 above are advanced on the basis that the Respondent's conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation."*

Agreed Facts

4. The Respondent is a solicitor (SRA ID: 474900) who was admitted to the Roll on 3 September 2012. At the time of the Allegations, the Respondent was employed by the Firm as a Senior Associate, who are registered at New North House, 78 Ongar Road, Essex CM15 9BB.
5. The matter which forms the basis for Allegation 1.1 came to the attention of the SRA on 26 March 2021 when the Managing Partner of the Firm informed the SRA of the circumstances concerning a complaint made by Client A to the Firm. On 12 July 2021 following an internal investigation, the Firm issued a written warning to the Respondent for her conduct.
6. The Allegations relate to the Respondent's conduct towards Clients A, B and C (clients who sought assistance in relation to the registration of a Lasting Power of Attorney ('LPA')).

Registration of a Lasting Power of Attorney

7. On or around 1 July 2015¹, the Office of the Public Guardian (OPG) changed the Lasting Power of Attorney (LPA) forms from 'LP2' to 'LP1F'.
8. The OPG's registration process for the LP2 form meant that a separate registration form was required for signature to register the document, whereas the LP1F forms means that a separate form is not required² and as the Applicant understand it, requires completion of section 15, which was not a separate form. Form LP1F is the current version LPA registration form.
9. The type of LPA could be determined by the reference on the form to 'LP2' or 'LP1F' which appears in the bottom right-hand corner of the LPA document.
10. The Firm has provided evidence to support that the Respondent successfully registered 9 LPAs in the 3 months before and after the events which arose on Clients A, B and C's files.

Clients A and B

11. In 2018 the Respondent had acted for Clients A and B in relation to the implementation of a Lasting Power of Attorney for Finance relating to Mr D. The

¹ Lexis Nexis Guidance: Lasting powers of attorney – overview

² Lexis Nexis Guidance: Lasting powers of attorney – overview; 'Registration procedure'

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new style LPA, using form 'LP1F' was signed by Clients A and B on 8 October 2018, which was witnessed by the Respondent.

12. On 29 October 2020, Client A telephoned the Respondent and asked her to register the LPA. On the same day the Respondent created the following documents entitled, 'Time Posting Slip' detailing the following the narratives:

- a. *'Call in with [Client A] (attorney) re needing to register the LPA. KOD explain can do this over phone. No need for meeting as KOD met everyone and understand the current situation with needing to assist. Confirm send c.copies out also PDF of electronic ones [sic].*
- b. *'open up the file, sort out ML'*
- c. *'email Max to get the LPA packet out'*
- d. *'KOD draft up LPA registration form'*
- e. *'letter out with LPA form and confirm our fee and admin fee cost'*

13. On 30 October 2020, the Respondent sent an LP2 registration form to Clients A and B for signature. The letter stated:

"Further to our earlier conversation, I now enclose the registration form for the Lasting Power of Attorney"

I have requested the original Lasting Power of Attorney back from storage and this should be with me by mid next week"

14. On 3 November 2020, Clients A and B returned the signed LP2 forms, dated 2 November 2020. On 11 December 2020, the Respondent created a 'Time Posting Slip' for a 'Letter In' with the narrative, *'In from [Client A and B] with signed LPA registration form'*.

15. On 11 December 2020, the Respondent wrote to the OPG to register the LPA and enclosed the following:

1. *The Donor's Original Lasting Power of Attorney*
2. *Registration form*
3. *Cheque in the sum of £82 in respect of your registration fee*

16. On 14 January 2021, the OPG wrote to the Firm (which was received on 21 January) and stated that:

“Unfortunately, we haven’t registered your LPA and we haven’t started any validation checks. The reason we can’t process your application is because:

- *You are missing the registration part of the LP1F (property and financial affairs) form. This is sections 12 to 15 (pages 16 to 20)*
- *You cannot use a LP2 as this form is only intended for use with old-style LPAs*
- *We need a fully completed LP1 form pages 1 to 20 for a valid LPA”*

17. On 29 January 2021, the Respondent created the following Time Posting Slips with the narrative:

- a. *‘Letter in from OPG with registration issue and return original LPA and cheque’.*
- b. *‘KOD letter out to [Client A] re the LPA issue and new form’.*
- c. *‘KOD redraft the form for LPA registration’*

18. On 29 January 2021, the Respondent wrote to Clients A and B and stated that:

“Further to my earlier correspondence unfortunately the Office of Public Guardian require different registration forms to be signed. They have changed their registration process depending upon the date in which the LPA’s are signed. Due to Covid delays they have only just informed me of this, despite having the registration documents for several months. [emphasis added]

I enclose further form your signature [sic]. If you could please return this form to me in the enclosed prepaid envelope provided, I would be grateful. Immediately upon return I’ll forward to the Office of Public Guardian for completion of the registration.”

19. Following direct enquiries made by Client A to the OPG regarding the registration process, a complaint was made to the Firm, first to a ‘mail’ address belonging to the Firm on 16 February 2021 and on 8 March 2021 to the

Managing Partner of the Firm as a response had not been received to the initial complaint.

20. On 8 March 2021, Client A sent an email to the Managing Partner and stated that:

*“On the 3rd November last year I returned the registration form for the Lasting Power of Attorney – Property & Affairs for [Mr D] to Kayleigh O’Donnell at your Brentwood office. **Having heard nothing after three months had passed I made four attempts over a two week period to speak to Kayleigh leaving a message on each occasion [emphasis added].** I eventually received the attached letter. The message it contained raised some suspicion in my mind. I therefore initially spoke to a legal practice manager friend of mine who after seeking advice confirmed that the OPG had not changed their registration process. To be certain of this I contacted the OPG – see below exchange of emails – who also confirmed that there had been no change.”*

21. The email exchange between Client A and the OPG was provided by Client A to the Managing Partner and shows that on 3 February 2021, Client A contacted the OPG and stated the following:

*“My wife & I signed the registration form for an LPA Property & Affairs on November 3rd last. We have now been advised that the OPG has **recently changed [emphasis added]** its registration process and require different forms depending on the date on which the LPA was signed.”*

22. The OPG responded to Client A on 9 February 2021, and stated that:

“The Office of the Public Guardian have not changed the registration process.

Lasting Power of Attorneys are worked on when received”

23. On 8 March 2021, the Respondent provided her comments on Client A’s complaint to the Managing Partner in an email. She stated that:

“[Client A] contacted me to register [Mr D’s] LPA – he and his wife are attorneys – I completed what I thought was the correct form for the LPA in question. The OPG changed the LPA forms over the years, so dependent on the original type of LPA completed, this then impacts on the Registration Form that needs to be used.

I thought I had used the correct one, sent this for signing to [Clients A and B], then sent the LPA to the OPG for registration.

The OPG rejected this due to the LPA registration form not being correct for the original LPA in question. I sent a new form out to [Clients A and B] and explained that the OPG had changed their registration forms and could they sign and return then I would resubmit.

...

I probably should have been more upfront and stated I’d used the incorrect form and could they resign but I thought best not to open that ‘can of worms’ and to try to resolve quickly [emphasis added].

All they had to do was re-sign and return. They’ve sat on this form from 29 January, so five weeks. So yes I have delayed however in turn they have not simply signed and returned. I understand wanting to raise a query but perhaps do that whilst returning the signed form in question.”

24. On 26 March 2021, the Managing Partner at the Firm responded to Client A as follows:

“In relation to the registration form sent to the Office of the Public Guardian, this is also an error on Kayleigh’s part. Kayleigh informs me that she thought she had used the correct form but she had, in fact, used the wrong form for the nature of the LPA being registered. I see that Kayleigh informed you that the OPG had ‘changed their registration process depending on the dates in which the LPAs are signed. Due to COVID delays they have only just informed me of this, despite having the registration documents for

several months'. This statement, at least, implies that the necessity to resign the documents was due to changes at the OPG. That is not the case [emphasis added]. The necessity for you to resign the forms and resubmit them was because Kayleigh sent the wrong forms to you in the first place."

Client C

25. On 29 October 2020, Client C contacted the Respondent to register her father's LPA. The following Time Posting Slips were created by the Respondent on the same day:

- a. *'Call in from [Client C] Need to sort out Dad's bank account but docs not 'good enough' re the bank. Kodconfirm [sic] not registered so need to do that. KOD confirm will do and the process for this. She can sign, not Dad if he is isolating'*
- b. *'KOD email Max and organise docs. To be retrieved from storage'.*
- c. *'LPA registration forms x 2 – drafting'*
- d. *'Out with LPA forms for registration'*

26. On 24 November 2020 the Respondent sent a further letter to Client C and stated:

"Further to my correspondence of 29 October I note that I have not heard from you. As discussed, please find enclosed two registration forms, one for the property and affairs Lasting Power of Attorney and one for the health and care."

.....

"I have requested the original Lasting Powers of Attorney back from storage and this should be with me by mid next week'.

27. On 6 and 7 December 2020, Client C and her co-attorney signed LP2, which the Respondent sent to the OPG on 16 December 2020, and on the same day she created the following Time Posting Slip, which stated:

- a. *'In with registration forms';*

- b. *'KOD out to OPG with the LPA's to be registered and (sic) out to client with update on timeframes [sic]'*

28. On 15 January 2021 the Firm received a letter from the OPG dated 13 January 2021 which stated:

"The reason we can't process your applications is because:

- You are missing the registration part of both the LP1H (health and welfare) and LP1F (property and financial affairs) forms. This is sections 12 to 15 (pages 16 to 20)*
- You cannot use a LP2 as this form is only intended for use with old style LPAs.*
- We need a fully completed LP1 form pages 1 to 20 for a valid LPA."*

29. On 21 January 2021, the Respondent created two Time Posting Slips with the narratives, *'2 x letters in from OPG returning the papers and stating what docs they do/do not need'* and *'KOD do letter out to Sarah with forms to sign off on [sic] with apologies'*. The Respondent also created an entry for *'KOD prepare x 2 new registration forms'*.

30. On 29 January 2021, the Respondent wrote to Client C and stated:

'Further to my earlier correspondence unfortunately the Office of Public Guardian require different registration forms to be signed. They have changed their registration process depending upon the dates in which the LPA's are signed. [emphasis added]'

The Respondent's explanations

31. When asked for an explanation by the Managing Partner in response to Client A's complaint, the Respondent provided the following comments:

- 31.1. *'The OPG rejected this [the LPA sent to the OPG for registration] due to the LPA registration form not being correct for the original LPA in*

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question. I sent a new form out to [Clients A and B] and explained that the OPG had changed their registration forms and could they sign and return then I would resubmit’;

31.2. *‘I probably should have been more upfront and stated I’d used the incorrect form and could they resign but I thought best not to open that ‘can of worms’ and to try and resolve quickly’*

32. In an email to the SRA, on 20 July 2021, the Respondent stated that:

32.1. She did not set out to maliciously deceive the client;

32.2. She was embarrassed that she had made, *‘what was a minor error in using the incorrect Lasting Power of Attorney registration form and instead of admitting this to the client, I decided incorrectly to the error onto the Office of Public Guardian as to why new registration forms needed to be signed’*

33. In a letter from her representative dated 6 June 2022, in relation to the facts, the Respondent states that:

33.1. The content of her letter to Clients A and B was incorrect and inaccurate to the extent that it suggested that the OPG had, *‘changed their registration process’;*

33.2. The letter was correct in relation to the suggestion that the OPG required different registration forms to be signed and which was the genuinely held belief of the Respondent at the time;

33.3. *‘She in error, and inadvertently, advanced an incorrect position to her client in the letter dated 29 January 2021, for which she offers her sincere apology’*

33.4. *‘She should have taken greater care in the language used in the letter dated 29 January 2021’*

Breaches of Principles and the Code of Conduct

Allegations 1.1.1 and 1.1.2

34. The above conduct breached Principles 2 and 5 of the SRA Principles 2019. The letter to Clients A and B was misleading in that the recipient of that letter would, in the absence of any explanation, be led to believe that a further form was required because of the OPG's processes and not because of the Respondent's own mistake. Further, the letter made no reference to the fact that she had sent the wrong forms for signature at the outset. The Respondent must have known that the issue had arisen due to her own mistake due to the following factors:
- a. The OPG changed its registration process in July 2015; some 4.5 years before the date of the letters sent to the clients;
 - b. At the point she received the file from archive which would have included the original LPA, she would have been able to identify whether it was an old or new style form using 'LP2' or 'LPF1';
 - c. At the point the OPG requested a 'new style form' she would have been made aware that she had in fact, used the wrong form
35. The Respondent must have known that she had returned the forms to the OPG on 11 December i.e., one month before writing to Clients A and B on 21 January when she used the words 'several months'. The Respondent must have known it was not the case that the OPG had been in receipt of the forms for several months when she sought to explain the reason for a) the requirement for further forms and b) the delays encountered at that point.
36. It is the SRA's case that the inevitable inference is that the Respondent's purpose, in limiting the letter such that she did, was to seek to explain to the client that the issue had arisen as result of the OPG's processes and not her own management of the file. The mere fact that the OPG required a different form indicated that the wrong form had been used which the Respondent must have realised when receiving the OPG's letter.

37. Principle 5 of the SRA Principles 2019 requires solicitors to act with integrity. In *Wingate v SRA [2018] EWCA Civ 366*, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson said:

"Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members"

38. As to Principle 5, the Respondent failed to act with integrity in that the public are entitled to expect that solicitors will act with complete candour in their correspondence even where mistakes occur which can be rectified. A solicitor acting with integrity would not have misled their client without ensuring that the contents of their letter was accurate and did not risk misleading their client as to the true position. A solicitor acting with integrity would have taken steps to ensure that their client was not misled or at risk of being misled.

39. As to Principle 2, the Respondent failed to behave in a way that maintains the trust the public places in solicitors and in the provision of legal services in that:

- a. Users of legal services are entitled to rely on and place their trust in the information provided to them by the supplier of those services, in this case the Respondent;
- b. Her action did not lead to personal gain but did serve to cover up the mistake she had made in relation to the registration of the LPA for Clients A and B;
- c. These actions on the part of the Respondent undermined the trust Clients A and B had placed in her, and more generally the public trust in the provision of legal services when things go wrong.

40. As per Rule 1.4 of the Solicitors Code of Conduct you, *'do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client)'*.

41. Client A stated that he had *'heard nothing after three months'* and made attempts to speak with the Respondent before he received a letter from the

Respondent regarding the forms. Client A stated that he had made attempts to speak with the Respondent and in an email to the OPG on 3 February 2021 he stated, *'my wife & I signed the registration form for an LPA Property and Affairs on November 3rd last.'*

42. Client A was in fact misled by the Respondent as he made enquiries with the OPG to ascertain if changes to the registration process had taken place *'recently'* and asked whether they would *'have to go to the end of the queue again'*. Client A appeared to be under the impression that the delays rested with the OPG. It is accepted that the Respondent did not use the word *'recently'* but based on the actions undertaken by Client A in contacting the OPG, he was plainly led to believe that the reason a different form was required was in fact because of the change in registration process and that the Respondent had only just been informed – *despite having the forms for several months'* - and not for any other reason.

Allegation 1.2

43. The above conduct breached Principles 2 and 5 of the SRA Principles 2019. The letter to Client C was misleading in that the recipient of that letter could, in the absence of any explanation, be led to believe that a further form was required because of the OPG's processes and not the Respondent's own mistake. Further, the letter made no reference to the fact that she had in fact sent the wrong form using the LP2 form (and not the LPF1) for signature at the outset. The Respondent must have known that the issue had arisen due to her own mistake due to the following factors:
- a. The OPG changed its registration process in July 2015; some 4.5 years before the date of the letter sent to Client C;
 - b. At the point she received the file from archive, which would have included the original LPA, she would have been able to identify whether it was an old or new style form from the date the form was signed or whether the form stated 'LPF1' or 'LP2';
 - c. At the point the OPG requested a 'new style form' she would have been made aware that she had in fact, used the wrong form i.e., an 'old style' form

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44. It is the SRA's case that the inevitable inference is that the Respondent's purpose, in limiting the letter such that she did, was to seek to explain to the client that the issue had arisen as result of the OPG and not her own management of the file. The mere fact that the OPG required a different form indicated that the wrong form had been used, which the Respondent must have realised when receiving the OPG's letter.
45. As to Principle 5, the Respondent failed to act with integrity in that the public are entitled to expect that solicitors will act with complete candour in their correspondence even where mistakes occur which can be rectified. A solicitor acting with integrity would not have misled their client without ensuring that the contents of their letter was accurate and did not risk misleading their client as to the true position. A solicitor acting with integrity would have taken steps to ensure that their client was not misled or at risk of being misled.
46. As to Principle 2, the Respondent failed to behave in a way that maintains the trust the public places in solicitors and in the provision of legal services in that:
 - a. Users of legal services are entitled to rely and place their trust in the information provided to them by the supplier of those services, in this case the Respondent;
 - b. Her action did not lead to personal gain but did serve to cover up the mistake she had made in relation to the registration of Client C's LPA;
 - c. These actions on the part of the Respondent undermined the trust Client C had placed in her, and more generally the public trust in the provision of legal services when things go wrong.

Recklessness in relation to Allegations 1.1.2 and 1.2

47. In relation to both Allegations 1.1.2 and 1.2, the Respondent's conduct demonstrates that she was reckless. The Applicant relies upon the test for recklessness which was set out in the case of *Brett v SRA* [2014] EWHC 1974. At paragraph 78 in that case, Wilkie J said that for the purposes of the Brett appeal, he adopted the working definition of recklessness from the case of *R v G* [2004] 1 AC 1034. He said that the word recklessly is satisfied: with respect to (i) a circumstance when [the solicitor] is aware of a risk that it exists or will exist and (ii) a result when [the solicitor] is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk.

48. In each case the Respondent was aware of the risk that the client may be misled by the contents of her letter in that the letters made no reference to the fact that she had sent a form that was to be used with the old-style LPAs only. The Respondent was an experienced solicitor of some 10 years standing and was aware of the matters of fact – namely that an incorrect form had been used by her – and the date on which she became aware of that error [the letter from the OPG indicating the wrong form had been used]. She nonetheless went on to run that risk in doing so, she acted recklessly.

Dishonesty in relation to Allegation 1.1.1

49. The Applicant relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

“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 fact-finder 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.”

50. As to Principle 4, the Applicant submits that the Respondent was dishonest when she stated that the OPG had been in receipt of the forms relating to Clients A and B for ‘several months’. The Respondent had in fact submitted the forms for registration on 11 December 2020 which were then returned by the OPG on 14 January 2021. The total period before the OPG had responded was 4 weeks and 6 days (11 December to 14 January). Even when taking into account the date the Respondent received the letter from the OPG (see paragraph 17) the period between submitting the form and actioning the OPG’s letter was 5 weeks and 6 days. The Applicant submits that on either calculation, the use of the words ‘several months’ was demonstrably untrue.
51. The Applicant submits that the Respondent deliberately provided misleading information to a client, to conceal the fact that instructions had not been

actioned. This would on any view be considered dishonest by the standards of ordinary decent people.

Mitigation

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

52.1. During the time period in question that the incident occurred I was under a considerable amount of general stress, both professionally and personally. Working in private client during COVID was incredibly challenging and the number of clients I was required to manage was excessive and I worked long hours. I also had family members in remission from cancer, whilst my mother has a weakened immune system due to having a stroke when I was 16. So another lockdown with all the associated stress just exacerbated an already stressful situation. It is not an excuse for my behaviour and it certainly does not excuse this but it is important to have this as a background to the circumstances.

52.2. I have not had any other complaints against me, and I (at the time) had been practising for over eight years. My actions were severely out of character as can be referenced by my character references. I was reported to the SRA by my managing partner and he continued to employ me after this as he still trusted me to practice. My area of speciality was Court of Protection and managing the financial affairs of vulnerable adults. My head of department knew of the report and continued to support my employment with the firm and trusted me to continue to represent vulnerable clients. I think this is important because they could have dismissed me from employment but instead chose not to, and they also provided me with character references which is not something they had to do.

52.3. It is important that it be known that I deeply regret my actions. Although said actions did not cause any harm to the client and they did not suffer any loss financially it is still regrettable as to how I behaved.

52.4. I have also fully cooperated with the managing partner when this was brought to his attention. I also cooperated with the SRA within all their timeframes. It should be noted here that the SRA took 18 months to investigate this and issue proceedings and they knew I was still employed by Pinney Talfourd LLP and had a practicing certificate during this period. I completely understand the need to protect the public however it does

raise the issue of whether they should have taken action sooner, if they really deemed me such a threat, given they knew I was still practicing. I think it is important that the Tribunal be aware of this context given dishonesty is such a serious allegation yet during the investigation I was still supported and employed by the firm who reported me. I do believe the SRA should have been prompter in their investigations if they deemed me a risk.

Agreed Outcome

53. The Respondent agrees to be struck-off the Roll and to pay a contribution to costs to the SRA in the sum of £5,000.
54. The costs set out above include a reduction for the case having concluded by way of Agreed Outcome.
55. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanction (10th Edition).
56. It is agreed that:
 - 56.1. Neither a reprimand, fine, restrictions nor a suspension are sufficient for the protection of the public and the protection of the reputation of the profession; and
 - 56.2. This is not a case in which "exceptional circumstances" exist, which would justify the Tribunal departing from the usual sanction of imposing a strike-off in cases involving dishonesty.
57. In respect of the level of culpability:
 - 57.1. The Respondent had been on the Roll for a little more than eight years at the time of these Allegations; and
 - 57.2. Whilst these actions may not have been pre-planned or premeditated, nor did they involve a direct financial benefit to the Respondent, the contents of the letters appear to have been an attempt by the Respondent to conceal from her own clients the mistakes that she had made in relation to (a) submitting the incorrect forms on her clients' behalf; and (b) in the case of Clients A and B, failing to submit their paperwork promptly.
58. In respect of the level of harm:

Sensitivity: General

- 58.1. The public are entitled to expect that members of the legal profession will be frank and open when mistakes have been made and communicate truthfully with their clients. To do otherwise undermines the trust and confidence afforded to solicitors in the role they play in submitting documents on behalf of their clients;
- 58.2. Whilst the clients may not have suffered directly as a result of the Respondent's conduct contained within the Allegations, had the Respondent not sought to mislead them as to the reason that the forms had been rejected, and instead communicated frankly and openly as to the mistake that had occurred, Client A may not have felt the need to spend time communicating directly with the OPG to try and identify what had gone wrong.
59. In respect of mitigating features, the Respondent's mitigation is set out at paragraph 52 above.
60. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Date: **24.02.23**

Signed:

On behalf of Solicitors Regulation Authority Limited

Date: