SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No.12420-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

ANDREW MARK BRETT Respondent

Before:

Ms A Horne (in the chair)
Mr C Cowx
Mr G Gracey

Date of Hearing: 19 April 2023

Appearances

Benjamin Tankel, counsel of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR, for the Applicant.

Mr Brett did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against Mr Brett by the Solicitors Regulation Authority Limited ("SRA") were that whilst in practice as a solicitor at Barnes & Partners, ("the Firm") he:

1.1 Between 23 February 2016 and January 2019, failed to progress Client A's case adequately or at all, and in so doing he breached Principles 1, 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011 ("the Code").

1.2 Between 12 February 2017 and 13 December 2018, made false representations to Client A about the progress that was being made on the case, and in so doing he breached Principles 1, 2, 4, 5 and 6 of the Principles.

2. Further, in relation to Allegation 1.2, it was alleged that Mr Brett acted dishonestly. However, dishonesty was not a critical element of Allegation 1.2.

Executive Summary

3. The Tribunal found that Mr Brett had failed to progress Client A's case. He had thereafter lied to Client A about the progress being made. Such conduct, the Tribunal found, was aggravated by Mr Brett's dishonesty. The Tribunal's reasons and findings can be accessed here:

- Allegation 1
- Allegations 1.2 and 2

Sanction

4. The Tribunal's sanctions and its reasoning on sanction can be found here:

- Sanction

Documents

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

- Rule 12 Statement and Exhibit IWB1 dated 15 December 2022
- Applicant's Schedule of Costs dated 5 April 2023

Preliminary Matters

6. Application to proceed in the Respondent's absence

6.1 Mr Tankel explained that on 23 April 2020, the Applicant wrote to Mr Brett by both post and email. Mr Brett responded by email. In that email he asked the SRA to correspond with him using an iCloud email address. During the latter end of 2020 and

throughout 2021, Mr Brett continued to communicate with the Applicant using the iCloud email address.

6.2 On 22 October 2021, Mr Brett emailed the Applicant using the iCloud email address. In that email he explained, amongst other things, that the conditions that had been placed on his practising certificate meant that it would be difficult for him to obtain further employment. He stated that he had no intention of renewing his practising certificate. Mr Tankel confirmed that Mr Brett had not applied for a practising certificate following that email. There had been no further communication from Mr Brett following that email.

6.3 Mr Tankel submitted that all correspondence with Mr Brett had been both by email and by letter to his home address. On 28 October 2022, the Applicant received a tracing report which showed that Mr Brett was residing at a new address. Evidence from the Land Registry showed that the property he had been living in had been sold, and that he had purchased the property to which he had now been traced.

6.4 Service of the proceedings had been effected by the Tribunal in the usual way. The Applicant had also sent Mr Brett a post-issue letter. This had been sent both by email and post to the latest address. The Applicant did not receive any undeliverable notification from the email. The letter had been sent by recorded delivery and was delivered and signed for on 22 December 2022 from someone who identified themself as “Brett”.

6.5 On 16 January 2023, the Tribunal emailed the Applicant querying whether any Answer had been received. Mr Brett was copied into that email. The Applicant confirmed that it had not. A non-compliance hearing was listed on 19 January 2023. Mr Brett did not attend that hearing.

6.6 On 10 March 2023 a letter was sent by the Applicant to Mr Brett, again both by email and recorded delivery to his latest address. In that correspondence, the Applicant stated that it would Apply for the hearing to be heard remotely following Mr Brett’s lack of engagement. The letter was delivered on 14 March 2023 and signed for, again in the name of “Brett”.

6.7 On 17 March 2023, the Applicant again wrote to Mr Brett by special delivery, first class post and email, notifying Mr Brett that the Application for the hearing to be held remotely had been granted. The letter was not signed for. The Post Office stated that it had been unable to deliver the recorded delivery letter because no-one had been in. Mr Tankel noted that there was no undeliverable notification received from the email. He further noted that the letter had, in any event, also been sent by ordinary first-class post, and had not been returned to the Applicant. It was thus to be inferred that Mr Brett had received the 17 March 2023 letter.

6.8 Mr Tankel submitted that the conclusion to be drawn was that Mr Brett had voluntarily absented himself. He had been silent for around 3 years and had said, in terms, that he wanted nothing more to do with the profession. Mr Brett had had ample time to engage with the Applicant and the proceedings but had chosen not to do so. He had received several items of correspondence which referred to the date of the substantive hearing.

There was nothing to suggest that if the hearing were to be adjourned, Mr Brett would attend. Accordingly, the Tribunal should proceed in Mr Brett's absence.

The Tribunal's Decision

6.9 Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the Rules") provides:

> "If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."

6.10 The Tribunal firstly considered whether service had been effected in accordance with Rule 44 of the Rules. The Tribunal determined that Mr Brett had been properly served with notice of the proceedings as was evidenced by the correspondence the Tribunal had been taken to. Mr Brett, it was found, was fully aware of the proceedings. The emails from both the Applicant and the Tribunal had been sent to an email address of Mr Brett's choosing. This was the same email address that he had previously used to communicate with the Applicant.

6.11 The Tribunal therefore concluded that Mr Brett was aware of the date of the hearing and Rule 36 was thus engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB, CA by Rose LJ at paragraph 22(5) which provided (amongst other things) that:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case …"

6.12 The Tribunal also paid significant regard to the comments of Leveson P in GMC v Adeogba [2016] EWCA Civ 162, namely that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At paragraph 19 he stated:

> "… It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

6.13 Leveson P went on to state at paragraph 23 that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account."

6.14 The Tribunal was cognisant of the fact that the principles identified in Adeogba were affirmed by the Court of Appeal in regulatory proceedings in GMC v Hayat [2018] EXCA Civ 2796.

6.15 Mr Brett had not made any contact with the Applicant or the Tribunal concerning this matter. The Tribunal was satisfied that in this instance Mr Brett had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. There was nothing to indicate that Mr Brett would attend or engage with the proceedings if the case were adjourned to a different date. Further, no application for an adjournment of the proceedings had been made by Mr Brett. The Tribunal concluded, taking all matters into account, that it was just and fair to proceed with the hearing notwithstanding Mr Brett's absence.

6.16 Accordingly, the application to proceed with the substantive hearing in Mr Brett's absence was granted.

Factual Background

7. Mr Brett was admitted to the Roll of Solicitors in February 1993. He does not hold a current practising certificate. At the time of the alleged misconduct, he worked for the Firm as an Assistant Solicitor. He commenced employment at the Firm on 3 October 2005, and left on 31 December 2018.

8. Mr Brett was instructed by Client A in a professional negligence claim against another firm of solicitors known as LGS Solicitors (in liquidation) ("LGS"). The claim was that LGS had failed, in breach of their instructions from Client A, to arrange adequate security for a loan of £2 million, alleged to have been made by Client A to a property developer known as the Bellerive Corporation. On 29 November 2013, Mr Brett on behalf of Client A issued a claim against LGS: Client A v LGS Solicitors Ltd (in Liquidation) in the High Court of Justice (Queen's Bench Division). The matter was assigned to a Queen's Bench Master for case management.

9. On 17 January 2014, Mr Brett on behalf of Client A issued a second claim against Bellerive for repayment of the £2 million loan: Client A v Bellerive Corporation in the High Court of Justice (Chancery Division). The matter was assigned to a Chancery Master for case management. On 7 August 2014, Bellerive filed a Defence to the claim against it, in which it averred that there had been no agreement between Client A and Bellerive for the loan, that LGS was not acting for Bellerive with the necessary authority, and that Bellerive never received the £2 million which Client A had paid to LGS.

10. On 26 September 2014, the Bellerive claim was stayed. The stay expired on 19 June 2015. The view in or around June 2015, at the time the stay expired, was that, in light of the position taken in Bellerive's Defence, the focus would need to be on the LGS claim. No further action was taken in the Bellerive claim.

11. On 20 January 2020, the Court struck out Client A's claim (against LGS) as a result of Mr Brett's inaction.

12. Client A had previously intimated a professional negligence claim against the Firm. The Firm instructed Browne Jacobson LLP to act for it in that action. Having investigated the matter, on 29 January 2020 Browne Jacobson LLP sent a report to the SRA about the Respondent's conduct.

Witnesses

13. No witnesses gave oral evidence. The written evidence 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. 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

14. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Brett's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Dishonesty

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

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

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

Integrity

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

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their

own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

18. **Allegation 1.1 - Between 23 February 2016 and January 2019, failed to progress Client A's case adequately or at all, and in so doing he breached Principles 1, 2, 4, 5 and 6 of the Principles and failed to achieve Outcomes 1.2 and 1.5 of the Code.**

The Applicant's Case

18.1 There were a number of difficult issues in the claim against LGS, including the destruction of LGS's records by their storage company, their subsequent liquidation, and the consequent need to restore them to the Companies Register, and the difficulty in establishing to whom (other than Bellerive) LGS had paid out the £2,000,000. On 23 February 2016, Master Eastman gave Directions which included amongst other things:

"3. Disclosure of documents will be dealt with as follows:

a) by 4pm on 7 April 2016 the parties must give to each other standard disclosure of documents by list and category

b) by 4pm on 21 April 2016 any request must be made to inspect the original of, or to provide a copy of, a disclosable document

c) any such request unless objected to must be complied with within 14 days of the request.

4. There be mutual and simultaneous exchange of the Witness Statements of all witnesses of fact by 4pm on 24 June 2016

...

6. The trial will be listed as follows.

a) The trial window is between 11 January 2017 and 12 April 2017 inclusive ...

...

c) By 4pm on 24 July 2016 the parties must attend upon the Clerk of the Lists for a listing appointment with their availability for trial..."

18.2 Mr Brett did not meet the above deadlines. The Applicant understood that Mr Brett asked to extend the disclosure deadline to 21 April 2016, and then 27 April 2016. But he then failed to serve the Claimant's Disclosure List, or engage at all (despite the Defendant chasing on 21 April, 28 April, 5 May and 10 May) until 30 June 2016, over three months after the deadline had expired.

18.3 On 27 May 2016, the Defendant made a Request for Further Information pursuant to Part 18 of the Civil Procedure Rules. By 13 January 2017, Mr Brett had still not responded to that Request.

18.4 On 28 September 2016, Mr Brett wrote to LGS' representatives, requesting inspection of documents in their List, and seeking to agree exchange of witness statements by 14 October 2016. On the same day, Mr Brett wrote to Client A saying:

> "I have proposed with my opponent that we exchange witness statements by 14 October 2016. If we can aim to be ready by this date then if the other side drag their heels we will be in a position to make an application to the court."

18.5 Both sets of correspondence were silent as to the fact that Mr Brett was by then in serious breach of the Order dated 23 February 2016.

18.6 By letter dated 4 October 2016, LGS's solicitors provided inspection, requested their own inspection of the Claimant's list, and pointed out that the parties did not have the power to extend the deadline for exchange of witness statements beyond 28 days.

18.7 By 18 October 2016, Mr Brett was required to give inspection of requested documents in the Claimant's list. As at 13 January 2017, this remained outstanding.

18.8 On 20 October 2016, Client A asked Mr Brett whether witness statements had been exchanged on 14 October 2016 "as expected". It was not evident from the file that Client A received a response to his email of 20 October 2016.

18.9 LGS' representatives sent a chasing email on 2 November 2016, and chasing letters on 15 December 2016 and 13 January 2017. The 13 January 2017 letter listed Mr Brett's procedural breaches, warned that the claim should be struck out as a result of these breaches, and sought a comprehensive explanation of the procedural delays within seven days. That letter was received by the Firm, but for whatever reason did not make it onto Client A's file.

18.10 Mr Tankel submitted that, between around 23 February 2016 and around January 2019, Mr Brett failed to progress Client A's matter adequately or at all. Witness statements were not exchanged, the matter was not listed for trial, and Mr Brett sent no communications to either LGS' solicitors or the Court.

18.11 Mr Brett left the Firm on 31 December 2018. The report regarding his failure to progress the case was made by the Firm's solicitors to the Applicant in January 2019. Client A instructed new solicitors to act for him in his claim against LGS, who Applied to the Court for relief from sanction. LGS' solicitors made a cross Application for the claim to be struck out. In its Letter of Claim to the Firm, dated 1 April 2019, Client A's solicitors stated:

> "Of greatest significance, however, is the failure of Barnes and Partners to observe the time limits in the LGS Claim as given at the CCMC on 9 February 2016. In this regard: (1) disclosure was given over two months late and no extension of time was sought or granted; (2) the date for the exchange of witness statements was missed entirely and no extension of time was ever sought or

granted; as a result [Client A] is subject to the sanction in CPR r. 32.10; (3) no appointment with the Clerk of the Lists was ever made or kept in order to fix the trial date. Such failings are obvious examples of a failure to exercise reasonable care and skill on the part of Barnes and Partners. No reasonably competent litigation solicitors would act in this manner".

18.12 Mr Tankel submitted that Mr Brett's failure to serve witness statements was the direct cause of Client A's claim being struck out. Master Sullivan, in a Judgment dated 20 January 2020, refused the Application for relief from sanctions. It was determined that, whilst Client A was "actively misled by his then solicitor", relief from sanction should not be granted. Accordingly, Client A would not be able to call any witness evidence in support of his claim against LGS. As there were important matters upon which witness evidence was required, the inability to cross-examine Client A meant that the trial would not be fair to LGS. Master Sullivan granted the Defendant's cross Application to strike out the claim.

18.13 Mr Tankel submitted that it was unclear why Mr Brett had, in effect, abandoned Client A's matter. The last piece of substantive work Mr Brett undertook was the drafting of Client A's witness statement, which was signed by Client A on 8 May 2017. Client A's witness statement should have been served on LGS in 2016. It was never in fact served.

18.14 In effectively abandoning Client A's matter, Mr Brett deliberately prevented it from proceeding to trial. Mr Brett did not avail himself of any of the opportunities he had to rectify the problems created by his failures. He lied about his lack of progress, making it impossible for his client to do anything about it. The abandonment of the claim was more than professional negligence. Mr Brett failed to progress Client A's case and then attempted to conceal those failings.

18.15 Solicitors, it was submitted, were responsible for conducting litigation and could not simply abandon a claim that was proceeding before the Court. In doing that, Mr Brett had failed to uphold the rule of law and the administration of justice.

18.16 Mr Brett's misconduct meant that, contrary to Client A's best interests, Client A lost the chance to pursue a potentially valuable claim. Accordingly, he failed to act in his client's best interests, in breach of Principle 4.

18.17 Principle 5 required Mr Brett to provide a proper standard of client care and work. In order to do so, Mr Brett was required to exercise competence, skill and diligence, and take into account the individual needs and circumstances of each client. Mr Brett failed to meet any Court deadlines, failed to resolve (or attempt to resolve) the problems he had created by failing to meet those deadlines, and brought about a situation in which a potentially valuable claim was struck out on grounds of serious procedural breach. Such conduct was plainly in breach of Principle 5.

18.18 Outcome 1.2 required solicitors to provide services to their clients in a manner which protected their interests in their matter, subject to the proper administration of justice. For the reasons given in relation to Principles 4 and 5 above, Mr Brett failed to achieve this Outcome.

18.19 Outcome 1.5 required solicitors to ensure that the service they provided to clients was competent, delivered in a timely manner, and took account of their clients' needs and circumstances. For the reasons given in relation to Principle 5 above, Mr Brett failed to achieve this Outcome.

18.20 The public expects solicitors who take on cases to pursue them appropriately, and solicitors who litigate claims to prosecute those claims. The public would be alarmed by a solicitor who effectively abandoned a potentially valuable claim midway through, without making any arrangements for the future conduct of the claim, without informing anybody that they had done so, and indeed deliberately concealing that they had done so. Such conduct, it was submitted failed to maintain the trust the public placed in solicitors and in the provision of legal services, in breach of Principle 6.

18.21 Client A trusted Mr Brett to pursue his matter in his best interests. Mr Brett breached that trust by abandoning the claim, for reasons of his own. Mr Brett must have known that this could fatally undermine his client's prospects of succeeding. The abandonment of the matter was calculated and planned, as can be seen from the fact that Mr Brett carefully covered it up by continuously lying to his client. The misconduct lasted for several years. Such conduct failed to uphold the ethical standards of the profession and lacked integrity, in breach of Principle 2.

The Tribunal's Findings

18.22 The Tribunal examined the documents with care. The Tribunal found, as alleged, that Mr Brett had failed to progress Client A's case. He had not complied with any of the deadlines in the Directions Order dated 23 February 2016. Nor had he made any attempt to remedy the situation he had created in failing to comply with the Court's Order. As a result of those failings, Client A's case was struck out. Such conduct, it was determined, was not in the best interests of Client A. Accordingly, Mr Brett had breached Principle 4. In effectively abandoning the matter, Mr Brett had not provided Client A with a proper standard of service, in breach of Principle 5.

18.23 As a consequence, Mr Brett had also failed to achieve Outcomes 1.2 and 1.5 as alleged.

18.24 In abandoning Client A's claim in the way that he did, Mr Brett had failed to uphold the proper administration of justice, in breach of Principle 1.

18.25 Members of the public, it was determined, would be extremely concerned to know that a solicitor had knowingly failed to progress a claim on behalf of a client. Not only had Mr Brett failed to comply with the Court's Directions, he had taken no steps to remedy his failings. The harm he had caused to Client A was significant, when taking into account the potential value of Client A's claim. The value of the claim was not a determining factor, but it demonstrated the likely importance of the claim to Client A. Mr Brett was aware of this. Notwithstanding that knowledge, he persisted in his failure to conduct the claim with any diligence. Such conduct, the Tribunal found, failed to maintain the trust the public placed in Mr Brett as a solicitor, and in the provision of legal services in breach of Principle 6.

18.26 Solicitors acting with integrity would not have abandoned a claim as Mr Brett did, knowing that such conduct would prevent a client from pursuing his claim. Nor would a solicitor acting with integrity, knowing that he had failed to comply with Court Orders, do nothing to remedy those failings. The Tribunal found that in conducting himself as he did, Mr Brett had acted without integrity in breach of Principle 2.

18.27 Accordingly, the Tribunal found allegation 1.1 proved in its entirety.

19. **Allegations 1.2 & 2 – Between 12 February 2017 and 13 December 2018, made false representations to Client A about the progress that was being made on the case, and in so doing he breached Principles 1, 2, 4, 5 and 6 of the Principles. Such conduct was alleged to have been dishonest.**

The Applicant's Case

19.1 From January 2017 onwards, Mr Brett represented to Client A that he was liaising with the Court and with the other side to progress his claim. However, there never was any such liaison with the Court and his correspondence with LGS's solicitors did not reflect what Client A had been told. The representations were therefore all false.

19.2 In an email to Client A dated 12 February 2017, Mr Brett stated:

> "...after discussions with [Counsel] there are certain procedural matters on which we need to go back to the Court. This includes a further direction regarding exchange of witness statements and obtaining a trial date.
>
> Before we go back to the Court on this, I am giving the other side the opportunity over the next 14 days of voluntarily disclosing any evidence it has regarding the destination of the funds, so that if disclosure is not given within this time and depending on any response from them we can consider an application to the Court seeking an order for specific disclosure."

19.3 There was no copy of any such letter to LGS' solicitors on Client A's file.

19.4 In an email dated 3 March 2017, Mr Brett wrote to Client A that:

> "We previously gave the other side 14 days notice of an application to the Court, which 14 days expired this Monday 27 February 2017...
>
> I have contacted [Counsel]'s clerk to arrange an appointment with the Clerk of the List, so that we can obtain a trial date and I expect to have a trial date towards the end of this month, the date itself is likely to be in 3-6 months' time. In the meantime, I will send you a draft witness statement next week, so that we are ready to exchange witness statements when the Court considers our application for further directions..."

19.5 In an email dated 6 April 2017, Mr Brett told Client A that: "I am expecting to receive news about the listing appointment next week...".

19.6 In an email dated 20 April 2017, Mr Brett told Client A that "I hopefully will have some news regarding the listing appointment next week".

19.7 No listing appointment had in fact been made.

19.8 In an email dated 26 April 2017, Mr Brett sent Client A a first draft of his witness statement. The statement was finalised on 8 May 2017.

19.9 In an email dated 19 May 2017, following a request for an update from Client A, Mr Brett said that "The next step is to obtain further directions including a trial date from the Court and I shall press the Court to provide this as soon as possible".

19.10 The Applicant understood that, on 25 May 2017, LGS solicitors sent a further letter to the Firm, which was again not on the Firm's file. That letter again noted that Client A appeared to have no intention of proceeding to trial.

19.11 In an email to Client A dated 15 June 2017, following a request for an update from Client A, Mr Brett said that "I anticipate receiving a trial date from the Court in the next 14 days with the trial date likely to be towards the end of this year."

19.12 In an email dated 5 July 2017 to Client A, Mr Brett stated: "As the trial date is not likely to take place until towards the end of the year, the priority was to try to obtain a trial date to put pressure on the other side and make any necessary applications before trial. I will discuss this further with [Counsel] ..."

19.13 In an email dated 10 October 2017 to Client A, Mr Brett stated: "I have now hear [sic] back from [Counsel] and I am preparing an application to the Court to obtain both an order for the other side's disclosure of where the monies went and also for further directions including the obtaining of a trial date. I aim to issue the application at Court later this week and shall confirm to you when this has been done."

19.14 In an email to Client A dated 31 October 2017, Mr Brett stated: "the application was [sic] been sent off for issue at the Court ... I am presently waiting for this to be returned with a hearing date".

19.15 In an email dated 28 November 2017 to Client A, Mr Brett stated: "I understand from the Court that they are expecting to hear back from the Master later this week and so hopefully can report on a hearing date in the next few days".

19.16 In an email dated 8 December 2017, Mr Brett told Client A that there was "Still no word for [sic] the court, I shall continue to chase them early next week ..."

19.17 In an email dated 20 December 2017 to Client A, Mr Brett stated: "I have finally heard back from the court that a hearing has been listed for 21 March 2018 when the court will give further directions to bring the matter on for a trial..."

19.18 In an email dated 7 March 2018 to Client A, Mr Brett stated: "I shall be touching base with the barrister next week in readiness for the hearing on 21 March 2018..."

19.19 In an email dated 20 March 2018 to Client A, Mr Brett stated:

> "I have heard from the court that the hearing tomorrow is having to be rescheduled due to the unavailability of the Master. The court will be giving a new date shortly.
>
> There is a possibility that the directions can be agreed with the other side, which would avoid the need for a hearing and I shall keep you posted on this."

19.20 In an email dated 30 April 2018 to Client A, Mr Brett stated: "I confirm that no response has been received from the other side, so I shall chase the court for a new hearing date to keep the pressure on the other side."

19.21 In an email dated 4 May 2018 to Client A, Mr Brett stated: "I have chased the court and am expecting to know next week when the next hearing date will be."

19.22 In an email dated 17 May 2018 to Client A, Mr Brett stated: "Still not received a new date but am told by the Court this should be coming back from the Master any day now."

19.23 In an email dated 1 June 2018 to Client A, Mr Brett stated: "I am told by the court that the hearing date is likely to be mid-July and I am just awaiting confirmation which I expect next week." The same day, Client A asked whether he would need to attend the Directions hearing as he would be on holiday around that time. Mr Brett replied: "There will be no need for you to attend the hearing.".

19.24 In an email dated 15 June 2018 to Client A, Mr Brett stated that the new hearing date would be 20 July 2018.

19.25 In an email dated 30 July 2018 to Client A, Mr Brett stated that: "The hearing was pulled from the list at the last minute..."

19.26 In an email dated 17 August 2018 to Client A, Mr Brett stated: "Haven't got a new date yet but expecting to receive one next week."

19.27 In an email dated 14 September 2018 to Client A, Mr Brett stated that he had: "Finally received the date of 15 November 2018, which will be a definite fixture". Client A replied asking if it would be possible to arrange a sooner date. On 25 September 2018, Mr Brett stated: "It is very difficult to obtain a date sooner than listed by the court, but I will ask the court to provide an earlier date if a date becomes available."

19.28 In an email dated 15 November 2018, Mr Brett wrote to Client A as though a Directions hearing had taken place that day:

> "We are looking at a 2 day hearing in the Spring, the precise dates to be fixed... Disclosure of documents is to be completed in the next 28 days, to include from the other side details of where the monies were sent, after which witness statements are to be exchanged".

19.29 No hearing in fact took place on Client A's matter on 15 November 2018, and none had been listed to take place on that date.

19.30 In an email dated 13 December 2018, as part of a discussion about the future strategy for the case, Mr Brett wrote to Client A that: "...we should concentrate on securing a trial date..."

19.31 In addition, on the Firm's file were the following letters, purporting to be to the Defendant's solicitors, but which the Defendant's solicitors had never received. Mr Tankel submitted that it was most unlikely that the letters had been sent to the Defendant's solicitors, or had ever been intended to be sent, because they referred to hearings which did not exist, or procedural steps which had not been taken, and would have elicited an incredulous response from the Defendant's solicitors. The inference to be drawn was that Mr Brett did not send these letters, but created them to show to Client A, and copied them immediately to the file, in order to create the false impression that he was progressing the case:

- Letter dated 20 January 2017, in which Mr Brett purported to provide the requested disclosure documents for inspection. He repeated the request for evidence of the funds leaving the Defendant's bank account, and said that "once we receive details of where the monies went, we can finalise witness statements and seek the court's permission to rely upon the same". Mr Brett provided no explanation for the delays to date, nor any response to the Defendant's Request for Further Information.

- Letter dated 13 February 2017, concerning disclosure of bank statements and containing an indication that Mr Brett would make an Application to the Court if information was not given.

- Letter dated 10 April 2018, by which Mr Brett purported to write to the Defendant: "we invite you to agree the terms of the draft consent order within the next 14 days to avoid the costs of the adjourned hearing."

19.32 In respect of the letter dated 10 April 2018 referred to immediately above, Mr Brett sent a copy to Client A on 11 April 2018, claiming that a copy had gone to the Defendant the previous day.

19.33 In or around January 2019, the Firm appears to have discovered what had been going on. It called Client A to say that, contrary to what he had been told by Mr Brett, no steps had been taken on his file since 2017, and that Client A should seek independent legal advice. In or around March 2019, Client A appointed new legal representatives to take over conduct of his claim against LGS, and to pursue a negligence claim against the Firm.

19.34 Client A's new representatives sent the Firm a Letter Before Claim alleging a range of serious shortcomings in the management of the claim. Whilst that letter suggested that, not only did Mr Brett fail to progress the claim from 23 February 2016 onwards, but that he may not have been running the claim appropriately since its outset, the Applicant did not raise these additional criticisms as standalone allegations of professional misconduct; the Applicant considered it disproportionate to do so.

19.35 Client A's new representatives Applied to the Court for relief from sanctions in the claim against LGS. LGS cross Applied to strike out the claim. Client A relied upon the fact that the delays in progressing the claim were not his fault, and that he had been misled by Mr Brett. The matter came before the Court (Master Sullivan) on 20 January 2020. The Court found that Mr Brett had failed to progress the claim, and that Mr Brett had actively misled Client A about this. The Court nevertheless refused to grant Client A relief from sanctions, and struck out the claim. Mr Brett's conduct therefore caused Client A to lose the chance of pursuing a valuable claim.

19.36 Mr Tankel submitted that, in lying to Client A about the progress of his matter, Mr Brett had effectively disabled Client A's capacity to proceed with the claim. Such conduct, it was submitted, failed to uphold the rule of law and the proper administration of justice, in breach of Principle 1. He also failed to act in Client A's best interests in breach of Principle 4. That he had failed to provide a proper standard of service was plain. Solicitors providing a proper standard of service provided clients with truthful information about the progress of their matters, so that clients could make informed decisions and provide informed instructions. Mr Brett's failings amounted to a clear breach of Principle 5.

19.37 Members of the public, it was submitted, would be alarmed to know that a solicitor had lied to a client about their own failure to progress the client's case. Such conduct failed to maintain the trust the public placed in solicitors and in the provision of legal services.

19.38 Mr Brett knowingly misled Client A about the progress of his matter. The misconduct was calculated, repeated, and lasted for a significant period of time. Mr Brett knew that his misconduct would seriously harm his client's prospects of success. He acted for his own reasons, whatever those were, and placed those reasons ahead of his own client, despite the serious harm that he knew this would cause. That such conduct failed to uphold the ethical standards of the profession and lacked integrity, in breach of Principle 2, was clear.

Dishonesty

19.39 Mr Tankel submitted that Mr Brett's conduct was dishonest in the following respects:

- Each of the representations made in the emails sent to Client A after 12 February 2017, detailing steps taken in the case, was false.

- The overall impression created by Mr Brett that he was prosecuting the case was false.

- Mr Brett knew that each representation, and the overall impression he created, was false. He was responsible for progressing the matter and he knew that, contrary to what he told Client A, he had not done so.

- Mr Brett knew that his misconduct would cause considerable harm to the client. He nevertheless continued to lie to the client for reasons of his own.

19.40 Ordinary decent people would unarguably regard a solicitor deliberately and repeatedly lying to their own client about the conduct of their case, and knowingly harming their client's prospects of success, for reasons of their own, as dishonest.

The Tribunal's Findings

19.41 The Tribunal considered each of the representations made by Mr Brett in the emails detailed by the Applicant.

19.42 The Tribunal noted that in the Judgment of 20 January 2020, Master Sullivan found that none of the letters dated 20 January, 13 February 2017 and 10 April 2018, addressed to LGS' solicitors, had been received by them. Further, no Application had ever been sent to the Court after March 2017, and no hearings had been listed on 21 March 2018, 20 July 2018, 15 November 2018, or at all. Master Sullivan also found that:

> "It appears that Mr Brett for whatever reason was not progressing the claim but telling the Claimant that he was and giving incorrect information as to the progress of the claim."

19.43 The Tribunal found, as a matter of fact, that it was clear that Client A's claim had not been listed for a hearing before the Court, and that Mr Brett had made no Applications to the Court regarding the claim after the February 2016 Directions Order. It was also clear that, in circumstances where no hearing was listed and no Application had been made for any such hearing, Mr Brett knew that hearings had not been "pulled from the list at the last minute". Nor had Mr Brett obtained any listing appointments before the Clerk of the Lists, and so he knew that so trial date had even been fixed. Having considered the evidence, the Tribunal agreed with the findings of Master Sullivan quoted above.

19.44 It was also plain that Mr Brett had not sought to obtain further Directions from the Court, nor had he pressed the court to provide a trial date, as he stated that he would in his email to Client A of 19 May 2017. The Tribunal found that, not only had Mr Brett not progressed the claim, but that he had deliberately and persistently misled Client A as to the what the true position was regarding the progress of the claim.

19.45 The Tribunal found that Mr Brett, by his conduct, had prevented Client A from pursuing his claim. He had also provided false information to Client A about Court hearings and Directions. Such conduct, it was determined, failed to uphold the rule of law and the proper administration of justice in breach of Principle 1.

19.46 It was plain that such conduct was contrary to Client A's best interests, and did not provide client A with a proper standard of service, in breach of Principles 4 and 5.

19.47 The public would be extremely concerned about a solicitor making false representations to his client about the progress of a case, particularly when that solicitor had made up Court hearing dates and Directions supposedly given at fictitious hearings. Such conduct, it was found, inevitably failed to uphold the trust the public placed in solicitors and the provision of legal services, in breach of Principle 6.

19.48 The Tribunal agreed with Mr Tankel's submission that Mr Brett had knowingly misled Client A about the progress of his matter, and that such conduct was calculated, and repeated over a significant period of time. No solicitor acting with integrity, the Tribunal found, would deliberately mislead their client into believing that a matter was progressing when, in fact, no progress had been made, and indeed, the claim was liable to be struck out as a result of the solicitor's default. Nor would a solicitor acting with integrity provide their client with fictitious Directions from fictitious Court hearings. It was plain that such conduct lacked integrity, in breach of Principle 2.

Dishonesty

19.49 The Tribunal found that Mr Brett knew that:

- he had failed to comply with the deadlines in the Directions Order dated 23 February 2016;
- he had not liaised with the Court in order to have the matter listed for trial;
- he had not been chasing the court;
- he had not heard back from the court regarding the listing of any Application for Directions or the trial;
- no Directions hearing had been listed in March 2018, and thus no such hearing had been rescheduled due to the unavailability of the Master;
- he had not chased the court for a new hearing date in order to "keep the pressure on the other side". In fact, due to his failings, there had been no pressure whatsoever placed on the other side;
- he had not received a fixture from the court for a Directions hearing in November 2018, nor were there any Directions from the Court following that hearing, as no hearing had taken place.

19.50 The Tribunal found that Mr Brett had continuously and repeatedly lied to Client A about the progress of the claim. He knew that he had not taken the steps he suggested he had, and knew that at no time had the matter been listed, and then later withdrawn from the list. Ordinary and decent people would clearly consider that such conduct was dishonest.

19.51 Accordingly, the Tribunal found allegation 1.2 proved, including that Mr Brett's conduct had been dishonest (as per allegation 2).

Previous Disciplinary Matters

20. None.

Mitigation

21. None.

Sanction

22. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct, and to impose a sanction that was fair and proportionate in all the circumstances.

23. The Tribunal was unable to ascertain Mr Brett's motivation for his wholesale failure to progress Client A's matter, and thereafter repeatedly lying to Client A about the progress on his case. His actions were clearly planned. He had deliberately misled his client into believing that the case was progressing when it was not, and kept up that pretence over a protracted period, even remembering when to update Client A after a fictitious hearing had supposedly been listed and either withdrawn or taken place. Client A trusted Mr Brett to advance his case properly and to provide him with truthful information as regards the progression of the case. Mr Brett was solely and wholly responsible for the circumstances giving rise to the misconduct. He was an experienced litigation solicitor.

24. He had caused significant harm to Client A. As a result of his failings, Client A was prevented from pursing a claim for a substantial amount of money; the failure to progress the case led to Client A's claim being struck out. The harm caused by Mr Brett's misconduct was easily foreseeable. His conduct amounted to a complete departure from the integrity, probity and trustworthiness expected of a solicitor.

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

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

26. The conduct was deliberate, calculated and repeated, and had continued over a period of time. He had concealed his failing to run Client A's case properly by pretending that the case was being progressed through the Court, when he knew that was not the case. He fabricated that progress was being made on the case.

27. The Tribunal noted that Mr Brett had a previously unblemished record.

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

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter

how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

29. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring Mr Brett in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that, in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction, in order to protect the public and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that Mr Brett be struck off the Roll.

Costs

30. Mr Tankel applied for costs in the sum of £22,950.00. It was submitted that as a result of Mr Brett's non-engagement, the Applicant had to prepare for a fully contested hearing. The investigation costs claimed in-house by the SRA was £750. Capsticks fee was a fixed fee of £18,500 + VAT. Capsticks costs were broken down into the work undertaken by the individual fee earners.

31. Conduct of the parties. The allegations were all found proved. Mr Tankel submitted that the allegations were reasonably pursued and proportionate. Mr Brett's conduct had been unreasonable. He had failed to engage and had forced the regulator to prepare for a contested hearing. It is part of the expectation that solicitors engage with the regulator. This was clear from the Principles and caselaw. Failing to do so was also unreasonable as it drove up costs.

32. Mr Brett had failed to comply with any of the Tribunal's Directions which had also created additional costs.

33. The preparation of a case takes time even when it is not contested. This matter concerned 2 client files of approximately 1,000 pages each. It was necessary to go through those files in order to identify how to present the case in a proportionate manner. This was not a case where there was a Forensic Investigation to assist in the preparation of the matter.

34. The Tribunal Rules suggest it is necessary to assess the reasonableness of the hourly rate charged. The notional hourly rate was approximately £164 per hour. This compared reasonably with non-central London guideline rates set out by the Lord Chancellor.

35. Mr Tankel submitted that his brief fee was also entirely reasonable. Although, this was not charged directly, as it formed a disbursement payable from the solicitors' fixed fee, and so it did not increase the amount of the costs claimed.

36. Mr Brett was the owner of his current property, which had no charges or mortgage against it. He was the sole owner of the property. He was not registered as bankrupt or insolvent. Accordingly, it was submitted, Mr Brett was able to afford the costs claimed by the Applicant. Further, and in any event, it was for Mr Brett to provide evidence of his means if he wished to contend that he was unable to satisfy any costs Order, and he had failed to do so.

37. Mr Tankel submitted that, when working on a fixed fee basis, the only difference that the length of the hearing made to costs was to the notional hourly rate of the solicitors. The notional hourly rate had been calculated on the basis that the hearing took 1 day. It did not follow that, if the fee was reasonable for a 2 day hearing, the same fee was unreasonable if the hearing took less time.

38. The Tribunal was unable to take account of Mr Brett's means in determining the appropriate costs figure, as he had provided no evidence of his means.

39. The Tribunal considered whether the costs claimed were reasonable pursuant to Rule 43 of the Rules.

40. The Tribunal found that the Applicant had pursued the allegations in a reasonable and proportionate manner. It was noted that the Applicant had complied with the Tribunal's Directions. Mr Brett had failed to engage in the proceedings, and thus had not complied with any of the Tribunal's Directions.

41. The Tribunal determined that the time spent on the preparation and presentation of the case by Capsticks (approximately 70 hours) was proportionate and reasonable given the nature of the case and the issues to be determined. The notional hourly rate, (which took into account the reduced hearing time and removed any refresher fee), was also reasonable and proportionate, as were the fees claimed as disbursements (namely the cost of the Tracing Agent and Counsel's fees). The Tribunal also found that the amount claimed by the SRA for its in-house investigation was reasonable, given the matters that the SRA had been required to consider.

42. Having determined that the costs charged were reasonable and proportionate, the Tribunal did not find that there should be any reduction in the costs claimed.

Statement of Full Order

43. The Tribunal Ordered that the Respondent, ANDREW MARK BRETT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,950.00.

Dated this 17th day of May 2023
On behalf of the Tribunal

A Horne
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
17 MAY 2023