SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12421-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

MALCOLM RICHARD GLYNN Respondent

Before:

Mr A Ghosh (in the chair)
Mr M N Millin
Mr G Gracey

Date of Hearing: 31 May 2023

Appearances

Cameron Scott, counsel in the employ of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Saba Naqshbandi, counsel of Three Raymond Buildings, Gray's Inn, London WC1R 5BH, instructed by Euros Jones, solicitor of DWF LLP, 20 Fenchurch Street, London EC3M 3AG for the Respondent.

JUDGMENT

Allegations

The allegations made against Mr Glynn by the Solicitors Regulation Authority Limited ("SRA") were that while in practice as a solicitor at Progression Solicitors Limited ("the Firm"):

1. On 24 November 2019, he made statements in an email to the Firm regarding his involvement with Craig LaPenna which were untrue and/or misleading namely:

1.1 That, in relation to a loan agreement between Client B and Person C, he had been provided with contact details for Client B by another solicitor at the Firm;

1.2 That he had not been advised of any connection between Client B and Mr LaPenna;

1.3. That Client B had advised him that the funds for the transaction were his personal funds.

In doing so he acted in breach of either or both Principles 2 and 6 of the SRA Principles 2011 ("the 2011 Principles").

Allegation 1 was advanced on the basis that Mr Glynn also acted dishonestly. Dishonesty was alleged as an aggravating feature of Mr Glynn's conduct but was not an essential ingredient of proving the allegation.

Allegation 2

2. On 25 November 2019, he made statements in a meeting to Pamela Horobin and Anthony Smith of the Firm regarding his involvement with Mr LaPenna which were untrue and/or misleading namely

2.1 - Withdrawn -;

2.2 That he did not know who Mr LaPenna was until he was referred to a newspaper article and found out about his conviction;

2.3 That he had not been dealing with Mr LaPenna after he found out about his conviction;

2.4 That he had met Person A only once, about 12 to 18 months previously;

2.5 That he did not think that there was any connection between Mr LaPenna, Client B and Client D but that he did not know.

2.6 That he thought Mr LaPenna and Client B did know each other but did not think there was a business link between them in relation to the lending to Person C.

In doing so, he acted in breach of any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the 2019 Principles").

3. On or around 4 March 2020, he, through his representative, made a statement to the SRA which was untrue, namely that he had no relationship at all with Mr LaPenna and had never had any relationship with him and in doing so he breached any or all of

Principles 2, 4 and 5 of the 2019 Principles and any or all of Paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors")

Executive Summary

4. Mr Glynn admitted all of the allegations he faced, including that his conduct had been dishonest. The Tribunal found all of the allegations proved on the facts and the evidence. The Tribunal found Mr Glynn's admissions to have been made properly.

Sanction

5. The Tribunal found that given the serious nature of Mr Glynn's misconduct the appropriate and proportionate sanction was to strike Mr Glynn off the Roll of Solicitors. The Tribunal did not find that there were any exceptional circumstances that would justify any lesser sanction. The Tribunal's sanctions and its reasoning on sanction can be found here:

- Sanction

Documents

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

- Rule 12 Statement and Exhibit HWP1 dated 16 December 2022 (as amended on 26 May 2023)
- Respondent's Answer and Exhibits dated 8 March 2023
- Applicant's Schedule of Costs dated 24 May 2023
- Recordings of meetings dated 25 November and 16 December 2019
- Character reference dated 30 May 2023
- Submissions on sanction and attachments dated 30 May 2023

Preliminary Matters

7. Application to amend the Rule 12 Statement

7.1 Mr Scott applied to amend the Rule 12 Statement so that it was an accurate reflection of the factual position. Allegation 2 had been drafted on the basis of the typed notes of the meeting received by the SRA. On 24 April 2023, the SRA received the recording of the meeting. This evidenced that part of allegation 2 was factually incorrect.

7.2 In addition, the Rule 12 Statement contained a sentence that was prejudicial to Mr Glynn. Mr Glynn had requested that be removed and the SRA agreed that it was not pertinent to the allegations.

7.3 Ms Naqshbandi supported the application to amend.

7.4 The Tribunal considered that it was in the interests of justice to grant the application. There would be no prejudice to Mr Glynn in doing so, particularly as he now admitted all of the allegations.

7.5 Accordingly, the application to amend the Rule 12 Statement was granted.

8. Application for anonymity

8.1 Mr Scott applied for the persons named in the matter to be anonymised in the proceedings and in the Judgment. There were four individuals and one company. Three of the individuals and the company were all clients. Person A, whilst not a client in this matter, was a client of the Firm. Clients had a right of confidentiality and legal professional privilege. The allegations necessarily involved discussion of their instructions and the advice given. It also related to transactions that the Firm was instructed to undertake.

8.2 Mr Scott submitted that the situation in this matter was different to that in Lu v SRA [2022] EWHC 1729 (Admin), where Kerr J criticised the wholesale anonymity applied in that Judgment, as Lu did not involve clients. Further, whilst Kerr J was critical of the anonymity applied, he continued anonymity in relation to three individuals who were not clients.

8.3 Mr Scott submitted that clients had a legitimate expectation that their matters with their solicitors would remain confidential and that legal professional privilege applied in relation to naming the clients. The clients in this matter were not being called to give evidence, and it was unclear whether they were aware of the proceedings against Mr Glynn.

8.4 Mr Scott submitted that, in all the circumstances, it was in the interests of justice for the clients to remain anonymous.

8.5 The Tribunal invited Mr Scott to address it on the comments made by Popplewell J at paragraph 76 of JSC BTA Bank v Ablyazov & Ors [2014] EWHC 2788 (Comm):

> "Where is the line to be drawn between "the ordinary run of cases" in which privilege attaches to communications with a solicitor by a client with a view to advancing a knowingly false case, and the conduct in Kuwait Airways (No 6)? The answer lies, in my view, in a focus on three aspects of legal professional privilege and the iniquity exception. The first is that legal professional privilege attaches to communications between solicitor and client which are confidential. The quality of confidence is a prerequisite to the privilege, because it is the protection of such confidence which forms the bedrock of the rationale for the privilege as essential to the administration of justice. Secondly, communications made in furtherance of an iniquitous purpose negate the necessary condition of confidentiality. It is this which prevents legal professional privilege attaching to communications for such purpose. Thirdly, the reason that communications in furtherance of iniquity lack the necessary quality of confidentiality is that communications can only attract the confidence if they are made in the ordinary course of professional engagement of a solicitor. It is the absence or abuse of the normal relationship which arises where a solicitor is rendering a service falling within the ordinary course of professional engagement which negates the necessary confidentiality and therefore the privilege. The "ordinary run of cases" involve no such abuse: a solicitor instructed to defend his client of a

criminal charge performs his proper professional role in advancing what the client knows to be an untrue case."

8.6 Mr Scott submitted that Ablyazov did not apply as it was not the Applicant's case that there was an "iniquitous purpose". Accordingly, it was not relevant to the considerations in this matter.

The Respondent's Submissions

8.7 Ms Naqshbandi was neutral on the application. The only observation she made was that the Tribunal should firstly consider whether Person A (Mr LaPenna) was in fact a client to whom confidentiality attached on the facts of this case.

The Tribunal's Unanimous Decision

8.8 The Tribunal noted that Mr LaPenna was not a client in the matters to be considered by the Tribunal. The fact that he had provided instructions to Mr Glynn did not mean that he could claim confidentiality in circumstances where he was not a client. Furthermore, Mr La Penna had participated in furthering the course of conduct which was the subject of the allegations against the Respondent. The Tribunal was of the view that naming Mr LaPenna would not cause him any prejudice, in circumstances where he could have no expectation of confidentiality. Accordingly, the application to anonymise Mr LaPenna was refused.

The Tribunal's Majority Decision

8.9 The Majority considered that Client B, Person C, Client D and Company E were entitled to anonymisation in the Judgment and the proceedings as clients of the Firm. The Majority determined that the decision in Lu was distinguishable in circumstances where there were no clients in Lu. The Majority determined that the purpose of the Tribunal's Judgment was for members of the public and the profession to understand the allegations made against a Respondent, and defence and the Tribunal's reasons for the decision it reached, and the sanction (if any) imposed. The Tribunal did not consider that the anonymisation of clients who had not attended to give evidence (indeed had not provided witness statements) derogated from the principle of open justice.

8.10 Accordingly, the Majority granted the application for the anonymisation of Client B, Person C, Client D and Company E.

The Chair's Dissenting Decision

8.11 The Chair dissented. For the reasons set out below, he was of the view that all of the clients should be named.

8.12 In Lu v SRA [2022] EWHC 1929 (Admin), Kerr J. observed

"*A common misconception is that if the identity of a person in legal proceedings is not directly relevant, there is no public interest in that person's name being known. The justice system thrives on fearless naming of people, whether bit part players or a protagonist. Open reporting is discouraged by what George Orwell*

once called a "plague of initials." Clarity and a sense of purpose are lost. Reading or writing reports about nameless people is tedious [at paragraph 6].

8.13 Whilst Mr Scott acknowledged the force of Kerr J's arguments, he also drew attention to a passage in that judgment, at paragraph 4, in which Kerr J. had said "*I am prepared, not without hesitation, to continue the anonymity of three relevant individuals within the two complainant firms. This is because they are likely, as against their employer, to have a contractual right to anonymity in respect of allegations made by or against them internally within the context of their employment; albeit that contractual right is far from conclusive, does not bind the court and might well have to yield to open justice.*"

8.14 When questioned by the Chair, however, as to whether he was submitting that the clients in question had a contractual right to anonymity similar to the contractual right of an employee referred to by Kerr J. in the passage cited above, Mr Scott declined to make such a submission. Instead, he argued that the clients had a right to anonymity as a concomitant of legal professional privilege.

8.15 The Tribunal has a duty under section 6 of the Human Rights Act 1998 to give due weight to the European Convention on Human Rights and Fundamental Freedoms. It had to weigh in the balance Articles 6 (Right to a Fair Trial), 8 (Right to Respect for Privacy and Family Life) and 10 (Freedom of Expression). The public had a legitimate interest in knowing the identity of the clients. Any press report would be likely to be of much lesser interest to readers if the identity of the clients were to be anonymised.

8.16 The balance here favoured Article 10 and the principle of open justice.

Factual Background

9. Mr Glynn was admitted to the Roll of Solicitors in April 2004. He held an unconditional Practising Certificate. He was employed by the Firm from 16 February 2015 to 3 February 2020.

10. In or around March 2018, Mr Glynn acted for Client E, a limited company, in relation to a loan facility and the granting of a charge over a property. Client E was a limited company owned by Person C.

11. In or around April 2019, Mr Glynn acted for Client B in relation to a loan of £125,000 to Person C. In the course of this matter Mr Glynn drafted a Short Form Facility Agreement between Client B and Person C and a Legal Mortgage over a property owned by Person C.

12. In or around February 2019, Mr Glynn acted for Client D in relation to a proposed loan of £50,000.

13. Mr LaPenna, on or around 14 March 2019, was convicted at Manchester Crown Court of illegal money lending and money laundering offences.

Witnesses

14. No witnesses were required to give oral evidence.

Findings of Fact and Law

15. 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 Glynn'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

16. 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."

17. When considering dishonesty, the Tribunal firstly established the actual state of Mr Glynn'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

18. 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".

19. **Allegation 1 - On 24 November 2019, he made statements in an email to the Firm regarding his involvement with Craig LaPenna which were untrue and/or misleading namely: (1.1) That, in relation to a loan agreement between Client B and Person C, he had been provided with contact details for Client B by another solicitor at the Firm; (1.2) That he had not been advised of any connection between Client B and Mr LaPenna; (1.3) That Client B had advised him that the funds for the transaction were his personal funds. In doing so he acted in breach of either or both Principles 2 and 6 of the 2011 Principles. It was further alleged that such conduct was dishonest.**

The Applicant's Case

19.1 On 28 August 2019, Person C made a report to the SRA concerning Mr Glynn. In summary it was alleged that:

- Mr Glynn had acted for Person C and Client E to secure a business loan;
- In April 2019 she was refinancing her business through a broker, Mr LaPenna. Mr LaPenna was a friend of Mr Glynn;
- She was called into the Firm to sign documents to pay off the original loan and purchase a caravan from Mr LaPenna;
- She believed Mr Glynn was acting on her behalf. At no point was she advised to seek alternative legal advice;
- She did not know the contents of the documents she signed and felt she had been defrauded. She was in danger of losing her home and possessions.

19.2 The SRA informed the Firm and Mr Glynn of the report from Person C on 21 November 2019.

19.3 On 2 January 2020, the Firm wrote to the SRA confirming:

- The Firm acted for Client B who was the lender in relation to a personal loan to Person C;
- They had acted for Client E in March 2018 in connection with a commercial loan. Person C was the sole director and shareholder of Client E. She gave a personal guarantee which was secured on a property in her name;
- As far as the Firm was aware, Mr Glynn only had a professional relationship with the parties. There was nothing to suggest there was a conflict of interest;
- The Firm was not acting for Person C. She was advised by Mr Glynn to seek independent legal advice and told him that she had done so.

19.4 On 3 January 2020, the Firm wrote further to the SRA providing a list of files in which they had acted for Mr LaPenna, Client B and Person C. In respect of Mr LaPenna, they confirmed they had acted in four matters. In addition, a file was originally opened in Mr LaPenna's name in respect of the loan from Client B to Person C. As for Client B, in addition to the file for the loan facility to Person C, they had a file for a further loan facility from Client C to Person C.

19.5 The letter also stated that the Firm had concerns about these files:

> "We were unaware until I received your letter dated 21 November 2019 that Mr LaPenna had been convicted… I immediately began an investigation… The reason Mr Glynn was suspended was because when I spoke with him on 22 November he told me categorically that he had only met Mr LaPenna once,

> briefly, on being introduced to him by George Lonsdale, and that the next time he had any contact with him was when Mr LaPenna had been in the background during a telephone conference with [Client B] … Mr Glynn repeated this in an interview with myself and my colleague Anthony Smith on Monday 25 November, when he was suspended …. I had discovered by this time that in fact there was extensive email correspondence between Mr LaPenna and Mr Glynn throughout the matter that was not on file… the train of email correspondence shows that Mr LaPenna had a prearranged meeting with Mr Glynn in our Windermere Office on 18 February 2019, and that it was Mr LaPenna who gave Mr Glynn the contact details for [Client B] … The file for the secured lending … was originally opened as a file for Mr LaPenna, but that file was closed and a new file … was opened with [Client B] as the client … Mr LaPenna and Mr Glynn were in regular email correspondence about the matter throughout and [Mr LaPenna] was copied in on most of the emails with [Client B] …
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> …
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> It seems that [Person C] quickly defaulted on the loan … [Client B] and Mr LaPenna agreed to lend her further money … Mr Glynn was asked to draw up a side agreement between [Client B] and Mr LaPenna about the further loan… Mr Glynn drafted a side agreement between [Client B] and Mr LaPenna".

19.6 The letter expressed concern about another matter in which Mr Glynn acted, involving Client D.

19.7 In the course of the investigation conducted by the Firm, Mr Glynn sent an email to the Firm, dated 24 November 2019, in which he stated the following:

- That, in relation to a loan agreement between Client B and Person C, he had been provided with contact details for Client B by another solicitor at the Firm;
- That he had not been advised of any connection between Client B and Mr LaPenna;
- That Client B had advised him that the funds for the transaction were his personal funds.

19.8 Mr Scott submitted that all of those statements were untrue and Mr Glynn knew they were untrue. In fact, Mr LaPenna had introduced Client B to Mr Glynn. Mr Glynn was well aware that there was a connection between Mr LaPenna and Client B. Client B had not advised Mr Glynn that the funds for the transaction were his personal funds. This could be inferred from the following documents on the Firm's file:

- Mr Glynn's secretary wrote to Client B on 21 February 2019 confirming that Mr LaPenna had provided Client B's telephone number to Mr Glynn;
- An email from Mr Glynn to Mr LaPenna dated 15 February 2019 in which Mr Glynn had sought instructions from Mr LaPenna in relation to the loan to Person C;

- A diary entry and emails dated 18 February 2019 showing Mr Glynn had arranged a meeting with Mr LaPenna and met him in the Firm's offices on 18 February 2019;

- Mr LaPenna had corresponded by email with Client B on 18 February 2019 to request a meeting regarding Person C;

- Numerous emails between Mr Glynn and Client B regarding the loan to Person C were copied to Mr LaPenna;

- Mr Glynn provided advice or information to and sought instructions from Mr LaPenna regarding the loan to Person C;

- An email from Client B to Mr Glynn dated 29 March 2019 suggesting that Mr LaPenna had agreed to provide funds to redeem the existing mortgage over the property;

- An email from Mr LaPenna to Mr Glynn dated 29 March 2019 seeking advice on a personal guarantee from Person C and Mr Glynn's reply with advice on 2 April 2019 (HWP1 page 129);

- An email dated 25 February 2019 from Mr Glynn's secretary regarding closure of a file in the name of Mr LaPenna;

- An email from Mr Glynn dated 12 April 2019 to Mr LaPenna regarding Company E which stated:

  > "I am preparing a facility agreement …based upon what he is suggesting he has spoken to you about. When you have got time can you just confirm the background to the facility, so I can finalise the documents. Who is the lender- is it you- can this be the case based upon the recent court case. Who will be the borrower… "

- An attendance note recording that Mr Glynn's secretary had called "John" and that they were waiting to hear back from "Craig" with detailed instructions. Mr Scott submitted that it was to be inferred that John was the husband of Person C and Craig was Mr LaPenna;

- Mr Glynn had drafted two side agreements between client B and Mr LaPenna in terms of which client B and Mr LaPenna had agreed to grant Person C a secured term loan of £168,000 and that Mr LaPenna would be providing a caravan. Mr Glynn sent these to client B and Mr LaPenna on 17 and 18 June 2019.

19.9 Mr Scott submitted that Principle 6 of the 2011 Principles required Mr Glynn to maintain the trust the public placed in him and in the provision of legal services. Public trust in the solicitor's profession was diminished by a solicitor who provided false information to his employer generally and, in particular, in the context of an investigation.

19.10 Principle 2 of the 2011 Principles required solicitors to act with integrity. The statements made by Mr Glynn in the email of 24 November 2019 were untrue. When he made the statements, Mr Glynn knew that the matter was being investigated by the SRA and by the Firm. He also by that time knew about the conviction of Mr LaPenna. A solicitor acting with integrity would not have made those statements and would have ensured that he provided accurate information to the Firm in the course of its investigation. Such a solicitor would have told the truth. Principle 2 of the 2011 Principles was therefore breached.

Dishonesty

19.11 Mr Scott submitted that Mr Glynn knew that the statements were untrue and/or misleading. Ordinary decent people would regard his conduct in making statements to the Firm which he knew to be untrue and/or misleading to be dishonest.

The Respondent's Case

19.12 Mr Glynn admitted allegation 1, including that his conduct was dishonest.

The Tribunal's Findings

19.13 The Tribunal found allegation 1 proved on the facts and evidence. The Tribunal considered that Mr Glynn's admissions were properly made, including that his conduct had been dishonest.

19.14 Accordingly, the Tribunal found allegation 1 proved in its entirety including that Mr Glynn's conduct had been dishonest.

20. **Allegation 2 - On 25 November 2019, he made statements in a meeting to Pamela Horobin and Anthony Smith of the Firm regarding his involvement with Mr LaPenna which were untrue and/or misleading namely: (3.2) That he did not know who Mr LaPenna was until he was referred to a newspaper article and found out about his conviction; (3.3) That he had not been dealing with Mr LaPenna after he found out about his conviction; (3.4) That he had met Person A only once, about 12 to 18 months previously; (3.5) That he did not think that there was any connection between Mr LaPenna, Client B and Client D but that he did not know; (3.6) That he thought Mr LaPenna and Client B did know each other but did not think there was a business link between them in relation to the lending to Person C. In doing so, he acted in breach of any or all of Principles 2, 4 and 5 of the 2019 Principles 2019.**

The Applicant's Case

20.1 On 25 November 2019, at a meeting with Pamela Horobin and Anthony Smith, both solicitors at the Firm who were conducting an investigation into the matter, Mr Glynn made the following statements:

- That he did not know who Mr LaPenna was until he was referred to a newspaper article and found out about Mr LaPenna's conviction;

- That he had not been dealing with Mr LaPenna;

- That he had met Mr LaPenna only once, about 12 to 18 months previously;

- That he did not think that there was any connection between Mr LaPenna, Client B and Client D but that he did not know;

- That he thought Mr LaPenna and Client B did know each other but did not think there was a business link between them in relation to the lending to Person C.

20.2 Mr Scott submitted that all of those statements were untrue and Mr Glynn knew they were untrue. Mr Scott referred the Tribunal to the documents from the Firm's file detailed at allegation 1 above. It was the SRA's case that Mr Glynn knew about Mr LaPenna's conviction at latest on 12 April 2019 but continued to deal with him after that date. These dealings were not limited to one phone call as Mr Glynn had previously claimed.

20.3 Further, in 2017, Mr Glynn had acted for Mr LaPenna in relation to a secured loan to a third party. In addition, Mr Glynn knew there was a connection between Mr LaPenna and Client D. In February 2019, Mr Glynn had acted for Client D in relation to a loan of £50,000. An email from Mr LaPenna to Mr Glynn dated 22 February 2019 and his response showed that initial instructions came from Mr LaPenna and that he provided Client D's email address to Mr Glynn.

20.4 Mr Scott submitted that public trust in the solicitor's profession was diminished by a solicitor who provided false information to his employer generally and, in particular, in the context of an investigation. Accordingly, Mr Glynn had Principle 2 of the 2019 Principles.

20.5 The statements made by Mr Glynn in the meeting on 25 November 2019 were untrue. When he made the statements, Mr Glynn knew that the matter was being investigated by the SRA and by the Firm. He also, by that time, knew about the conviction of Mr LaPenna. A solicitor acting with integrity would not have made those statements and would have ensured that he provided accurate information to the Firm in the course of its investigation. Such a solicitor would have told the truth. In failing to do so, Mr Glynn had acted without integrity in breach of Principle 5 of the 2019 Principles.

20.6 Mr Glynn knew that the statements he had made were untrue and/or misleading. Ordinary decent people would regard that a solicitor who had made statements to his Firm which he knew to be untrue and/or misleading to be dishonest. Accordingly, Mr Glynn had acted dishonestly in breach of Principle 4 of the 2019 Principles.

<u>The Respondent's Case</u>

20.7 Mr Glynn admitted allegation 2.

The Tribunal's Findings

20.8 The Tribunal found allegation 2 proved on the facts and evidence. The Tribunal considered that Mr Glynn's admissions were properly made, including that his conduct had been dishonest in breach of Principle 4 of the 2019 Principles.

20.9 Accordingly, the Tribunal found allegation 2 proved in its entirety.

21. **Allegation 3 - On or around 4 March 2020, Mr Glynn, through his representative, made a statement to the SRA which was untrue, namely that he had no relationship at all with Mr LaPenna and had never had any relationship with him and in doing so he breached any or all of Principles 2, 4 and 5 of the 2019 Principles and any or all of Paragraphs 7.3 and 7.4 of the Code for Solicitors.**

The Applicant's Case

21.1 On 4 March 2020, Mr Glynn's then representative wrote to the SRA and made the following statements on Mr Glynn's behalf:

- That Mr Glynn had no relationship at all with Person Mr LaPenna;
- That Mr Glynn had never had any relationship with Mr LaPenna.

21.2 Mr Scott referred the Tribunal to the documents contained on the Firm's files and the submissions as regards communication between Mr Glynn and Mr LaPenna detailed above at allegations 1 and 2.

21.3 Mr Scott submitted that the statements made were plainly untrue.

21.4 Paragraph 7.3 of the Code for Solicitors required solicitors to cooperate with the SRA when investigating concerns in relation to legal services. Paragraph 7.4 of the Code for Solicitors required solicitors to provide full and accurate explanations, information and documents in response to any request or requirement. The statements made were untrue and/or misleading. At the time when the statements were made, Mr Glynn knew they were untrue and/or misleading. He knew that the matter was being investigated by the SRA. He also knew about the conviction of Mr LaPenna. The public's trust in the solicitors' profession was diminished by a solicitor who provides false information to his regulator generally and, in particular, in the context of an investigation. Principle 2 of the SRA Principles was therefore breached.

21.5 A solicitor acting with integrity would not have knowingly made untrue statements. In doing so, Mr Glynn had failed to act with integrity in breach of Principle 5 of the 2019 Principles. Mr Glynn knew that the statements made were untrue. Ordinary and decent people would regard Mr Glynn's conduct in knowingly making untrue statements to the SRA to be dishonest.

21.6 Accordingly, Mr Glynn had breached the Principles and the Code for Solicitors as alleged.

The Respondent's Case

21.7 Mr Glynn admitted allegation 3.

The Tribunal's Findings

21.8 The Tribunal found allegation 3 proved on the facts and evidence. The Tribunal considered that Mr Glynn's admissions were properly made, including that his conduct had been dishonest in breach of Principle 4 of the 2019 Principles.

21.9 Accordingly, the Tribunal found allegation 3 proved in its entirety.

Previous Disciplinary Matters

22. None

Mitigation

23. Ms Naqshbandi submitted that Mr Glynn wanted to begin by expressing his regret and remorse for actions which have led him to appearing before the Tribunal in an otherwise exemplary career.

24. He had worked incredibly hard to qualify as a solicitor, beginning at the age of 22 as a legal assistant for a local authority. He had worked incredibly hard to qualify, including working part-time whilst undertaking the Legal Practice Course. He was admitted to the Roll at the age of 36. This was the first time in his career of over 15 years that Mr Glynn has been the subject of investigation or complaint to the SRA about his conduct as a solicitor. During this period, he worked at five previous firms with no SRA involvement.

25. He has been employed by Blackpool Borough Council Legal Services as Deputy Head of Service reporting directly to the Head of Legal Services, Dawn Goodall, since March 2020 initially as a locum and then on a permanent basis since October 2020.

26. As could be seen from the witness statement of Dawn Goodall, Mr Glynn's employer was aware of the allegations and was fully supportive of him. His employer described Mr Glynn as being diligent, approachable, extremely knowledgeable and supportive to her and the other members of the legal department. Ms Goodall has explained how Mr Glynn manages a team of three lawyers, one senior and the other two at varying levels of knowledge along with two legal support officers; how his senior reporting lawyer and the other members of his team look to him for support advice and assistance. Ms Goodall states that Mr Glynn has been described by the corporate leadership team at the council as an asset to the redevelopment of Blackpool.

27. Ms Goodall also explained that she found it difficult to reconcile the character of Mr Glynn that had been portrayed by his previous employer with the person with whom she had been working closely. It was also confirmed that should the Tribunal impose a supervision requirement on Mr Glynn, she was personally happy to undertake that supervision role.

28. Mr Glynn joined the Firm in February 2015. The Firm was owned and operated by a husband and wife, Anthony Smith and Pamela Horobin whose main area of work was residential property and probate. It operated out of five relatively small offices in the area, employing around twenty-five to thirty fee earners.

29. Mr Glynn's work was largely commercial property with some residential property and general corporate work. He had two large retail clients and many smaller clients to deal with. He started as a solicitor and was promoted twice; first to Associate and then to Partner. He undertook 350 – 400 matters during the 4-year period of his employment.

30. He was notified on 21 November 2019 by email from the SRA of the complaint made by Person C. His employer, Ms Horobin, was notified at the same time. She requested Mr Glynn to provide the relevant transaction file to her the same day which he did. He was therefore without access to the client file when he sent the email to the Firm on 24 November 2019 (Allegation 1) and attended the meeting with the Firm on 25 November 2019 (Allegation 2). At the meeting on 25 November 2019, Mr Glynn had requested someone to be present and to take a note of the meeting. It was Mr Glynn's position that both requests were declined by Ms Horobin and Mr Smith. As Ms Horobin has revealed very recently, she and Mr Smith covertly recorded this meeting (and the subsequent meeting on 16 December 2019). This recent revelation has led to the SRA amendments on 26 May 2023 to its Rule 12 statement.

31. Mr LaPenna, who was convicted of illegal money lending and money laundering on 14 March 2019, was a pre-existing client of the Firm (not Mr Glynn's client) and was known previously to others in the firm, including another solicitor and Mr Smith, one of the two owners of the firm. Neither appeared to have been aware of Mr LaPenna's conviction at the time in March 2014.

32. Ms Naqshbandi noted that as regards the matters relied upon for allegation 1 and 2, many of these were prior to Mr Lapenna's conviction, however Mr Glynn accepted that given the contents of his email to Mr LaPenna on 12 April 2019, he probably knew of the conviction hence he sought to clarify the terms of the proposal. Mr Naqshbandi noted that there was no evidence that Mr Glynn was aware of the conviction for any considerable time before his email of 12 April 2019.

33. Allegation 3 was not directly related to Mr Glynn's conduct at the Firm but concerned correspondence by his then legal representative on 4 March 2020 regarding his relationship with Mr LaPenna. Mr Glynn could see how this correspondence was viewed as dishonest by the standards of ordinary decent people hence his admission. By way of explanation only, it was submitted that the comments should be considered in the context of the original (unsubstantiated) complaint made by Person C that Mr Glynn was a friend of Mr LaPenna and did a lot of dealings for him, when this was not the case.

34. As a result of correspondence from the SRA, Mr Glynn understood the SRA concerns to be about a personal relationship with Mr LaPenna. Mr Glynn accepted, in hindsight, he should have been clearer in the correspondence on 4 March 2020 that it was a personal relationship/friendship that he was refuting. Additionally, the communications he had with Mr Lapenna were plain from the file; Mr Glynn never sought to hide any of the communication that he had with Mr LaPenna.

35. Ms Naqshbandi reminded the Tribunal of the general approach to sanction, namely:

- Every case is fact specific;
- The Tribunal's Guidance Note on Sanction consisted of guidelines only; it was not intended to fetter the discretion of the Tribunal when deciding sanction;
- The function of the Tribunal was to protect the public from harm, and to maintain public confidence in the reputation of the legal profession;
- The Tribunal dealt with an infinite variety of cases. Prescriptive, detailed guidelines for sanctions in individual cases were neither practicable nor appropriate. The Tribunal adopted broad guidance. Its focus was to establish the seriousness of the misconduct and, from that, to determine a fair and proportionate sanction;
- The Tribunal was not restricted as to the number of or combination of sanctions which it may impose.

36. Ms Naqshbandi submitted that the Tribunal should have regard to the following:

Culpability

- Whilst in a senior role, Mr Glynn had a heavy workload with limited support. He admits that he knows that he should have done better and expresses regret and remorse for what occurred.
- Mr Glynn has not financially or otherwise gained from this conduct.
- This was not a breach of trust case.
- Of the many clients Mr Glynn dealt with during his 4 years there, it was only in respect of this particular transaction and individuals that his conduct has been found wanting.
- The period in which Mr Glynn was in communication with Person A after his convictions was relatively short: 14 March 2019 to 18 June 2019.

Harm

37. There were no client victims of Mr Glynn's actions. Of particular note, was that Person C's original complaint was found to be wholly unsubstantiated as Mr Glynn maintained throughout. Notably, Ms Horobin described Person C as a "person who's in desperate financial trouble and she'll do anything". Further, there were no vulnerable parties involved.

38. His misconduct was absent the following aggravating factors:

- The conduct does not involve the commission of a criminal offence;

- There was no abuse of power or authority involved;

- Mr Glynn did not conceal any wrongdoing; on the contrary he had opportunities to delete emails and destroy documents, none of which he did;

- He had no previous matters before the Tribunal nor previous investigations by the SRA or his former employers;

- The case did not involve sexual misconduct, violence, bullying, discrimination or non-sexual harassment.

39. As regards mitigating factors, the Tribunal should consider his regulatory history and patterns of behaviour: Mr Glynn was 55 years of age and had had an unblemished record. He had worked in his current role for the past 3 years without fault; quite the opposite. His current employer was fully supportive of his work and was aware of and engaged with these proceedings.

40. The Tribunal, it was submitted, could be assured from this that the likelihood of future misconduct was very low.

41. Ms Naqshbandi explained how the proceedings had affected Mr Glynn's health.

42. Ms Naqshbandi whilst noting the Guidance on dishonesty in the Guidance Note on Sanction, also noted the Tribunal's indication that every case must be treated on its own merits and that the Guidance was a guideline which could not fetter the Tribunal's discretion.

43. It was submitted that, in any event, this was a case where there were exceptional circumstances. The conduct did not continue over a very long period of time, it had no adverse effect on others and this was not a case where there was any financial loss to anyone or gain to Mr Glynn. In addition, the Tribunal was aware of the impact this case had had on Mr Glynn. It was his ability to continue working that was assisting his health.

44. Reflecting the level of seriousness of this case, it was submitted that the following stringent package of sanctions fairly, adequately and proportionately addressed the functions of sanction, in particular restoration of public trust and confidence in the solicitor's profession:

- A suspended period of suspension;

- A supervision requirement with his current employer;

- A Restriction Order that Mr Glynn is unable to work in private practice;

- A Restriction Order that Mr Glynn notify the SRA if he is considering moving employers; and

- Financial penalty – an appropriate penalty could be considered which would serve as a further deterrence (noting there has been nothing to Mr Glynn's detriment over the last three years in his current employment).

45. Ms Naqshbandi submitted that if the Tribunal were to strike Mr Glynn off the Roll, this would be a bleak day for him. He was a 55-year-old man who had taken over 15 years to get to this point and for all of his hard work to result in him appearing before the Tribunal for an error in what was an otherwise exemplary career.

Sanction

46. 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.

47. The Tribunal accepted that Mr Glynn had not been motivated by financial gain. Indeed, the Firm had received a modest fixed fee for the work undertaken. Rather, he had been motivated by his desire to conceal the relationship he had with Mr LaPenna and his involvement in the matter. His actions were planned. He had written an email to the Firm that contained statements which he knew to be untrue. He had also made statements that he knew to be untrue in his meeting with the Firm. His then representatives, on his behalf, had made further untrue statements to the SRA. All of these untruths were made when Mr Glynn understood that his conduct was subject to investigation by the Firm and the SRA. He had breached the trust placed in him by his employers to give a truthful account of events. Whilst the Tribunal accepted that he had not breached a trust, it found that he had breached the position of trust placed in him. He was solely and wholly responsible for the circumstances giving rise to his misconduct. He had sought to deliberately mislead the SRA in the letter sent to it on or around 4 March 2020. The Tribunal found that Mr Glynn was highly culpable for his misconduct.

48. Mr Glynn had caused significant harm to the profession's reputation. 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"."

49. Such harm was obvious given his dishonest conduct.

50. Mr Glynn had admitted that he had been dishonest on three separate occasions and had made at least 10 statements that he knew to be untrue. The Tribunal found that his conduct had been deliberate, calculated and repeated. Whilst this had been over a relatively short period of time, the number of dishonest statements made by him was significant. Whilst he had not sought to conceal any documents, he had sought to conceal the true position from both the SRA and the Firm. The Tribunal found that it was plain to Mr Glynn that acting dishonestly was in material breach of his obligation to protect the public and the reputation of the profession.

51. In mitigation, Mr Glynn had demonstrated insight into his misconduct, and had made open and frank admissions (albeit that those admissions were made shortly before the hearing). He had a previously unblemished career. The Tribunal found that it was to his credit that his current employer was fully aware of the proceedings and wished to retain him following them.

52. 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 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."

53. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved repeated dishonesty, the only appropriate and proportionate sanction was to strike the Mr Glynn off the Roll of Solicitors.

54. The Tribunal then assessed whether the matters raised by Ms Naqshbandi amounted to exceptional circumstances such that to strike Mr Glynn off the Roll would be disproportionate. In line with Sharma, the Tribunal considered the nature, scope and extent of Mr Glynn's dishonesty, including the length of time over which it had occurred, whether it was of benefit to him, and whether it had an adverse effect on others. It also considered the evidence in mitigation provided by Mr Glynn, including the impressive character reference provided by Ms Goodall.

55. The Tribunal's Guidance Note on Sanctions stated at paragraph 55:

> "Where dishonesty has been found mental health issues, specifically stress and depression suffered by the solicitor as a consequence of work conditions or other matters are unlikely without more to amount to exceptional circumstances".

56. Mr Glynn had admitted that his conduct had been dishonest, and the Tribunal had found those allegations proved. The Tribunal noted the circumstances in which the dishonesty had occurred. It considered the medical evidence provided. That medical evidence was not material to the time when the misconduct had occurred. The Tribunal considered that Ms Naqshbandi had said all that could be said on behalf of Mr Glynn. However, that mitigation was not sufficient to establish that this was a case where exceptional circumstances existed. The nature, scope and extent of the dishonesty, whilst taking place over a relatively short period of time, was extensive. Mr Glynn had made, and repeated, a number of statements that he knew to be untrue, both to his employer and to the SRA. In Bolton it was stated that:

> "… the most fundamental of all [of the principle and purpose of sanction]: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth … a

> member of the public … is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

57. The Tribunal determined that in the absence of exceptional circumstances, 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 Glynn be struck off the Roll.

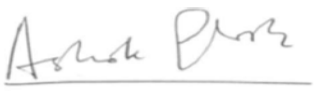
Costs

58. The parties agreed costs in the sum of £17,000. The Tribunal determined the agreed costs were reasonable and proportionate. Accordingly, the Tribunal ordered Mr Glynn to pay costs in the agreed sum.

Statement of Full Order

59. The Tribunal Ordered that the Respondent, MALCOLM RICHARD GLYNN, 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 agreed sum of £17,000.00.

Dated this 21st day of June 2023
On behalf of the Tribunal



A Ghosh
Chair