

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12433-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

WILLIAM AMO

Respondent

Before:

Ms A Kellett (in the chair)

Mr B Forde

Ms C Valentine

Date of Hearing: 11-15 May 2023

Appearances

Mr Rupert Allen, barrister of Fountain Court, Temple, London, EC4Y instructed by Capsticks LLP, 1 St George's Street, Wimbledon, London SW19 4DR for the Applicant.

Marc Beaumont, barrister of Windsor Chambers, Castle Hill House, 12, Castle Hill, Windsor, Berkshire, SL4 1PD for the Respondent.

JUDGMENT

Allegations

1. The allegation against the Respondent, Mr Amo, is that, on 28 January 2020, while employed as a trainee solicitor by Holland & Knight (UK) LLP ('the Firm') at an appraisal meeting with Mr Robert Ricketts and Ms Victoria Koob, he represented:
 - (a) that he had not failed any LPC examinations, which was untrue in that he had failed an examination sat on 27 August 2019; and/or
 - (b) that he had not failed any LPC modules, which was misleading in that he failed to mention a failed litigation examination sat on 27 August 2019.
2. In respect of the above allegation, it is alleged that the Respondent acted dishonestly (or alternatively recklessly) and it is accordingly alleged that the Respondent breached any or all of Principles 2, 4 and 5 SRA Principles 2019 and that the Respondent's actions constitute conduct on the Respondent's part of such a nature that it is undesirable for him to be involved in a legal practice.

Executive Summary

3. Mr Amo denied the allegations in their entirety.
4. The case rested upon the recollection and memory of the witnesses there being no objective contemporaneous record of the questions put to Mr Amo and the answers he gave in the meeting.
5. The Tribunal reviewed the evidence and found that in the absence of a written record it could not find the allegations proved to the requisite standard and it dismissed all the allegations including dishonesty.
6. In reaching its decision the Tribunal gave significant weight to Mr Amo's evidence relating to his character which attested to his credibility and his lack of propensity to be dishonest.
7. The Tribunal was also assisted by the judgment of Leggatt J (as he then was) in: [Gestmin SGPS S.A. v Credit Suisse \(UK\) Limited and Credit Suisse Securities \(Europe\) Limited \[2013\] EWHC 3560](#)
8. The Tribunal's reasoning can be found [here](#).

Other Bookmarks

- [Factual Background](#)
- [The Finding of Facts and Law](#)
- [The applicable Principles, Rules, Outcomes, and Tests](#)
- [The Applicant's Case.](#)
- [The Respondent's Case.](#)
- [Costs.](#)
- [Statement of Full Order.](#)

Documents

9. The Tribunal considered all the documents in the case which were contained in the electronic bundle.

Factual Background

10. The Respondent, Mr Amo, born in March 1991, is an unadmitted individual who was at all material times employed by the Firm, first as a paralegal and then, from February 2019 to July 2020, as a trainee solicitor.

Witnesses

15. For the Applicant:

- Mr Robert Ricketts
- Ms Victoria Koob
- Ms Gwen O’Flynn

16. For the Respondent:

- Mr William Amo

Findings of Fact and Law

17. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Amo’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.

SRA Principles 2019 and legal tests relevant to the case

18. As an employee of an authorised body Mr Amo was at all material times required to comply with the SRA Principles 2019 which provides, in material part the following:

Principle 2

They must act in a way that upholds public trust and confidence in the solicitors’ profession and in legal services provided by authorised persons.

Principle 4

They must act with honesty.

Principle 5

They must act with integrity.

19. In Wingate v SRA [2018] EWCA Civ 366, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson said: Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members.

The Test for Dishonesty

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

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

The Test for Recklessness

21. The common law test of recklessness in R v G [2014] 1 AC 1034, as applied in Brett v SRA [2014] EWHC 2974, to the effect that a person is reckless in respect of a circumstance if he or she is aware of a risk which does or would exist, and a person is reckless in respect of a result if he or she is aware of a risk that the result would occur and if it was, in the circumstances known to that person, unreasonable to take that risk.
22. **The allegation against the Respondent, Mr Amo, is that, on 28 January 2020, while employed as a trainee solicitor by Holland & Knight (UK) LLP ('the Firm') at an appraisal meeting with Mr Robert Ricketts and Ms Victoria Koob, he represented:**
- (a) **that he had not failed any LPC examinations, which was untrue in that he had failed an examination sat on 27 August 2019; and/or**
 - (b) **that he had not failed any LPC modules, which was misleading in that he failed to mention a failed litigation examination sat on 27 August 2019.**

The Applicant's Case

- 22.1. On 28 May 2020, the SRA received a report from the Compliance Officer for Legal Practice and training principal of the Firm, Mr Ricketts, on behalf of the Firm, about the Respondent's conduct.

Mr Amo's Training Contract

- 22.2 Mr Amo joined the Firm as a paralegal in May 2018 and was seen as having performed well. In the summer of 2018, he notified the Firm that he wished to complete the LPC and be offered a contract as a trainee solicitor. Although it was not its usual practice, the Firm agreed to this arrangement to provide funding for the Respondent's LPC fees. Mr Amo's training contract began in February 2019.
- 22.3 As Mr Amo would, unusually for the Firm, be working as a trainee solicitor at the same time as studying for his LPC, the Firm sought assurances from him that he understood that this arrangement would require a great deal of his own time to be dedicated to study outside of his work commitments as a trainee at the Firm. Mr Amo verbally acknowledged this and accepted that he would give constant updates to Mr Ricketts regarding his progress on the LPC.

Failure of the Respondent's Litigation Examination

- 22.4 On 27 August 2019, Mr Amo sat his litigation examination as part of his LPC. He failed the examination. Mr Amo was aware of his failure of this examination no later than October 2019. A re-sit of the litigation examination (the first of two resits ordinarily permitted without having to re-sit the whole of Stage 1 of the LPC) was scheduled for 13 January 2020 ('the January 2020 Resit').

Appraisal and Investigation by the Firm in January 2020

- 22.5 In late January 2020, it came to the attention of Mr Ricketts that Mr Amo may have sat and failed his litigation exam, and that he may not have done well on the re-sit. Due to this information, Mr Ricketts asked Mr Amo to provide a full statement of all exams sat to date and the results of each prior to an appraisal meeting on 28 January 2020.
- 22.6 In response to this Mr Amo sent an email with a table containing what he described as 'completed modules' to Mr Ricketts, Ms O'Flynn and another partner at the Firm, Ms Victoria Koob ('Ms Koob') on 27 January 2020. This did not show any failed or deferred examinations and did not make mention of the litigation module or examination.
- 22.6 A further document was provided by Mr Amo just prior to an appraisal meeting on 28 January 2020. Although this document was not in the format expected, it was taken at face value by the Firm as it appeared to show that Mr Amo had sat and passed all his examinations.
- 22.8 The appraisal meeting took place on 28 January 2020. Mr Amo, Mr Ricketts, and Ms Koob were present. Mr Amo was asked repeatedly whether he had passed all of the examinations undertaken so far or whether any had been unsuccessful. Mr Amo denied having failed any LPC modules. He stated that he had not failed litigation but had only just taken the examination. Mr Amo did not disclose that the examination was a resit. In fact, Mr Amo had not undertaken the examination as scheduled.

- 22.9 In their evidence, Mr Ricketts and Ms Koob said that they had been alerted to the suggestion that Mr Amo had failed some of his examinations by someone who they termed a '*whistle-blower*'. They had not wished to reveal the identity of the informant or alert Mr Amo as to how they had come by the information. Mr Koob said that given the information from the informant they had been clear on what questions to ask in order to elicit the required information from Mr Amo.
- 22.10 Mr Ricketts and Ms Koob said that Mr Amo had been asked the question directly regarding his success of failure in his examinations.
- 22.11 In cross-examination it was put to both Mr Ricketts and Ms Koob that the suggestion that Mr Ricketts asked Mr Amo several times whether he had passed all of the examinations undertaken so far, or whether any had been unsuccessful, was not correct and that because of their need to protect the source of their information the questions they had put to Mr Amo had been more generalised than they had recalled. It had been something more informal to the effect of '*how is the course going?*' This suggestion was denied by them.
- 22.12 Further, in cross-examination it was put to the witnesses that Mr Ricketts had not asked for "*exam results*" before the meeting and that he had asked for a "*progress report*" or "*exam results?*"
- 22.13 Mr Ricketts and Ms Koob confirmed in cross-examination that they had not taken minutes or made a contemporaneous note of the questions put to Mr Amo and/or his responses to those questions at the meeting.
- 22.14 Ms Koob conceded that she could not remember the words used by her or Mr Ricketts or Mr Amo's answer. She accepted that by the time of her witness statement in August 2020, she could not be precise about the words used, in questions or answers.
- 22.15 Mr Beaumont cross-examined Mr Ricketts closely on his recollection of the meeting and elicited from him that Mr Ricketts was not able to remember the exact date when the meeting had taken place i.e., whether it had been 27 or 28 January 2020.
- 22.16 Mr Ricketts accepted that the events of the meeting were only first committed to paper by him on 28 May 2020, 4 months later, with the report he made to the SRA.
- 22.17 It was put to Mr Ricketts and Ms Koob, and denied by them, that the suggestion on 28 January 2020 that Mr Amo flatly denied having failed any LPC modules and confirmed to them that he had not failed litigation, was not correct. Similarly, it was not correct to say that he had told the partners that he had only just taken the examination.

Subsequent developments

- 22.18 In late April 2020, Mr Amo informed Mr Ricketts that he had failed his litigation examination. Given the material and account that Mr Amo had provided to the Firm on 27-28 January 2020.

- 22.19 Mr Ricketts was under the impression that this was a recent examination.
- 22.20 On 14 May 2020, Mr Ricketts asked Mr Amo to provide an independent update from BPP of the examinations that Mr Amo had taken, and the results so far. On 20 May 2020, Mr Amo produced a copy of his LPC student record card to Mr Ricketts. This showed that in respect of the litigation module Mr Amo was on his second attempt and had secured a deferral for his most recent attempt. It also showed that Mr Amo had failed the practical legal assessment at his first attempt.
- 22.21 Mr Ricketts emailed Mr Amo on 21 May 2020 and asked him a number of further questions.
- 22.22 Mr Amo responded to Mr Ricketts by email on 22 May 2020. In this response Mr Amo stated the following:
- That his first litigation examination was in October 2019 (later clarified to in fact have been sat on 27 August 2019) and that he attained a mark of 42%.
 - That his resit was scheduled for January 2020 but had been deferred after his course leader saw him panicking and offered to defer the examination until May 2020.
 - That the table emailed to Mr Ricketts on 27 January 2020 had not included the litigation module as he was awaiting the re-sit.
- 22.23 Ms O’Flynn, who had not been present in the January meeting said that in late February 2020, she spoke to Mr Amo about his work and that it was not up to the standards expected by the Firm of its trainees. However, she could not recall the exact details of the conversation.
- 22.24 Due to the above disclosures a report was made by the Firm to the SRA regarding Mr Amo’s conduct on 28 May 2020. The Firm allowed him to complete his contract which ended on 31 July 2020, at which point he left the Firm.
- 22.25 Mr Rickett, Ms Koob and Ms O’Flynn denied in cross-examination that their view of Mr Amo had been distorted by their perception that he had been performing unsatisfactorily as a trainee.
- 22.26 Mr Rickett’s said that he had wanted Mr Amo to succeed.

Allegation 1: misleading the Firm by representing that he had not failed any examinations or modules.

- 22.27 Mr Amo’s representation to Mr Ricketts and Ms Koob as to whether he had failed any LPC modules was an act relating to a legal practice in that it took place as part of his appraisal as a trainee solicitor at the Firm.
- 22.28 Mr Amo was asked during the meeting whether he had failed any LPC examinations. Mr Amo denied failing any examinations and/or denied failing any LPC modules. At the time of the meeting, Mr Amo was aware that he had failed his litigation examination.

- 22.29 He did not disclose this to Mr Ricketts or Ms Koob.
- 22.30 Mr Amo's representation that he had not failed any examinations was untrue. Further or alternatively, Mr Amo's representation that he had not failed any modules was misleading.
- 22.31 Although BPP allowed multiple resits, such that Mr Amo could not yet be said to have failed his litigation module absolutely, the representation that Mr Amo had not failed any modules gave the impression that Mr Amo had not failed any assessments, rather than that he had not failed all of his assessments including resits.
- 22.32 Mr Amo deliberately made an untrue and/or misleading statement in order to deceive Mr Ricketts and Ms Koob. In so acting, he acted dishonestly within the meaning set out in R v Ivey.
- 22.33 Alternatively, Mr Amo made a misleading statement recklessly, in that he knowingly gave an incomplete response to the Firm's enquiry so as to avoid attention being drawn to his failed litigation examination and did so knowing that there was a risk that Mr Ricketts and Ms Koob, and thereby the Firm, would be misled into thinking that all examinations sat to date had been completed successfully. There was no reasonable justification for creating that risk.
- 22.34 It is alleged that the Respondent breached these Principles in the following ways.

Deliberately making untrue or misleading statements

- 22.34.1 It is dishonest to make a statement which the person making it knows to be untrue, or which the person making it knows will mislead the recipient. In making such statements (as particularised above) Mr Amo acted dishonestly, in breach of Principle 4.
- 22.34.2 Mr Amo also failed to act with integrity, in breach of Principle 5. Acting with integrity requires proper adherence to the ethical principles of the solicitor's profession and legal professions generally. For a person to deceive their employer deliberately (whether by untrue statements or misleading statements) is a clear breach of those ethical principles.
- 22.34.3 The public is required to place considerable trust and confidence in the honesty, integrity, and reliability of the solicitors' profession and in legal services provided by authorised persons. For a person to deceive their employer deliberately (whether by untrue statements or misleading statements), either for personal advantage or for the sake of avoiding personal embarrassment, fundamentally undermines that trust and confidence.

Recklessly making misleading statements

- 22.34.4 In so far as Mr Amo acted honestly but recklessly, he failed to act with integrity, in breach of Principle 5. For a person to make a statement which he knows may mislead the recipient exposes that person, without any reasonable justification, of the risk of being misled.

- 22.34.5 Proper adherence to the ethical principles of the solicitors' profession and the legal professions generally requires a person not to expose third parties to the risk of being misled without proper justification.
- 22.34.6 Similarly, for a person knowingly to expose third parties to the risk of being misled, whether for personal advantage or for the sake of avoiding personal embarrassment, undermines that trust and confidence in the solicitors' profession and the provision of legal services by authorised persons, and accordingly is a breach of Principle 2.

Mr Amo's Case

- 22.35 Mr Amo denied the allegation. Mr Amo said he had made no representations which had been misleading. He not been dishonest nor reckless as alleged.
- 22.36 Mr Amo explained that it was a matter of regret for him that his time at Holland and Knight ended after he completed his training contract in or about July 2020, because the partners thought he had lied to them.
- 22.37 Mr Amo said that he would never deliberately lie to another solicitor, let alone those who had given him the chance to move from paralegal to solicitor, who he regarded as friends and colleagues.
- 22.38 He said that he had told no lies at the meeting on 28 January 2020. As he recalled matters the meeting had been an appraisal meeting about his progress during my training contract and not one called to discuss his progress in the LPC. The LPC was discussed only at the end of a 30–45-minute discussion. Mr Amo said he was not asked before that meeting to provide his LPC results thus far, but to provide a list of the modules that he had completed at that point in time.
- 22.39 He did that by email on 27 January 2020 at 14:31 hours. It was important to note that the email itself described the enclosed schedule as, "... *details of my completed modules below.*" The schedule was headed, "*Completed modules:*"
- 22.40 Mr Amo said that the schedule dated 27 January 2020 showed that he had scored two distinctions, two commendations, six passes at a level of competence, and one other pass. These were satisfactory results and, in four cases, were commendable. If he had understood that he was required to report on uncompleted (including failed) as well as completed modules he would have done so. He had had nothing to hide because overall his score, even inclusive of the litigation 'blip', would not reasonably have led the Firm to dismiss him as at January 2020.
- 22.41 Mr Amo said he told no lies at the meeting, and he did not lie by assertion or by non-disclosure in the face of a specific question. He did not recklessly mislead the two partners.
- 22.42 He knew Mr Ricketts to be a sympathetic person and a '*supporter*' of his, and he had nothing to hide from him. Mr Amo said that if Mr Ricketts had asked him outright whether he had failed an examination or module, Mr Amo would have told him that he had had failed the litigation module but planned to re-take it. However, neither Mr Ricketts nor Ms Koob asked him this question outright.

- 22.43 It was not even the case that he had not understand them to have asked him outright whether he had failed an examination or module, if in fact they did so.
- 22.44 The submission that Mr Ricketts asked him several times whether he had passed all of the examinations undertaken so far, or whether any had been unsuccessful, was not correct. The question was more generalised than that. It was something informal to the effect *'how is the course going?'* and I responded to the effect, *"yes, it is going well"*, and, overall, it was going well.
- 22.45 The suggestion that on 28 January 2020, that he had categorically denied having failed any LPC modules and confirmed that he had not failed litigation, was not correct. Similarly, it was not correct to say that he had told the partners that he had only just taken the examination. It was not put to him that he had failed any of the LPC modules. If it had been then he would not have denied it.
- 22.46 Mr Amo said he had not given an *"unequivocal assurance"* as stated by Mr Ricketts and he did not say that he had only just sat the litigation examination.
- 22.47 It was put to Mr Amo in cross-examination and denied by him that he had not told the truth at the meeting because he had not wanted to appear that he was struggling or be placed in a position where he would be asked to repay the course fees that the Firm had expended on his behalf. Mr Amo said that this was not the case, particularly as his training contract had not excluded failure of some examinations so long as he passed them by an agreed date, as stipulated in his training contract, namely September 2020.
- 22.48 Mr Amo said that he was not asked directly about his success or failure until April when Mr Ricketts had raised the issue in April 2020. He said that he had been shocked to learn that he was being reported to the SRA.
- 22.49 Mr Amo presented to the Tribunal evidence attesting to his character, demonstrating his credibility and that he lacked propensity for dishonesty.

Closing

- 22.50 Mr Beaumont's major points are summarised below.
- 22.51 There was one central issue of fact to be determined by the Tribunal, namely, whether the Applicant had proved to the relevant standard of proof that Mr Amo lied to his employer?
- 22.52 To answer this question, the Applicant was required to prove what question had actually been asked of Mr Amo at a meeting by Mr Ricketts and Ms Koob. If the Applicant could not prove the question that was actually asked, Mr Beaumont contended that it was impossible to treat any answer as a lie.
- 22.53 The Allegations in the Rule 12 Statement referred to express representations, not implied representations. Further, it had not been alleged by the Applicant that this was a case of not volunteering information, even if Mr Amo was not asked a question about exams he had failed.

- 22.54 As Mr Amo was accused of lying the Applicant was required to adduce more cogent evidence to prove the dishonesty or recklessness than if the allegation was that Mr Amo made a mistake or misunderstood the question. The key question, therefore, was did the evidence reach the necessarily higher level of cogency?
- 22.55 The Tribunal were referred to the judgment in Gestmin SGPS v Credit Suisse (UK) Ltd EWHC 3560 where Mr Justice Leggatt set out principles to be considered in relation to witness credibility which essentially boiled down to the concept that human memory is not only fallible but that it is fluid and malleable. They are constantly rewritten whenever they are retrieved. Memories are revised to make them more consistent with our present beliefs. Studies show that memory is particularly vulnerable to inference and alteration when a person is presented with new information or suggestions when their memory is already weak due to passage of time.
- 22.56 The two common misconceptions about memory are, first, that the stronger and more vivid one's feeling or experience of recollection the more likely the recollection is to be accurate. Second, the more confident another person is in their recollection, the more likely their recollection is to be accurate.
- 22.57 The process of civil litigation itself subjects memory to biases wherein witnesses have a stake in a particular version of events and this is more obvious in relation to parties and those with ties of loyalty to parties.
- 22.58 The procedure of preparing for trial has a considerable interference with memory wherein a witness is often asked to make a statement a long time after the relevant events and the statement is usually drafted by a lawyer who is conscious of the significance of the issues in the case. The statement is made after a witness's memory has been "refreshed" by reading documents. The statement goes through several versions before it is finalised. This also causes the witness's memory to be based increasingly on the material and later interpretations rather than the original events.
- 22.59 Leggatt J suggested that the approach of a judge is to place little, if any, reliance on witnesses' recollections of what was said in meeting and conversations and that factual findings are to be based on inferences drawn from the documentary evidence and known probable facts.
- 22.60 In the present case Mr Beaumont said that the witnesses' recollections had fallen victim to the matters set out above by Leggatt J. The statements of Mr Ricketts, Ms Koob and Ms O'Flynn had been prepared by solicitors (Fox Williams) they had instructed for this purpose, and the statements had been through several iterations during which process the witnesses had read each other's statements thereby moulding their individual recollections. Mr Beaumont made the point that Fox Williams, unlike the SRA had owed a duty of care to their clients and to nobody else. They did not owe the prosecutor's duty to the general public, or its duty of candour to the accused.
- 22.61 There were no minutes of the meeting on 28 January 2020. There was no document setting out the pre-planned list of questions drafted before the meeting and no contemporaneous document.

- 22.62 The events of the meeting in January 2020 were only first committed to paper by Mr Ricketts on 28 May 2020, 4 months later, with the report he made to the SRA.
- 22.63 When considering the January 2020 evidence, the fine distinction between the phrase “*exam results*”, or the phrase “*general progress*”, and then the passage of 4 months in early 2020 meant that the evidence failed to reach the required level of greater cogency.
- 22.64 This was a case in which the witnesses had to piece together very specific language used 4 months earlier in Mr Ricketts’ case and 7 months earlier in the case of the other witnesses and where the delays in recording recollection meant that what appeared to be certainty of recollection was not reliable.
- 22.65 Mr Ricketts used the phrases *passing exams*, *failing modules* and *general progress* interchangeably. This being so and allowing for the dangers explained by Leggatt J, the evidence as to how he couched his question in January 2020, failed to reach the necessary threshold of cogency.
- 22.66 By 30 April 2020 the Firm was dissatisfied with Mr Amo’s performance in his work as a trainee. For example, as recounted by Ms O’Flynn his filing of emails was poor and in late February 2020, she had spoken to Mr Amo about his work and how it was not up to the standards expected by the Firm of its trainees. The Firm had decided to let him go at the end of his training contract. Mr Ricketts referred to Mr Amo as a “*clown*”, a “*stupid bugger*”. He may have felt personally let down as he had supported Mr Amo. Therefore, the witnesses’ recollection of the oral exchanges at the meeting was unlikely to have been a benevolent one.
- 22.67 Mr Beaumont submitted that when once a low opinion is formed about a person, their past actions will tend to be viewed in hindsight in such manner as to vindicate that low opinion.
- 22.68 It was said that Ms O’Flynn had emailed Ms Koob and Mr Ricketts on 22 May 2020 stating that, “[Mr Amo] lied to us when we specifically asked him in January if he had failed any exams”. However, Mr Beaumont said that this email was almost 4 months after the event and that Ms O’Flynn had not been at the meeting of 28 January 2020. Ms O’Flynn produced no written record before 22 May 2020 and on 22 May referred to lying but without any particularity whatsoever. This evidence, as Mr Beaumont submitted had no weight at all.
- 22.69 Mr Amo had made an early contemporaneous denial and he had been consistent from the start in his explanation. He said that he knew Mr Ricketts to have been a sympathetic person and a ‘*supporter*’ of his, and he had had nothing to hide from him. If Mr Amo had been had asked me outright whether he had failed an examination or module, Mr Amo confirmed that he have told Mr Ricketts that he had failed the litigation module but planned to re-take it. However, neither Mr Ricketts nor Ms Koob asked him that question outright.

Applicant's Corrections and Submission on Law

22.70 Mr Allen, for the Applicant, did not accept that there is any “*threshold of cogency*” in relation to the evidence required to prove the allegation. As stated in *Phipson on Evidence* (pp.209-210):

“The House of Lords [in B (Children)] emphasised that any logical or necessary connection between the seriousness of an allegation and its inherent probability is to be rejected: inherent probabilities are simply something to be taken into account as a matter of common sense, where relevant, in deciding where the truth lies; Lord Nicholls in H is not to be taken as having laid down any rule of law to the contrary.”

And:

“Under the ordinary civil standard if an act or event alleged is inherently improbably it may require the court to look more critically or more anxiously at the evidence to satisfy itself to the requisite standard, however all reference to a sliding-scale standard, or to varying degrees of probability, is now to be regarded as wrong: the civil standard is finite and unvarying. Importantly, B also makes clear that, under the ordinary civil standard, the seriousness of the consequences for an individual is only relevant in so far as it correlates to the likelihood or unlikelihood of the allegations being unfounded.”

22.71 In other words, it did not follow from the fact that the allegation against Mr Amo was a serious one (of dishonesty or recklessness) or that the consequences for Mr Amo might be serious that the facts alleged were to be regarded as inherently improbable.

22.72 It was necessary therefore for the Tribunal to approach the question of what was (or was not) inherently (im)probable in the round, taking account of all the circumstances of the case.

22.73 In any event, the ultimate question for the Tribunal was whether in all the circumstances the Applicant had proved that the facts alleged were more likely than not to have occurred: the civil standard of proof is “*finite and unvarying*”.

22.74 Mr Allen said it was wrong to state, as Beaumont had done, that the Applicant's case had been solely put as one of express representation. The allegation was pleaded that Mr Amo made one or both of two representations that were alleged to be either untrue or misleading. It was open to the Tribunal to find that those alleged representations were made by Mr Amo either explicitly, or implicitly, or by conduct. This required the Tribunal to consider the evidence in the round as to what was said (or not said) by both Mr Ricketts and Ms Koob (on the one hand) and Mr Amo (on the other hand).

22.75 It did not require the Applicant to prove what specific form of words was used when putting questions to Mr Amo during the appraisal meeting on 28 January 2020 (as Mr Beaumont appeared to be suggesting during his closing submissions).

- 22.76 The Tribunal needed only to satisfy itself that questions were put to Mr Amo in such a way that his response, whether by express or implied statement or by conduct, gave rise to one or both of the untrue or misleading representations that were pleaded.
- 22.77 As to the evidence, Mr Allen considered that Mr Beaumont did not accurately state Ms Koob's evidence when it was said that she could not remember the words used and that her oral evidence was not consistent with her witness statement. Ms Koob acknowledged quite fairly that she could not recall the specific words used in either the partners' questions or Mr Amo's response.
- 22.78 However, Ms Koob also made clear in her answers that the purpose of the questions that were asked at the appraisal meeting was to establish whether or not Mr Amo had failed the litigation examination (in view of the information provided by the 'whistle-blower') and she was "very confident" that they asked the questions needed to elicit the "type of responses" that they were looking for in that regard.

The Tribunal's Findings

- 22.79 The Tribunal reminded itself that with respect to all the allegations the burden was solely upon the Applicant to prove its case to the requisite standard, namely on the balance of probabilities. Mr Amo was not bound to prove that he did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on his part.
- 22.80 The Tribunal recognised that the civil standard of proof is "*finite and unvarying*" and there was no sliding scale of proof dependent upon the seriousness of the allegations. Cogent evidence was required in all cases.
- 22.81 The central question of fact for determination by the Tribunal was whether, to the necessary standard, on 28 January 2020, Mr Amo orally represented to two partners of Holland & Knight: (a) that he had not failed any LPC examinations, and/or (b) that he had not failed any LPC modules.
- 22.82 The Tribunal found all the witnesses who gave evidence before it, including Mr Amo, to have been sincere and credible in their accounts. However, the Tribunal was mindful of the warnings set by Leggatt J (as he then was) in Gestmin, and the importance of avoiding '*the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*'
- 22.83 This cut both ways, for the Applicant and the Respondent. However, as stated, Mr Amo was not obliged to prove his case and the burden of doing so was upon the Applicant alone.
- 22.84 The Tribunal considered that within the sphere of regulatory compliance the value of oral evidence lay largely in the opportunity which cross-examination provided a party to subject the documentary record to critical scrutiny rather than solely what the witness recalled of particular conversations and events.

- 22.85 To this end it would have been helpful for the Tribunal to have been referred to the minutes of the meeting which took place on 28 January 2020 or a contemporaneous note of what had taken place, noting the questions put to Mr Amo by the witnesses and his answers. There was no such material, and the Tribunal was placed in the position of deciding which recollection it preferred.
- 22.86 Mr Ricketts, while no doubt an honest and convincing witness had not been able to recall the date of the January meeting and he had used words and phrases relating to Mr Amo's progress on the course interchangeably. In his evidence Mr Ricketts had told the Tribunal that during material time he was engaged in very difficult and time-consuming work to save an airline which was imminently to go out of business during the Covid pandemic. Understandably, his mind was not entirely focussed on Mr Amo.
- 22.87 Ms Koob, similarly, convincing and honest, could not recall exactly what had been said in the meeting although she said that the whole purpose of the meeting had been to question Mr Amo regarding his success or failure in the examinations based upon the information they had received from their informant. Ms O'Flynn, had not been in the meeting and could have had only second-hand knowledge of what had been discussed.
- 22.88 Mr Amo, was clear and unwavering in his denial. He presented as a credible witness. He said that he had not been asked the question directly.
- 22.89 Mr Ricketts and Ms Koob believed with conviction that they had been precise in their questioning and Mr Amo believed with equal conviction that he had not been asked direct questions, other than general questions about his progress.
- 22.90 At the January meeting Mr Amo had not known that a 'whistle-blower' and given information to Mr Ricketts and Ms Koob therefore in ignorance of this information he could not have known the motivation behind the questioning of him by Mr Ricketts and Ms Koob and issues which may have been clear in their minds may not have transferred clearly to his.
- 22.91 Mr Amo was able to point to his training contract wherein there was a 'failure clause' which permitted him leeway to pass his examinations by September 2020. Therefore, it was understandable that he may not have wanted to volunteer information without being asked outright and there had been no obligation for him to do so.
- 22.92 There remained open the possibility of confusion and 'crossed wires' during the meeting and the parties may have left it each thinking completely differently about what it was they had discussed.
- 22.93 In the absence of a written and contemporaneous evidence regarding the nature of the questions and responses the Tribunal could not, as the Applicant had urged upon it, consider the 'evidence in the round' in circumstances where such evidence was based on memory and recollection alone. To do so in the circumstances of this case would be to ignore Leggatt J's warning as set out in Gestmin.
- 22.94 The Tribunal also weighed in the balance the character references put forward on Mr Amo's behalf attesting to his honesty and other good qualities. This evidence assisted the Tribunal to reach its decision.

- 22.95 Factually, it was not to be doubted that a meeting took place between Mr Ricketts, Ms Koob and Mr Amo on 28 January 2020. At that meeting there was also no doubt that Mr Amo's progress was discussed, however, there was no objective evidence to permit the Tribunal to determine whether this was discussed in general or direct terms. The parties each left the meeting with their own view and belief as to what had taken place and the Tribunal would not fill in the evidential gap with its own speculation.
- 22.96 In the light of its factual findings the Tribunal did not consider that the Applicant had proved its case either in part or in full to the required standard of proof, namely the balance of probabilities and it dismissed all the allegations against Mr Amo.
- 22.97 This had been a finely balanced decision.
- 22.98 The Tribunal noted that during this case certain matters regarding the propriety of the witnesses instructing their own solicitors to draft their witness statements and advising them as to law and procedure were raised. The Tribunal made no comment on this issue save to observe that whilst not usual, it was not impermissible, and no criticism could attach to the witnesses nor their representatives for adopting this course.

Costs

23. Mr Allen confirmed that following the Tribunal's findings the Applicant would not make an application for its costs to be recovered from the Respondent.
24. Mr Beaumont asked the Tribunal to award costs in the Respondent's favour as he had incurred costs in the region of £60,000.00 in contesting a matter in which he had ultimately prevailed.
25. Mr Beaumont said that in the Tribunal costs did not follow the event, however, the Tribunal had a wide discretion as to costs under its own rules. In this case, while the proceedings were not necessarily a 'shambles from start to finish' there were other good reasons for the Tribunal to depart from the normal course, most notably delay.
26. Mr Beaumont said that there had been considerable delay in bringing this matter to the Tribunal and it had taken almost 3 years for the Applicant to do so. This had left Mr Amo in a state of 'exquisite agony' whilst he waited for the opportunity to establish his innocence. The delay had been excessive, unreasonable, and unconscionable infringing as it did his right to a fair hearing within a reasonable time under Article 6 of the European Convention on Human Rights.
27. The Applicant had failed to reach a settlement with Mr Amo, although Mr Amo had been willing to accept one but only on the basis that dishonesty was withdrawn. Mr Amo never accepted that he had been dishonest, and no middle way was possible.
28. Further, the Applicant had prepared its case in an unusual way by ceding the responsibility of preparing witness statements to its own witnesses and Mr Beaumont criticised the Applicant for departing from good investigatory practice.
29. In the intervening period of delay Mr Amo's health had suffered, and his career placed in stasis.

30. Two of the three years it had taken to bring the matter to trial had been unnecessary and Mr Beaumont said that it was right that Mr Amo should therefore have two-thirds of his costs returned to him. Such a course would have no impact on the Applicant, and it would not act a chilling effect upon any other cases it chose to bring before the Tribunal.
31. In response Mr Allen said that there was no good reason to depart from the Tribunal's normal practice. The delay had not been excessive given that there had been other avenues of investigation which in the event did not result in any further allegations.
32. The Applicant acted the public interest and in discharging this duty the public would expect it to conduct its investigation with rigour and thoroughness. Further, the Applicant had been minded to deal with this matter by way of an internal process, however, Mr Beaumont had wanted a public hearing. This insistence had added to the delay.
33. Mr Allen disputed Mr Beaumont's contention that the Applicant had been wrong to rely on witness statements taken by Fox Williams, there had been nothing wrong in doing so although he conceded it had resulted in certain complications but none that impacted on the fairness of the proceedings.

The Tribunal's Decision on Costs

34. The Tribunal had listened with care to the submissions.
35. The Tribunal noted that the proceedings had been correctly brought by Applicant as it had raised serious issues regarding Mr Amo's honesty and the evidence both for and against each party had been finely balanced.
36. It was perhaps arguable that it should not have taken the length of time it had to reach the Tribunal, however, there were reasons why there had been delay but that delay was not excessive.
37. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.
38. When viewed objectively, the Tribunal could identify any good reason to depart from its normal practice of not awarding costs against the Applicant in circumstances where the Respondent had successfully defended himself against the allegations.
39. Accordingly, the Tribunal made no order for costs.

Statement of Full Order

40. The Tribunal Ordered that the allegation against WILLIAM AMO, be DISMISSED. The Tribunal further Ordered that there be no Order as to costs.

Dated this 7th day of July 2023
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'A Kellett', is centered within a light gray rectangular box.

A Kellett
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
7 JUL 2023