

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12434-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

RESPONDENT AC

Respondent

Before:

Mr G Sydenham (in the chair)
Mr R Nicholas
Mrs L McMahon-Hathway

Date of Hearing: 28 - 29 March 2023

Appearances

Nimi Bruce, counsel, of Capsticks LLP, 1 St. George's Road, London, SW19 4DR, for the Applicant.

Clare Dixon KC, of 4 New Square, Lincoln's Inn, 4 New Square, London WC2A 3RJ, for the Respondent.

JUDGMENT

Allegations

1. The allegation against the Respondent, AC, was that, while in practice as a solicitor at the Firm and attending the Firm's Christmas lunch in December 2017, he sang a song in front of and/or directed at Person A and made gestures which accompanied the words used, which were sexualised in nature and comprised breaches of any or all of Principles 2, 6 and 9 of the SRA Principles 2011.

[PROVED.](#)

Executive Summary

2. The Respondent filed an application ("the First Application") dated 3 January 2023 for the Tribunal to deploy special measures in relation to him by way of privacy and anonymity. The application was predicated on matters of health and was supported by unchallenged medical evidence. The Tribunal considered the same on the papers on 17 January 2023 following which it broadly directed that (i) the Tribunal hearing the CMH determine whether the substantive hearing should be heard in private with an anonymised cause list and (ii) the Tribunal hearing the substantive matter determined whether the Judgment be anonymised and/or in private. Full details of that decision can be found by way of memorandum dated 17 January 2023.
3. The Respondent filed a further application ("the Second Application") dated 26 January 2023 in which he sought, amongst other matters, anonymisation of the Cause List for the substantive hearing and the final judgment. The application was predicated on matters of health and was supported by unchallenged medical evidence. The Applicant did not oppose anonymisation of the cause list but averred that the any determination regarding the status of the final judgment was premature and should be determined at the conclusion of the substantive hearing.
4. The Tribunal determined the Second Application at a Case Management Hearing convened on 30 January 2023. Having received written and oral submissions from the parties, the Tribunal GRANTED the application for anonymisation of the judgment. Full details of that decision can be found by way of memorandum dated 3 February 2023.
5. As a consequence of the Tribunal's determinations (including a further determination at the outset of the substantive hearing) the identity of the Respondent and Person A shall remain private. Further the disclosure of any matter likely to lead to the identification of Person A or the Respondent is prohibited.
6. Respondent AC admitted Allegation 1 in its entirety. However, there remained a factual dispute between his recollection of events and that of Person A. The Tribunal therefore proceeded to hear evidence from Person A, Respondent AC, Colleague 1 and Colleague 2 to establish the factual basis upon which sanction was imposed. Having done so, the Tribunal proceeded to sanction Respondent AC on his version of events for the reasons set out below.

Sanction

7. The Tribunal imposed a [financial penalty](#) of £23,000.00 and Ordered Respondent AC to pay costs to the Applicant in the sum of £22,800.00.

Documents

8. The Tribunal considered all of the documents in the case contained within an electronic hearing bundle, the content of which was agreed between the parties.

Preliminary Matters

9. *Application to amend the allegations*

Applicant's Submissions

- 9.1 Miss Bruce applied to amend the allegations to consolidate the previously pleaded particulars (of which there were four) into the single allegation set out above at §1. In so doing she submitted that it had not been the intention of the Applicant to “decouple” the words used and the gestures deployed by Respondent AC. It was, and always had been, accepted by the Applicant that the mischief sought to be addressed was encapsulated in the song sung by Respondent AC accompanied by the gestures used which jointly formed “one piece” of misconduct.

Respondent's Submissions

- 9.2 Miss Dixon KC did not object to the application.

The Tribunal's Decision

- 9.3 The Tribunal noted that, as previously pleaded, the allegations made plain the exact nature of each word and each gesture used by Respondent AC in conjunction with the attendant Principle breaches alleged.
- 9.4 The Tribunal accepted that the Applicant's intention with regards to the originally drafted allegations was to assist Respondent AC in understanding the extent and nature of the case against him which was entirely fair and proper. However, in circumstances where the verbal and physical actions were so inextricably linked, the proposed amended allegation achieved the same purpose. The simplified proposed amended allegation was in the interests of the parties, in that it enabled Respondent AC to enter an unequivocal admission to the same, and the efficient progression of the proceedings, in that it narrowed the contentious issue which fell to be determined by the Tribunal namely the facts and circumstances directly preceding the offending conduct.
- 9.5 The Tribunal therefore GRANTED the application.

Factual Background

10. Respondent AC was admitted to the Roll of Solicitors. He became a partner in the Firm in 2016. Person A joined the Firm as a trainee in 2017. Respondent AC and Person A were based in different offices of the Firm both of which were located in London. Respondent AC was based at Office 1 and Person A at Office 2. Respondent AC was four years older than Person A but accepted that, given their respective roles within the Firm, there was a power imbalance in his favour.
11. In December 2017, the Firm held its annual Christmas lunch which comprised of a lunch at Venue 1, followed by drinks at a public house, Venue 2, both of which were located in London.
12. Whilst at Venue 2, the offending video was recorded by Person A which showed Respondent AC singing “[Person A’s] vagina is lovely. I like it. It likes it up the arse but also in the vag”. Accompanied with those words were gestures deployed by Respondent AC namely; (i) firstly moving his right fist upwards at the start of the song and (ii) subsequently cupping his right hand and moving it twice in front of his genitals for the latter part. After the incident, the lunch continued then progressed from Venue 2 to a nightclub, also based in London. Person A did not go onto the nightclub and went home instead.
13. Person A submitted a formal complaint to the Firm in June 2019 which contained a number of grievances including the offending video incident. The Firm launched an internal investigation. Respondent AC responded to the notice of the Firm’s investigation and in the following terms:

“... [he was] extremely embarrassed about the footage that has come to light. Whilst [he does] not accept that [he] made any “explicit gestures” ... [he] certainly recognise[d] that [his] behaviour was “vulgar” ... and ... had the potential to cause offence... place on record [his] absolute and unreserved apology to [Person A] and anyone that overheard what [he] said, together with the partnership as a whole for any embarrassment that this event caused. Whilst it does not excuse [his] behaviour, [he did] wish to emphasise that it was deliberately outrageous in response to the events that preceded it ...”
14. The contentious issue of fact that fell to be determined by the Tribunal was whether or not Respondent AC’s misconduct was precipitated by an invitation from Person A to “do something outrageous” or words to that effect.

Witnesses

15. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

- (i) Person A.
- (ii) Respondent AC.
- (iii) Colleague 1.
- (iv) Colleague 2.

Findings of Fact and Law

16. 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 the Respondent's right 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.
17. **Allegation 1 - The allegation against the Respondent, AC, was that, while in practice as a solicitor at the Firm and attending the Firm's Christmas lunch in December 2017, he sang a song in front of and/or directed at Person A and made gestures which accompanied the words used, which were sexualised in nature and comprised breaches of any or all of Principles 2, 6 and 9 of the SRA Principles 2011.**

The Applicant's Case

Person A

Evidence in Chief

- 17.1 Person A stated that at the time of the Christmas lunch she had been employed by the Firm as a trainee for three months. She had only met Respondent AC once prior to the Christmas lunch which was during her first week at the Firm during a tour of Office 1 after which drinks were held at a local bar. Person A stated that she also had an email exchange with Respondent AC prior to the Christmas lunch with regards to the food order that he was responsible for organising.
- 17.2 Person A stated that, after the Christmas lunch, she was filming her colleagues (at Venue 2) singing and dancing on her mobile telephone. During the course of doing so, she stated that Respondent AC "while on camera" sang the offending song and "apart from the shocking nature of the words ... [he] also made vulgar and explicit gestures whilst singing..."
- 17.3 Person A stated that the incident left her "shocked and humiliated to be spoken to in such a degrading fashion by the partner whom I had only met once before ... he was encouraging involvement with a more junior team member ... was happy to humiliate me in front of a large number of the ... team..."
- 17.4 Person A further stated that "... it was a very male dominated environment and though [she] felt shocked and humiliated to be spoken to in such sexualised and derogatory language [she] also felt [she] had no choice but to accept it ... [she] thought long and hard about this incident and regrettably now with hindsight decided

it was best that [she] did not raise a complaint due to [her] vulnerability as a trainee...”.

- 17.5 With regards to email exchanges that took place in spring 2018, Person A stated that she needed Respondent AC’s help in relation to a client matter thus sought his advice in that regard. What followed was a “... stream of communication that started to make [her] feel less comfortable again. They were flirtatious which made [her] feel uncomfortable ...”.
- 17.6 Person A explained that when she filed a grievance with the Firm in June 2019, she felt “compelled to report these issues”.

Cross Examination

The first email chain

- 17.7 Person A did not accept that she had met Respondent AC and exchanged emails with him over and above the tour of Office 1. Miss Dixon took Person A to emails dated 2 October 2017 in which discussions were had between her and Respondent AC comprising of grammatical teasing and a holiday that Respondent AC had recently taken. Person A did not accept that those matters were predicated on a previous meeting and/or conversations between herself and Respondent AC.

The second email chain

- 17.8 Miss Dixon KC referred Person A to further emails exchanges that occurred on 18 October 2017 in relation to her food choices for the Christmas lunch. Miss Dixon put to Person A that the tone of those emails was “familiar” in that they she and Respondent AC referred to each other by shortened versions of their respective names. Person A stated that most people referred to Respondent AC in that manner. Miss Dixon KC put to Person A that when she mentioned her “love life” in one of the emails, she was referring back to a previous conversation regarding the same with Respondent AC. Person A accepted that contention. Person A accepted that the email exchange recorded a discussion regarding a television programme that they were both aware of and culminated in Respondent AC nicknaming her “Soup Course”. Person A accepted that it was a “friendly exchange of emails” which included discussion regarding the trainee performance at the Christmas lunch.

The offending video

- 17.9 Person A accepted that the Christmas lunch took place at Venue 1 at which she did not remember speaking to Respondent AC. Person A did not accept the contention that she did not need to go onto Venue 2 after the lunch and asserted that it “wouldn’t have looked good” if she hadn’t, she was expected to go and that it was still within the working day. Person A accepted that there were a “lot of women” at Venue 2. Person A stated that she was filming the “boys” taking part in an ambitious dance move. She “vaguely recalled” dancing with one person but denied “dropping to her knees” and “grinding her bottom” against him.

- 17.10 Person A accepted that she had a conversation with Respondent AC and another colleague regarding her boyfriend. Person A accepted that she filmed Respondent AC and another colleague delivering a spoof news report about her boyfriend. Person A recalled a conversation about Brexit but did not recall Respondent AC being party to that.
- 17.11 Person A did not accept that a conversation took place regarding the ubiquitous use of mobile telephones which had resulted in “no-one behaving badly anymore” through fear of being recorded. Person A did not accept that shortly after that conversation, she told Respondent AC to “say something naughty” and commenced recording him on her mobile telephone.
- 17.12 With regards to the offending video, Person A accepted that Respondent AC was staring at the camera the entire time and that the other person (who made a lewd gesture) was slightly behind him. Person A did not accept that the video started as soon as the song commenced, she asserted that it started “shortly before” but accepted that it ended at the conclusion of the offending song. Miss Dixon KC put to Person A that her witness statement suggested that she was filming Venue 2 and in the course of so doing Respondent AC sang the offending song. Person A stated that she meant she was filming various parts of the evening and maintained that the offending song was entirely unprovoked.
- 17.13 Miss Dixon KC put to Person A that she had trimmed or edited the video. This was denied by Person A.
- 17.14 Person A stated that there was more footage beyond the offending video which she thought she had shared with the Firm namely 3–4 videos of colleagues dancing, people singing and the spoof news report. Miss Dixon KC put to Person A an email from the Firm to the Applicant in which it confirmed that the offending video was the only video provided by her. Person A stated it was their decision as to what evidence was pertinent and reiterated that she was happy to provide all of the videos she had taken.
- 17.15 Person A accepted that after the recording the offending song she did not take issue with Respondent AC in circumstances where she was “in a state of shock, felt humiliated and degraded. He called me ‘it’ in front of the team that [she] worked with. [She] was in complete shock and did not go onto [the nightclub]. [She] left when they went [onto the nightclub]”.
- 17.16 Miss Dixon KC suggested to Person A that the reason she left Venue 2 was that Colleague 1 had spoken to her about her the manner in which she was dancing. Person A denied any such conversation occurred. Miss Dixon KC suggested to Person A that she left Venue 2 as a consequence of incessant messages from her boyfriend (as to where she was and who she was with). Person A stated that she could not recall but accepted that was the type of “thing that he [the boyfriend] would do”.
- 17.17 Miss Dixon KC suggested to Person A that if she had been as humiliated as described, it would have been natural to avoid or minimise her contact with Respondent AC as far as possible moving forwards. Person A stated that she desperately wanted to qualify into the team that Respondent AC was a partner in. Given that fact she

“needed to maintain some kind of relationship with him” in order to do so. In those circumstances she thought, with regards to the incident, that she “just had to deal with/accept it and put it to one side.”

The third email chain

- 17.18 Person A accepted that she instigated an email conversation on 12 March 2018 as she needed help in relation to a client matter. Person A stated that she was comfortable in so doing because Respondent AC came to the kitchen area in Office 1 which was next to where she sat at that time. Following the verbal discussion, Person A emailed her thanks to Respondent AC and commented on the lunch that she had observed him having. Respondent AC replied with reference to the prison visits which she was required to undertake as part of her position at that time. Person A accepted that the tone of that email exchange was “jocular”. The last email from Respondent AC to Person A was at 18:26 hours in which he referenced submitting a poem to Faber for publication.
- 17.19 Person A responded the following day at 09:40 hours in which she enquired whether he had decided upon a “pen” name. Person A did not accept that she had “re-started” the conversation. She maintained that she simply responded to his email from the night before. Respondent AC replied and asked whether she had any suggestions. Person A responded by stating “... I assume one uses the same equation you use to discover your porn name ...”.
- 17.20 Miss Dixon KC put to Person A that contrary to her assertions in her witness statement that the third email chain made her feel “less comfortable”, she changed the tone from “pen” to “porn” of her own volition. Person A stated that the “correspondence had to be seen in the context of the tone set by Respondent AC with trainees and junior members of staff.” She maintained that the incident made her feel “like a victim and [she] wanted to be part of [the team] not objectified.”

The fourth email chain

- 17.21 Person A accepted that she instigated an email conversation on 13 April 2018 at 17:55 hours on behalf of herself and others which enquired whether there would be Friday night drinks near Office 1. She stated that she had made similar enquiries of others at Office 1 but had not received a response. Person A accepted that she did not have to make the enquiry of Respondent AC but did so because her colleagues wanted to go for drinks near Office 1.
- 17.22 Person A accepted that Respondent AC replied in the early hours of 14 April 2018 at 00:40 hours. He referred to her by way of the previously established nickname “Soup Course”, referred to the fact that her “horsey bants” were always welcome at Office 1 drinks but stated that he was not in London.
- 17.23 Person A accepted that she responded at 00:50 hours and in so doing stated “... you should come out ... you know I am drunk emailing you ...”.

- 17.24 Person A acknowledged that Respondent AC replied at 00:57 hours in which he essentially made fun of the location where she was having drinks. Person A accepted that she responded at 01:00 hours in which she asked him to call her so that she could explain and provided her telephone number.
- 17.25 With regards to this exchange, Person A asserted that it was simply a continuation of her first email enquiring as to whether there were Office 1 drinks going on that evening. She accepted that it was inappropriate for her to have referred to “drunk emailing” but asserted that after the incident, Respondent AC set the tone for what was appropriate and inappropriate.

The grievance to the Firm and initial complaint about the incident (June 2019)

- 17.26 Person A accepted that a month before she lodged her grievance she had an appraisal with Colleague 3 (partner) and Colleague 4 (mentor) at which she was told that they did not think that there would be a position available for a newly qualified solicitor.
- 17.27 Person A did not accept that, during that coffee, Respondent AC discussed issues with regards to her performance or that she was considered to have been operating at 30%. Person A did accept that Respondent AC informed her that the Firm had interviewed an external candidate for the NQ role and Person A said that she would like to be considered for that role.
- 17.28 A few days later Respondent AC invited Person A for coffee. When they met, Respondent AC confirmed that an external candidate had been appointed. Within ten minutes of their return to Office 1, Respondent AC sent an email confirming the appointment of a newly qualified solicitor which Person A stated “destroyed” her.
- 17.29 A few days thereafter, Person A stated that she felt “compelled” to report issues to the Firm which included the offending video.

Principle Breaches

- 17.30 **Principle 2** required Respondent AC to act with integrity. Miss Bruce submitted that in subjecting Person A to a song accompanied by gestures which were inappropriate, personalised to her and of a sexual nature, Respondent AC failed to act with integrity and thereby breached principle 2. In his words and his gestures to a junior colleague, Respondent AC failed to adhere to the standards required of a solicitor. Respondent AC failed to apply a basic standard, implicit in the code, namely to treat others with respect. To apply that standard was not to set an unrealistically high standard but to recognise that solicitors may be held to a higher standard than those standards which may be said to apply outside of the profession.
- 17.31 **Principle 6** required Respondent AC to act in a way that maintained the trust the public placed in him and in the provision of legal services. Respondent AC’s behaviour undermined public trust and confidence in the solicitors profession and the provision of legal services provided by authorised persons. In the context in which the incident took place, namely a Christmas party organised for colleagues within a department of a law firm, the public would not expect a solicitor to behave in the manner described by Person A. The public was entitled to expect a solicitor to act

with due respect and decorum at such an event and Respondent AC's actions failed to meet that expectation in breach of principle 6.

- 17.32 **Principle 9** as a partner, it was expected that Respondent AC set a good example in his interaction with others in the Firm. Instead, Respondent AC referred to a junior female employee who was new to the Firm in a sexualised, derogative and humiliating manner in front of her peers. The conduct took place in public, in full view and within hearing distance of colleagues, one of whom joined him. Respondent AC also named Person A within the lyrics, therefore those within hearing distance would have been left in no doubt as to whom he was referring. By behaving in that manner, Respondent AC failed to carry out his role in a way that encouraged respect for diversity contrary to Principle 9.

The Respondent's Case

Respondent AC

Evidence in Chief

- 17.33 Respondent AC admitted Allegation 1.
- 17.34 Respondent AC stated that whilst there were plainly differences in recollection of the event directly preceding and directly after the offending video, he “did not want that to detract from [his] unreserved apology [for] arrogant and vulgar behaviour” from which he did not recognise himself.
- 17.35 Respondent AC maintained that the offending song was precipitated by an invitation to “say something outrageous” following a discussion regarding the ubiquity of mobile telephones.
- 17.36 Respondent AC further stated that since the incident, he had a lot of time to reflect and accepted that his “misguided attempts to be collegiate had the opposite effect”.

Cross Examination

- 17.37 Respondent AC accepted that he had a friendly relationship with Person A, that it was informal in the context of a non-hierarchical environment and that Person A had just started her career in law. Respondent AC did not consider Person A to be a friend but accepted that they spoke about her personal issues such as her boyfriend at the time.
- 17.38 Respondent AC accepted that the offending video “betrayed the trust [in him] as a colleague” and that it had a “pernicious effect on Person A”.
- 17.39 Miss Bruce contended that Respondent AC's admissions had not always been full and frank in that he, in his initial response to the Firm, did not accept that his gestures had been explicit. Respondent AC rejected that contention and asserted that the gestures taken in silo, absent the accepted vulgarity of the words used, were not in and of themselves sexualised and/or explicit. Respondent AC stated that taken together, the gestures could be categorised as such which was why he entered full admissions to the amended allegation.

- 17.40 Miss Bruce put to Respondent AC that he further sought to explain the gestures during the Firm's investigation as a "silly dance". Respondent AC accepted that suggestion and averred that "on reflection [he could] see that it was more than a silly dance and was sexual".
- 17.41 Miss Bruce put to Respondent AC that, in his response to the Applicant's notice of referral to the Tribunal, he rejected having made a "rude gesture", which was inconsistent with the admission made at the substantive hearing. Respondent AC stated that he could "see how [his] position had changed [and] that they weren't full and frank admissions".
- 17.42 Miss Bruce put to Respondent AC that his evidence with regards to the manner in which Person A was dancing had similarly shifted from "provocatively dropping to her knees" during the Firm's investigation to "provocatively" whilst looking at him during the Tribunal proceedings. Respondent AC rejected Miss Bruce's suggestion that the shift followed a realisation of how "deeply unattractive [his] first account was by blaming a trainee with reference to her actions". Respondent AC maintained that he was attempting to provide context as opposed to attribute blame.
- 17.43 With regards to the offending video, Respondent AC rejected the suggestion that he was surrounded by men but accepted that there were people in the background comprising of (i) a colleague holding his shoulder, (ii) a woman on his right, (iii) men to his left, (iv) men behind, (v) two men at the bar and (vi) a man speaking to a woman.
- 17.44 Respondent AC accepted that the offending words that he sang were vulgar, offensive and demeaning. Whilst he acknowledged the power imbalance, Respondent AC would've hoped that she felt able to remonstrate with him in the moment. Respondent AC maintained that Person A laughed and the evening continued until she left Venue 2 and he went to the nightclub with others.
- 17.45 Respondent AC stated that, had the impact on Person A been as acute as she has described, he would not have expected her subsequent email communications to be as "forthright and jovial" as they were nor would he have expected her to instigate the amount of contact that she did in the friendly terms that she was able to do so.

Tribunal Question

- 17.46 The Panel asked Respondent AC to explain his first response to the Firm. Respondent AC stated that he remembered "receiving the video and being shocked, mortified and devastated. [He] did not want to be equivocal. [His] intention was to give a full explanation to the partnership and the investigation."

Colleague 1

Evidence in Chief

- 17.47 Colleague 1 stated that she recalled Person A's behaviour at Venue 2 which she considered to be "totally inappropriate in circumstances where she was a trainee and had just started at the firm".

- 17.48 Colleague 1 further stated that she had spoken to Person A about the manner in which she was dancing and told her that it was not the “done thing”. Person A did not materially respond.
- 17.49 Colleague 1 suggested that, having subsequently learnt that Person A left Venue 2 early, Person A may have done so as a consequence of their conversation.

Cross Examination

- 17.50 Colleague 1 confirmed that she did not witness the offending song nor had she seen the offending video. The offending video was played to the court and the words of the offending song read aloud following which she stated “the way [Person A] danced was very provocative so [the offending video] could have been a consequence of that”.
- 17.51 Colleague 1 summarised the offending video and words as a collegiate attitude on the part of Respondent AC which were jokey, not serious and indicative of having “one too many drinks” Colleague 1 made plain that it did not excuse Respondent AC’s behaviour but maintained that she “did not think it was intended to be harmful in any way” and that the words were “insulting but not abusive”.
- 17.52 Colleague 1 did accept, however, that it was “totally not acceptable” behaviour.

Colleague 2

Evidence in Chief

- 17.53 Colleague 2 stated that he was aware why he had been asked to give evidence on Respondent AC’s behalf but made plain that he did not see the incident. He saw the offending video for the first time the previous week.

Cross Examination

- 17.54 In response to Miss Bruce asking Colleague 2 what his view of Person A’s dancing was, he stated that it “was not relevant to what happened” but that her dancing was his only ongoing recollection of the Christmas lunch over four years ago.
- 17.55 Colleague 2 stated that he was not aware of what was going on in the video as he was “talking to someone at the bar”.

The Tribunal’s Findings

- 17.56 The Tribunal considered that Respondent AC’s admission was properly made and accepted the same.
- 17.57 It fell to the Tribunal to determine the sole issue of whether or not the admitted misconduct was predicated upon an invitation by Person A to say something outrageous or naughty or words to that effect. In consideration of the same the Tribunal carefully assessed the oral evidence it had received and the submissions made. In so doing, it found the evidence of Colleague 1 and 2 to be of limited, if any,

assistance. Their evidence centred on the manner in which Person A was said to have been dancing which was not deemed relevant to the discrete matter under consideration. Colleagues 1 and 2 both made plain that they (i) did not witness the events preceding the offending video, (ii) did not witness the recording at the material time, (iii) did not witness the events as they unfolded after the event. The evidence upon which the Tribunal relied was that of Person A and Respondent AC from which it made the following findings of fact.

- 17.58 Despite an age difference of just four years, Respondent AC was in a position of seniority, given that he was a partner in the Firm, over Person A, who was a trainee in the Firm. They communicated in friendly terms and addressed each other with shortened versions of their respective names.
- 17.59 The first email chain appeared to have been instigated by Respondent AC and referenced a holiday from which he recently returned. The Tribunal inferred from that exchange that it was predicated on a previous conversation with regards to his holiday and a nightclub that Person A had recommended. It also included grammatical teasing, indicative of an established friendly form of communication.
- 17.60 The second email chain appeared to have been instigated by Respondent AC in relation to the food order for the Christmas lunch. During the course of that exchange, Person A made an off-topic reference to her love life and subsequently to a television character in a mutual exchange of jokey name calling.
- 17.61 It was plain to the Tribunal that Person A and Respondent AC communicated via email in an informal and jokey manner. The Tribunal considered it more likely than not that they communicated in the same friendly and jokey manner in person.
- 17.62 The offending video was taken at Venue 2 after the Christmas lunch at Venue 1. It was an event at which, as is ordinarily the case at office Christmas celebrations, alcohol was likely to have been consumed by all in attendance. Person A accepted that she was filming her colleagues during the course of the evening, singing and dancing. The Tribunal carefully considered her evidence that in the course of filming others, she “turned” and started recording Respondent AC shortly before he commenced to sing the offending song.
- 17.63 The Tribunal found it difficult to reconcile that evidence with the fact that (i) the offending video started as soon as Respondent AC started singing Person’s A’s name, (ii) the offending video ended as soon as Respondent AC concluded singing and (iii) the multimedia forensic scientist’s unchallenged expert evidence was that the video had been trimmed.
- 17.64 Weighing all of those factors in the balance, the Tribunal could not be satisfied, on the evidence advanced by the Applicant, that it was more likely than not that Respondent AC launched into the offending song unprovoked and absent any interaction with Person A immediately prior to so doing.
- 17.65 The Tribunal therefore found on the evidential findings set out above and the admission made, the factual matrix of Allegation 1, breach of Principle 2, 6 and 9 **PROVED**.

Previous Disciplinary Matters

18. None.

Mitigation

19. Miss Dixon KC reminded the Tribunal that Respondent AC had not been subject to any disciplinary proceedings prior to or following the incident. He remained employed in the capacity of a Partner and his current employers were aware of the present proceedings.
20. Miss Dixon KC referred to the character statements advanced on Respondent AC's behalf, all of which attest to having seen the video and which they collectively state does not reflect his true character.
21. Miss Dixon KC invited the Tribunal to take into account the evidence pertaining to Respondent AC's health preceding and following the incident, not by way of justification but in terms of how that may have impacted on his uncharacteristic behaviour in the offending video.
22. Miss Dixon KC made plain that credit should be afforded to Respondent AC for the early admissions made to the Firm, in accepting that the incident was "vulgar" and "had the potential to cause offence". Miss Dixon KC reminded the Tribunal of the unreserved apology offered by Respondent AC to Person A at the outset of the Firm's investigation, throughout the Applicant's investigation and the Tribunal proceedings.
23. Miss Dixon KC contended that Respondent AC demonstrated significant insight in recognising the inexcusable nature of his conduct from which he did not seek to detract. Subsequent to the incident he sought to address his failings by attending training courses and volunteer work.
24. Miss Dixon KC submitted that, in and of itself, the Tribunal proceedings has had a profound effect on Respondent AC's health and life of a punitive nature.
25. Miss Dixon KC stated that, given the Tribunal findings, sanction should be determined in context of the surrounding circumstances (namely the "invitation" to say something naughty/outrageous). It should not be determined in a vacuum. Miss Dixon KC commended the sanction of a Rebuke to the Tribunal which, she submitted, was proportionate and appropriate in all of the circumstances.
26. Miss Dixon KC contended that, if the Tribunal did not agree, then a low-level financial penalty sufficiently addressed the isolated incident of misconduct which was at the lower end of the spectrum of sexual misconduct and verbal in nature.

Sanction

27. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction.

28. With regards to culpability, the Tribunal determined that Respondent AC was motivated to behave in the manner that he did following an express “invitation” from Person A. His misconduct was spontaneous and reactive to the same. However, the words used, the gestures that elected to deploy, the fact that he was a Partner, at a work event, with colleagues present and in a public setting represented a grave breach of his position of trust. The fact that it was highly likely that Respondent AC was intoxicated did not vitiate the direct control that Respondent AC had in response to the “invitation” to say something “naughty/outrageous”.
29. Person A plainly suffered direct harm as a consequence of Respondent AC’s misconduct. The Tribunal assessed the extent of that harm by reference to:
- The third email exchange, which took place three months after the Christmas lunch, was instigated by Person A. She initially reached out to Respondent AC for assistance with a client matter but during the course of the email chain, changed the conversation from “pen” name to “porn” name. The Tribunal had difficulty in reconciling that contemporaneous documentary evidence with Person A’s oral evidence, which confirmed her witness statement in the proceedings, that the email exchange left her feeling “uncomfortable”.
 - The fourth email exchange, which took place four months after the Christmas lunch, was instigated by Person A seeking information regarding Friday night drinks at Office 1. The Tribunal found that she was under no duty to make that enquiry of Respondent AC but elected to do so on behalf of herself and a group of colleagues at Office 2. The Tribunal determined that she was demonstrably comfortable in so doing particularly given that (i) Respondent AC did not respond until the early hours of the morning to say that he was not at any drinks, (ii) Person A chose to continue the conversation by informing him in response that she was “drunk emailing” him, (iii) inviting him to join her group for drinks and (iv) providing her mobile telephone number.
 - The fact that Person A did not complain about Respondent AC’s misconduct until 17.5 months later. In so doing, it formed part of a larger grievance she filed against the Firm having been overlooked for the role of newly qualified solicitor.
30. In so doing, the Tribunal determined that harm was caused to Person A but not to the extent that she advanced in evidence. Had that been the case, the Tribunal determined that she would not have instigated friendly communications in the terms that she did nor would she have reached out to Respondent AC for assistance in progressing at the Firm.
31. The Tribunal found that harm had been caused to the reputation of the profession as a consequence of Respondent AC’s misconduct. The public would be rightly appalled by the disgraceful incident irrespective of whether it was precipitated by an invitation to say something “outrageous/naughty”. Whilst the Tribunal accepted that Respondent AC did not intend to cause the harm that he did, it was eminently foreseeable that his misconduct would do so.

32. The Tribunal determined that Respondent AC's misconduct was aggravated by the fact that (i) it was sexual in nature, (ii) given his position of seniority it represented an abuse of his power and (iii) he knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the profession.
33. The Tribunal determined that Respondent AC's misconduct was mitigated by the fact that (i) it was a single episode, (ii) it comprised of six seconds, (iii) there was demonstrable insight shown and (iv) open and frank admissions were made to the gravamen of the misconduct.
34. Weighing all of the above factors in the balance, the Tribunal determined that it was not appropriate to make No Order. The Tribunal further determined that a Reprimand was not appropriate in circumstances where (i) Respondent AC was highly culpable, (ii) harm to Person A and the profession had been identified, (iii) the harm identified was far from negligible and (iv) findings of a lack of integrity, failure to maintain public trust in solicitors and the profession and failure to respect diversity were not minor breaches which could have been dealt with under the Applicant's own disciplinary jurisdiction.
35. The Tribunal assessed the level of misconduct as very serious. In all of the circumstances, a financial penalty at Level 4 was deemed to be the proportionate and appropriate sanction in all of the circumstances. Having taken into account the financial means of Respondent AC the Tribunal imposed a financial penalty in the sum of £23,000.00.

Costs

36. Miss Bruce applied for costs in the sum of £22,800.00 which comprised of £900.00 incurred by the Applicant in its investigation and supervision of the report. The remaining £19,100.00 consisted of Capsticks fixed fee (including VAT) to prepare and present the case before the Tribunal. Miss Bruce submitted that the costs incurred were reasonable and proportionate.
37. Miss Dixon KC consented to the application in principle but challenged the quantum sought. Miss Dixon KC questioned why four fee earners worked on the matter which would have inevitable led to duplication in the time spent. She further contended that the hours claimed to draft the Rule 12 Statement and prepare the exhibit bundle was excessive. Miss Dixon KC queried the involvement of counsel in circumstances where Miss Bruce prepared and presented the case before the Tribunal. Miss Dixon KC further queried the need for a solicitor and paralegal to have been present in court throughout the substantive hearing.

The Tribunal's Decision

38. The Tribunal noted that the application was not opposed in principle.
39. The allegation was predicated on sexual misconduct. The Tribunal accepted that required sensitive and frequent input from varying grades of fee earner particularly with regards to the vulnerable witness handling of Person A.

40. The Rule 12 Statement required careful drafting in circumstances where it became plain that an application for privacy of some description was likely to be made given the medical evidence relied upon by Respondent AC.
41. Two applications made on behalf of Respondent AC required review and response. One application had to be drafted and filed on behalf of Person A.
42. Notwithstanding the admissions made by Respondent AC, a factual dispute required determination in order for the Tribunal to assess the appropriate sanction. A final hearing, in the form of a Newton Hearing, therefore took place. Person A therefore needed support during the course of the hearing as well as Miss Bruce in her presentation of the Applicant's case.
43. With regards to quantum, the Tribunal was familiar with the fixed fee arrangement in place between Capsticks and the Applicant. It was cognisant of the fact that the breakdown of time spent and the number of fee earners deployed on the matter was not charged at an hourly rate, it was encapsulated in the fixed fee.
44. The question for the Tribunal to determine therefore was whether the amount claimed was reasonable and proportionate. For the reasons set out above, and the factors contained therein, the Tribunal granted the application for costs in full, namely £22,800.00.

Statement of Full Order

45. The Tribunal Ordered that the Respondent, RESPONDENT AC, solicitor do pay a fine of £23,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,800.00.

Dated this 13th day of April 2023

On behalf of the Tribunal



G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
25 APR 2023