

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12453-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

PAUL FORMBY

Respondent

Before:

Mr R Nicholas (in the Chair)
Ms C Rigby
Ms L R Fox

Date of Hearing: 5 July 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against, Mr Formby, the Respondent made by the Applicant are:

(numbering as quoted in the Agreed Outcome)

“2.1 whilst acting on behalf of his client Ms Kent, in a matter in which she was a trustee in bankruptcy for Macdonald Angus Crosbie (“the Crosbie matter”), in or around 14 February 2017 he:

- (a) agreed to withdraw a Section 366 Insolvency Act 1986 application (“s366 application”) without Ms Kent’s knowledge or consent; and
- (b) agreed that Ms Kent would pay the second and third respondent’s costs in relation to the withdrawal of the s366 application without Ms Kent’s knowledge or consent.

In doing so, he breached all or any of Principles 2, 4, and 6 of the SRA Principles 2011

2.2 When acting on behalf of Ms Kent in the Crosbie matter and dealing with a Section 367 Insolvency Act 1986 application (“s367 application”) he redacted paragraphs (which amongst other things referred to the withdrawal of the s366 application and/or Ms Kent’s agreement to pay costs) from the following documents he sent to Ms Kent, presenting them as the original unredacted documents:

- (a) The first witness statement of Daniel Seth Preddy dated 2 May 2017 which he sent to Ms Kent on 8 May 2017; and
- (b) The first witness statement of Simon Geoffrey Paterson dated 2 May 2017 which he sent to Ms Kent on 10 May 2017; and
- (c) The second witness statement of Daniel Seth Preddy dated 12 June 2017 which he sent to Ms Kent on 13 June 2017; and
- (d) The second witness statement of Simon Geoffrey Paterson dated 12 June 2017 which he sent to Ms Kent on 13 June 2017. In doing so, he breached all or any of Principles 2, 4, and 6 of the SRA Principles 2011

2.3 When acting on behalf of Ms Kent in the Crosbie matter and dealing with the s367 Insolvency Act 1986 application, he redacted paragraphs (which amongst other things referred to the withdrawal of the s366 application and/or Ms Kent’s agreement to pay costs) from the following documents he sent to Mr Lloyd, a barrister instructed by Ms Kent, presenting them as the original unredacted documents:

- (a) The first witness statement of Daniel Seth Preddy dated 2 May 2017 which he sent to Mr Lloyd on 9 May 2017; and/or

- (b) The first witness statement of Simon Geoffrey Paterson dated 2 May 2017 which he sent to Mr Lloyd on 9 May 2017; and/or
 - (c) The second witness statement of Daniel Seth Preddy dated 12 June 2017 which he sent to Mr Lloyd on 13 June 2017; and/or
 - (d) The second witness statement of Simon Geoffrey Paterson dated 12 June 2017 which he sent to Mr Lloyd on 13 June 2017. In doing so, he breached all or any of Principles 2, 4, and 6 of the SRA Principles 2011
- 2.4 On or around 24 August 2017, after he had ceased to act for Ms Kent in the Crosbie matter, he agreed, without Ms Kent's knowledge or consent, that she would pay the second and third respondents' costs in the sum of £30,000 and failed to inform her of the agreement. In doing so, he breached all or any of Principles, 2, 4 and 6 of the SRA Principles 2011.
- 2.5 Dishonesty is alleged as an aggravating feature of allegations 2.2 and 2.3, however proof of dishonesty is not an essential ingredient for proof of the allegation."

Executive Summary

2. Mr Formby admitted all the allegations in their entirety including that he was dishonest. Mr Formby was struck off the Roll of Solicitors and ordered to pay costs of £5046.00.

Preliminary Application

3. The Applicant applied for leave to make the application less than 28 days before the date of the substantive hearing which was listed on 17 July.
4. In compliance with Rule 25 (1) SDPR19, the agreed outcome was required to be submitted to the Tribunal on or by 20 June 2023. Although the parties had agreed in principle the agreed outcome prior to this date, Mr Formby had made a pre-emptive application to the SRA for consent to be employed under Section 41 of the Solicitors Act 1974 (employment of a struck off or suspended solicitor) and was awaiting a decision on that application before agreeing that the application could be filed with the Tribunal.
5. Mr Formby admitted the allegations in his Answer and the matter was listed for a 1-day hearing. The outcome at the hearing would inevitably be a strike off in light of Mr Formby's admission to dishonesty. However, preparation for and attendance at the hearing will necessitate the incurring of further costs.
6. In the circumstances, the parties submitted it was in the interests of justice and to save time and costs for the Tribunal to direct that the agreed outcome in which Mr Formby accepts being struck off, to be considered although it was out of time.

7. The Tribunal acceded to the application for the reasons set out by the parties and gave the required permission. The Tribunal agreed that it was not necessary, proportionate or in the public interest to proceed to a substantive hearing in circumstances where the allegations, including dishonesty, were admitted by Mr Formby.

Documents

8. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit IJ1 dated 29 March 2023
 - Statement of Agreed Facts and Outcome dated 29 June 2023

Background

9. Mr Formby was admitted as a solicitor on 1 October 2004. At all material times he acted as a salaried partner of SAS Daniels (“the firm”) of 30 Greek Street, Stockport, SK3 8AD.
10. He specialised in the area of Insolvency and corporate recovery law.
11. Mr Formby is currently employed as a solicitor at KBL Solicitors LLP of 28 Mawdsley Steet, Bolton, BL1 1LF. His practising certificate was subject to conditions that he is not a manager or owner of an authorised body and that he may act as a solicitor, only as an employee where the role has been first approved by the SRA.

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

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

Findings of Fact and Law

13. 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 Formby’s rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
14. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Formby’s admissions were properly made.
15. The Tribunal considered the Guidance Note on Sanction (June 2022/10th Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
16. The Tribunal noted that Mr Formby admitted his conduct was dishonest and there was little more to add to than what was set out in the Agreed Outcome document.

17. He was an experienced solicitor and had direct responsibility for the circumstances that gave rise to the misconduct. Rather than admit to his client he had made mistakes and handled an application poorly, he took unilateral action and subsequently concealed that action from his client by redacting witness statements and sending those to her and counsel. His actions were planned and deliberate. His actions were motivated by a desire to keep his position at the firm and to retain his client. His actions involved a breach of trust that his client placed in him.
18. Mr Formby's conduct was aggravated by repeated dishonesty over a period of some 5-6 weeks involving the redaction of four witness statements and sending them to his client and counsel; committing his client to pay costs which she was unaware of, had not agreed to and could not afford, the misleading of his client for a period of several months; misconduct, which was deliberate, calculated and repeated; concealment of wrongdoing; misconduct which he knew or ought reasonably to have known was in material breach of his obligations to protect the public and the reputation of the legal profession.
19. The Tribunal found that sanctions such as a Reprimand, Fine or Suspension did not adequately reflect the seriousness of the misconduct. The Tribunal found that given the admission of dishonesty, the only appropriate and proportionate sanction was to strike Mr Formby off the Roll of Solicitors.
20. The Tribunal did not find that there were any exceptional circumstances such that striking Mr Formby off the Roll would be disproportionate. Accordingly, the Tribunal approved the sanction agreed by the parties.
21. The Tribunal noted that this was a case where the cover up of a mistake had resulted in an escalation into serious and embedded professional misconduct. When mistakes are made solicitors must act with openness and full disclosure. As a general observation, the Tribunal urged any solicitor who realises they have made a mistake to take steps to address it before matters escalate beyond their control.

Costs

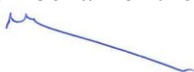
22. The parties agreed that Mr Formby would pay costs in the sum of £5046.00. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered Mr Formby to pay costs in the agreed sum.

Statement of Full Order

23. The Tribunal Ordered that the Respondent, PAUL FORMBY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5046.00.

Dated this 11th day of July 2023

On behalf of the Tribunal



R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
11 JUL 2023

IN THE MATTER OF THE SOLICITORS ACT 1974

And

IN THE MATTER OF PAUL FORMBY

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED

And

Applicant

PAUL FORMBY

Respondent

<p>STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME</p>
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1. By its application dated x March 2023 which included a statement pursuant to Rule 12 Solicitors (Disciplinary Proceedings) Rules 2019, the Solicitors Regulation Authority ("SRA") brought proceedings before the SDT against the Respondent.

ALLEGATIONS

2. The allegations against the Respondent made by the Applicant are:

2.1 whilst acting on behalf of his client Ms Kent, in a matter in which she was a trustee in bankruptcy for Macdonald Angus Crosbie ("the Crosbie matter"), in or around 14 February 2017 he:

(a) agreed to withdraw a Section 366 Insolvency Act 1986 application ("s366 application") without Ms Kent's knowledge or consent; and

(b) agreed that Ms Kent would pay the second and third respondent's costs in relation to the withdrawal of the s366 application without Ms Kent's knowledge or consent.

In doing so, he breached all or any of Principles 2, 4, and 6 of the SRA Principles 2011

2.2 When acting on behalf of Ms Kent in the Crosbie matter and dealing with a Section 367 Insolvency Act 1986 application ("s367 application") he redacted paragraphs (which amongst other things referred to the withdrawal of the s366 application and/or Ms Kent's agreement to pay costs) from the following

Sensitivity: General

documents he sent to Ms Kent, presenting them as the original unredacted documents:

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2.4 On or around 24 August 2017, after he had ceased to act for Ms Kent in the Crosbie matter, he agreed, without Ms Kent's knowledge or consent, that she would pay the second and third respondents' costs in the sum of £30,000 and failed to inform her of the agreement.

In doing so, he breached all or any of Principles, 2, 4 and 6 of the SRA Principles 2011.

2.5 Dishonesty is alleged as an aggravating feature of allegations **2.2** and **2.3**, however proof of dishonesty is not an essential ingredient for proof of the allegation.

ADMISSIONS

3. The Respondent admits all the allegations in their entirety and admits that he was dishonest.

BACKGROUND

4. The Respondent's date of birth is April 1979, and he was admitted as a solicitor on 1 October 2004. At all material times to this application, he acted as a salaried partner of SAS Daniels ("the firm") of 30 Greek Street, Stockport, SK3 8AD. He specialises in the area of Insolvency and corporate recovery law.
5. The Respondent is currently employed as a solicitor at KBL Solicitors LLP of 28 Mawdsley Steet, Bolton, BL1 1LF. His practising certificate is subject to conditions that he is not a manager or owner of an authorised body and that he may act as a solicitor, only as an employee where the role has been first approved by the SRA.

AGREED FACTS

Background to Insolvency proceedings & applications

6. Ms Kent was an Insolvency Practitioner and had instructed the Respondent in July 2013 to act in relation to various proceedings relating to the bankrupt estate of Macdonald Angus Crosbie.
7. Mr Crosbie had been the subject of three personal bankruptcy orders, with the latest order being made on 27 October 2010. On 11 March 2011, James Pretty had been appointed as trustee in bankruptcy of the 2010 bankrupt estate of Mr Crosbie. Ms Kent was appointed as joint trustee with Mr Pretty on 11 June 2014 and she was appointed as sole trustee in May 2016.
8. In 2015, the Respondent acted for the trustees in proceedings for possession and sale of a property, which was contested by Mr Crosbie and his wife. In December 2015 the High Court granted an order for possession and sale in favour of Ms Kent and Mr Pretty.
9. As part of the possession and sale proceedings it was identified that the trustee in Bankruptcy of Mr Crosbie's 2002 bankrupt estate, Simon Geoffrey Patterson ("Mr Patterson"), had operated a client account on behalf of Mr Crosbie and not disclosed it either to Ms Kent or the creditors of the 2002 bankruptcy estate. The bank account, which was held at Nat West Bank, came to be referred to as "the 1972 account" on the basis that these were the last 4 digits of the bank account.

10. On 23 April 2015 proceedings were issued pursuant to Section 284 of the Insolvency Act 1986 against Mr Patterson and Moore Stephens LLP, the firm for which he worked, for a sum of monies relating to the 1972 account. An agreement was reached by the parties in respect of the Section 284 claim in 2016 which involved a payment of monies to Ms Kent .

The s366 application

11. Section 366 of the Insolvency Act 1986 is an investigative power given to an Insolvency Practitioner which allows them to obtain information in relation to a bankrupt's affairs, property and dealings in order to assist the Insolvency Practitioner in understanding the bankruptcy estate in order to identify/recover assets for the benefit of the creditors.
12. Ms Kent instructed the Respondent to make a s366 application to obtain information about the operation of the 1972 account. The s366 application, dated 5 February 2016 was sealed by the Court on 12 February 2016. The respondents to the notice were Mr Patterson(first Respondent), Moore Stephens LLP (second Respondent) and David Ronald Elliott (third Respondent) ("Mr Elliott"). Mr Elliott was involved in the operation of the 1972 account and had worked at Moore Stephens LLP.
13. The s366 application sought an order requiring the respondents to the s366 application to attend Court to be examined under oath to give information relating to the 1972 account. The hearing of the application was listed on 7 April 2016. The Respondent served the application on the respondents to the s366 application on 18 March 2016. The respondents to the s366 application were represented by DAC Beachcroft LLP ("DAC").
14. DAC wrote to the Respondent on 24 March 2016 querying the necessity of the s366 application in light of pre-issue correspondence that they had sent (in response to a draft s366 application) in which they provided information and answered questions posed. DAC Beachcroft LLP sought an adjournment of the hearing so that their clients could review the evidence and consider their position.
15. The hearing of the s366 application listed on 7 April 2016 was adjourned by consent of the parties. The consent order dated 4 April 2016 recorded that the respondents were to file and serve evidence in response to the s366 application, if so advised by 5 May 2016 and the Applicant had liberty to file and serve evidence in reply, if so advised by 2 June 2016. The hearing of the s366 application was listed to be heard on the first available date after 30 June 2016.

16. Following receipt of witness statements from the respondents to the s366 application, the Respondent in late May and early June 2016 discussed with counsel and Ms Kent the merits of the s366 application and an application under s367 of the Insolvency Act 1986.
17. The Courts powers under s367 relate to delivery up of property comprised in the bankrupt estate which is in the possession of a respondent and the payment to the trustee of debts owed to the bankrupt by a respondent. Orders are made under s367 on consideration of any evidence obtained under s366 or s367.
18. On 1 June 2016 DAC wrote to the Respondent inviting him to withdraw or stay the s366 application against Moore Stephens LLP and Mr Elliott and to ask additional questions of Mr Patterson who was willing to assist voluntarily. On 3 June 2016, the Respondent wrote to DAC informing them that the client was proceeding with the application to examine Mr Patterson orally and that they would accept affidavits from the other respondents in lieu of being orally examined.
19. The Respondent omitted to file any evidence in reply to the witness statements of the respondents to the s366 application, in accordance with the 4 April 2016 Court order. The Respondent did not file a witness statement on behalf of Ms Kent or any other evidence. The failure to serve any evidence in reply was noted by DAC in their letter to the Respondent on 21 June 2016 and by letter dated 18 July 2016 they queried whether Ms Kent intended to continue with the application.
20. On 16 August 2016 the hearing of the s366 application was listed to be heard on 15 February 2017.
21. In November 2016, Reynolds Porter Chamberlain (RPC) began acting for Mr Patterson. DAC remained acting for Moore Stephens LLP and Mr Elliott.
22. Shortly before the hearing of the s366 application in February 2017, the Respondent negotiated and agreed the withdrawal of the s366 application with RPC and DAC. He did so without the consent and knowledge of Ms Kent.
23. The Respondent negotiated the terms of the withdrawal with Daniel Seth Preddy (DSP) of DAC between 2 and 10 February 2016. It is apparent from the correspondence with DSP that the Respondent hadn't had much engagement with DAC since the summer of 2016 and had done little to prepare for the hearing on 15 February 2017.

24. It is also apparent from the correspondence that DSP made a counter proposal whereby he was seeking a costs contribution from Ms Kent of £25,000 and that when he queried whether the Respondent had instructions on the counterproposal, the Respondent informed him that he had instructions.
25. The Respondent agreed that Ms Kent was to pay the costs of Moore Stephens LLP and Mr Elliott to be assessed if not agreed. He did so without the knowledge or consent of Ms Kent.
26. The Respondent negotiated the withdrawal with RPC as against Mr Patterson, between 26 January 2016 and 9 February 2016 and drafted a consent order for the disposal of the s366 application. The Respondent agreed an order with RPC that neither party were to pay costs.
27. The Respondent sent the signed consent orders to the court on 14 February 2017. The consent orders were sealed by the Court on the 14 February 2017.

s367 application

28. A s367 application was made to the Court on 19 September 2016. It appears that it was made at this time due to the expiry of a limitation period for the issuing of such a claim.
29. The respondents to the s367 application were Mr Patterson and Moore Stephens LLP. RPC acted for Mr Patterson and DAC acted for Moore Stephens LLP.
30. In the application Ms Kent sought £3,591,588.92 from the respondents. It was claimed that these monies related to funds received into the 1972 account and had not been repaid or returned to Mr Crosbie and not identifiably dispersed to third parties for the benefit of or instruction of Mr Crosbie.
31. The application was listed for hearing on 9 November 2016. On 28 October 2016, the Respondent sought the opinion of another barrister, Christopher Lloyd as to the merits of the s367 application.
32. On 28 October 2016, the hearing date of the s367 application was adjourned from 9 November 2016 and relisted to be heard on 20 February 2017. On 17 February 2017, it was agreed by consent that the hearing on 20 February 2017 be adjourned and directions were agreed for filing points of claim and points of defence.
33. Following service by the Respondent of the points of claim and an amended application on 23 March 2017, RPC and DAC responded by informing the

Respondent that they opposed the amendment to the application and sought to strike out the points of claim.

Original witness statements sent to the respondent & redacted witness statements sent by Respondent to Ms Kent and Counsel

34. The respondents to the s367 application served witness statements on the Respondent in May and June 2017, in support of their response to the amendment application and their cross application to strike out the points of claim and summary judgment.

First witness statements of Mr Patterson and DSP

35. On 2 May 2017, DAC served the first witness statements of DSP and Trent Selby-Jones dated 2 May 2017 on the Respondent by way of DX and email.
36. A copy of the first witness statement of Mr Patterson dated 2 May 2017 was sent by RPC to the Respondent.
37. The Respondent redacted paragraph 3.20 from the first witness statement of DSP and paragraphs 35 to 39 and 42 from the first witness statement of Mr Patterson. These paragraphs referred to the dismissal of the s366 application by consent and/or Ms Kent being ordered to pay the second and third respondents (to the s366 application) costs. They also referred to general failures on the Respondent's part to engage with the parties and to comply with directions. The Respondent redacted the paragraphs by using a photocopier. The redacted paragraphs are repeated here:

- Paragraph 3.20 to DSP's first witness statement: *"After further inter-solicitor correspondence [pages 145-146], an order was sealed on 16 August 2016 listing the s366 Application for hearing on 15 February 2017 [page 147]. Shortly before that date agreement was reached with SAS Daniels by Reynold Porter Chamberlain on behalf of the first Respondent and DAC Beachcroft on behalf of the Second Respondent that the s366 Application should be dismissed with an order for the Applicant to pay the second and third Respondents' costs, and this was recorded in a consent order [pages 157-158]."*
- Paragraphs 35-39 and 42 to Mr Patterson's first witness statement: [35] *"As was the case in the First Civil Claim, the objections of DAC were met with total hiatus in correspondence. In particular:*

- *[35.1] No Reply was received to letters from DAC sent on 21 June 2016, 4 July 2016, 18 July 2016 (email), or 7 October 2016 [SGP1/152, 154, 155 & 156]*
- *[35.2] The Directions Order for the s.366 Application provided that the Applicant was to file evidence in reply by 2 June 2016. No such evidence was filed.*
- *[35.3] The s.366 Application was listed to be heard on 15 February 2017. Again, nothing was heard in response to that listing.*
- *[36] In November 2016, I changed solicitors and instructed Reynolds Porter Chamberlain LLP (RPC) in place of DAC. On 23 December 2016, RPC wrote to SAS giving notice of change of solicitors and asking what was happening regarding the s.366 Application [SGP1/160]. At that stage nothing had been heard from SAS for over 6 months.*
- *[37] SAS then finally engaged with my solicitors and negotiations between SAS, RPC and DAC (still acting for the other respondents) ensued. Consequently, the s.366 Application was dismissed by consent under an order dated 14 March 2017.*
- *[38] However, even now I am not able to regard the s.366 Application as fully determined and to move on from it. I am told by RPC that the order dismissing the s.366 Application was not served on them until 20 March 2017, some five weeks after it was sealed. RPC had signed the order in advance of it being filed on the basis that all parties agreed its terms. While the order served on RPC was unchanged from that which was signed, RPC, understands that a different order has been served on the Second Respondent. It would appear therefore that SAS has, on behalf, of the Applicant requested the court to make an order by consent which is not the order that all the parties agreed to and signed. RPC has repeatedly asked for clarification (see letters of 27 March 2017, 11 April 2017 and 21 April 2017 [SG1/176, 183 & 200] but none has been forthcoming.*
- *[39] I am advised by RPC that this failure to serve the order and the failure to evidence that the order filed was that to which the parties agreed and signed, is highly unusual. SAS has given no explanation.*
- *[42] As set out above the s.366 Application was dismissed by an Order dated 14 March 2017. Information under s.66 of the Act has been sought by the Applicant (or the Trustee) since 2013."*

38. The Respondent sent the redacted first witness statement of DSP to Ms Kent by email on 8 May 2017. On 10 May 2017, the Respondent sent the redacted first witness statement of Mr Patterson to Ms Kent by email.
39. The Respondent sent the redacted first witness statements of DSP and Mr Patterson to Counsel, Christopher Lloyd by email on 9 May 2017. On the same day Mr Lloyd emailed the Respondent querying missing paragraphs 35-39 and 42 of Mr Patterson's witness statement and whether there was a problem with the PDF or whether they existed. The Respondent appears not to have answered the query in Mr Lloyd's email.

Second witness statements of Mr Patterson and DSP

40. Mr Patterson's second witness statement is dated 12 June 2017 and DSP's second witness statement is dated 13 June 2017.
41. Again, the Respondent redacted the witness statements to remove paragraphs that referred to the dismissal of the s366 Application by consent and/or Ms Kent being ordered to pay the second and third respondents (to the s366 application) costs. They also referred to general failures on the Respondent's part to engage with the parties and to comply with directions. The Respondent redacted paragraphs 6.13 to 6.15 from DSP's witness statement and paragraphs 8.1, 19.3 and 19.4 from Mr Patterson's witness statement. The redacted paragraphs are repeated here:

- Paragraphs 6.13, 6.14 and 6.15 of DSP's second witness statement [6.13]
" In the event that the Applicant did not pursue the s366 Application but accepted that it should be dismissed and consented to an order dated 14 February 2017 that she is to pay the costs of the second Respondent and Mr Elliot [DSP1/157-8].
- [6.14] *Any suggestion that the second Respondent has 'failed' to provide information (in particular relating to the 1972 Account) can therefore be seen to be fundamentally unjustified and unsustainable. The Second Respondent has provided the information it was in a position to provide following a proportionate review of its records.*
- [6.15] *There has been no examination of any representative of the Second Respondent under section 366. There has been no concession by the Second Respondent (whether in evidence 'obtained under' section 366 or 367 of the Insolvency Act, or otherwise) of the sort which might have founded an application under sub-section 367(1) or (2)."*

- Paragraphs 8.1, 19.3 and 9.4 of Mr Patterson's second witness statement [8.1] *"At paragraph 36: the Trustee's failure to explain why the terms of the Consent Order served on me dismissing the s3.66 Application was on different terms to that which was served on the Second Respondent. This has been raised on 27 March 2017, 11 April 2017, 21 April 2017 and in Paterson 1.*
 - [19.3] *" The s.366 Application was served on me on 18 March 2016. Correspondence followed and on 6 May 2016 DAC filed and served a witness statement on my behalf. Shortly after that, the Trustee seems to have abandoned the s.366 Application. As I make clear at paragraph 35 of Paterson 1 all correspondence from my solicitors between June and October 2016 went unanswered and the Trustee failed to file evidence in accordance with the relevant directions order. The s.366 Application was dismissed by consent in March 2017 without me having provided any further information without the Trustee pursuing it.*
 - [19.4] *At no point while the s.366 Application was live did I make any admission or statement or provide any information that I was indebted to Mr Crosbie or that I held any property belonging to his estate upon which the Trustee could have relied to bring claims under s.367(1) or s367(2) Of the Act."*
42. The Respondent sent the redacted second witness statements to Ms Kent and Christopher Lloyd on 13 June 2017.
43. In email correspondence on 14 June 2017 between Mr Lloyd and Ms Kent, copying in the Respondent, they both queried the gaps in the second witness statements of Mr Patterson and DSP. Mr Lloyd queried whether the gaps in the witness statements were a deliberate error or a formatting error, highlighting by way of example the gaps at paragraphs 6.12 of the DSP statement and paragraph 19.2 of Mr Patterson's statement.
44. In her email, Ms Kent identifies that the gaps are at the point in the statements where they are talking about *"obtaining information"* (DSP and Mr Patterson) and *"The 366 Application and basis of the Application"* (Mr Patterson).
45. Ms Kent further states in her email that *"in addition to the gaps, the line down the side of Preddy and at the bottom of SGP would indicate they were re scanned, having been printed, I would guess with these paragraphs covered with blank paper/tippex or similar. They have focused on not having an obvious line where the text is covered but not the other lines"* ,She ends her email by stating "So

what they have filed is an edited/incorrect account, which does not reflect the true position."

46. The Respondent's response to the emails from Mr Lloyd and Ms Kent was that he would let them have hard copies of the witness statements which he expected would arrive tomorrow, to see whether they would shed any light on the issue they raised. The Respondent made no admissions to redacting the witness statements.

Termination of instruction of Respondent

47. Following the late filing of a witness statement (in response to the strike out applications in the s367 application) by the Respondent, it became necessary for the Respondent to make an application to Court for relief from sanctions. The application for relief was granted on 27 July 2017.
48. On the 2 August 2017, the Ms Kent emailed the Respondent and terminated his instructions. She asked him to arrange for the full files to be sent to her new solicitors, Verisona Law by no later than 14 August 2017. At this stage Ms Kent was still unaware that the s366 application had been withdrawn, that she was subject to a costs order or that the witness statements of Mr Patterson and DSP had been redacted by the Respondent.

Discovery of the status of s366 application, costs order and redactions to witness statements

49. A hearing in relation to the strike out and amendment applications relating to the s367 application was listed on 5 October 2017.
50. On 21 September 2017, the firm sent 2 lever arch files of papers to Verisona Law relating to the hearing on 5 October 2017. The covering letter from the firm under which the files were sent is at page 267. The letter refers to the content of the lever arch files, including reference to "*All witness statements and exhibits in relation to the aforementioned applications*".
51. On 26 September 2017, the court sealed an order that the firm ceased to act for Ms Kent in the s367 application.
52. On 29 September 2017, Nick Oliver of Verisona Law sent an email to the Respondent querying the current position regarding the s366 application. In the email, Mr Oliver referred to an apparent stay of the application and requested that the Respondent urgently confirm the position and to send him a copy of the Court order. The Respondent does not appear to have responded to that email.
53. Verisona Law prepared bundles for the hearing on 5 October 2017 and included within them the redacted witness statements. After receipt of the hearing bundles the Solicitors for the respondents to the s367 application wrote to Verisona Law

querying why they had included redacted witness statements and provided the original versions of the witness statements to Verisona Law for inclusion of the bundle.

54. Verisona Law subsequently sent the original witness statements including exhibits to Ms Kent for her consideration. On 4 October 2017 Ms Kent compared the redacted witness statements she had received from the Respondent with the original statements she received from Verisona Law.
55. Ms Kent's colleague, Chris Ressle sent an email to Nick Oliver on 4 October 2017 informing him that Ms Kent had compared the witness statements and attached extracts of the same (together with the relevant exhibits) from the redacted and original witness statements highlighting missing paragraphs from the witness statements.
56. Ms Kent only became aware that the s366 application had been withdrawn and that she was liable for costs following the disclosure of the original witness statements from the solicitors to the respondents to the s367 application, some 8 months after the Respondent had agreed the withdrawal of the application and that she would pay costs.

Agreement by Respondent for Ms Kent to pay £30,000 after ceasing to act for Ms Kent and payment of £30,000 by the firm

57. The Respondent was involved in without prejudice negotiations with DAC Beachcroft LLP as to the amount of costs payable by Ms Kent to the second and third respondents to the s366 Application. This was again without the knowledge and consent of Ms Kent.
58. The without prejudice negotiations took place between 1 June and 25 August 2017.
59. It is apparent from email correspondence between the Respondent and DAC that the Respondent referred to his client's instructions when making an offer to pay costs, despite having no such instructions. In his email of 28 July 2017, he stated "*I can confirm that my client's intention remains to try and reach an agreement in relation to costs without the need for detailed assessment. As such my client is willing to pay the sum of £25,000 in respect of your client's instructions*". The Respondent's offer was rejected by DAC on 15 August 2017.
60. Ms Kent had terminated the Respondent's instructions on 2 August 2017, but he continued to negotiate the level of costs that she was liable to pay. On 24 August the Respondent offered £30,000 in settlement of the second and third respondent's costs. On 25 August 2017, the offer was accepted by DAC on behalf of their clients.

61. On 25 August 2017, DAC Beachcroft sent a draft consent order recording the agreement to pay £30,000 within 14 days of the date of the order to the Respondent. On 13 September 2017, DAC sent the draft consent order to the Respondent again, asking him to confirm whether he was in a position to sign the order.
62. The Respondent did not sign the draft consent order and it appears from DAC's email of 13 September 2017, that the Respondent was seeking to defer Ms Kent's liability to pay costs until after the outcome of the 5 October 2017 hearing in relation to the s367 Application.
63. In their 13 September 2017 email DAC state "*we have made it clear that the costs dispute in the s366 Application is quite separate from your client's September 2016 Application. Not least because the identities of my clients are different in the two disputes. Your client cannot defer her liability to pay my clients' costs in the s366 Application until the outcome of the 5 October hearing in respect of the September 2016 Application.*"
64. On 23 October 2017 DAC wrote to Nick Oliver at Verisona Law informing him that his client's former solicitors had agreed that she was to pay £30,000 within 14 days and asking him to sign the consent order. DAC sent a further email dated 31 October 2017 to Verisona Law informing them that if a signed consent order was not received within 7 days, their client would take steps to formally recover its costs.
65. On 6 November 2017 Verisona Law sent a letter to the firm in which they referred to previous correspondence in which they had informed the firm that they had instructions from Ms Kent to investigate a professional negligence claim against the firm.
66. In the 6 November 2017 letter to the firm, Verisona Law referred to the email from DAC of 31 October 2017 and negotiations between DAC and the Respondent which had led to an agreement, unbeknown to their client that she would pay £30,000 in costs. Verisona Law also referred to the client having no knowledge of the Costs order being made against her and that she had no knowledge and gave no instructions to the Respondent to negotiate settlement of the costs.
67. Verisona Law informed the firm that Ms Kent did not have £30,000 to settle the costs and could not agree a consent order as the respondents could enforce the costs order against her and ultimately pursue bankruptcy proceedings, however if she did not agree costs by 7 November 2017 the respondents would start assessment proceedings which would increase her liability. Verisona Law

requested the firm to settle the costs at £30,000 by way of interim payment against their client's claim generally.

68. On 21 November 2017 the Firm made payment of £30,000 to DAC in settlement of the costs. Verisona Law was notified by the firm on 22 November 2017 that the payment had been made.

Allegation 2.1

69. The Respondent failed to properly deal with the s366 application. He failed to engage with correspondence from the solicitors to the respondents to the s366 application and failed to file any evidence in reply to the witness statements of the respondents to the s366 application, in accordance with a Court order. He did not file a witness statement on behalf of Ms Kent or any other evidence.
70. Rather than notify his client of the issues with the s366 application and take her instructions, in February 2017, before the hearing of the s366 application, he unilaterally decided to withdraw the s366 application. He negotiated the terms of the withdrawal of the s366 application which included that his client would pay the costs of the second and third Respondents.
71. The Respondent was aware that his client was under the impression that the s366 application was extant. However, he failed to tell her that the s366 application had been withdrawn and that a costs order had been made against her. She only discovered the true status of the s366 application when the contents of the original witness statements of DSP and Mr Patterson were brought to her attention in October 2017, some 2 months after the Respondent had ceased acting for her.
72. The Respondent's motivation for his actions was to conceal his handling of the s366 application, in order to maintain his relationship with the client and his position at the firm. Ms Kent was an important client and the Firm had invested a substantial amount of work in the file. The Respondent's position is that he had hoped to offset the costs of the s366 application against costs that he expected to be awarded in the s367 application and so ultimately the client would not have to pay any costs.
73. The Respondent failed to act with integrity in breach of Principle 2 of the SRA Principles 2011. A solicitor acting with integrity would;

- have advised his client of the issues (even if caused by his own mistakes) in respect of the s366 application and sought their instructions on the withdrawal.
 - not have unilaterally decided to withdraw the S366 application and agreed for his client to pay costs.
 - not taken such critical steps in litigation for a client without express instructions from his client.
 - not have misled his client for several months about the status of the s366 application by omitting to tell her that the s366 application had been withdrawn.
74. The Respondent's actions were not in the best interests of his client. It was in the best interests of his client to be informed and advised of the issues with the s366 application and for her to ultimately decide on whether the application should be withdrawn and whether she was willing to be subject to a costs order.
75. It was not in the best interests of his client to be subject to a costs order, which she did not agree to and was unaware of. Further it was not in her best interests, as trustee of the Crosbie bankrupt estate, for her to be unaware that the s366 application had been withdrawn.
76. Although the Respondent's intention may have been to offset the costs of the s366 application against costs that he expected his client to be awarded in the s367 application, he denied his client an opportunity to decide whether she should be subject to a costs order and whether that was the best course of action in the circumstances, weighing up the risks.
77. There was a risk that the s367 application would be unsuccessful, that the respondents to the applications would not agree to offset costs and of the costs award being enforced against the client. As it transpired, no offset was agreed and Ms Kent faced potential enforcement action, prior to the costs award being paid by the firm.
78. Principle 6 of the SRAP11 required the Respondent to behave in a way that maintains the trust the public places in him and in the provision of legal services.
79. The Respondent's actions have undermined public trust in him and confidence in the provision of legal services. The public would not expect a solicitor to take important decisions in litigation without the client's instructions. That is particularly so where the decision could have an adverse financial consequence for the client.

80. The public would not expect a solicitor to mislead the client about the status of applications he had made on her behalf in litigation and to fail to inform her of an adverse cost award against her.

Allegations 2.2 and 2.3

81. The Respondent knew that his client was not aware:
- that the s366 application had been withdrawn.
 - that she was subject of a costs order.
 - that he had failed to engage with the parties to the s366 application and
 - that he had failed to comply with Court directions in the s366 application to file evidence.
82. He was aware that the original witness statements of DSP and Mr Patterson served on him in the s367 application referred to the matters in the preceding paragraph of this statement. He therefore redacted paragraphs from all the original witness statements by using a photocopier before sending those to Ms Kent and Mr Lloyd, presenting them as true copies of the originals.
83. He did this to conceal the matters at paragraph 81 of this statement from coming to the attention of Ms Kent and to maintain his relationship with her and to preserve his position at the firm.
84. Both Ms Kent and her instructed Counsel, Mr Lloyd, raised queries with the Respondent about the missing paragraphs in the witness statements, (Ms Kent specifically noting that the gaps in the second statement of Mr Patterson related to the s366 application, that the second witness statements did not set out or reflect the true position and that they appeared to have been doctored). However the Respondent failed to inform his client or her Counsel of the true position in respect of the s366 application, the costs award against her by his agreement or admit that he had altered the witness statements. He continued to represent to his client and Mr Lloyd that the statements were the original witness statements received.
85. A solicitor acting with integrity would not redact original witness statements and then serve those on his client and the instructed barrister, presenting them as true copies of the originals. Nor would a solicitor acting with integrity continue to represent to his client and counsel that the witness statements were the original witness statements received when issues were raised about them by his client and counsel.

86. Redacting the original witness statements and sending those to Ms Kent and Mr Lloyd was clearly not in his client's best interests. Both Ms Kent and Counsel, who was advising her, were not aware of the true position in respect of the s366 application or of the costs award. It was in Ms Kent's best interests to receive the original witness statements so they were aware of the true position about the s366 application and the costs award against her, because she could then proceed on an informed basis in respect of the extant s367 application and whether she wished to retain the services of the Respondent.
87. The Respondent's actions have clearly undermined public trust in him and confidence in the provision of legal services. The public would not expect a solicitor to redact witness statements and present them to his client and counsel as the original statements in order to continue to conceal from his client the true position in related litigation.

Allegation 2.4

88. The Respondent negotiated the level of costs Ms Kent would pay in satisfaction of the costs order against her, with the solicitors for the second and third respondents to the s366 application. He did this between 1 June and 25 August 2017. He was aware that Ms Kent was not aware of the costs award or the negotiations about the amount of costs she would pay and he was aware that from 2 August 2017 he was no longer acting for her.
89. On 25 August 2017 he offered £30,000 in settlement of the costs, which was accepted by the solicitors for the second and third respondents to the s366 application. They were not willing to set off the £30,000 costs against any costs awarded to Ms Kent in the s367 application and intimated to Verisona Law, that they would take formal steps to recover their costs if Ms Kent did not sign a consent order agreeing to pay £30,000.
90. Ms Kent could not afford to pay £30,000 and faced the prospect of enforcement action against her and potential bankruptcy if she signed the consent order. The second and third respondent's costs were in the region of £66,760 and there was a prospect of Ms Kent's liability for costs increasing in the event that a detailed assessment was required. Ultimately, the firm paid £30,000 in settlement of the costs, Verisona Law having raised a professional negligence action against the firm based upon the Respondent's conduct.
91. The Respondent failed to act with integrity by agreeing that Ms Kent would pay £30,000 in settlement of the costs order. He knew she was not aware of the costs

order (as he had concealed that from her), that he no longer acted for her and had no authority to make any offer to settle costs. The Respondent did not inform Ms Kent that he had offered £30,000 in settlement of the costs order and that the offer had been accepted, despite agreeing terms that it would be paid within 14 days.

92. It was not in Ms Kent's best interests for the Respondent to agree on her behalf that she would pay £30,000 in 14 days in circumstances where, he was no longer acting for her, she was not aware that a costs order had been made against her and she could not afford to pay £30,000. She only became aware that the Respondent had agreed for her to pay £30,000 some two months later following DAC's email dated 23 October 2017 to Verisona Law.
93. It was in Ms Kent's best interests for her to have given instructions on any offers to settle costs and to be made aware of her liability for costs and the amount of the same, irrespective of whether the deal struck by the Respondent to settle costs was a good one or not.
94. The Respondent's actions have undermined public trust in him and confidence in the provision of legal services. The public would not expect a solicitor to make an offer that his client would pay £30,00 in costs within 14 days without seeking her instructions and agreement and subsequently fail to tell her that the offer had been accepted.

Dishonesty

95. The Respondent's actions were dishonest in accordance with the test for dishonesty laid down in **Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67** ("Ivey v Genting Casino"): The following paragraph from the authority is relevant to the assessment of whether the Respondent acted dishonestly

"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”.

96. The Respondent accepts that he acted dishonestly according to the standards of ordinary decent people by redacting the original witness statements of DSP and Mr Patterson and presenting them as original statements to Ms Kent and Mr Lloyd. He redacted paragraphs in four witness statements over a period of six weeks by covering paragraphs with blank papers and photocopying the same.
97. He redacted the original witness statements to conceal:
- that the s366 application had been withdrawn.
 - that Ms Kent was subject of a costs order.
 - that he had failed to engage with the parties to the s366 application and
 - that he had failed to comply with Court directions in the s366 application to file evidence.
98. The Respondent's motivation for his actions was to conceal his handling of the s366 application, in order to maintain his relationship with Ms Kent and his position at the firm.

MITIGATION

99. The following mitigation is put forward by the Respondent but is not endorsed by the SRA:
- He was under a significant amount of pressure to progress the s367 application given both the quantum of the claim and the contingent work in progress which was £500,000 plus VAT.
 - In addition to the pressure, he was under in relation to the complexity of the bankruptcy estate he was put under additional pressure by his client.
 - he failed to deal properly with the hearing in relation to the 366 application and he felt unable to notify the client of the same and a mistake he made in dealing with the hearing in relation to the s366 application.
 - by redacting the documents, he was seeking to give himself sufficient time to resolve the problem caused by his mistake. He felt, at that time, that by doing so he would be able to present the client with both the mistake and the fact that he had been able to resolve the same. He felt at the time that he was acting in the best interests of the client.
 - He accepts that he should have sought assistance in both dealing with this matter and also with the particular client.

- He is both personally ashamed and professionally embarrassed by his conduct.
- Whilst it does not excuse his behaviour, his rationale for negotiating the terms of the withdrawal of the s366 application and the consent order was to minimise costs in relation to the s366 application.
- It was never his intention that the client would be responsible for paying the costs liability set out in the consent order. At the time he negotiated terms for the withdrawal of the s366 application and the Consent order, he had intended that the costs due to the respondents in relation to the s366 application would be offset against the costs that he expected to recover from the proceedings issued against the respondents in September 2016.
- That when his file of papers was transferred to another firm by Ms Kent, he provided complete and unredacted copies of the witness statements of DSP and of Mr Patterson within the hearing bundle and made no attempt to continue to mislead his client in relation to the costs liability incurred in relation to the s366 application.
- That he co-operated with the SRA investigation and made admissions to all the allegations against him from the earliest opportunity. An explanation with warning letter ('EWW') was sent to him on 24 October 2018. On 8 November 2018 he responded to the SRA admitting the allegations made against him.
- The SRA investigation has had a negative impact on his mental wellbeing. The time between the admissions made on 8 November 2018 and the decision by the SRA to refer this matter to the SDT on 19 January 2023 have exacerbated that negative impact.

PROPOSED SANCTION

100. The proposed outcome is that the Respondent is struck off the Roll of Solicitors and pays the SRA costs in the fixed sum of £5046.00.

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

101. The Respondent is highly culpable for his actions. This is because:
- He is an experienced solicitor and had direct responsibility for the circumstances that gave rise to the misconduct. Rather than admit that to his client he had made mistakes and handled an application poorly, he took unilateral action and subsequently concealed that action from his

client by redacting witness statements and sending those to her and counsel.

- His actions were planned and deliberate.
- His actions were motivated by a desire to keep his position at the firm and to retain his client.
- His actions involved a breach of trust that his client placed in him.

102. The Respondent's conduct resulted in his firm having to meet the costs liability of the client in the amount of £30,000.

103. The Respondent's conduct is aggravated by:

- repeated dishonesty over a period of some 5-6 weeks involving the redaction of four witness statements and sending them to his client and counsel;
- the misleading of his client for a period of several months;
- misconduct, which was deliberate, calculated and repeated.
- concealment of wrongdoing;
- misconduct which he knew or ought reasonably to have known was in material breach of his obligations to protect the public and the reputation of the legal profession.

104. Mitigating features of his conduct include his cooperation with his regulator and his admissions at an early stage.

105. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).*"

In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows: "*(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."

106. This case does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.
107. The Respondent's misconduct is at the highest level. Protection of the public and public confidence in the provision of legal services requires the Respondent to be struck off the roll.
108. The parties invite the SDT to impose the sanction proposed as it meets the seriousness of the admitted misconduct and is proportionate to the misconduct in all the circumstances.

29 JUNE

Dated this ~~March~~ 2023

Signed...

INDERJIT S JOHAL
Senior Legal Adviser
For and on behalf of the Solicitors Regulation Authority

Signed

Paul Formby

