

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12454-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RICHARD SMITH

Respondent

Before:

Mr P Lewis (in the chair)

Mrs A Sprawson

Mr P Hurley

Date of Hearing: 9 -10 October 2023

Appearances

Louis Weston, counsel of Outer Temple Chambers, The Outer Temple, 222 Strand, London WC2R 1BA, instructed by John Tippet-Cooper, solicitor of Capsticks LLP, Staple House, Staple Gardens, Winchester, Hampshire SO23 8SR for the Applicant.

Jonathan Goodwin, advocate of Jonathan Goodwin Solicitor Advocate Ltd, 69 Ridgewood Drive, Pensby, Wirral CH61 8RF, for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Smith by the Solicitors Regulation Authority (“SRA”) were that while in practice as a Partner at the Firm he:
 - 1.1 Between 1 December 2017 and 8 November 2019 pursued a course of conduct which he knew or ought to have known was unwanted and/or inappropriate towards Person A which included:
 - 1.1.1 taking covertly, and without Person A’s consent or knowledge, digital images of Person A; and/or
 - 1.1.2 sending more than 1000 messages to Person A by WhatsApp including messages at weekends and outside of office hours and when Person A was on leave; and/or
 - 1.1.3 repeatedly inviting Person A to dine with him; and/or
 - 1.1.4 giving Person A gifts which, in number and kind, were inappropriate to a working relationship;
 - 1.1.5 having been granted bail by the British Transport Police on 6 November 2019 with a condition: Not to have any unsupervised direct or indirect contact with [Person A], wrote a handwritten note for and addressed to Person A (“the Note”) and placed the Note in her desk drawer at her workplace;

and in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”) and failed to achieve Outcome 2.1 and/or Outcome 11.1 of the SRA Code of Conduct 2011 (“the Code of Conduct”).

Sexual Motivation

2. Mr Smith’s alleged conduct at paragraphs 1.1.1 to 1.1.4 above was sexually motivated. This was alleged as an aggravating feature of his conduct but was not an essential ingredient in proving the allegation.

Executive Summary

3. Mr Smith admitted the allegation, including that his conduct was sexually motivated. The Tribunal found the allegation proved on the facts and the evidence. The Tribunal found that Mr Smith’s admissions were properly made. The Tribunal’s findings can be accessed here:
 - [Findings](#)
4. A number of applications were made on Mr Smith’s behalf, which the Tribunal heard in private. The submissions included information that was confidential to Mr Smith. The Tribunal determined that to hear those matters in public, or to publish those matters in its Judgment, would cause Mr Smith exceptional hardship, exceptional prejudice, and would be in breach of his Article 8 rights. The Tribunal thus ordered that those

private matters be appended to the Judgment. Those appendices were only to be disclosed to the parties and were not to be published. Further, the recordings of those parts of the hearing that took place in private were not to be disclosed other than to the parties.

Sanction

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

- [Sanction](#)

Documents

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

- Rule 12 Statement and Exhibit JTC1 31 March 2023
- Respondent's Answer and Exhibits dated 9 May 2023
- Applicant's Schedule of Costs dated 2 October 2023

7. Respondent's Application to Adjourn

7.1 On 4 October 2023, the Tribunal (Mr P Lewis, Mrs A Sprawson, Mr R Slack) heard an application made on Mr Smith's behalf to adjourn the substantive hearing in order to obtain up-to-date medical evidence to ascertain (i) the effect of publication on Mr Smith's health and (ii) whether his health informed or contributed to his conduct. The submissions made were on the basis that an adjournment was necessary to protect Mr Smith's Article 2 and Article 8 rights. Due to the nature of the evidence and submissions to be considered, that hearing was held in private. Mr Weston opposed the application.

7.2 On 9 October 2023, at the commencement of the substantive hearing, the Tribunal announced its refusal of that application. The Memorandum of that hearing which includes the submissions made and the Tribunal's reasons are attached to this Judgment at Appendix one.

8. Respondent's Application for the substantive hearing to be heard in private

8.1 In accordance with Rule 35(4) of the SDPR 2019, the application for the hearing to be heard in private was, itself, heard in private. Mr Goodwin applied for the matter to be heard in private on the basis that a public hearing would cause Mr Smith exceptional hardship, exceptional prejudice and would contravene his Article 2 and Article 8 rights. The application was opposed by Mr Weston.

8.2 The Tribunal did not find that there were compelling reasons to derogate from the principle of open justice. It did not find that holding the hearing in public would amount to a breach of Mr Smith's Article 2 and/or Article 8 rights.

8.3 Having announced its decision to refuse the application, the Tribunal gave Mr Smith time to consider whether he would make an immediate application to seek injunctive relief. Mr Goodwin confirmed that no such application would be made.

8.4 The submissions made and the Tribunal's reasons are detailed in Appendix 2.

9. **Applicant's application for anonymity of witnesses**

Applicant's Submissions

9.1 Mr Weston applied for anonymity of the following:

- Person A
- Partners of the Firm
- Employees of the Firm
- The name of the Firm
- The location of the Firm

9.2 Mr Weston submitted that an anonymity order was necessary to protect the confidentiality of Person A, who may be affected by the disclosure of their identity in a judgment. The identification of Person A would breach their right to confidentiality and privacy. By anonymising the names of employees and Partners of the Firm, the name of the Firm and the location of its Office, the possibility of jigsaw identification of Person A would be avoided.

The Respondent's Submissions

9.3 Mr Goodwin confirmed that the application was not opposed.

The Tribunal's Decision

9.4 The Tribunal considered that it was both in the interests of fairness and justice to grant the application. Accordingly, the Tribunal ordered that the disclosure or publication of the names of:

- (i)
- Person A
 - Partners of the Firm
 - Employees of the Firm
 - The name of the Firm;

and/or

- (ii)
- The location of the Firm;

be prohibited.

- 9.5 The Tribunal further ordered that the disclosure or publication of any matter likely to lead to the identification of those persons and entities detailed at (i) and (ii) above be prohibited.

Factual Background

10. Mr Smith was admitted to the Roll in February 1989. At all material times, he was an equity partner (i.e. a member of the LLP) of the Firm in the City. Mr Smith held a current unconditional practicing certificate.

Witnesses

11. None.

Findings of Fact and Law

12. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Integrity

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

“Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession”.

14. **Allegation 1.1 - Between 1 December 2017 and 8 November 2019 pursued a course of conduct which he knew or ought to have known was unwanted and/or inappropriate towards Person A which included:**

- (1.1.1) **taking covertly, and without Person A's consent or knowledge, digital images of Person A; and/or**
- (1.1.2) **sending more than 1000 messages to Person A by WhatsApp including messages at weekends and outside of office hours and when Person A was on leave; and/or**
- (1.1.3) **repeatedly inviting Person A to dine with him; and/or**
- (1.1.4) **giving Person A gifts which, in number and kind, were inappropriate to a working relationship; and or**
- (1.1.5) **having been granted bail by the British Transport Police on 6 November 2019 with a condition: Not to have any unsupervised**

direct or indirect contact with [Person A], wrote a handwritten note for and addressed to Person A (“the Note”) and placed the Note in her desk drawer at her workplace; and in doing so breached any or all of Principles 2 and 6 of the Principles and failed to achieve Outcome 2.1 and/or Outcome 11.1 of the Code of Conduct.

Allegation 2 – The conduct alleged at allegation 1.1.1 – 1.1.4 above was sexually motivated.

The Applicant’s Case

- 14.1 Person A joined the Firm and was based in the Firm’s offices in the City, as a junior employee who developed her legal career in the same team as Mr Smith, who was her Superior.
- 14.2 On 5 November 2019 Mr Smith and Person A were travelling back from an evening business meeting in London by train to the City which departed at around 22:20 hours. During that journey Mr Smith and Person A were sitting opposite each other in the First-Class compartment. Mr Smith was seen by a member of the public to be taking photographs on his mobile phone of Person A without her knowledge. He was accused of ‘upskirting’. The member of the public required Mr Smith to show and inform Person A of what he had been doing and to delete the photographs.
- 14.3 Mr Smith showed Person A the photographs and deleted them from his phone. Person A was upset, left the carriage, and locked herself in the train’s toilet for about 20 minutes. On her return to the carriage, she told Mr Smith she did not want to talk to him and sat elsewhere on the train.
- 14.4 The photographs taken on that night included at least one photograph of Person A’s legs/knees, that photograph being seen by Person A and apparently the member of the public. Also taken was a full photograph of Person A’s face as she concentrated on an email.
- 14.5 Upon arrival at the City train station, Mr Smith was detained by the British Transport Police. He was arrested, detained and taken to a police station to be interviewed. He was then released on police bail the following day (6 November 2019). A condition of that bail was that he was: “Not to have any unsupervised direct or indirect contact with [Person A]”. No criminal charges were brought against him.
- 14.6 The Firm investigated the events. Both Person A and Mr Smith were interviewed by the Firm’s HR director on 7 November 2019. Mr Weston submitted that it was apparent from the record made of those meetings that Mr Smith had admitted that:
- he had become besotted with [Person A] and had, on earlier and other occasions, covertly taken photographs/videos of her by his mobile phone, and had done, at least partially, because “I wanted to get a nice photo of her as she is a very attractive woman”;
 - he had previously been told to stop taking images of Person A by another partner at the Firm;

- he had sent Person A very many messages via Skype and WhatsApp and had given her presents.
- 14.7 During the Firm's interview of Person A it became apparent that Mr Smith had left a Note for Person A at the office in the period between 5 and 7 November 2019 in which he told her:
- he was sorry for his conduct on the night of the incident on the train;
 - he accepted it was "completely wrong of me to try to take pictures of your concentration face"; and
 - the other pictures were just a mistake.
- 14.8 The incident on the train was reported to the SRA first by the Firm on 9 November 2019. Mr Smith made a self-report to the SRA on 16 November 2019. In his self-report, Mr Smith acknowledged that:
- he had taken covert photographs and videos on the Train of Person A;
 - he was wrong to have taken the photographs; and
 - he had taken other photos and video of [Person A] in the office on other occasions without her knowledge and that [he] had done so because of the feelings he had for her.
- 14.9 Investigations of Mr Smith's mobile telephones, revealed that the conduct of taking photographs/videos of, sending large numbers of messages to, and of giving presents to Person A dated back to December 2017 and that:
- On two occasions (the first in about March to May 2018 and the second in December 2018) Mr Smith was told to stop taking photographs/videos of Person A having been caught doing so covertly;
 - On both occasions Mr Smith had denied doing so, but upon challenge on that second occasion in December 2018, accepted that he done so and said he would stop.
 - In the period between 7 January 2019 to 4 November 2019 Mr Smith sent 1241 WhatsApp messages to Person A and received one reply.
 - There were 55 instant messages from Mr Smith to Person A with only 3 replies.
 - Mr Smith had carried out 63 web searches of Person A's name.
 - Mr Smith sent very regular messages to Person A via the Firm's internal Skype instant messaging platform. Some of these messages were work related; many were social and there was a disproportionate balance between his many messages to her (4,427 messages) and her many less messages to him (3,405 messages), for example:

- (i) between 19 December 2018 (after the date Mr Smith was told to stop taking photographs/videos of Person A) to 5 November 2019, Mr Smith sent 2,656 (consisting of 41,178 words) Skype instant messages to Person A and Person A replied with 1,955 messages (consisting of 12,788 words);
 - (ii) on 8-11 October 2019 there was a huge imbalance of messages, with Mr Smith sending 87 Skype instant messages to Person A and Person A replying with 19 messages – on 8-10 October 2019, Mr Smith sent 42 messages to Person A with no reply from Person A.
- there were in excess of 90 pictures of Person A, including photographs of Person A taken from under a desk with her legs crossed.
 - of the images and videos extracted from his work phone, 22 images and 4 videos were of Person A.

Person A

- 14.10 In her interview of 7 November 2019, Person A explained that from her time as a junior team member she received heavy messaging from Mr Smith both when she was working in his team and on starting a different role in the Firm. Person A described how the messaging made her feel odd and that it caused her stress, but she did not feel able to put a stop to it because it was embarrassing. She started not to respond. She described Mr Smith as pursuing [her] every day. The messaging was not sexual in language, but it led to Person A feeling uncomfortable so that she did not want him to know where she lived, and when he offered, she would make up an excuse to avoid being given a lift home. She felt Mr Smith was monitoring when [she] logged off at night. He also gave her unwanted gifts of biscuits, chocolates, and gadgets, that she felt unable to refuse.
- 14.11 Person A became aware that someone thought she was being videoed by Mr Smith, and that had made her feel sick.
- 14.12 Person A refers to being told by Person B to raise the matters with the firm's HR department but she had chosen not to bother because she thought she could manage the situation but also because she was scared of the consequences.
- 14.13 Person A described the incident on 5 November 2019 as occurring on a journey home on the train and her being occupied by a personal email she was writing and a member of the public gaining her attention by saying "why are you filming her and taking picture of her legs in between her skirt". She described Mr Smith as freezing and following a demand that the pictures be shown to her, she said: *"I saw a full photo of me typing and then one of my legs in the central area – the gap between my legs was not visible as I had my legs closed and I was wearing black tights – I am always conscious of what I wear when I am going out with [Mr Smith]"*. Following this, she locked herself in the toilet for some 20 minutes or so and then went back to Mr Smith and said she did not want to talk to him and sat elsewhere. Person A saw Mr Smith detained at the City's train station.

Person B

- 14.14 In his statement, Person B addressed the period from Person A joining the Firm. He described the roles of both Mr Smith and Person A.
- 14.15 Person B noted that from early 2018 (whilst Person A was a junior team member), Mr Smith acted oddly when around Person A, and he suspected that Mr Smith was regularly filming Person A on his mobile phone. He had fielded complaints from other staff members about Mr Smith filming Person A. As a result of what he had seen he spoke to Person A on 12 March 2018 and made a note of his conversation with her. The note recorded that Person A said she was very sad and confessed and that, at times, she was finding it difficult to cope with. She described feeling trapped. Person B advised Person A to speak to the firm's HR department.
- 14.16 Person B and Person A formed a plan using the pretence of her partner being upset to try to gently dissuade Mr Smith from sending unwanted messages at weekends and late at night, making unwanted invitations for dinner, and giving unwanted gifts.
- 14.17 That 'plan' was recorded in an email which Person A read in draft at the meeting and confirmed that it reflected the situation and that nothing needed to be changed. Person B later sent the email to Person A as a record of events.
- 14.18 Person B recorded that Person A expressly did not want the matter to be reported to the firm's HR department as she felt that an allegation of sexual harassment against a senior partner would have a detrimental impact on her developing her legal career.
- 14.19 Following that meeting (and before May 2018) Person B described seeing Mr Smith videoing Person A at work. Person B confronted Mr Smith in private in his room. Mr Smith denied that he had been videoing Person A but was blushing and was awkward in doing so.
- 14.20 Thereafter, Person B did not see Mr Smith videoing Person A again for some time. However, on 14 December 2018 Person B observed Mr Smith videoing Person A. Person B stood between the camera and Person A and waited for a time to challenge Mr Smith. On 19 December 2018, Person B confronted Mr Smith making an attendance note of their meeting. At first Mr Smith denied he was doing so, but then he admitted that he had taken photographs of Person A.
- 14.21 Mr Weston submitted that of particular note was that Mr Smith when challenged on his behaviour by Person B asking if he thought she would join the same team as him if he continued covertly videoing her, admitted it would be unlikely. Mr Smith said it would stop, and Person B told him that it was upsetting Person A which Mr Smith accepted. Person B was not aware of any further incident until after the incident on 5 November 2019.

Mr Smith

- 14.22 Mr Smith made it clear in his response to the SRA dated June 2021 that he did not dispute the evidence of Person B. He contended that he had a good and friendly relationship with Person A but that he ended up feeling romantically attracted to her. Mr Smith stated:

“I recognise, of course, that I should not have taken surreptitious videos of [Person] A at any point. At the time I was not in a normal mental or emotional state. I know it was a breach of my friendship with [Person] A. The last thing I would have wanted to do was to upset her, but I was in such a depressed state that I simply could not help myself. I sincerely regret any distress or discomfort I have caused her. “

The WhatsApp messages were also symptomatic of the same situation. They had started on a reciprocal basis for several months and were usually about music or books or art or travel. We also exchanged a lot when she was (considering her career development) in 2018. It later became part of the way in which I could find a moment of happiness to share something I had seen or heard with [Person] A. Her responses became less and less over time but I could see that [Person] A had read the messages and because we were still chatting and enjoying the time we spent together in the office or out with clients I assumed that she was not upset by them at all. There was never anything rude or unpleasant about them and in the end it did not seem to matter that it was a one way process. If [Person] A had asked me to stop I would have done, as I would never have wanted to upset or fall out with her. Only once did [Person] A chastise me in an email about some slightly over familiar choice of words in some of the messages and I did not use those words again.”

- 14.23 Mr Weston submitted that the evidence of the covert filming, the initial denials and then the later admissions, all led to the conclusion that Mr Smith knew what he was doing was wrong, that it was unwanted and that it was sexual in its intent and further that it was a course of conduct. In addition, the evidence of Person B was that, from at least December 2018, Mr Smith knew his conduct was upsetting to Person A.

Allegations 1.1.1 – 1.1.4

- 14.24 In support of allegation 1.1.1, Mr Weston submitted that the Applicant relied upon the quantity, nature of the images and covert manner in which the images were taken. As regards the WhatsApp messages (allegation 1.1.2) the Applicant relied on the matters detailed above. The fact that Mr Smith did not receive more than one reply to his WhatsApp messages was clear evidence, it was submitted, that his contact was unwanted and unwelcome.
- 14.25 In relation to allegation 1.1.3, the Applicant relied upon the evidence of Person B as to what Person A complained of and the draft email (confirmed by Person A as reflecting the situation and not requiring amendment) which recorded Mr Smith repeatedly inviting Person A for dinner with him, such that she had to form an excuse to decline to do so each time and bring a stop to the requests.
- 14.26 As regards allegation 1.1.4, the Applicant relied upon the evidence of Person B as to what Person A complained of and the draft email which recorded Mr Smith repeatedly

making gifts to Person A, including biscuits, chocolates, gadgets, book for her birthday and a soft neck travel pillow such that she felt uncomfortable.

14.27 Mr Weston submitted that Mr Smith failed to adhere to the standards of his profession. His misconduct occurred in the place of work, during travel from a work-related event and in the context of a partner of the firm contacting a more junior colleague outside work hours.

14.28 That he had failed to act with moral soundness, rectitude and steady adherence to a moral code was evidenced by the following:

- He was considerably older than Person A and objectively in a position of power and authority over her as her superior at work. He was a partner of the Firm and the head of a team in the City office. Person A was initially part of his team as a junior member then she was able to move onto a role where she was developing her legal skills.
- His actions fell to be considered in the light of the very significant power imbalance existing between him and Person A and Person A's responses should also be considered within that context. Person A felt unable to complain of Mr Smith's conduct because she wanted to develop her legal career at the Firm.
- He knew what he was doing with respect to taking images of Person A was wrong. It was obviously wrong which is both why he accepted it was wrong when challenged by Person B, and why he then continued to do so covertly.
- He took images of Person A for a sexual purpose in the workplace. He also did so on a train surrounded by members of the public on 5 November 2019 (and on other occasions).
- His conduct was repeated and continued notwithstanding that he was told twice by Person B to stop. He denied to Person B on two occasions as to his taking photographs of Person A, and did so to conceal what he knew to be wrong.
- His messaging, gifts and/or invitations to dinner were inappropriate and they were unwelcome. They invaded Person A's time away from work, her leave and her weekends. The levels of correspondence were not reciprocated, and Person A repeatedly declined Mr Smith's invitations to dinner with him. It was improper to persist in the requests and correspondence particularly so with the level and number of messages, especially when Person A was not replying to them and declining his requests.
- His actions were not spontaneous but planned and deliberate; his attempts to conceal his actions demonstrated that he knew what he was doing was wrong and inappropriate.
- He was aware or ought to have been aware that Person A's career progression and ambitions were or would be harmed by his conduct towards her.

- He had caused significant harm to Person A.

14.29 In the circumstances described above it was submitted that Mr Smith's conduct lacked integrity.

14.30 Mr Smith's conduct also amounted to a breach the requirement to behave in a way which maintains the trust placed by the public in the profession and in the provision of legal services. The public would be appalled at Mr Smith's conduct towards a very junior member of staff. The use of covert filming was offensive to the privacy and secure working environment of Person A. The repeated and unwanted messaging, invitations to dinner and unwanted gifts were both an invasion of her personal life and an interference with her working life.

14.31 Mr Smith's conduct had a serious and ongoing impact on Person A. The note of the discussion with Person B set out how that, as at 12 March 2018, Mr Smith's conduct was causing Person A to be generally very sad and that at times she was finding it difficult to cope. In an email to the SRA dated 19 March 2021, Person A set out that:

"I am scared to see him and/or to hear his voice. Scared of how that would make me feel on the day and for weeks/months after...This is a man who has violated me by taking thousands pictures and videos of me (according to what the police said) without me knowing...I don't think I can stand to be in the same room with him. Just the idea of it leaves me sleepless."

14.32 A member of the public was appalled (the lady on the train who confronted Mr Smith), a fellow Partner advised in favour of reporting matters to the firm's HR department (Person B) and a peer and colleague of Person A's also threatened to do so (another junior team member in the office). Accordingly, his conduct was in breach of Principle 6 of the Principles.

14.33 Mr Smith harassed Person A and thereby failed to achieve Outcome 2.1 of the Code of Conduct. His conduct which, as Mr Smith knew or ought to have known, was unwanted and had as its purpose the effect of invading Person A's privacy, dignity and comfort and enjoyment of her workplace and private life, amounted to harassment, in particular:

- the substantial number of unwanted gifts (which Person A had tried to reject), messages, and unaccepted invitations to dine with him were harassing of Person A.
- his purpose was to pursue his unwanted attraction to Person A. The repeated filming and videoing of Person A was for that same purpose and caused upset to Person A.
- he knew that Person A was upset by his conduct from at least December 2018, but continued that conduct over a substantial period, in circumstances where Person A felt unable to tell him to stop that conduct, and also having been expressly told to desist from it and when he knew it was wrong to continue with it.
- he continued covertly taking digital images of Person A knowing it to be unwanted, and that it was upsetting to her.

14.34 Mr Smith took unfair advantage of Person A in both his professional and personal capacity and thus he failed to achieve Outcome 11.1 of the Code of Conduct. He was in a senior position relative to Person A; he was a partner and team head, and she was a junior team member in the team and who wanted to develop her career at the Firm.

14.35 Mr Weston submitted that the unfair advantage was evidenced by the following:

- Mr Smith used Person A as an object by taking photographs and video films of her which were taken without her consent in the work environment;
- He used his position in relation to her to make unwanted contact with her, both in and outside of working hours, when she was not able to and did not feel able to tell him stop such conduct;
- He used his position in relation to her to invite her to dine with him when she did not want to and which she felt unable to stop;
- He used his position in relation to her to give her gifts which she did not want and which she felt unable to stop;
- He pursued his romantic interest in and/or feelings towards Person A when she did not want that interest;
- He continued his conduct towards Person A notwithstanding that he knew it was upsetting her.

14.36 Mr Weston submitted that the above demonstrated that Mr Smith had breached the Principles and failed to achieve the outcomes alleged as regards allegations 1.1.1 – 1.1.4.

Allegation 2 - Sexual motivation

14.37 The case of *Basson v GMC* [2018] EWHC 505 (Admin) defined sexual motivation as conduct which is done either in pursuit of sexual gratification or in pursuit of a future sexual relationship. It was evident that Mr Smith was focussed on Person A and would not leave her alone. His conduct towards her was sexually motivated in that, as he admitted:

- he found Person A to be attractive and that was the reason for his taking photographs and videos of her;
- he described himself as being in love with Person A and besotted by her, and romantically attracted to her;
- he described himself as having feelings for Person A.

- 14.38 Mr Weston submitted that in all the circumstances, there was no other reasonable explanation for Mr Smith's conduct towards Person A other than that it was sexually motivated.

Allegation 1.1.5

- 14.39 When released on police bail following the incident on the train on 5 November 2019, Mr Smith was subject to a condition that he was not to contact Person A unless supervised. He was released on police bail on 6 November 2019.
- 14.40 Mr Smith knew that he was not to have unsupervised contact with Person A - he explained that condition in his interview on 7 November 2019, stating "*[the police] told me that I could be in the same building but that any contact with [Person A] would have to be supervised. Last night I went to the office as I needed to retrieve my laptop for work purposes.*"
- 14.41 Between his release on that bail condition and before 10am on 7 November 2019 (when Person A was interviewed), Mr Smith wrote the Note and placed it in Person A's workplace desk. The Note stated:
- "... I am so sorry for ruining what was otherwise a lovely evening and which we were enjoying so much. It was completely wrong of me to try to take pictures of your concentration face while you were composing your email, without you knowing. The other pictures were just a mistake. I would never do the nasty things that woman suggested I was doing. I just would not do that to you. I can only ask you to believe me about that, no more. I am sure you are very upset. I am too. Two minutes of stupidity. I will not speak or write to you or talk about it with you. I will talk to [Person B] tomorrow. I am so sorry."*
- 14.42 When questioned by the Police on 7 November 2019, they asked him if he recognised the letter. To which he nodded his head and answered "yes". The police asked him if he wrote that letter, to which he answered "yes". The note was plainly a breach of the police bail condition not to contact Person A.
- 14.43 Further, it was submitted, the tone and contents were an attempt by Mr Smith to excuse his conduct and to set out for Person A his account of events on the train. He sought to minimise the conduct and to place it in a favourable and innocent context.
- 14.44 Such conduct, it was submitted, lacked integrity. Despite being told by the police and required on account of a police bail condition not to have any unsupervised direct or indirect contact with Person A, Mr Smith had unsupervised indirect contact with Person A via the Note which he left in her workplace desk shortly after his release from the police station. He did so deliberately by writing the note which was calculated to exculpate him and lessen the seriousness of his conduct.
- 14.45 Mr Weston made clear that whilst a breach of a bail obligation imposed by the Police was not a criminal offence and no criminal charges were brought against Mr Smith, such conduct failed to adhere to the ethical standards of the profession and thus lacked integrity.

- 14.46 Members of the public would rightly expect a solicitor to abide by police bail conditions particularly when those conditions have as their purpose the protection of Person A and the prevention of any offences which could include those relating to interference with witnesses or evidence (e.g. witness intimidation and/or perverting the course of justice). In conducting himself as he did, Mr Smith breached Principle 6 of the Principles.
- 14.47 The leaving of the note for Person A was a further act of harassment of her. Mr Smith knew he ought not to have contact with her, that he had caused significant upset to her and that his conduct was under police investigation. When Person A opened the letter during her interview with the Firm, she was upset by the contents. Such conduct amounted to a failure to achieve Outcome 2.1.

The Respondent's Case

- 14.48 Mr Smith admitted the matters he faced, including that his conduct was sexually motivated as alleged.

The Tribunal's Findings

- 14.49 The Tribunal found all allegations proved on the facts and evidence. The Tribunal found that Mr Smith's admissions were properly made.

Previous Disciplinary Matters

15. None

Application to adjourn prior to Sanction

16. Following the Tribunal's announcement of its findings, Mr Goodwin applied for the matter to be adjourned. It was submitted that an adjournment was necessary in the interests of justice and fairness. Mr Smith had a medical appointment scheduled for 13 October 2023. A supplemental report would be available a few weeks later, thus any adjournment would be relatively short. Mr Goodwin noted that the division that considered the adjournment application on 4 October 2023, had raised the possibility of dealing with the substantive matters and thereafter adjourning to obtain any additional medical evidence required for a sanctions hearing. Mr Goodwin made further submissions that are detailed in Appendix 3.
17. Mr Weston opposed the application. The application was being made for matters that went solely to mitigation. The guidance made clear that matters of purely personal mitigation were not relevant to an assessment of the seriousness of the misconduct, as Mr Smith was expected to conduct himself to the standard of a reasonable solicitor. Mr Weston submitted that to adjourn speculatively to see what might be said was not justifiable. Mr Smith had admitted the allegations. From his own description, his feelings took over. There was nothing to be gained from an adjournment for further medical evidence.
18. Mr Weston made further submissions that are detailed in Appendix 3.

The Tribunal's Decision

19. On 4 October 2023, Mr Goodwin made an application to adjourn the substantive hearing. The prospect of being able to make further submissions prior to sanction were the adjournment application to be refused was posited. It was now plain that Mr Smith suffered from a medical condition. The medical evidence that Mr Goodwin sought to obtain was, at best speculative because the medical evidence may show that Mr Smith may have been suffering from an illness which may have affected or informed his misconduct. (Tribunal's emphasis).
20. The allegations had been proved in full. Some of the statements in Mr Smith's Answer, were equivocal. Those equivocal statements were no longer relied upon by Mr. Smith (as they may have been on 4th October 2023) and the Tribunal's view of the evidence was now clear.
21. Mr Smith had admitted (and the Tribunal had found) that he had taken photographs of Person A (including at least one image that could be described as upskirting) which were sexually motivated. Further, he had breached the terms of his police bail conditions, knowing that those conditions had been imposed. The findings amounted to (as was admitted) a lack of integrity.
22. The Tribunal noted the long history of the proceedings and that it had been open to Mr Smith to commission a report on any aspect that he chose. The report did not need to be limited to the matters that the Applicant requested information on. The Tribunal had and would continue to take into account Mr Smith's medical diagnosis. The Tribunal considered that matters of purely personal mitigation were not a primary factor in the consideration of seriousness of misconduct or the appropriate sanction to be imposed. Accordingly, the Tribunal found that it had sufficient information to allow it to impose a sanction that was fair and just in all the circumstances.
23. Accordingly, the application to adjourn was refused. The Tribunal took into account the submissions made. It also had regard to the interests of justice, the Tribunal's Rules and the need to conduct a fair and expeditious hearing.

Mitigation

24. Mr Goodwin submitted that Mr Smith was 34 years old and had a previously unblemished and exemplary record as a solicitor. He had fully co-operated both with the Applicant's investigation and the proceedings. He had done his best to assist as a litigant in person who was wholly unfamiliar with proceedings before the Tribunal.
25. Mr Smith had self-reported his conduct to the Applicant on 16 November 2019 which was to his credit. Mr Goodwin noted that the Applicant had continually granted unconditional practising certificates to Mr Smith, notwithstanding the self-report and subsequent proceedings. Those unconditional practising certificates supported the view that Mr Smith's continuation in practise did not pose a risk to the public. It was important to note that there had been no complaint as regards Mr Smith's work as a solicitor.

26. Mr Smith was thoroughly remorseful for his conduct which had brought shame on him and the profession as well as on his professional reputation. He offered his apology to Person A, the profession, the public and the Tribunal for his behaviour.
27. Mr Goodwin invited the Tribunal to have regard to the report submitted on Mr Smith's behalf dated 7 August 2023, and to have the matters discussed therein in mind when deciding on the appropriate sanction. Mr Goodwin noted that the misconduct had not been repeated since the incident on the train on 5 November 2019.
28. The Respondent's conduct had occurred at a time when he was suffering from undiagnosed and untreated medical issues which dated back 10 years. Further, his conduct marked a divergence from his true character both personally and professionally.
29. Mr Smith's admitted and proven misconduct required an appropriate disposal. Mr Goodwin submitted that it was evident that the public were not at risk of harm from Mr Smith. This was not to be construed as a departure from the admissions made. The Tribunal should recognise that the consequences for Mr Smith had been profound, significant, and tragic. Until the incident on the train, Mr Smith had perceived that he had a friendly working relationship with Person A. It was not until he sought medical help and advice that he became consciously aware of the extent of his behaviour. Mr Goodwin again made clear that such a submission was not intended to go behind Mr Smith's admission that his behaviour was sexually motivated.
30. Whilst the Applicant relied upon the excessive nature of the communications, Mr Goodwin submitted that there was a period of time when this was consensual and reciprocated by Person A. At no time were the messages or communications sexualised, and there were no inappropriate comments of a sexual nature made by Mr Smith to Person A.
31. Mr Goodwin acknowledged that the breach of police bail conditions was concerning, however this was an attempt by Mr Smith in a clumsy and foolish manner, to explain his conduct.
32. The Tribunal was reminded that when considering sanction, it should take a "bottom up" approach. It was submitted that Mr Smith's appearance at the Tribunal was, it was submitted, a significant punishment in itself. The misconduct was not such that there should be any interference with Mr Smith's ability to practice. Mr Smith had acknowledged the harm caused to Person A and had extended his apologies. The case of Wingate made it clear that solicitors were not expected to be paragons of virtue. Sharma demonstrated that a finding that a solicitor's conduct lacked integrity, (as had been admitted and proved in this case) did not automatically mean that there would be any interference with a solicitor's ability to continue in practice.
33. Mr Goodwin submitted that the proportionate sanction taking into account all the circumstances, was a financial penalty, within the appropriate indicative fine band. The Tribunal was asked to display compassion and sympathy for a foolish man who had medical issues. Mr Smith looked forward to a future in the profession; he knew nothing else have been in practise for 34 years.

34. The Tribunal was referred to testimonials provided on Mr Smith's behalf which attested to his character and the quality of his work. Mr Smith, it was submitted, was a kind and decent person who was deserving of a second chance, particularly when taking into consideration his health condition.

Applicant's application to address the Tribunal on Sanction

35. Mr Weston applied to be heard on sanction so as to assist the Tribunal with the matters that it should take account of and the level of the sanction in relation to the seriousness of the misconduct.
36. The Applicant set the standards and guidance for the profession. Mr Weston submitted that it was unfair and unjust that only one party was able to address the Tribunal as regards the appropriate sanction. In all other areas, all parties were entitled to address the Tribunal. All parties appeared before the Tribunal on an equal footing, it was thus unfair that one party should be prevented from addressing sanction. Accordingly, fairness and justice demanded that the Applicant be allowed to address the Tribunal as regards the appropriate sanction. It was understood that it had been the practise of the Tribunal not to allow the Applicant to make submissions on sanction, however, practise alone was not sufficient enough reason to refuse the application. In a number of other jurisdictions (e.g. criminal), the prosecution addressed the court on sanction. It was clearly not unfair for a prosecutor to do so.
37. Arriving at the appropriate sanction was a complex process that required the application of the Guidance Note on Sanction. It was also important that members of the public and the profession to know what view the regulator took of the proven misconduct. The regulator, it was submitted, was entitled to express what the threshold was for misconduct.

The Tribunal's Decision

38. The Tribunal confirmed that it did not need to hear from Mr Goodwin on this point; Mr Goodwin already having indicated that the application was opposed. The Tribunal did not accept that it rendered the proceedings unfair if the Applicant was unable to make submissions on sanction.
39. As to the complexity of applying the sanctions guidance, the division was an experienced one that was well used to the proper application of the Guidance Note on Sanctions when determining the appropriate sanction for proven misconduct.
40. The Applicant, it was determined, had other means at its disposal to deliver messages to the public and the profession as to the view that it took in relation to misconduct. It did not need to do so via individual cases by making submissions on sanction. Mr Weston had pointed to other jurisdictions, where submissions on sanction were made by the prosecutor, to demonstrate that to do so at the Tribunal would not be unfair. The Tribunal did not consider that the ability to do so elsewhere automatically, and the inability to do so automatically at the Tribunal, rendered the Tribunal's position unfair.
41. The Tribunal was well versed with the issues in the case. Whilst it thanked Mr Weston for his offer of assistance, the Tribunal did not consider that such assistance was

required. Accordingly, the application for the Applicant to make submissions on sanction was refused.

Sanction

42. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal’s overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal’s role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
43. The Tribunal determined, as Mr Smith admitted, that:
- The motivation for his conduct was sexual.
 - His conduct was planned.
 - His actions were planned.
 - He breached the trust placed in him as a partner in the Firm and a direct supervisor to Person A. The Tribunal found his conduct in linking her potential promotion to having dinner with him to be egregious.
 - Mr. Smith was wholly and solely responsible for the circumstances giving rise to the misconduct.
 - Mr Smith was an extremely experienced solicitor who knew how to interact appropriately with junior colleagues, and had chosen, notwithstanding warnings received, to interact with Person A in a wholly inappropriate manner.
 - The Tribunal considered that Mr. Smith’s conduct, in sending a note to Person A, the day after he had been placed on police bail with a condition not to contact Person A, was very serious. The conduct undermined the confidence that Person A and members of the public would have in the efficacy and importance of police bail for witnesses and victims.
44. His conduct had caused Person A significant harm. This was evident from the notes of the HR meeting that took place on 7 November 2019 in which Person A stated (amongst other things):

“...it made me feel odd and I thought if I didn't reply it would stop. I coped at the beginning but then it was too much and I got stressed. I did not feel that I could actually say stop because it was too embarrassing. I stopped sharing information and started to not respond hoping this would make RS stop. This did not work.

...

When I was working in other teams there was less natural integration so [Mr Smith] would tell me to pop round before I leave or suggest that we have lunch

etc. I would say that I was busy but he kept pursuing every day. Someone mentioned that they thought he was videoing me. He would come into the office with his phone close to his chest with the camera pointing at me. People said this was odd and one person saw him doing it and said that they would mention to him that this should stop. The thought that he was videoing me made me feel sick.

...

Another thing is that I moved house in July and didn't want him to know where I lived. He kept asking where I lived and I didn't want to say. He kept offering me a lift home. I felt like he was monitoring when I logged off at night as he would leave soon after me and then drive passed (sic) me and ask me if I wanted a lift. I coped with this by pretending I was on the phone and shaking my head. I tried to find a way without seeming rude."

45. Further, in an email to the SRA dated 19 March 2021, Person A set out that:

"I am scared to see him and/or to hear his voice. Scared of how that would make me feel on the day and for weeks/months after...This is a man who has violated me by taking thousands pictures and videos of me (according to what the police said) without me knowing...I don't think I can stand to be in the same room with him. Just the idea of it leaves me sleepless."

46. The Tribunal found that Person A's physical and mental health had suffered as a direct result of Mr Smith's conduct. That Mr Smith's conduct also caused harm to the reputation of the profession was plain.
47. The Tribunal found, as had been admitted, that Mr Smith's conduct was aggravated by its sexual motivation. It was deliberate, calculated and repeated, and had continued over a period of time. He had deliberately targeted a junior member of staff over whom he had supervisory responsibilities and had thus abused his position of power and authority over her. The Tribunal considered that Mr Smith knew that his conduct was in material breach of his obligation to protect the reputation of the profession.
48. The Tribunal found that Mr Smith had scared Person A as was evident from the matters detailed above. Even when she was on holiday abroad, she felt obliged to respond to his messages for fear that if she did not, Mr Smith would travel to meet her. Those fears, it was determined, were well founded: she woke nearly every day to numerous messages from the Mr Smith whose conduct was prolonged notwithstanding warnings from a colleague to desist. Unbeknownst to Person A at the time, Mr Smith had taken numerous photographs of her without her permission. Those photographs included at least one image which might properly be described as upskirting in that it was an image taken surreptitiously showing her knees from underneath. It was accepted that the motivation for taking the photographs was sexual.
49. A member of the public noticed Mr Smith taking images of Person A without her knowledge. Mr Smith was made to delete photos taken and the police were contacted. Following his arrest and detention, Mr Smith was released on police bail with an express non-contact condition, in order to protect Person A. He flagrantly disregarded

his bail condition and left a note for Person A in which he denied the conduct that he now admitted. The Tribunal noted that Person A withdrew her cooperation with the police, but that it had not been informed as to why.

50. Mr Goodwin had reminded the Tribunal that solicitors were not expected to act as ‘paragons of virtue’. The Tribunal did not impose unrealistic obligations upon Mr Smith’s conduct. However, this was more than a mistake or error of judgement, rather his conduct amounted to a repeated and prolonged abuse of a position of trust. The Tribunal found that his actions were of a predatory sexual nature.
51. In mitigation, the Tribunal acknowledged that Mr Smith had voluntarily notified the Applicant of the facts and circumstances giving rise to his misconduct. He had a previously unblemished record and had made open admissions at an early stage. He had also co-operated fully with the investigation and the proceedings. There had also been no repeat of his conduct, which was confined to Person A. The Tribunal had due regard to the testimonials submitted on Mr Smith’s behalf.
52. Having considered Mr Smith’s level of culpability, the harm caused and the aggravating and mitigating factors, the Tribunal assessed the seriousness of the misconduct as being extremely high.
53. The Tribunal determined that sanctions such as a reprimand, a financial penalty and restrictions did not adequately reflect the seriousness of his misconduct. The Tribunal considered that the sexually motivated allegations were so serious as to require a suspension from practice. These allegations were further aggravated by the breach of police bail, which, the Tribunal determined, was of itself, amounted to serious misconduct. In the note he left for Person A, Mr Smith described his behaviour as “*2 minutes of stupidity*”. This was plainly not the case. His conduct was prolonged and calculated. The Tribunal found that both at the time, and now, Mr Smith failed to appreciate the significance of his actions. Taking into account the principle of totality, and given the extremely serious nature of his misconduct, the Tribunal found that the only appropriate and proportionate sanction was to strike Mr Smith off the Roll.

Application for the anonymisation of Mr Smith in the Tribunal’s Judgment

The Respondent’s Submissions

54. Mr Goodwin applied for Mr Smith’s name to be anonymised in the Tribunal’s Judgment. Whilst it was accepted that the matter was already in the public domain, the publication of Mr Smith’s name in the Judgment would reach a wider audience than those member of the public and press that had attended the hearing. This would cause Mr Smith exceptional harm, exceptional prejudice and would also result in a breach of his Article 2 and 8 rights. The submissions made as regards protecting Mr Smith’s Article 2 and Article 8 rights were repeated, including how publication would amount to a breach of those rights.

The Applicant’s Submissions

55. Mr Weston opposed that application. The Applicant had taken the fair and reasonable view that the Judgment would preserve the privacy of those matters dealt with in

private. The hearing had been conducted in public; the public was thus already aware of the allegations, the facts and the Tribunal's findings. The Tribunal's reasons for its findings on both the allegations and sanction were vital to the public understanding of the case. Accordingly, the application for Mr Smith to be anonymised in the Judgment should be refused.

The Tribunal's Decision

56. The Tribunal had refused Mr Smith's application for the matter to be heard in private, having found that to hold the hearing in public would not amount to a breach of his Article 2 and/or Article 8 rights. The Tribunal noted that members of the public were fully aware of the facts, Mr Smith's admissions and the Tribunal's findings. When it refused the privacy application, the Tribunal had afforded Mr Smith the time and opportunity to seek injunctive relief to prevent the matter being heard in public, he had chosen not to pursue that option. Accordingly, he knew at that stage that all matters (save for his private matters) would be in public.
57. There had been members of the press and the public observing the proceedings. Save for its determination on anonymity of the Applicant's witnesses, the Firm and its location, those members of the public and press were free to report the proceedings. The Tribunal did not accept that it was appropriate for those present at the hearing to know that the Judgment related to Mr Smith, but that anyone reading the Judgment could not. Further, any member of the public was able to request a copy of the recording of the hearing (save for those parts conducted in private), at which point it would be clear that the proceedings related to Mr Smith.
58. The Tribunal did not consider that publication of the Judgment would infringe Mr Smith's Article rights for the same reasons as detailed in its refusal of the adjournment and privacy applications. Accordingly, the application to anonymise Mr Smith in the Tribunal's Judgment was refused.

Costs

59. Mr Weston applied for costs in the sum of £59,550. The notional hourly rate, when costs were divided by the number of hours of preparation, was £89.44. The government guideline rates, even at the lowest grade in the lowest band was £126 per hour. This demonstrated the reasonableness of the costs claimed.
60. As regards the time spent in preparation, this matter involved a number of complex issues and communication with third parties in order to obtain the necessary materials. Further, additional work was involved as, for a substantial amount of time, Mr Smith was a litigant-in-person, which generated more correspondence than would usually be the case if he were represented.
61. Mr Goodwin submitted that the internal costs charged by the SRA were reasonable and were thus not challenged. The fixed fee of £48,500, it was submitted, was not reasonable. Given the issues, and Mr Smith's admissions, there should have been a fixed fee of £18,500 with a total costs claim (including VAT and the SRA's internal costs) of £23,500.

62. There had been six fee earners involved in the preparation of the matter which would have led to an element of duplication for which Mr Smith should not be liable. Whilst it was an easy calculation to divide the costs by hours claimed for a notional hourly rate, it was more appropriate for the Tribunal to consider the nature, scope and necessity of the work claimed for.
63. The Tribunal examined the costs schedule with care. The Tribunal did not accept the assertion that given the numbers of people working on the matter that this necessarily involved a duplication of the work undertaken. The Tribunal considered that the hours claimed were reasonable and necessary given the issues to be determined in the case. The Tribunal found the costs claimed to be reasonable and proportionate. The Tribunal then considered whether there should be any reduction in costs, taking into account Mr Smith's means. Having considered Mr Smith's financial position, the Tribunal determined that no reduction in costs was appropriate as a result of his means. Accordingly, the Tribunal ordered that Mr Smith pay the costs claimed in full.

Statement of Full Order

64. The Tribunal Ordered that the Respondent, RICHARD ASHLEY SMITH, 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 £59,550.00

Dated this 28th day of November 2023

On behalf of the Tribunal

P Lewis

P Lewis
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
28 NOV 2023