SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12496-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

LOIS YVONNE BAYLISS Respondent

Before:

Mrs L Boyce (in the Chair)
Mrs H Hasan
Mr A Pygram

Date of Hearing: 2-4 September 2024

Appearances

Mr Benjamin Tankel, counsel, of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR for the Applicant.

Dr Peter Fields, counsel, of The Barrister Group, IDRC, 1 Paternoster Lane, London EC4M 7BQ for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent are that:

1.1 Between 4 and 21 February 2022, in the context of the COVID-19 pandemic, she sent letters to up to 450 individuals at up to 247 schools and GP surgeries, and encouraged up to 48 others to send similar letters, threatening that the recipients could or would face civil and/or criminal liability if they:

(i) Required face-coverings and carried out routine lateral flow tests for schoolchildren;

(ii) Facilitated the school-age children COVID vaccination programme.

1.2 The threats in Allegation 1.1 were misleading.

1.3 When making the threats in Allegation 1.1, the Respondent improperly sought to rely upon her standing and role as a solicitor.

2. By reason of any one or more of the matters set out at paragraph 1 above, whether viewed singly or in combination, Ms. Bayliss has breached one or all of:

(i) Paragraph 1.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

(ii) Principle 2 of the SRA Principles 2019; and

(iii) Principle 5 of the SRA Principles 2019.

Executive Summary

3. The Respondent's position had been that certain measures taken by the government in relation to the immunisation of school age children against Covid-19 were harmful, and that information about this harm was being withheld from the public. It was her case that she had been entitled as a solicitor to oppose the policy, based on a body of scientific evidence and her deeply held views.

4. The Applicant's case was that the Respondent, as a solicitor, was bound by rules of professional conduct which she should have observed and followed. In promoting her views in this manner she had crossed the line from personal activism into professional misconduct.

5. The Tribunal found on the balance of probabilities, that the Respondent sent letters containing implied legal threats to between 244-247 schools and more than 400 recipients. She relied on her position as a solicitor to tell recipients they could be at risk of criminal/civil liability if they required face masks to be worn in schools, carried out routine lateral flow tests or facilitated Covid vaccinations for children aged 12-17.

6. The Tribunal did not find proved that the Respondent had encouraged others to send the letters or that the threats in themselves were misleading.

7. The Tribunal found on the balance of probabilities:

Allegation 1.1 proved in part
Allegation 1.2 not proved
Allegation 1.3 proved in full

8. Collectively, the Tribunal found proved breaches of Principles 2 and 5 of the Principles, and a breach of Paragraph 1.2 of the Solicitors Code of Conduct.

Sanction

9. The Respondent was fined £2,500.00 and ordered to pay the Applicant's costs in the sum of £30,000.00.

The Facts can be found here
The Applicant's Case can be found here
The Respondent's Submission of No Case to Answer
The Respondent's Case can be found here
The Tribunal's Factual Findings can be found here
The Tribunal's Decision on Sanction and Costs

Documents

10. The Tribunal considered all the documents in the case, which were contained within an agreed electronic hearing bundle.

Witnesses

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

12. The Respondent

12.1 In her evidence in chief the Respondent relied on her statement dated 20 August 2024, the contents of which she confirmed to be true. She was cross-examined on her evidence by Mr Tankel.

12.2 The Respondent denied all the allegations, stating that all times, she had adhered to the SRA Principles and Codes of Conduct.

12.3 In summary, the Respondent's position was that her letters highlighted the risks of harm to children and the consequences if the school acted in a form of joint enterprise with the vaccination agency to facilitate such harm. The letters were sent to schools to inform them of the risk of the vaccine, mask wearing, and testing causing serious harm to children. The Respondent believed that it was in the public interest of children

and parents to be fully informed of these risks.

12.4 The Respondent had been a solicitor of 18 years in which she had never received a single client complaint regarding her work. The Respondent had taken great pride in the practice of ethical evidence-based law and adhered to the seven principles of public life: selflessness, objectivity, integrity, accountability, honesty, openness, and leadership.

12.5 During her career she had assisted 'pro bono' on many cases and causes including 'Defective/Non-Medical Grade Silicone PIP Implant'. She acted in the same way with respect to her work for families regarding the Covid 19 vaccination programme. In her opinion, the vaccination programme had been rolled out in tremendous haste by the government with far too little attention by the medical, scientific, and general media as to potential dangers of the vaccine on children and young people.

12.6 The Respondent said she had carried out a lot of research and it had become clear that the risk to children of death or serious injury from Covid itself was virtually zero. Her research had included considering more than 800 peer-reviewed scientific papers. From the government's own published data, it had been shown that the Covid 19 virus presented near zero risk of death to children (as recorded in Table 1 of Chapter 14A of the Green Book).

12.7 The Respondent said she had been concerned that the government had been incentivising schools to facilitate vaccination of children by paying the schools to encourage the children to sign consent forms. She had also been aware that no child or parent was ever told that there were no health benefits from the vaccine, and they were not told that the health risk of "no vaccine" was near zero and that there was a risk of death or serious injury that was 450 times greater than that from vaccines.

12.8 Furthermore, parents were not told that the Joint Committee on Vaccination and Immunisation ("JCVI") had only approved the vaccination of children after being asked to consider the benefit to "education". Therefore, the government had buried information that the risks to children of vaccination were greater than that of Covid. Without this information, parents could not have given informed consent to enable the lawful vaccination of their children. Without lawful consent a vaccination constituted a battery and that teachers were potentially aiding and abetting this offence.

12.9 The fact that the teacher was not doing the injection made no difference because under the principles of joint enterprise, anyone who assists someone to carry out a crime (in this case, battery) is also liable for the same sanction as the primary offender.

12.10 In sending the letters the Respondent had acted with urgency to ensure that harm to children was prevented and to this end she carried out a huge amount of research and worked with others to pool knowledge. The Respondent submitted that her letters to schools had been well researched and had been cautionary in nature. Her right to petition on this issue had not been a derogation of the moral compass and ethical responsibility required of her as a solicitor by the Applicant.

12.11 The Respondent accepted that she signed and sent the letters to the schools. To the best of her knowledge, she did not personally issue any letters to GP surgeries. The

schools required consideration for their part in policing uptake of the injections and obtaining consent (amongst other things) which the Respondent considered represented a contract in law for the provision of these services, although she accepted that schools were not performing the actual injections. The Respondent contended that it had been reasonably arguable that the schools had had a clear duty to ensure the Schools Area Immunisation Service ("SAIS" or "SIS") exercised reasonable care and skill in those operations which exposed the children to risk.

12.12 The Respondent confirmed that she had not been instructed to act on behalf of a particular client to send out the letters. The Respondent's letters, she said, had been intended to protect children and teachers: to inform and notify teachers on matters which might otherwise not have been within their knowledge. The Respondent said she had wanted to protect children from harm, and protect badly informed and confused teachers from the risk of criminal or civil prosecution. She had had no other motive than this. She did not think her motives had been unethical or that she had conducted herself improperly or without integrity as suggested by the Applicant.

12.13 The Respondent denied that her letters were threatening. There were two separate letters, "the Mask letter" of 4 February 2022 and "the Vaccination Letter" of 3 February 2022. The purpose of these letters was to explain the risks and to encourage teachers not to participate in either the mask/testing programme or the vaccination programme.

12.14 The Respondent used her firm's letterhead because, as a solicitor, she said she had not been ashamed of challenging government policy and wanting to protect children. This was exactly the same as protesting outside parliament against government policy by holding a banner with her firm's name on it. She saw no difference between these methods. She was entitled to exercise her right to freedom of expression.

12.15 In cross-examination the Respondent said that she had used the firm's letterhead/logo because she had wanted teachers to take notice of her letters and that if she had not done so then the letters would likely have been ignored.

12.16 The Respondent said her letters had been polite in nature. With respect to the masks letter, she had set out briefly the body of research showing that mask wearing can cause significant levels of harm and that children faced no real risk from the virus itself.

12.17 The Respondent reminded the head teachers of their legal obligation to carry out a suitable risk assessment and to protect vulnerable students, who were even more exposed to risk by wearing masks and of the potential for damage caused by repeated lateral flow testing which is an invasive medical procedure.

12.18 If children and parents were not informed of the risks, then such testing if facilitated by teachers would amount to battery. Even if the teachers were not actually administering the tests they could have been guilty of aiding and abetting (secondary liability). In cross-examination, the Respondent accepted that she had no experience in criminal law and whilst she said she had done much research on the point she had not retained her notes to evidence her research.

12.19 In trying to persuade them to change/stop the vaccinations, the Respondent informed headteachers that, as they were facilitating the injections, this would render them liable for any losses sustained. This was not a letter before action, and she had not been making a claim.

12.20 As to the issue of 'non-delegable duty of care' to which she had made reference in her written submissions, the Respondent said that she had not mentioned this issue in the letters because she had not wanted the letters to appear overly legalistic. Her letters had not been *letters before action* but a friendly warning/ advice to schools and headteachers.

12.21 She said that whilst she had ended the masks letter by saying that she would continue to *"observe your response ....should we not hear from you to confirm your intentions toward swift compliance"* there had been no intention on her part to seek consequences of not complying, there was no threat of legal action, and no threat of any sanction. It was put to the Respondent in cross-examination and denied by her that this could not be correct given the wording of the letters i.e.:

> *"We will continue to observe your response to this polite letter should we not hear from you to confirm your intentions towards swift compliance."* (masks letter).
>
> *"Can you come back to me confirming that the visit has been cancelled."* (vaccination letter).

12.22 Mr Tankel suggested that the wording in each had been unequivocal statements of the Respondent's intent to take matters further, or at least a threat to do so.

12.23 The Respondent said that none of the letter recipients complained about being personally threatened, and not one of the complaints received by the Applicant about her involved anything about being threatened.

12.24 As to the Vaccination Letter, this letter started in the same way as the Mask Letter. However, the context of the letter was different because, at the time, the Respondent had a crime reference number from the Metropolitan Police at Hammersmith confirming that the police were investigating allegations. At the time she wrote the letters, she had been informed by the police that their investigations were continuing. At no stage was she told by the police that they had closed the case. However, as soon as she became aware that the police had not investigated the allegations, she stopped referring to the investigation in any communications.

12.25 In the Vaccination Letter, the point the Respondent said she had been making was that the head teachers should inform parents of the risks, and she had wanted them to cancel the vaccinations.

12.26 The Respondent said she did not gain anything financially and she had had no other interest other than the protection of children.

12.27 In cross-examination she accepted that she had not received any complaints from parents stating that their children had had a lateral flow test administered by a teacher

on school premises.

12.28 The Respondent said that her letters had not stated *"that the recipients could or would face civil and/or criminal liability "* as alleged by the Applicant. Two of the letters stated the following: *"you will render yourself liable for losses ... and liability could include criminal liability."*

12.29 The Respondent said that she had had a reasonably held, genuine and honest belief that the Metropolitan Police was investigating the crimes reported by herself and three other individuals on 20 December 2021. She confirmed in cross-examination that she had not disclosed in her letters that she was one of the people who had made the police complaint.

12.30 She had not known at the time of sending the letters that the police investigation had gone nowhere and that it had been closed on the basis that the police did not consider any criminal offences had been or were being committed.

12.31 The Respondent denied the letters had been threatening and that she had had any intention of following up on them to see if the schools had taken steps in compliance with her warnings. There had not been a plan to pursue any legal claims against the schools.

12.32 The Respondent said there had been a demand for her letters from like-minded, informed people. The Respondent made the letters freely available for people to use should they feel the need. She denied that she had 'encouraged' others to send the letters and such people had exercised their own free will to do so.

12.33 The Respondent said she had protected and controlled the integrity of her letters by allowing only pdf versions to be sent by others rather than Word versions which could be edited. She accepted that in correspondence she had referred to some of her supporters as *'her trio of lady warriors'*; however, this was not evidence that she had encouraged them in any way. These individuals, and those like them, had each made their own choices on what action to take, based upon their own views and research.

12.34 The Respondent acknowledged the Applicant's contention that the appropriate way to challenge a government policy was by way of judicial review. However, the purpose of her letters had not been to mount a legal challenge to the government's policies. The purpose of her letters had been to inform teachers that they were under no legal duty to facilitate the injection of all children and that they needed to be alive to the risks of doing so. The "appropriate" way to communicate this information would not have been by judicial review. Judicial review proceedings had a specific purpose that had not been relevant to her concerns.

12.35 There had since been a campaign against her which had caused her distress, embarrassment, time, and money. There were people who had asked the Applicant to launch an investigation that risked censoring her freedom of speech and restricting or preventing her ability to practise.

12.36 The Respondent said she had simply been a concerned person (and a solicitor) who wanted to tell people important things. She was not aware that there was any rule of

professional conduct that forbade her from doing so.

12.37 The Respondent denied that much of her statement consisted of ex-post facto reasoning and retrospective justification which had not been present in her decision making at the relevant time.

Factual Background

13. The Respondent was admitted to the roll on 16 January 2006. She is the manager, owner, COLP, COFA and MLRO of a firm known as Broad Yorkshire Law Limited. She has a practising certificate free from conditions.

Agreed Facts

14. To assist in narrowing some of the issues the parties agreed the following:

14.1 The government guidance in force at the material time was as set out in the Rule 12 Statement and exhibits thereto.

14.2 The government guidance related to the following (the "Measures"):

a. Routine lateral flow tests of children for the purposes of attending schools.

b. The use of face masks for children in the school setting.

c. COVID-19 vaccines for school-aged children.

14.3 At the material time, there existed scientific debate as to the merits of the Measures.

14.4 The Respondent had a genuine belief that the Measures were harmful to children.

14.5 The Respondent's genuine belief was based upon scientific evidence. The Applicant remains neutral on the merits of the scientific evidence.

14.6 The Respondent had a genuine belief, having regard to her understanding of that evidence, that the Measures should not be implemented.

14.7 The Applicant did not ask the Tribunal to make a determination about the reasonableness or otherwise of the Respondent's views as (2) to (6) above.

14.8 The Respondent sent the "Masks and LFT Letter" and "School and Medical Vaccination Cancellation Request Letters" to up to 450 recipients at 244 schools.

14.9 The Respondent made the Masks and LFT Letter" and "School and Medical Vaccination Cancellation Request Letters" available to up to 48 others to send for themselves.

15. **The Applicant's Case**

15.1 It is known that, from around December 2019 onwards, the world faced the COVID-

19 pandemic. From around March 2020, significant public health measures started to be taken in England in response to this pandemic. In education settings, a balance needed to be struck between the delivery of education and controlling the spread of the COVID-19 virus. The Department for Education published regularly updated guidance for maintained schools and expected independent schools to take a similar approach.

15.2 Between 4 and 8 February 2022, the Respondent emailed up to 450 individuals at up to 247 schools and GP surgeries a copy of a *"School Vaccination Cancellation Request Letter"*. Most of these schools were also sent a *"Masks and LFT Letter"* at the same time. The letters were sent by way of email attachment from the Respondent's work address. The name of the document as attached to the email was *"Client Template.DOC"*. Most of the covering emails read:

> *"Please ensure the contents of the attached letters are read and disseminated amongst your staff team as appropriate with any required action taken immediately. Should you wish to seek verification of the Metropolitan Police investigation, the crime reference number is: 6029679/21."*

15.3 Other covering emails read: *"see urgent letters attached"*.

15.4 One covering email, addressed to the general enquiries email address of an academy school, read: *"It has come to my attention that you have been vaccinating children aged 12-15 years with the second dose of the SARS-Cov 2 injections. See letter attached"*.

15.5 The emails were all signed off with a Broad Yorkshire Law email signature. In some instances, the Respondent sent the School Vaccination Cancellation Request Letter and the Masks and LFT Letter to multiple recipients at the same school.

15.6 Between 4 and 21 February 2022, the Respondent sent emails to up to 48 individuals asking them to disseminate the Masks and LFT Letter and the "*Medical Vaccination Cancellation Request Letter"*. These individuals were tasked with identifying the recipient and sending the letters.

15.7 The Applicant received 19 complaints about the letters that the Respondent sent or was responsible for sending. However, Mr Tankel said that the Applicant did not rely upon the content of those complaints in support of its allegation. The allegations were based solely upon the documentary record.

Masks and LFT Letter

Policy context: face covering

15.8 Face covering was never required by pupils in primary schools.

15.9 Face covering was required by most children in secondary schools from the return to face-to-face education, until on or about 19 July 2021. Masks were reintroduced in secondary schools for a period of three weeks in January 2022, during the Omicron resurgence. These ceased to be required for secondary school pupils in classrooms from 20 January 2022 and in communal areas from 27 January 2022.

15.10 The relevant guidance at the time the Respondent sent her letters was the Department for Education's "Schools COVID-19 operational guidance" (published 2 July 2020, last updated 24 February 2022, withdrawn 1 April 2022) (the "Operational Guidance"). The Department for Education also published an "Evidence Summary: Coronavirus (COVID- 19) and the use of face coverings in education settings" (January 2022).

15.11 Under the Guidance, by the end of January 2022, face coverings were no longer required in education settings.

Policy context: testing

15.12 The Operational Guidance in force at the relevant time also provided:

> *Asymptomatic testing*
> *Testing remains important in reducing the risk of transmission of infection within schools. Staff and secondary school pupils should continue to test twice weekly* ***at home****, with lateral flow device (LFD) test kits, 3-4 days apart. Testing remains* ***voluntary but is strongly encouraged****.*
>
> *Secondary schools should also retain a small asymptomatic testing site (ATS) on-site until further notice so they can* ***offer*** *testing to pupils who are unable to test themselves at home. Schools are strongly encouraged to ask parents and other visitors to take a lateral flow device (LFD) test before entering the school. Further information on Daily Rapid Testing can be found in the Tracing close contacts and isolation section.*
>
> ***There is no need for primary age pupils (those in year 6 and below) to regularly test****, unless they have been identified as a contact for someone who has tested positive for Covid-19 and therefore advised to take lateral flow tests every day for 7 days."*
>
> **(*Emphasis added)**

The Masks and LFT Letter: content

15.13 The letter was on "Broad Yorkshire Law" headed notepaper. It was addressed to "Head Teacher & Assistant Head Teacher." The Respondent sent it to up to 450 recipients. It read amongst other things as follows:

> *"I write in connection with your schools' recommendation that staff and students wear face masks during lessons. There is a body of clinical research, evidence and opinion that mask wearing causes significant physical and psychological harm. There is no legal/lawful requirement to support mask wearing. No head teacher is required to implement mere guidance. All head teachers should understand that guidance is NOT LAW.*
>
> ...

If head teachers choose to follow guidance and cause a child or children to suffer injury or harm as a result, then that choice is open to legal challenge. Each head teacher would have an independent duty to undertake a risk assessment relating to each individual child. That risk includes the following potential harms ...

- *Fibrosis of the lung(s) Sensitisation to fibres from the masks Issues as regards suppression of immune system function within the respiratory passages*
- *Risk of infection by inhaling bacteria proliferating on the mask*
- *Risks associated with reduction in oxygen availability*
- *Risks associated with an increase in carbon dioxide within the breathing zone*
- *Risk associated with the suppression of the immune cells lining the respiratory tract due to high carbon dioxide levels*
- *Neuronal harm due to reduced oxygen availability*
- *Exacerbation of existing conditions such as asthma*
- *Exacerbation of anxiety.*

Additionally, there are potential claims for disability discrimination as some children suffer from pre-existing health conditions that place them at disproportionate disadvantage from reduced oxygen availability ...

The school is under a legal obligation to carry out a suitable and sufficient risk assessment to identify those who may be vulnerable to harm if measures such as these are to be in place. That obligation is extended further in that they are duty bound to identify and provide control measures to reduce that harm to a level as low as is reasonably practicable.

The repeated requirement to perform invasive and injurious lateral flow testing is assault and needs to be urgently reviewed ... As you will be aware whilst children are in school, the school's legal position is "in loco parentis". You owe a legal obligation to each child in your care.

We will continue to observe your response to this polite letter should we not hear from you to confirm your intentions towards swift compliance."

15.14 The letter was signed *"Lois Bayliss, Broad Yorkshire Law."*

15.15 The reasonable reader of this letter would have read it as purporting to contain threats that the recipients would be pursued by the Respondent as being liable or potentially liable in law unless they complied with the requests contained within the letter.

15.16 The letter was written on the basis that guidance at the time required face-coverings and routine testing. Further, the letter assumed that recipients were in fact implementing such a policy. However:

a. The letter did not reflect the up-to-date policy position at the time it was sent.

b. There is no evidence that any of the schools to whom the Respondent sent these letters were requiring face-coverings or carrying out routine testing. Rather, the evidence tends to suggest that the letters were sent in scattergun fashion without regard to the underlying facts.

c. As to testing, even if school staff were physically carrying out routine testing (of which there was no evidence), criminal liability for the alleged offence of assault would require the absence of consent: Brown (A.) [1994] 1 AC 212. In the very rare cases where actual or grievous bodily harm or a wound resulted from routine testing, consent would be a defence if there was good reason, which can include "reasonable surgical interference": AG's Reference (No.6 of 1980) [1981] QB 715 (CA). This would inevitably include routine COVID testing, where the same was being carried out in line with a reasonable body of medical opinion.

15.17 Mr Tankel said that in the premises, the legal threats that the letters contained were without proper foundation and were as such misleading.

School and Medical Vaccination Cancellation Request Letters

Policy context: Vaccination

15.18 In Winter 2021/22, all children aged 12-15 years were offered two doses of vaccine as part of the school-based COVID-19 vaccination programme. The UK Health Security Agency published "Coronavirus (COVID-19) Vaccination programme for children and young people: Guidance for schools" (winter 2021/22). It explained:

> ***"How vaccination in schools will work***
> *Like all school-based vaccination programmes, the vaccines will be administered by healthcare staff working closely with the school and following the usual approach to school-based immunisation. Your local SAIS provider has been asked to work with schools to plan for the roll-out of COVID-19 vaccinations for 12 to 15 year olds. The SAIS will be the primary provider of the vaccination programme for healthy 12 to 15 year olds and will be legally responsible for the delivery of the vaccine. The SAIS provider will be contractually responsible for the service, as they are for other school vaccination programmes. The expectation is that the vaccination programme will be delivered primarily within schools but there might be certain areas or certain schools where this is not possible."*

15.19 The Guidance explained the role of schools in the programme as follows:

> **"The role of schools**
> *We are grateful for the support that schools provide by hosting NHS vaccination sessions. Like all school based vaccination programmes, the vaccines will be administered by healthcare staff with appropriate qualifications who work to nationally agreed standards. Vaccines are offered in schools to ensure easy access for all children. The local SAIS provider team will be in contact with your school to agree a date for the vaccination session and the best approach for implementing the programme in your school.*

Schools will have 3 primary roles which will be familiar to them from other vaccination programmes:

- *to provide information to their SAIS provider on which children on their roll are eligible for the vaccine*
- *to share the information leaflet, consent form and invitation letter supplied by the SAIS team with parents and children*
- *to provide the space within school, and the time away from the timetable, to enable vaccinations to take place*

Your local SAIS provider team will try and keep disruption to a minimum and will only ask you to do the things that they cannot do themselves.

You will be asked to:

- *work with the SAIS provider team to agree the best approach for implementing the programme in your school*
- *nominate a named contact for the SAIS provider team to liaise with*
- *agree a date or dates for the vaccination sessions*
- *work with the SAIS to identify a suitable location for the session (for example, school hall) and for the 15 minute post-vaccination observation period to take place (this observation will be undertaken by qualified SAIS staff)*
- *agree a process for providing parents with the invitation letter, information leaflet and consent form*
- *encourage children and their parents to return the consent form by an agreed date*
- *send reminders through your usual channels such as email or text distribution lists, parent newsletters, visual display screens*
- *let parents know on which day vaccination will take place*
- *let the children know what will happen and when"*

School Vaccination Cancellation Request Letter: content

15.20 The Respondent took objection to the programme of vaccinating school-age children. Between around 4 and 8 February 2022, she sent a letter to up to 450 school leaders which read:

"I write in connection with the visit or any proposed visit of the school immunisation service. As you will be aware whilst children are in school, the school's legal position is "in loco parentis." You owe a legal obligation to each child in your care. We ask that you do the following:

1. *Write to the SIS and inform them that the vaccination session or any proposed vaccination session is cancelled and that the reason for cancellation is that the SARS CoV2 injection is under police investigation. Should you fail to cancel the immunisation session you will render yourself liable for any losses sustained as a result of the visit and liability could include criminal liability.*

Informed consent is impossible to obtain as the SIS vaccinators are not:

1. Informing the patient that the roll out of the SARS CoV2 injections are under Police investigation pursuant to crime reference number: 6029679/21. Most parents, if given that information, would decline to give consent for their child. Please ensure this letter is communicated to all parents.

2. Part of the Police investigation revolves around the alleged unlawful suppression of alternative treatments which have a far better safety profile. Informed consent is not possible if there is no discussion around safer alternatives.

3. Informing the patient of how much active ingredient is in each vial. The amount of active ingredient in each vial varies and it is a matter of public record that some batches kill and maim disproportionately. Witness statements will be considered by the Police from bad batch victims. By way of example; one of them is now infertile, others have been suffering with mobility and paralysis of the face and limbs and many others are suffering from serious heart conditions such as myocarditis/pericarditis/myopericarditis. These people have medical evidence which states that the injection caused the infertility, immobility, paralysis and heart conditions. It is a fact that they received bad batches.

As informed consent is impossible to obtain, anyone injected on site has suffered a battery, regardless of any injury sustained. Can you come back to me confirming that the visit has been cancelled."

Medical Vaccination Cancellation Request Letter: content

15.21 The Respondent also wrote a letter addressed *"FOA: All vaccination centres/hubs, all doctors, nurses, clinical staff, anyone administering or causing to be administered SARS-COV-2 vaccinations"*.

15.22 Mr Tankel said this letter was materially the same as the School Immunisation Service Letter, save that where schools had been invited to write to the SAIS to cancel visits, this letter asked SAIS staff to write to various government and statutory agencies asking them to cancel the vaccination programme.

15.23 As per Allegation 1.1 the letters were threatening, amongst other things, due to the following features:

a. The covering email was sent from the Respondent's firm email address.

b. The subject headings of the covering emails included "POLICE INVESTIGATION ** URGENT ** " (emphasis in original), and "Letter to Halt Immunisation Programme ... "

c. The letters were enclosed as attachments saved under the file name "client template" and "client template (2)", thereby implying that the Respondent was instructed by a client.

d. The covering email asked recipients to ensure that "any required action [be] taken immediately".

e. The letters themselves were on the Firm's headed notepaper.

f. The email address provided was claims@broadyorkshirelaw.co.uk.

g. The email signature, and letter footer, both noted that the firm was "authorised and regulated by the Solicitors Regulation Authority" and gave the firm's SRA number.

h. The letters referred to the possibility legal liability.

i. The letters intimated that there would be follow-up should the recipient fail to comply.

j. The letters were signed off by the Respondent, again giving the name of her firm.

k. Read as a whole and in context, the letters had a formal, adversarial, and legalistic tone.

15.24 Any recipient receiving such a letter would naturally treat them as including the threat of legal liability.

15.25 The Respondent's defence to this allegation was, in essence, that:

a. She did not have the subjective intention to issue any legal claim.

b. The letter did not expressly say words to the effect of "I am going to bring a claim".

15.26 Mr Tankel said that the context and tone of the letter, read as a whole, would have conveyed a threat to the reasonable recipient of these letters. Whilst the Respondent's state of mind was a matter of evidence, the way in which this letter would have been understood by a typical recipient was a matter for the Tribunal to determine and not dependent upon the Respondent's subjective intentions about it.

15.27 The most important point in this regard was that all three letters gave the misleading impression that a legal claim was being threatened when in fact the Respondent was

not instructed by any client to bring such claims. The letters could thereby have misled recipients into believing the threats and requests contained therein carried more weight than they otherwise deserved.

Lateral flow tests

15.28 The letters stated that "*the repeated requirement to perform invasive and injurious lateral flow testing is assault and needs to be urgently reviewed".* The letter referred to the schools being *"in loco parentis"*, owing *"legal obligations"* to the children in their care, and required *"swift compliance".*

15.29 Read in context, this could only be interpreted as an assertion that schools were performing lateral flow tests and were being requested to cease doing so.

15.30 Mr Tankel said that schools helped to distribute lateral flow tests to students and their parents. However, the tests were to be physically administered by students or their parents, not by school staff. Even the self-administered testing regime was voluntary (but encouraged). There was no evidence that any of the recipients of the Respondent's letters physically administered any lateral flow tests. The evidence upon which the Respondent relied in her witness statement were all examples of schools distributing, not administering, the tests.

15.31 In the absence of any physical contact between school staff and children, there was no possible basis for the allegation of *"assault"*. There could also be no possible legal obligation to stop distributing lateral flow tests to parents and children who were entitled to them and wanted them. Indeed, stopping such distribution would potentially have been unlawful.

Masks

15.32 The letter opened by stating *"I write in connection with your school's recommendation that staff and students wear face masks during lessons".* Mr Tankel said that the Respondent now accepted that she made no attempt to ascertain whether the schools to which she wrote had made any such *"recommendation".*

15.33 The letter continued "*No head teacher is required to implement mere guidance. All head teachers should understand that guidance is NOT LAW. If head teachers choose to follow guidance and cause a child or children to suffer injury or harm as a result, then that choice is open to legal challenge"*. Mr Tankel said that the Applicant noted that government guidance at the time the letters were sent did not require masking in schools and that in her evidence the Respondent appeared now to accepts this. Instead, however, she contended that the guidance was *"irrelevant"*.

Vaccination

15.34 The letter first requested that schools write to the School Area Immunisation Service ("SAIS") and inform them that the vaccination session was cancelled because the vaccine was *"under police investigation"*. In so doing, Mr Tankel said the Respondent was giving a seriously incomplete picture of the *"police investigation"*, the background to which was in summary as follows.

15.35 The Medical and Healthcare products Regulatory Agency ("MHRA") is the statutory body responsible amongst other things for providing the marketing authorisations which allow medicines to be lawfully available for use in the UK. In 2021, this included four COVID-19 vaccinations.

15.36 The Respondent together with three others believed that, in providing authorisations for these COVID-19 vaccinations, the MHRA had deliberately ignored evidence of harm caused by COVID-19 vaccinations. In December 2021/January 2022, they made a report of the same to the police. They were issued with a crime reference number. Such numbers are automatically issued and say nothing about the merits of the police report or the status of the investigation. In February 2022, the police decided to take no further action on the report.

15.37 The letter next states *"Should you fail to cancel the immunisation session you will render yourself liable for any losses sustained as a result of the visit and liability could include criminal liability."* It was said that informed consent was *"impossible"* to obtain for three reasons. It then said, *"As informed consent is impossible to obtain, anyone injected on site has suffered a battery, regardless of the injury sustained."* Given that this letter was addressed to headteachers, and that the offence of battery required physical contact between two individuals, this could only be interpreted as an assertion that schools were administering vaccines and were being requested to cease doing so by the Respondent.

15.38 The Respondent contended in her evidence, further or alternatively, that headteachers would be liable because they had a non-delegable duty of care which would have been breached by the provision of vaccines in their premises. There was no mention of this in the letter either. Here too, Mr Tankel said the legal analysis was convoluted and farfetched:

a. If the analysis were correct, then responsibility would be that of the local authority (for maintained schools) or the Academy Trust (for Academies).

b. The test for "non-delegable duty" includes the following (see Woodland v Essex County Council [2013] UKSC 66):

> *"(4) The defendant has delegated to a third party some function which is an integral part of the positive duty which he has assumed towards the claimant; and the third party is exercising, for the purpose of the function thus delegated to him, the defendant's custody or care of the claimant and the element of control that goes with it. (5) The third party has been negligent not in some collateral respect but in the performance of the very function assumed by the defendant and delegated by the defendant to him."*

15.39 This is not the case here as the giving of vaccines was not *"an integral part of the positive duty"* owed by an education authority to a child. It is a function of the NHS.

15.40 Mr Tankel said that contrary to the claims in the letters, however:

15.41 In so far as the letters were sent to school staff, vaccinations were the responsibility of SAIS, not of individual schools or their members of staff. Given schools' limited role as set out in publicly available guidance, it was wholly unclear how schools or school staff could have been even theoretically liable for facilitating the provision of medical treatment to which Gillick-competent children[1], or those with parental responsibility for non-Gillick competent children, had consented. Conversely, it was wholly unclear on what legal basis schools or school staff would have been able to interfere in the provision of NHS medical treatment to which pupils had a legal entitlement and to which they or their parents had consented.

15.42 There would have been no realistic prospect of establishing the offence of battery. As far as the schools were concerned, they were not physically administering the injection. As far as SAIS staff were concerned, they would have been able to avail themselves of the defence of consent. As regards battery, it is a defence if the patient has been informed *"in broad terms of the nature of the procedure intended" and* has consented: Chatterton v Gerson [1981] QB 432 at 443. Only consent obtained by fraud or the withholding of information in bad faith will vitiate consent and make the administration of the treatment a battery. The letters did not allege this.

15.43 Informed consent was not *"impossible"* to obtain. The relevant standard is not an absolute one requiring the provision of information about every alleged complication, however outlandish: Montgomery v Lanarkshire Health Board (General Medical Council intervening) [2015] AC 1430:

> *" ... a doctor was under a duty to take reasonable care to ensure that the patient was aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments, that the test of materiality was whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor was or should reasonably be aware that the particular patient would be likely to attach significance to it ... "*(from the headnote)

15.44 The instant medical procedure involved a straightforward vaccine being administered as part of a global vaccination programme. The government had published a detailed leaflet outlining the materially relevant risks and benefits of the vaccine, together with a bespoke consent form.

15.45 The letter gave three reasons why informed consent could not be given. None of them satisfied the Montgomery test because (i) they were not risks of treatment; and (ii) even if they were, the reasonable person in the patient's position would not attach significance to them.

15.46 Two of the reasons given by the Respondent for why *"informed consent"* could not be obtained were not medical risks about which a clinician would typically be expected to advise under the principle in Montgomery (supra). Rather, they concerned the fact that an alleged crime had been reported to the Metropolitan Police and that a crime reference number had been issued. Obtaining a crime reference number does

[1] Gillick competence is a medical law term used to determine if a child under 16 years old is able to consent to medical treatment without parental consent or knowledge.

not establish that a crime has in fact been committed. Crime reference numbers are issued automatically whenever a member of the public reports an alleged offence. Further, the Respondent conspicuously failed to mention the highly relevant information that she was one of the group of four individuals that had reported the alleged crime to the Metropolitan police.

15.47 The third reason given by the Respondent for why *"informed consent"* could not be obtained was, in Mr Tankel's view, very hard to follow. Patients are not normally informed how much of an active ingredient is contained in each medication. It is difficult to know what an ordinary patient without detailed expert knowledge of vaccinology would make of such information. The second sentence does not follow from the first. The second part of the second sentence does not follow from the first part. The remainder of the paragraph referred to a handful of alleged adverse reactions in those who had received the vaccine, with no mention of any medical research or statistical analysis to underpin or explain the significance of these cases.

15.48 A challenge brought against individual schools or clinicians would have been bound to fail, given the accepted scientific views at the time as articulated in government guidance. The appropriate way to challenge the relevant policy would have been by way of application for judicial review of the relevant government department or body responsible for the policy in question.

15.49 The letters materially departed from mainstream COVID-19 science. They did not present the substantial evidence that existed to the contrary. They took no account of the legal liability that may be incurred, or the harm that might be caused, if schools did not facilitate the school-age vaccination programme.

15.50 Mr Tankel said that for all the reasons given above, the letters were misleading.

Reliance upon standing and role as a solicitor

15.51 When sending each of these letters, the Respondent was acting within her professional sphere as a solicitor. All three of the letters were on Broad Yorkshire Law headed notepaper and were signed *"Lois Bayliss, Broad Yorkshire Law."* The letters concerned themselves with the alleged legal consequences of complying with the government's programme for managing the COVID-19 pandemic. The letters used legal terms of art and legal concepts. The information was presented in letter form, backed by an apparent legal threat, and taking only one side. In the premises, any reasonable reading of the letters implied that concordance with each of these programmes (or what the Respondent incorrectly understood the programmes to be) carried with it a risk of legal liability and that some form of legal challenge coordinated by the Respondent may follow.

15.52 In her response dated 17 January 2023 to the Applicant's referral notice, the Respondent said (at paragraph 150) that she had used headed notepaper *"so that the recipient of the letter would know that it had come from a credible source and someone who understood the law."* However, that is a point against her rather than in her favour: it was not open to her to invoke her status as a solicitor to promote her personal views in this way.

15.53 The Respondent admitted that she was not instructed by any clients to bring any claims. She said that she did not intend the letters to operate as pre-action protocol letters. As such, she was like any other ordinary member of the public with views on the merits of the public health measures adopted in response to the COVID-19 pandemic.

15.54 As with any other member of the public, there were many things the Respondent could have done in order to promote her views (e.g. writing to her MP, peaceful protests). Instead, she chose to send letters on her firm's headed notepaper, and to write in a way that will have looked to the reasonable recipient like a threat by a solicitor to bring a claim, i.e. she did something an ordinary member of the public could not do: she made a choice to use her status and role as a solicitor when promoting her views and making her requests, despite having no client instructions and (on her case) no intention to follow the threats up with formal proceedings.

15.55 The vague threats of legal liability or potential legal liability contained in the letters were an attempt by the Respondent to use her authority and standing as a solicitor to exert pressure and influence over members of the public in furtherance of her own individual beliefs.

15.56 The Respondent was aware of the harm that her campaign might cause to the profession, but proceeded nonetheless. By an email dated 4 February 2022, she wrote to a likeminded colleague *"Probably career suicide, but see attached. Had to be done!"*.

The Respondent's Motivation

15.57 Mr Tankel said it was important to understand what the Respondent was trying to achieve by sending the letters. In some parts of her evidence, the Respondent said that she was only seeking to bring the legal risks to the attention of schools. For example:

> "*At a very basic level, my letters were doing what the JCVI had insisted needed to be done, but the government had totally failed to do, I was informing the schools and teachers that the children were at risk of harm and would receive no comparable health benefit".*
>
> "*The letters were sent as a reminder of the schools duties and to make the recipients 'alive to the risks' in order that the recipient might not knowingly fail to take them into account. I was also concerned that the teachers may be used as scape goats after the fact and so the letters were a reminder to exercise caution with these novel mRNA injections for children."*

15.58 "The 'masks' letter was referred to as a *"polite letter"* and it further stated that the headteachers choice was *"open to legal challenge"*. "*It follows that such statements confer a tone of being helpful", "It was merely advice", "I was simply a concerned person (and a solicitor) who wanted to tell people important things. I was not aware - I am still not aware - that there is any rule of professional conduct that forbids me from doing so ... "*

15.59 The Respondent asked, rhetorically:

> "*Is it the SRA's position that any informative notice sent to any public servant criticising any Government policy is professional misconduct?" "By issuing the letters to raise awareness, I was providing the recipients with free legal advice"*

15.60 However, in Mr Tankel's submission there was considerable evidence that the Respondent's aim was not just to advise, but positively to thwart the masking, lateral flow test, and vaccination schemes:

15.61 The subject heading of some of the emails sent to schools was *"Letter to Halt Immunisation Programme ....*

15.62 The Respondent admits in her witness statement that:

i. *"I wanted them to cancel the vaccinations"*

ii. "*I wanted to protect children from such harm, and I wanted to protect badly-informed and confused teachers from the risk of criminal or civil prosecution. I had no other motive than this."*

iii. "*I have never denied that cancellation of the C19 jab sessions was the intention of the letters. Had this not been the case I would not have sent them."*

iv. "*If my letters have resulted in one child not having received the novel mRNA injection, I have more likely (as shown by the data) prevented harm to that child, and not put one at risk, as falsely claimed by the Applicant. I make no apology for this"*

15.63 The letters, however, read as threats, not as legal advice.

15.64 The Respondent was not instructed to advise the schools. It is not the role of solicitors to go about giving unsolicited legal advice.

15.65 It was submitted by Mr Tankel that the Respondent had engaged in a form of vigilantism in which she sought to thwart government policies which she believed, based on her own research, were wrong. It was in that context that her reliance upon her role and status as a solicitor had to be judged.

15.66 The Respondent had a very strong belief that the government's policies were morally wrong. She aimed to put a stop to them. She wrote adversarial-style letters on her firm's headed notepaper. There were any number of permissible alternative options open to her that she did not take. The Respondent is an experienced solicitor who must well have known the impact on others of receiving such letters. In the premises, she must have intended that writing in the way she did would lend her requests additional weight that they would not otherwise attract. In the alternative, she cannot have failed

to appreciate that this would be the case, but proceeded nonetheless.

15.67 Having made submissions on the facts and the Respondent's motivation, Mr Tankel moved to consider the relevant regulatory framework as follows:

15.68 Principle 2 of the SRA Principles requires solicitors to act in a way upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

15.69 Rule 1.2 of the Code of Conduct for Solicitors provides that *"You do not abuse your position by taking unfair advantage of clients or others."*

15.70 The SRA's Warning Notice on Offensive Communications (first published 24 August 2017, updated 25 November 2019), states:

> *"We expect you to behave in a way that demonstrates integrity and maintains the trust the public places in you and in the provision of legal services.*
>
> *In the context of letters, emails, texts or social media, this means ensuring that the communications you send to others or post online do not contain statements which are derogatory, harassing, hurtful, puerile, plainly inappropriate or perceived to be threatening, causing the recipient alarm and distress."*

15.71 The SRA's Topic Guide on Use of social media and Offensive Communications (issued 7 February 2019, updated 25 November 2019) notes that the following will be aggravating factors:

> *"The communication ... was likely and/or intended to shock, harass or victimise others.*
>
> *There is a pattern of frequent or a large number of concerning communications.*
>
> *The communication demonstrates a lack of independence or objectivity in carrying out the role... "*

15.72 The SRA's Guidance on "Conduct in disputes" (published 4 March 2022, after the events in question), gives the following examples of where solicitors have failed to balance properly duties owed in the public interest, to the court, to their client and to certain third parties. The Guidance is expressed to apply to pre-action activity as well as to conduct in legal proceedings proper. The first example is "making allegations without merit.":

> *"This involves solicitors bringing claims with insufficient investigation of their merits or of the underlying legal background ...*
>
> *Solicitors bringing claims may be reckless as to the merits of the case - or actively uninterested in the merits - and aim to pressure on an opponent to settle the case outside of court.*
>
> *Some solicitors rely on the asymmetry of legal understanding which may exist*

between the defendant and the solicitor.
There have also been cases where letters of claim included a threat to reveal publicly embarrassing information if the opponent fails to settle or an unjustified threat of liability for significant costs. Such an approach could amount to a failure to act with integrity."

The second example is "pursuing litigation for improper purposes". Although not expressly identified in the Guidance itself, this could include inappropriately threatening litigation in order to promote a particular individual belief or view.

The third example is taking unfair advantage, which stems from paragraph 1.2 of the Code of Conduct for Solicitors. This example explains amongst other things that:

"Special care is needed when dealing with or corresponding with an opponent who is unrepresented or vulnerable."

And

"Litigation will often involve putting a case against another party in strong terms. However, breaches of our standards can arise from oppressive behaviour and tactics including include:

- *threatening litigation where there is no proper legal basis for a claim*
- *making exaggerated claims of adverse consequences including alleging liability for costs that are not legally recoverable*
- *sending excessively legalistic letters with the aim of intimidating particularly unrepresented or lay parties sending letters in abusive, intimidating or aggressive tone or language"*

15.73 Collectively, Mr Tankel said these make it clear that the making of unmeritorious threats of legal liability or potential liability, in order to promote a particular view or belief, by exploiting the asymmetry between a solicitor and an unrepresented recipient of the threat, is a breach of professional standards.

<u>Article 10</u>

15.74 Article 10 of the European Convention of Human Rights and Fundamental Freedoms provides:

"Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ...

for the protection of health or morals, for the protection of the reputation or rights of others ..."

15.75 The Respondent has a right to freedom of expression. However, that is a qualified right (per Article 10(2)).

15.76 Mr Tankel said that in the context of the regulation of a profession, standards which are stated generally are sufficient for the purposes of the prescribed by law condition. Standards such as those set out above reflect the general body of obligations attaching to a profession and are capable of being readily understood by members of the solicitors profession, and certainly with the assistance of appropriate advice: Adil v GMC [2023] EWHC 797 (Admin) at [17].

15.77 Maintaining the good standing of the solicitors' profession is, for the purposes of Article 10(2), pursuit of a legitimate objective: R(Ngole) v University of Sheffield [2019] EWCA Civ 1127 at [104] and Adil at [24]. The Respondent's conduct was likely to diminish public confidence in the solicitors' profession. Her comments also risked undermining the protection of public health. Finally, the views were so far from a balanced view of the relevant legal obligations as to be outside legitimate legal opinion.

Breaches

Paragraph 1.2 of the Solicitors Code of Conduct

15.78 Paragraph 1.2 of the Solicitors Code of Conduct provides under the heading *"Maintaining trust and acting fairly"* that *"You do not abuse your position by taking unfair advantage of clients or others."*

15.79 The Respondent knowingly invoked her standing and role as a solicitor when sending the letters. In doing so, she sought to lend those letters, and the threats they contained, additional weight by exploiting the asymmetry between solicitors and laypeople.

15.80 The Respondent prays in aid the fact that the recipients were employees of public institutions that could have sought legal advice had they wished. However, the letter purported to require immediate compliance with the demands set out therein, and did not propose that recipients obtain their own legal advice. The recipients were unrepresented at the time the letters were sent, and the Respondent had no way of knowing who would and who would not seek legal advice.

15.81 Finally, it was no defence for the Respondent to say that up to 247 organisations should have been put to the trouble and cost, in the middle of a pandemic and at public expense, of seeking legal representation in order to take advice on her unmeritorious threats.

15.82 The conduct was aggravated by the fact that:

15.82.1 The letters were sent in the context of a national emergency and purported to require addressees immediately and materially to depart from government guidance.

15.82.2 The letters were likely to or intended to make recipients fear that they risked incurring legal liability if they followed government guidance. The letters implied that the Respondent would be keeping the conduct of the recipients under review.

15.82.3 Had the instructions in the letters been followed, the addressees might have risked acting unlawfully and of causing harm to children.

15.82.4 The Respondent sent the letter to up to 450 addressees.

15.82.5 By citing only one side of the scientific and legal debate, the Respondent was not acting objectively.

Breach of Principle 2: Public trust and confidence

15.83 The Respondent's letters presented only one side of the evidential picture, against a very large amount of evidence in the other direction. That formed no proper foundation for the legal assertions or threats that she made, which were misconceived in any event. The letters were presented as legal letters backed up by a vague legal threat.

15.84 The letters were sent by someone holding themselves out to be a solicitor and who was thereby seeking to invoke the good standing, authority, and reputation of the profession to lend her views additional legitimacy.

15.85 It was not open to the Respondent to use the hard-earned reputation of the profession to seek to lend additional weight and credibility to her views. By doing so, she undermined the trust and confidence that the public has in the profession.

15.86 Whether or not the merits of any particular COVID-19 policy are borne out with time, the typical recipient of these letters would likely have treated them as COVID "misinformation", but misinformation to which a solicitor holding herself out as such was seeking to lend the weight of her standing and role.

Breach of Principle 5: Integrity

15.87 This Principle required the Respondent to act with integrity. The concept of integrity was considered by the Court of Appeal in 2018 in Wingate and anor v The Solicitors Regulation Authority [2018] EWCA Civ 266. The judgment states that integrity:

> *(a) "97….is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members….the underlying rationale is that the professions have a privileged and trusted role in our society. In return, they are required to live up to their own professional standards…." (b) "100…. connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty".*

15.88 The Approved Judgment of LJ Jackson also states (at [101]) *"The duty to act with integrity applies not only to what professional persons say, but also to what they do".*

15.89 The Respondent must have been aware that:

15.89.1 The factual and legal picture she was presenting as the basis for her legal threats was very far from being complete.

15.89.2 The letters did not reflect the consensus scientific view or reasonable body of medical opinion, as reflected in guidance issued by the government in the context of a national emergency.

15.89.3 Her correspondence nevertheless contained unqualified assertions as to legal liability or potential liability, together with legal threats.

15.89.4 The recipients of her letters were not represented.

15.89.5 Had recipients complied with the requests in the letters, then there would have been material risks of acting unlawfully and of causing harm to children.

15.90 Having regard to all of the above, the Respondent must have been seeking to pressurise the recipients of her letters by exploiting her standing and role as a solicitor vis-à-vis those recipients, in order to lend weight to those legal threats.

15.91 A solicitor with integrity, sharing the Respondent's views and seeking to promote them, would instead have done one or more of the following:

15.91.1 Participated in peaceful acts of protest.

15.91.2 Brought a judicial review claim against the appropriate defendant, whether in her own name or on behalf of a client.

15.91.3 Expressed her views without revealing or relying upon her standing as a solicitor.

15.91.4 Acknowledged the full range of evidence that existed, including that which was contrary to her own view, and made clear that the relevant question was (at its highest) a matter of judgement for individual decision-makers as to which view to follow.

15.91.5 Given a balanced view of the legal risks, rather than making the bare assertion that civil and even criminal liability could or would ensue.

15.91.1 Disclosed material information, including in particular that it was she that had reported the *"crime"* to the police, and that the alleged crime did not involve the same conduct as the policies which were the subject of her letters.

15.92 The form of professional regulation under which the Respondent operates must be informed by objective criteria. However strongly she held her views, it was not open to the Respondent to threaten legal liability or potential liability on the basis of a one-

sided and therefore misleading picture of the science and the applicable legal principles: see by analogy PSA v (1) GDC (2) Mohamed Amir [2021] EWHC 3230 (Admin) at [44]. Doing so involved moral turpitude, not least when one considers the harm that might have resulted.

16. The Respondent's Case

16.1 The Respondent denied all the allegations.

16.2 The Respondent set out her detailed position in her evidence. Essentially, her conduct had at all times been consistent with the SRA Principles 2019 and the Code of Conduct for Solicitors, RELs, and RFLs. She had been motivated by a genuine concern that harm that was potentially being caused to children because of the government policies. Her letters had been neither threatening nor misleading. She had not hidden her status as a solicitor and had used the Firm's letterhead to ensure that her letters would be taken seriously by the recipients and not ignored out of hand.

16.3 The Applicant's case was fundamentally flawed in that, in its Rule 12 statement, it made a series of allegations that Respondent's letters were misleading and went against "accepted science". The Applicant had failed to provide any evidence to support its opinions on this point. The Applicant belatedly accepted that the Respondent's beliefs were genuinely held and based on a body of scientific evidence albeit one which ran counter to that relied upon by the government. The Applicant was neutral as to the merits of the scientific evidence.

Closing Submissions

16.4 Dr Fields submitted that the Applicant had not proved its case on any of the allegations.

16.5 The letter of 4 February 2022 (the Masks Letter) only provided information and said that the Respondent would observe the recipient's response to *"this polite letter"*. The letter did not require the recipient to reply or make any suggestion that the Respondent would take any further action. The Applicant had been wrong to allege that the Respondent's letters were threatening. No recipient ever complained to the Respondent that they felt threatened and issue of *'threat'* within the letters was a fiction created by the Applicant.

16.6 The Applicant had failed to make any case that the Respondent was, through her letters, initiating a claim or that the letters would lead to her initiating any form of sanction against the recipient.

16.7 The content of the Respondent's letters was based on credible scientific evidence, and her beliefs were genuinely and reasonably held. As to whether the Respondent threatened civil or criminal liability, the 'Masks Letter' did not make any reference to *"liability"* but focused on the issue of harm to children and asked the school to make changes in response to a *"polite note"*.

16.8 The 'vaccination letter' did not contain anything that could have been taken to be a threat in any meaningful or material way. There was no threat that the Respondent

would take legal action, or, indeed, any action at all other than to 'observe'.

16.9 The letter of 3 February 2022 (the vaccination letter) provided information about the harm to children and encouraged the recipient to cancel the proposed vaccination sessions. Whilst highlighting the potential legal consequences of continuing to aid the vaccination of children, this letter referred to the issue of informed consent and asked the recipient to respond to the Respondent confirming that the vaccination visits had been cancelled. Nowhere in this letter did she use any wording along the lines of a threat in saying *"if you don't do [X], I will do [Y]"*.

16.10 Regarding the issue of informed consent (risk/benefit) there was evidence to support the fact that schools were actively engaged with facilitating the vaccination of children. This included providing rooms, encouraging the parents to bring the children in, and procuring consent forms. When asked for their consent, the Respondent's genuine belief was that no child or parent was ever informed of the statistical risk/benefit of having the vaccination, or that the vaccination could cause death, or that the risk of "doing nothing" was virtually zero. The figures indicated that the risks of serious harm from vaccination were 120 times greater than from Covid itself.

16.11 The Applicant was mistaken in its contention that there would be no realistic prospect of establishing the offence of battery in relation to a teacher who encouraged and aided the vaccination of children, or administering LFTs. The Applicant failed to recognise the trite law that a medical procedure carried out without fully informed consent can amount to battery and that, according to the rules of joint criminal enterprise, anyone who aids the carrying out of a crime can carry the same liability as the person who carries out the crime (per R v Jogee [2016] UKSC 8).

16.12 Dr Fields said that In R (Wilkinson) v Broadmoor Hospital [2001] EWCA Civ 1545, Lady Justice Hale said, *"The people who carry out [medical assaults] may be sued in the ordinary way for the tort of battery"*. This principle was confirmed in Chatterton v Gerson [1981] Q.B. 432. The key was whether the patient/victim had received enough information to make their consent *"informed consent"*.

16.13 With regard to the duty of individual teachers, Dr Fields submitted that case of Woodland v Essex County Council [2013] UKSC 66 confirmed that teachers can be found to have a non-delegable duty of care to pupils and he contended that, once it is established that there was the potential for lack of informed consent, the Respondent had been correct to point out that there had been a clear potential for criminal liability even if through joint enterprise.

16.14 No child or parent was told that the JCVI had determined that there was not enough health benefit to justify the vaccination. The JCVI only approved vaccinations for children when they were asked to consider the broader societal benefit. This was never communicated to parents or children by the schools. Under what appeared to be pressure from the government, the JCVI then reported that they had considered that there would be a benefit to *education* if children were vaccinated and, on this basis, changed their recommendation. None of these benefits to education were quantified and there was no indication of how the JCVI had equated the risk of death with an unquantified benefit to "education". In making their recommendations, the JCVI advised the government: *"Children, young people, and their parents will need to*

understand potential benefits, potential side-effects and the balance between them".

16.15 Dr Fields submitted that at a very basic level, the Respondent's letters were doing what the JCVI insisted needed to be done but that the government had totally failed to do. She was informing the schools and teachers that there were risks of harm and there was no real health benefit.

16.16 In putting its case, the Applicant stated that had the instructions in the letters been followed, the addressees might have risked acting unlawfully and of causing harm to children, and by citing only one side of the scientific and legal debate, the Respondent was not acting objectively.

16.17 Dr Field submitted that in making such statements, the Applicant effectively repeated government policy and provided opinions without any evidence to support its assertions. This was concerning given that in the hearing itself Mr Tankel informed the Tribunal that the Applicant was taking no view on the science, and the reasonableness or unreasonableness of the position adopted by the Respondent in her letters had not been relevant to its case against her.

16.18 Dr Fields asked the Tribunal to note that the Respondent's application to admit expert evidence from authoritative experts, including three professors, was refused at an earlier hearing before the Tribunal. Given the Applicant's neutrality on the science was now an agreed fact, Dr Field submitted that, as the Applicant had offered no scientific evidence to prove the Respondent's assertions to be wrong, it could not succeed therefore in its argument that her scientific representations were misleading.

16.19 As to the issue of lack of integrity, Dr Fields reminded the Tribunal of the test for integrity in Wingate v Solicitors Regulation Authority [2018] EWCA Civ 336. Dr Fields submitted that the Respondent's actions were a breach of neither Principle 2 nor 5. With reference to Wingate, the Respondent's actions connoted moral soundness, rectitude and a steady adherence to an ethical code. Her beliefs were extensively researched and involved seeking advice and opinion from many learned professors who were experts in their field. This included taking into account the conclusions of more than 800 peer-reviewed scientific papers.

16.20 Whilst the test for integrity in Wingate is an objective one, Dr Fields maintained that the state of a person's knowledge was relevant, and he submitted that the Tribunal needed to take account of the views of an *"ordinary decent person"* as referenced in the test for dishonesty in the case of Ivey v Genting [2017] UKSC 67. Such views could not be limited to someone who may have only read government policy or newspaper headlines or be encumbered by *confirmation bias* in screening out any information with which they did not agree. The question had to be asked: *'If the ordinary decent person had the same science-based facts as the Respondent, and believed them to be true, would they think that her conduct had lacked integrity or damaged the public's trust and confidence in the profession?'* In Dr Fields' submission, this was a question that had to be answered in the negative.

16.21 In its Rule 12 Statement, the Applicant set out that it had received *"19 complaints about the Respondent which raised concerns that she had taken various actions which were perceived to be attempts to undermine the government's efforts to manage and*

combat COVID-19".

16.22 Dr Fields said it was not clear whether these were actual complaints, and the Applicant had failed to provide details of the full complaints. However, once the Applicant had made it publicly known that it was prosecuting the Respondent, nearly 1,000 members of the public wrote letters to the Applicant setting out their support for the action the Respondent had taken in sending the letters. Many of the communications received by the Applicant from members of the public stated that the Respondent had enhanced the reputation of the profession, and they urged the Applicant not to continue with its prosecution of the Respondent.

16.23 Whilst not hiding the fact that she was a solicitor, the Respondent did not seek to rely on her standing and role as a solicitor. The Applicant paid lip-service to acknowledging the Respondent's ECHR Article 10 rights to freedom of expression and failed to make out a case for restricting her fundamental rights in this regard.

16.24 Dr Field submitted that the use of her firm's logo was no different to holding a placard displaying her firm's name at a protest against government policy or putting her firm's name to a petition. If the Tribunal was to accept the Applicant's argument on this point, this would represent a fundamental breach of her Article 10 right to freedom of expression.

16.25 The Applicant had stated that for the purpose of Article 10(2) restricting the Respondent's rights was pursuit of a 'legitimate objective' and it referred to Adil v GMC and R(Ngole) v University of Sheffield in support.

16.26 In Adil, the proportionality of interfering with his Article 10 rights was carefully considered and the conclusion reached was that a doctor who informed patients/public of imaginary risks and outlandish ideas was a threat to public health. Dr Adil had denied that Covid existed and proclaimed that vaccination was a secret government plan to control the population.

16.27 In the case of R (Ngole), a student expressed his religious views on a public social media disapproving of homosexual acts. In referring to R (Ngole), the Applicant stated that '*the maintenance of confidence in the relevant profession was a legitimate aim'*, however, Dr Fields said the Applicant omitted to give the full comment set out in that judgment which went on to say: "*However, a moment's consideration will lead to the conclusion that the maintenance of confidence will carry very different requirements in different professions, and in different factual contexts. Thus, public expression of firm, political views will be perfectly proper for a lawyer in private practice but are quite improper for a judge."*

16.28 Dr Field contended that the Respondent's case could be distinguished from Adil in that there was scientific evidence that her actions would protect children. Further, that R (Ngole) confirmed that *"public expression of firm [ ] views will be perfectly proper for a lawyer in private practice"* and that this was what the Respondent had been doing in her letters. As such, the Applicant's prosecution of her breached the Respondent's Article 10 rights and, even if there was a legitimate purpose, this was disproportionate and not significant enough to justify the removal of her freedom of expression.

16.29 More specifically, the SRA *Warning on Offensive Communications* accepts that a solicitor may identify themselves in communications espousing a cause but: *"In the context of letters, emails, texts or social media, this means ensuring that the communications you send to others or post online do not contain statements which are derogatory, harassing, hurtful, puerile, plainly inappropriate or perceived to be threatening, causing the recipient alarm and distress."*

16.30 In this context, it was clear that *'threatening'* is interpreted as causing alarm or distress and Dr Fields said many letters from solicitors pursuing claims, or even pre-action protocol letters, could cause alarm and distress to the recipient. It followed that any alarm or distress arising from receipt of a letter highlighting an issue that had a factual basis could not be considered in the same way, for example, as an unjustified communication, demanding some payment. The Respondent had used the word *'could'* to draw attention to the fact that civil or criminal charges were a possibility, not a certainty.

16.31 In an earlier decision of the Tribunal SRA v Ronald George Patterson (Tribunal Ref: 12443, 11 - 13 July 2023 at para 10.66), the Tribunal determined that *"It did not amount to professional misconduct for a solicitor to fail to correct an incorrect assumption. Still less was it professional misconduct for a solicitor to fail to correct an incorrect assumption of which he was not aware. Accordingly, the allegation that Mr Paterson had breached Paragraph 1.4 of the Code was unsustainable."*

16.32 At paragraph 10.90 of the Patterson judgment, it further stated that *"the Tribunal agreed with the analysis of Mr Wheeler KC on this point detailed in his submissions above. In short, in order to have misled any of the participants of the meeting, Mr Paterson would have needed to have said something that caused the participants to believe that something was true when it was not"*.

16.33 Following on, therefore, in the instant case Dr Fields suggested that the Respondent could not be held accountable for the way in which the letters' recipients drew particular meanings or inferences from them which were not intended by the Respondent and not present.

16.34 Further, the Respondent could not be accountable for not presenting both sides of the argument in her letters. The letters were not written by the Respondent *"carrying out her role as a solicitor"*. As such, as she was clearly expressing an opinion, and Dr Fields submitted that she could not have been required to provide an alternative side to her argument. In any event, if the Applicant's position was found to be correct (i.e. that every communication must contain a balancing argument), any solicitor who writes a pre-action protocol letter would be at risk of prosecution and every solicitor who actively supported an anti-government peace protest or gave a speech at a political rally would also face the same risk.

16.35 Dr Fields said that combined with her Article 10 rights, it could not be the case that a solicitor who does not provide both sides of an argument in any communication in support of their beliefs would be in breach of their professional standards.

16.36 At the time she wrote these letters, a crime had been reported to the police and the Respondent had been given a crime reference number [6029679/21]. She was subsequently informed that the Metropolitan Police had discontinued their investigation on 22 February 2022. As soon as she became aware, she stopped referring to there being an investigation.

Conclusion

16.37 For the reasons set out above, Dr Fields urged the Tribunal dismiss the SRA's allegations of professional misconduct.

16.38 The Applicant's case was fundamentally flawed and there were matters within its Rule 12 Statement which should have been redacted.

16.39 The Applicant's allegation that the letters were threatening was not substantiated and it had not taken into account the unprecedented support for the Respondent from the public as against the 'complaints' made to the Applicant. If the facts were known, the Respondent's actions would enhance the public trust and confidence in the profession as showing that solicitors act independently and are not afraid to challenge government policy.

16.40 The Respondent's statements within her letters had not been *"misleading"*, either with regard to the science or the potential liability.

16.41 Dr Fields asked the Tribunal to consider the wider implications of this case for the legal profession and the public interest. If a solicitor could be sanctioned for acting to protect children's health by informing a group of people of the risks (backed up by evidence) simply because it was against government policy, this would perforce raise significant concerns about the integrity of the regulatory process.

16.42 Dr Field requested that the Tribunal dismiss all the allegations of professional misconduct because at all times the Respondent had been professional, ethical, and motivated by a genuine concern for public safety and the upholding of the rule of law. In the context of her beliefs, the Respondent could not be seen to have been acting without integrity, abusing her position or damaging the public trust and confidence in the profession.

Applicant's Response on matters of Fact and Law

16.43 Mr Tankel made the following points:

16.44 The Applicant's Rule 12 Statement accurately reflected the Respondent's alleged misconduct and there had been no application from the Respondent for redaction. The Applicant had maintained its position throughout and it had not changed its case.

16.45 The Applicant agreed that there was scientific evidence on both sides of the debate; however, the science was no part of the Respondent's case.

16.46 The Applicant disputed the Respondent's contention there was nothing that would permit the Applicant, as regulator of the solicitors' profession in England and Wales, from interfering with the Respondent's freedom of expression under Article 10. Mr Tankel stated that the test was set out in paras.75 to 80 in Adil:

"75. The expression "misconduct" involves a standard of behaviour falling short of what is proper or reasonably to be expected of a doctor in the circumstances: Roylance v General Medical Council (No 2) [2000] 1 AC 311 at p. 331B. It is not necessary in this case to address the point raised by the Respondent's Notice as to whether the provisions of the Act would satisfy the prescribed by law condition if they stood alone. They do not stand alone, but are supplemented by the statutory advice in the GMP and SM Guidance which any professional doctor would know contained principles relevant to their conduct and fitness to practice. That is emphasised by GMP para 6 and SM Guidance para 3, each of which state that serious or persistent failure to follow the guidance which poses a risk to patient safety or trust in doctors will put registration at risk.

76. Paragraphs 65 and 68 of GMP and 17 of the SM Guidance, which I have quoted above, make clear that conduct of the following kind may have that consequence: (1) conduct which undermines the public's trust in the profession (GMP para 65 GMP); (2) communication of information to patients which is untrustworthy because it does not make clear the limits of the doctor's knowledge and has not been reasonably checked for accuracy (GMP para 68). This applies to all potential patients, not merely existing clinical patients, as I have explained. (3) Publication on social media of views expressed as a doctor which are not views of the profession "more widely" (SM Guidance para 17). As I have explained this is not a reference to majority views of the profession, but does refer to views of a minority which have some scientific or medical basis.

77. In these circumstances it is clearly foreseeable from the published guidance that using one's status as a doctor to promote views on social media which are baseless and damaging to patient health would be regarded as misconduct and attract disciplinary sanction.

78. I detected two strands to Mr Hoar's submission on this ground. The first was that if contribution to debate on matters of medical scientific or political significance were to be proscribed and potentially made susceptible to disciplinary sanction that needed to be spelled out explicitly. In particular there would need to be express guidance saying that misconduct could cover expressions on matters of medical opinion. The other was that in order to achieve sufficient certainty and foreseeability the guidance would have to spell out what forms of opinion were proscribed. Such guidance must, he submitted, identify a particular class of expression.

79. As to the first, the guidance does expressly make clear in GMP para 68 and SMP para 17 that it covers expressions of medical opinion. But in any event the appellant's conduct was so far from being a contribution to medical scientific or political debate that it is unhelpful to formulate a proposition in these terms; what matters is whether it should have been reasonably foreseeable that the

appellant's particular conduct was professional misconduct and might attract disciplinary sanction. Making comments which are baseless and dangerous is self-evidently proscribed by the paragraphs 65 of GMP quite apart from paragraphs 68, and paragraph 17 of the SM guidance.

80. As to the second wider submission that guidance would need to identify what forms of medical opinion are proscribed, this is met by the need for flexibility emphasised in the passages quoted above from Sunday Times v UK and Chauvy. Statements which undermine public trust in the profession can be many and various, and it would be undesirable to try to identify or categorise them definitively. One cannot legislate for all forms of speech in advance. It would not be practical or realistic, to expect a regulator to publish exhaustive guidance on such matters. This is inevitable in the sphere of freedom of expression, where the application of article 10.2 requires a closely fact specific evaluation of issues of necessity and proportionality. It was essentially for these reasons that in R (Pitt) v General Pharmaceutical Council (2017) 156 BMLR 22 Singh J, as he then was, rejected a submission that rules of the General Pharmaceutical Council framed in terms of maintaining trust in the profession were not sufficiently certain: see [4] and [45]-[51]."

16.47 The Applicant did not seek to dictate to the Respondent what she should have done; however, there were ways where she could legitimately have pursued her objectives and conformed to expected professional behaviour, e.g. by accepting client instructions and initiating a Judicial Review of government policy. The Respondent's suggestion that this would have taken too long was incorrect as Judicial Review proceedings may be run on a fast-track basis due to urgency.

16.48 The Respondent could place very little reliance on the Tribunal's decision in SRA v Patterson, a first instance decision made on particular and unusual facts.

16.49 Regarding the issue of risk/benefit Mr Tankel stated that Dr Fields had in effect given inadmissible expert evidence. This information was in any event, no part of the Applicant's case against the Respondent.

16.50 As to *'encouragement'*, the Respondent had encouraged others by allowing third parties to use her letters.

17. **The Tribunal's Findings**

Introduction

17.1 The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under, respectively, Articles 6 and 8 of the ECHR.

17.2 The Tribunal applied the civil standard of proof, as it was required to do. The burden of proof lay entirely with the Applicant. The Tribunal carefully considered the evidence it had heard and read. The Tribunal also noted there is no 'sliding scale' with respect to the standard of proof and the balance of probabilities always meant '*more likely than not*."

Observations on the Tribunal's role

17.3 The Tribunal first made the following observations, as it had in a similar case:

17.4 The underlying facts of the case touched upon events taking place during the Covid-19 pandemic, the government's response to it and the actions of individuals in understanding, following, questioning and rejecting, ultimately, aspects of government guidance.

17.5 The matters for the Tribunal to consider did not extend to wider issues of the merits or de-merits of government policy and/or the rights and wrongs of the vaccination programme and the underlying scientific knowledge known or unknown at the time.

17.6 The case brought before the Tribunal related solely to allegations of professional misconduct and breaches of the SRA Principles and Code of Conduct by the Respondent. The jurisdiction of the Tribunal was a therefore a very narrow one concerning the actions of a solicitor operating within a regulated framework of activity, the protection of the public and the reputation of the profession.

17.7 The Tribunal directed itself that other than those decisions with which it was bound by the doctrine of precedent, it was not bound by any prior decision, observation or comment made by any other like Tribunal, adjudicator or fact-finder.

17.8 As to the allegations, it was common ground between the parties that the Respondent had not drafted the letters; however, she had approved the contents of each and then permitted them to be sent to recipients bearing her firm's name, style and logo.

17.9 The Tribunal noted that the Applicant had called no live evidence and that it had relied solely on the tone, content and context of the letters. The Applicant had not based its case against the Respondent on the genuineness or reasonableness of the Respondent's views or the scientific debate, upon which it remained neutral.

17.10 The letters were characterised by the Respondent as 'polite advice' to schools and head teachers providing them with information of which they may not have been aware.

17.11 The Respondent's case was that the letters were not written upon a client or clients' instructions and nor were they written in pursuit of a claim or for financial gain. They were therefore not *'letters before action'* but warnings to schools and head teachers of potential liability for their actions in following government guidance. The Respondent had been under no obligation to present both sides of the argument in the letters nor was she bound by any professional conduct rule in proceeding as she did, and the Applicant had been wrong to seek to interfere with the Respondent's freedom of expression under Article 10 ECHR.

17.12 In evidence, the Respondent said that as the letters were helpful warnings she had had no intention of following up on responses from the recipients, although she said that she would have retained an interest in *'observing'* their responses.

Introductory observations on findings

17.13 The Tribunal considered that the central issues were as follows:

- the Respondent had genuinely held views on the potential and actual harm caused to some young people by the vaccine.
- that her views were, in full or in part, based upon a body of scientific evidence which set out countervailing arguments to the scientific evidence adopted by the government and which formed the basis of its policy.
- that the scientific evidence pro or against the vaccination of children was not relevant to the issues which fell to be considered by the Tribunal and that the Tribunal was not required to make a decision on the underlying science.
- that it is the way the Respondent conducted herself in furtherance of her genuinely held views that fall to be determined by the Tribunal.

17.14 In her evidence to the Tribunal, the Respondent had presented as a sincere, hardworking and committed solicitor who answered most questions put to her in a straightforward way.

17.15 That said, the Tribunal could not reconcile the Respondent's contention that the letters had been nothing more than advice with certain matters which it would set out below in its detailed findings on the allegations.

Detailed Reasons

17.16 Allegation 1.1: Letters; threats; encouraging

17.16.1 It was not in issue that the Respondent had sent the letters to 450 individuals at up to 247 schools and that they had related to her perception of the continuing requirement for pupils to wear face masks, routine LFTs, and the facilitation by schools of the vaccination programme for pupils by schools, and that this took place between the dates specified in the allegation.

17.16.2 In the case of the 'masks letter' dated 4 February 2022 there had, amongst other things, been a warning in the following terms:

> *"If head teachers choose to follow guidance and cause a child or children to suffer injury or harm as a result, then that choice is open to legal challenge."*

17.16.3 In the case of the 'vaccination letter' dated 3 February 2022 there had, amongst other things, been a warning in the following terms:

> *"Should you fail to cancel the immunisation session you will render yourself liable for any losses sustained as a result of the visit and liability could include criminal liability."*

17.16.4 The issues to be determined by the Tribunal was whether the letters were threatening and/or whether the Respondent had encouraged others to send letters.

17.16.5 With respect to the question of *'threat',* the Respondent had denied that the letters were threatening, and she had said there was no evidence that any recipient found them to be so. However, the Tribunal noted that within the body of the sole response the Respondent had received (dated 23 February 2022) , there was the following :

> *"Dear Sirs*
> *We write further to your letter dated 3 February and note your comments. The School Immunisation Service Visits have not been cancelled. We wish to reassure you that the school is not involved in any decision-making concerning vaccinations and therefore* ***threats of liability on the part of the school and its staff are misdirected****.*"*
>
> **(*emphasis added)**

17.16.6 From this response it was clear that at least one recipient considered the Respondent's letter to contain threats of potential liability.

17.16.7 Upon opening such a letter, the recipient would have been confronted with an onrush of information and immediately taken from it the following:

- It was from a solicitor as the letter bore an 'official' logo, the firm's address and the Respondent's name.
- The firm was based in Yorkshire.
- It contained the e-mail address claims@broadyorkshirelaw.co.uk.
- It made reference to various warnings of legal obligations and liabilities; matters relating to battery, a police investigation, and of potential liability if the recipient did not stop some action with regards to masks and vaccination.
- It ended with an implied ultimatum regarding compliance:

> *"We will continue to observe your response to this polite letter should we not hear from you to confirm your intentions toward swift compliance."*

17.16.8 It was not a stretch to consider that the recipient, a lay person, would have experienced an element of confusion and anxiety by what they read. They would have viewed the correspondence as a *'solicitor's letter.'* A lay person would know that such solicitor's letters often presage intended or pending legal action of some sort. Why else would a solicitor send such a letter?

17.16.9 When placed in the position of a recipient receiving such unsolicited correspondence, completely out of the blue and in circumstances where they were no doubt contending with an unprecedented situation, it was difficult to see how the letters could not have been perceived otherwise than representing an implied threat of some type of action,

be that civil or criminal. The tone of the letters was not merely passive- aggressive but threatening in nature with the final paragraph containing an element of menace and intimidation which belied its entreaty that it was a '*polite letter.'*

17.16.10 A non-threatening letter could still have been robust and to the point, but it would have set out in very clear terms that the author, although using their firm's logo was not acting on behalf of a client; that the author was writing purely as a concerned, private individual and not as a solicitor, and that to their knowledge and belief no legal claims, of any nature, were in contemplation or conditional upon the recipient carrying out a specified action or ceasing and desisting from some activity. Such a letter may have also advised the recipient to seek independent advice.

17.16.11 However, at face value, the Respondent's letters were impliedly threatening, with the implication that the school and head teacher were doing something wrong; that they were harming the children in their care; that they were at risk of a police investigation; that they were being watched and if they did not stop certain behaviour as set out in the letter they may be at risk of adverse consequences. It was somewhat ambiguous as to whether it would be the Respondent or others who would enact the consequences; however, any lay person reading between the lines would have made their own assumptions on this point.

17.16.12 Whether or not that was what the Respondent had intended, the Tribunal found on the balance of probabilities that this is how her letters would have been perceived by a lay person.

17.16.13 Contrary to her assertion that she had had no intention of following up the letters, it appeared not inconceivable that, given the strength of her convictions and her declared wish to stop children being harmed by a potentially injurious vaccine, there would have been a secondary phase to the campaign had the police investigation not ended later in February 2022. This was merely an observation made by the Tribunal and it played no part in its finding as to the threatening nature of the letters.

17.16.14 With respect to the part of the allegation that the Respondent had encouraged others, the Tribunal was not satisfied to the requisite standard that she had in fact done so. The evidence to which the Tribunal had been directed consisting of various e-mail exchanges with other like-minded individuals had been incomplete and ambiguous as to any role the Respondent may have been playing beyond permitting others to use her letters to send to schools. Given the strength of feeling within the group there appeared little need for encouragement on the Respondent's part as this was an already motivated set of people with aligned views.

17.16.15 The Tribunal accepted the Respondent's account that she had been careful to make available only pdf versions of her letters to ensure that they could not be edited.

17.16.16 There was no evidence to which it had been directed to permit the Tribunal to make a finding that the Respondent had sent her letters to GP surgeries, and it did not make such a factual finding.

17.16.17 The Tribunal therefore found the facts of allegation 1.1 proved in part on the balance of probabilities.

17.16.18 Having done so, the Tribunal next considered whether the proved facts represented the alleged breaches of Principle and the Codes of Conduct.

17.17 Allegation 1.2 - The threats in Allegation 1.1 were misleading.

17.17.1 Upon a strict interpretation of the wording of this allegation the Tribunal could not find the threats found proved in Allegation 1.1 were misleading. The threats, albeit implied, were clear to a lay person, i.e. 'cease and desist, or run the risk of incurring some form of legal liability'. This was not misleading.

17.17.2 Whether the letters' content was itself misleading, the Tribunal could not be satisfied to the requisite standard.

17.17.3 The Tribunal took no view on the scientific evidence nor the research alluded to in the Respondent's letters, and indeed not upon the parties' views as to any points of criminal law stated in those letters. It could not do so, as it had not heard, and it had not required, any expert evidence on the science of the pandemic or the law relating to assault and battery.

17.17.4 The Tribunal did not find the facts in Allegation 1.2 proved on the balance of probabilities.

17.18 Allegation 1.3 - The threats in Allegation 1.1, improperly sought to rely upon her standing and role as a solicitor.

17.18.1 The Tribunal noted that in her evidence the Respondent accepted she had not hidden her status as a solicitor, and it had been clear from the letters that they emanated from a solicitor's firm. The Respondent had stated that she had wanted her letters to be taken seriously and not ignored by the recipient and she had used her status as a solicitor to achieve this.

17.18.2 As to whether the Respondent had acted improperly in doing so, the Tribunal considered that having found the letters to have been threatening, albeit impliedly, and written without the qualifications and caveats it considered should have been in place (for which, see above), it followed that the Respondent had made an improper use of her solicitor status. The recipient would have been, at the very least, confused as to the Respondent's standing in the matter. The recipient would not have known, with the clarity they deserved, whether the Respondent was acting as a solicitor upon instructions; whether they were expected to seek their own legal advice or whether this was, as the Respondent claimed it to be, merely helpful advice.

17.18.3 The Tribunal found the facts in Allegation 1.3 proved on the balance of probabilities.

17.18.4 The Tribunal therefore found all pleaded facts in Allegation 1.1 (save for the element of 'encouragement' and letters to GP's) and 1.3 proved to the requisite standard, namely the balance of probabilities.

Article 10 ECHR

17.18.6 However, before doing so, the Tribunal considered the issue relating to the Respondent's right to freedom of expression under Article 10 ECHR and the submissions it had heard from the Applicant and the Respondent on this point.

17.18.7 The Tribunal noted that Article 10 is not an absolute right, and it is subject to certain qualifications.

17.18.8 The Tribunal accepted without question the Respondent's right to freedom of expression, her right to protest, to act according to her conscience and to take a position on a matter of public importance. This was her right as an individual operating within a democratic society.

17.18.9 The Tribunal also accepted that solicitors should not be prevented from taking on unpopular causes and representing members of society whose views may attract the opprobrium of the majority.

17.18.10 However, solicitors by virtue of their membership of the profession were not able to act in furtherance of certain aims in the same way as individuals who were not part of the profession. Solicitors bear the responsibilities and burdens of being within a regulated profession governed by rules and standards of conduct.

17.18.11 By its findings in relation to Allegations 1.1 and 1.3, the Tribunal determined that the Respondent had sent implied threats and used her identity as a solicitor specifically to promote a cause she espoused. In such circumstances it was permissible for the Applicant, as the regulator, to interfere with her Article 10 rights in pursuance of a legitimate objective, namely, maintaining the good standing of the solicitors' profession in the eyes of the public.

17.19 Findings re alleged breaches of the Principles and Code of Conduct

17.19.1 Notwithstanding the Tribunal's separate findings of fact on each allegation it considered that in the circumstances of the Respondent's case it was appropriate and proportionate to consider the alleged breaches of the Principles 2019 and Code of Conduct collectively on all proved allegations.

Breach of Principle 5 of the Principles 2019 (integrity)

17.19.2 Whilst the Respondent may have been guided in her actions of sending the letters by her own, personal sense of duty and integrity, her conduct fell to be judged by the objective standards of the profession which applied to all solicitors, as per Wingate.

17.19.3 The Tribunal did not think it relevant to its decision on this issue that the letters had not, in the Applicant's view, *'reflected the consensus scientific view or reasonable body of medical opinion, as reflected in guidance issued by the government in the context of a national emergency'*.

17.19.4 More pertinent to the question of professional integrity had been the power imbalance inherent within the letters not only vis-à-vis solicitor/ lay person but also in what the Respondent chose not to include in her letters i.e. that she was not writing as a

solicitor; that she was not acting under client instructions; that no proceedings (whether criminal or civil) were within her contemplation, and that she would not be following up to see whether the recipient had complied.

17.19.5 A solicitor acting with integrity would have been very clear about these matters and not permitted any confusion to arise in the recipient's mind.

17.19.6 The Tribunal decided for those reasons that the Respondent had lacked integrity because she had been seeking to pressurise the recipients of her letters by exploiting her standing and role as a solicitor in order to lend weight to the implied legal threats.

17.19.7 The Tribunal found on the balance of probabilities that the totality of the Respondent's misconduct lacked integrity and was a breach of Principle 5 of the Principles.

Breach of Principle 2 (Public trust)

17.19.8 The Tribunal had no doubt that public trust in the solicitor's profession would be breached by a solicitor who had chosen to act in the way the Respondent had done. The lay public expects a solicitor to deal openly with them and to not send ambiguously drafted and threatening communications designed to cause confusion in the mind of the recipient and uncertainty as to the precise role of the solicitor in the matter.

17.19.9 The Tribunal agreed with the Applicant that it had not been open to the Respondent to use the hard-earned reputation of the profession to seek to lend additional weight and credibility to her views. By doing so, she undermined the trust and confidence that the public has in the profession.

17.19.10 The Tribunal found on the balance of probabilities that the totality of the Respondent's misconduct represented a failure on the part of the Respondent to uphold public trust and confidence in the solicitors profession and in legal services provided by the Respondent and it was a breach of Principle 2 of the Principles.

Paragraph 1.2 of the Solicitors Code of Conduct ("Maintaining trust and acting fairly" that *"You do not abuse your position by taking unfair advantage of clients or others.")*

17.19.11 In line with its findings as to the breaches of the Principles the Tribunal also found on the balance of probabilities that the Respondent had breached Paragraph 1.2 of the Solicitors Code of Conduct by knowingly exploiting the asymmetry between solicitors and lay people.

17.19.12 The Tribunal found that the letters were likely to or intended to make recipients fear that they risked incurring legal liability if they followed government guidance. The letters implied that the Respondent would be keeping the conduct of the recipients under review when in fact she said that she had had no real intention of doing so.

17.19.13 The Tribunal found on the balance of probabilities:

Allegation 1.1 proved in part.
Allegation 1.2 not proved.

Allegation 1.3 proved in full.

19.19.14 Collectively, the Tribunal found proved to the same standard, the balance of probabilities, breaches of Principles 2 and 5 of the Principles 2019 and a breach of Paragraph 1.2 of the Solicitors Code of Conduct.

Previous Disciplinary Matters

20. None.

Mitigation

21. Dr Fields said that the Applicant had not proved the entirety of its case against the Respondent. The Tribunal had not found that she had encouraged others nor that she had sent out anything which the Tribunal had found to be misleading in the letters.

22. Dr Fields reminded the Tribunal of the matters he had raised during the hearing with respect to the Respondent's good character. The Respondent had a previously unblemished 18-year regulatory record, no Ombudsman referrals, and no professional negligence claims.

23. It was extraordinary that in the region of a thousand people had written to or contacted the Applicant in support of the Respondent and questioning the approach it had taken with respect to her. This was in stark comparison to the 19 complaints which had been made against her to the Applicant.

24. Dr Fields took the Tribunal to its Guidance Note on Sanctions and the pertinent matters which the Tribunal would need to consider in its determination of the appropriate sanction.

25. Dr Fields asked the Tribunal to consider the principle of proportionality with respect to the facts of the found misconduct and the sanction to be imposed and to recognise that the Respondent's fundamental motivation had been the protection of children from harm during the unusual circumstances of the Covid-19 pandemic and her perception that urgent action had been required on her part.

26. The Respondent had not benefited from the conduct financially and indeed she had sought no recompense. The Respondent had believed wholly in the rectitude of her conduct, and she had spent many hours researching the science, which presented a very different picture of the risks to young people from the vaccine to that which government information had made available to schools.

27. The Respondent had not sought to diminish her involvement or her culpability. Her honesty had not been in question and ordinary decent people knowing something of the facts of the case would not have queried the Respondent's genuine desire to prevent something happening which she thought was wrong. There was no evidence of actual harm being caused by her actions.

28. It was unlikely that the conduct would be repeated and there was no requirement for a deterrent sanction. The circumstances of the case and the interests of justice required

'no order' to be made by the Tribunal. If the Tribunal considered that the conduct should be marked with a fine then this should be set at the lowest possible level and to take into account the Respondent's finances.

Sanction

29. As with all cases the Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

30. The Tribunal considered the Guidance Note on Sanction (10th Edition June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed to impose a sanction that was fair and proportionate in all the circumstances.

31. In assessing culpability, the Tribunal found that the Respondent had been strongly motivated by her individual sense of what she thought was right and took action to protect potential harm to children. She had used her status as a solicitor to add weight to her cause and either gave no thought to the risk of doing so or, if she had, she had gone ahead regardless of the risk.

32. Her actions had not been spontaneous but carried out within the context of a planned operation. She had had complete and direct control over the matters giving rise to the misconduct found by the Tribunal. The letters had been sent with the intention of conveying implied threats of retributive legal action, although the Respondent said that there had been no intention on her part to follow up on the matters set out in the letters other than to *'observe'* the recipient's response, if any.

33. There had been no breach of trust, and the Respondent had cooperated fully with the Regulator in its investigation.

34. There was no evidence of actual harm caused to anyone, although the potential for harm had been present, minimal though that was. Such harm that was caused applied to the confusion and anxiety experienced by the recipients of what would have appeared to a lay person as a *'solicitor's letter'* with all that would conjure in the mind of an unsuspecting lay person.

35. The harm to the reputation of the profession by a solicitor using her membership of the profession as a tactical ploy was not insignificant and the extent of the harm that was intended or might reasonably have been foreseen to be caused by the Respondent's misconduct was clear. The Respondent had invoked her professional standing at the expense of the public's confidence in the profession.

36. The Tribunal next considered aggravating factors. The Tribunal acknowledged there had been no allegation of dishonesty though her conduct had overstepped reasonable bounds and moved into the field of conduct lacking in integrity.

37. There was no evidence of any sort which indicated that the misconduct had involved the commission of a criminal offence. However, the Respondent's conduct had been deliberate, repeated and calculated, albeit over a relatively short but intensive period with letters being sent to hundreds of recipient schools and head teachers.

38. Save for the observation the Tribunal had made regarding the anxiety caused to lay person recipients, it did not find that the Respondent had taken advantage of a vulnerable person/s, and her conduct had not been motivated by hostility, nor had it been based on a protected characteristic of any person.

39. The Respondent would have known or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession.

40. The Respondent had no previous disciplinary findings recorded against her and this was to be viewed as a short pattern of misconduct in a hitherto unblemished career. She had not concealed her conduct nor sought to place blame on others.

41. Although the Respondent had not voluntarily notified the Regulator, she had co-operated with it. That said, the Respondent had shown little if any insight into her conduct.

42. The Tribunal found that the Respondent's misconduct was such that she had fallen far short of the standards of integrity and probity expected of a solicitor and in the circumstances the level of seriousness of the misconduct was high.

43. As to sanction, the Tribunal adopted a *'bottom up'* approach. The Tribunal considered the Respondent's good character and everything which had been said attesting to her personal and professional qualities.

44. However, the Tribunal decided that to make 'no order' or to impose a Reprimand would not be appropriate. These had not been minor breaches of a minor nature. Nevertheless, neither the protection of the public nor the protection of the reputation of the legal profession justified Suspension or Strike Off or restrictions on her practice.

45. The Tribunal found that the most appropriate sanction would be a fine set at the lower end of the range of Level 2 of the Indicative Fine Bands, *(conduct assessed as moderately serious*) and the Tribunal imposed a fine of £2,500.00 upon the Respondent.

    *[*Note: the Tribunal had already been addressed on the Respondent's means as set out in the Costs section below, and it found that the level of the financial resources open to her was sufficient to permit the Tribunal to make its order]*

Costs

46. The Tribunal, having announced its decision on sanction, next considered the question of costs.

The Applicant's Application for Costs

47. Mr Tankel submitted that as a matter of principle the Applicant was entitled to its proper costs. It had proved the majority its case to the requisite standard.

48. The quantum of costs claimed by the Applicant was set out in its amended itemised statement of costs dated 5 September 2024 in the total sum of £59,726.16. Mr Tankel submitted that this was a reasonable and proportionate sum given a case of this nature. It had been a complex case with documentation running to over 9,000 pages, mostly supplied by the Respondent and to which a response had been required. The case had raised issues of public importance impacting directly upon the reputation of the profession and matters regarding the nature of the solicitor's role when promoting a particular cause.

49. Mr Tankel reminded the Tribunal of the criteria it should consider as set out in Rule 43(4) of The Solicitors (Disciplinary Proceedings) Rules 2019.

50. The Applicant had pursued its case in a reasonable and proportionate way, *'laser focused'* on the law and conduct matters. The allegations had been well calibrated and pitched correctly, i.e. there had been no allegation of dishonesty.

51. The case had required two Case Management Hearings ("CMHs") to resist the Respondent's attempts to broaden the issues to include the underlying science.

52. The Applicant had followed all the directions set by the Tribunal and conducted itself responsibly and appropriately.

53. Due to changes in the way in which Capsticks costed their SRA cases the case had straddled two costs regimes used by the SRA and Capsticks, namely the fixed fee and hourly rate regimes. Under the first regime there had been a notional hourly rate of circa £100 and in the second, later regime, an across-the-board hourly rate of £142 per hour, applied to all fee earners irrespective of their level and grade. Neither of the hourly rates, whether notional or actual, could be considered excessive with the circumstances of a case of this nature or when looking at the charging rates applied commercially.

54. Mr Tankel said that when considering the making of a costs order, the Tribunal had also to consider the paying person's means. In this case, despite having ample opportunity to do so the Respondent had not submitted a statement of means and nor any supporting evidence. That said, there was open-source information indicating the Respondent had so far raised £43,000 in a *'GoFundMe'* campaign to pay for her legal costs.

55. It was right therefore that the Respondent be ordered to pay the Applicant's costs in full.

The Respondent's Submissions

56. Dr Fields invited the Tribunal to assess costs by taking a broad-brush approach and to reduce the Applicant's claimed costs by a half.

57. Dr Fields took no issue with the hourly rate claimed by the Applicant. However, he questioned the necessity of assembling a legal team comprising of a Partner, a Senior Associate, an Associate and Paralegal, in addition to counsel of Mr Tankel's experience. This appeared excessive and worthy of some reduction in costs.

58. Whilst the Respondent had started a *GoFundMe* campaign her own legal costs were in excess of £43,000.

59. Dr Fields said that the Applicant had failed on a significant and important portion of its case. It had not proved to the Tribunal's satisfaction that the Respondent had encouraged others nor that her letters had been misleading. Mr Tankel had taken a long time in going through various e-mails with the Respondent in an attempt to prove the allegation of *encouragin*g. Clearly this had not found favour with the Tribunal, and this should rightly be reflected in a reduction in the Respondent's costs.

60. The way in which the Applicant had presented its case had itself been misleading, leading the Respondent down the line of believing that she needed to meet the case with reference to scientific evidence, of which she had a lot, to demonstrate the foundation of the matters set out in her letters.

The Tribunal's Decision on Costs

61. The Tribunal noted that under Rule 43 (1) of The Solicitors (Disciplinary Proceedings) Rules 2019 it has the power to make such order as to costs as it thinks fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable. Such costs are those arising from or ancillary to proceedings before the Tribunal.

62. It noted that neither party had applied for the Tribunal to make a direction for the costs to be subject to detailed assessment by a taxing Master of the Senior Courts, therefore it remained open to the Tribunal to make a summary assessment of the costs.

63. By Rule 43(4), the Tribunal must first decide *whether* to make an order for costs and when deciding whether to make an order, against which party, and for what amount, the Tribunal must consider all relevant matters such as:

- The parties' conduct
- Were directions/deadlines complied with?
- Was the time spent proportionate and reasonable?
- Are the rates and disbursements proportionate and reasonable?
- The paying party's means.

64. The Tribunal found the case had been properly brought by the Applicant and that both parties had largely complied with the directions and deadlines set.

65. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal. The Tribunal considered that given the volume of material and the facts of the case the time spent in preparing the case had been proportionate and reasonable, as had the rates and disbursements outlined by Mr Tankel. That said, notwithstanding matters stated by Mr Tankel the Tribunal considered that the Applicant had modified its case somewhat from that set out in the Rule 12 Statement and its observations on the science and the Respondent's approach to the science had, to an extent, fallen away during the hearing. Indeed, it had played no part in the Tribunal's findings.

66. The Tribunal also noted the following factors:

- The substantive hearing had taken four full days, as estimated at the outset by the Applicant;

- This had been one of some complexity with issues relating to limitations upon a solicitor's freedom of expression in promoting a personal cause when at the same time using the badge of 'solicitor' to add weight to that cause;

- The Applicant and Respondent had agreed certain facts which had not required any expert and/or scientific evidence.

67. As usual in dealing with costs applications the Tribunal adopted a 'broad brush' approach to the costs and looked at matters in the round.

68. The Tribunal found that the costs claimed by the Applicant were on the whole reasonable and proportionate and that in principle the Applicant's costs should be paid by the Respondent. However, the Tribunal considered that there was room for significant reduction.

69. The Tribunal, in considering the Respondent's liability for the costs of the Applicant, had regard to the following principles, drawn from R v Northallerton Magistrates Court, ex parte Dove (1999) 163 JP 894:

- it is not the purpose of an order for costs to serve as an additional punishment for the respondent, but to compensate the applicant for the costs incurred by it in bringing the proceedings and;

- any order imposed must never exceed the costs actually and reasonably incurred by the applicant.

70. The Tribunal was mindful that it should not make an order for costs where it is unlikely ever to be satisfied on any reasonable assessment of the respondent's current or future circumstances as per Barnes v SRA Ltd [2022] EWHC 677 (Admin).

71. The Tribunal considered that whilst it had no direct evidence as the Respondent's means there was some information, not disputed by her, that she had a *GoFundMe* account which had accrued over £42,000. The Respondent was therefore not

impecunious in the Barnes' sense and there were no persuasive factors to divert the Tribunal from the normal course involving costs.

72. The Tribunal would set the costs at a level to take account of the fact that not every matter had been proved by the Applicant, that costs should not serve as an additional punishment, and that there had been some revision of the Applicant's case.

73. The Tribunal ordered that the Respondent should pay the Applicant's costs in the sum of £30,000.00.

Statement of Full Orders

74. The Tribunal ORDERED that the Respondent, LOIS YVONNE BAYLISS solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £30,000.00.

Dated this 9th day of October 2024
On behalf of the Tribunal

L Boyce

JUDGMENT FILED WITH THE SOCIETY
9 OCT 2024

L Boyce
Chair