SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No 12484-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

STEPHEN BRIAN SIMMONS Respondent

Before:

Mr R Nicholas (Chair)
Mr D Green
Mrs C Valentine

Date of Hearing: 7-8 April 2025

Appearances

Hanne Stevens, barrister in the employ of Capsticks, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

David Giles, barrister of Goldsmiths Chambers, Goldsmith Building, Temple London EC4Y 7BL, pro bono for the Respondent.

JUDGMENT

Allegations

1. The Allegations made against the Respondent, Stephen Simmons, are that whilst he was practising as a solicitor at Brightstone Law LLP ("the Firm"), he

The Firm

1.1. Between approximately March 2014 and June 2020, failed to disclose to the Firm that he had been made subject to a Bankruptcy Order on 10 March 2014, and in doing so breached any or all of the following:

Pre-25 November 2019
Principles 2 and 6 of the SRA Principles 2011 ("the 2011 Principles")

25 November 2019 and beyond Principles
2, 4 and 5 of the SRA Principles 2019 ("the 2019 Principles")

1.2. On or around the following dates, signed and submitted "Annual Compliance Declaration" forms to the Firm, which falsely stated that he had not, nor had he ever, entered into an IVA:

1.2.1. 21 February 2018;
1.2.2. 19 February 2019; and
1.2.3. 18 February 2020

In doing so breached any or all of the following:

Pre-25 November 2019
Principles 2 and 6 of the 2011 Principles

25 November 2019 and beyond
Principles 2, 4 and 5 of the 2019 Principles

The SRA

1.3. Between approximately March 2014 and June 2020, failed to disclose to the SRA that he had been made subject to a Bankruptcy Order on 10 March 2014, and in doing so breached any or all of the following:

Pre-25 November 2019
Outcome 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code"), Regulation 15.1 (c) of the SRA Practising Regulations 2011 ("the 2011 Practising Regulations") and Principles 2 and 6 and 7 of the 2011 Principles.

25 November 2019 and beyond
Rule 7.6(b) of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code") and Principles 2, 4 and 5 of the 2019 Principles.

1.4. Between approximately March 2015 and June 2020, failed to disclose to the SRA that he had been made subject to a Bankruptcy Restrictions Undertaking on 17 March 2015, and in doing so breached any or all of the following:

Pre-25 November 2019
Outcome 10.3 of the 2011 Code, Regulation 15.1(c) of the 2011 Practising Regulations and Principles 2 and 6 and 7 of the 2011 Principles

25 November 2019 and beyond
Principles 2, 4 and 5 of the 2019 Principles.

1.5. From approximately 11 March 2014 to approximately June 2020, practised as solicitor whilst his Practising Certificate was suspended and in doing so breached any or all of the following:

Pre-25 November 2019
Principles 2 and 6 of the 2011 Principles

25 November 2019 and beyond
Principles 2, 4 and 5 of the 2019 Principles

Dishonesty

In addition, Allegations 1.1, 1.2, 1.3, 1.4 and 1.5 above are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's conduct but is not an essential ingredient in proving the allegation.

Executive Summary

2. The allegations stem from the Respondent's failure to disclose his 2014 bankruptcy to both the Firm and the Solicitors Regulation Authority (SRA) between approximately March 2014 and June 2020. All five allegations were advanced on the basis that the Respondent's conduct was dishonest.

3. The Tribunal found all allegations proved, including dishonesty. The Respondent's explanations for his non-disclosure, such as believing the bankruptcy was a personal matter unrelated to his practice or claiming forgetfulness regarding the IVA, were deemed not credible. His reliance on unrecorded advice from a deceased accountant was also considered unconvincing.

4. While acknowledging his long career and the absence of client care complaints the Tribunal considered the seriousness of the misconduct, the lack of integrity, breach of public trust, and dishonesty warranted a significant sanction. There were no exceptional circumstances and the sanction imposed by the Tribunal was that the Respondent be struck off the Roll of Solicitors.

5. The Tribunal also considered the matter of costs but ultimately decided not to make an order for costs against the Respondent due to his limited means, age, and health.

Sanction

6. The Respondent was struck off the Roll of Solicitors.

The facts can be found [here]
The Applicant's case can be found [here]
The Tribunal's findings can be found [here]
The Respondent's mitigation can be found [here]
The Tribunal's decision on sanction can be found [here]

Documents

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

Factual Background

8. The Respondent was admitted to the Roll of Solicitors on 15 December 1980. In 2003, the Respondent became a partner at Sherringtons Solicitors. This firm ceased trading in June 2008; Brightstone Law LLP ("the Firm") is the successor practice.

9. SRA records indicate that the Respondent was employed by the Firm from 10 June 2008 (the date it started trading) until 10 June 2020. The Respondent was initially a Member of the Firm, and then from 31 July 2013 onwards he was engaged as a Consultant Solicitor.

10. The Respondent holds a current Practising Certificate which is subject to the following conditions:

- That the Respondent is prohibited from being an owner or manager of any authorised body or any authorised non-SRA firm; and

- That the Respondent may act as a solicitor only as an employee, providing the role has been approved by the SRA.

11. SRA records indicate that the Respondent is currently working for CVS Law Ltd.

12. The Allegations the Respondent faces relate to his failure to engage with both the Firm and the SRA in relation to his 2014 bankruptcy and the financial problems that led to it.

Findings of Fact and Law

13. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under Section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Clay's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. The Tribunal had due regard to the following and applied the various tests in its fact-finding exercise:

Dishonesty
The test set out at paragraph 74 of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

Integrity
The matters set at paragraphs 97 to 107 of Wingate v SRA [2018] EWCA Civ 366,

NOTE: While all the evidence was carefully considered the Tribunal does not refer to each and every piece of the evidence or submissions in its judgment and findings.

15. **Allegations 1.1-1.5**

Redacted Rule 12 Statement – Click Here

The Applicant's Case

15.1 The essential matters in the Applicant's case were that the Respondent's actions were deliberate and dishonest.

Allegation 1.1 - Non-Disclosure of 2014 Bankruptcy Order

15.2 This was the primary allegation made against the Respondent. It was alleged that he had failed to disclose to the Firm (where he had been a consultant solicitor between June 2008 and June 2020) and the SRA that he was made subject to a Bankruptcy Order on 10 March 2014.

15.3 It was submitted on the Applicant's behalf that it was only informed of the bankruptcy by the Firm's Compliance Officer for Legal Practice (COLP) on 3 June 2020. The Respondent, when questioned by the SRA investigator, stated he did not report the bankruptcy because it related to tax and not a professional matter, and he had discussed it with his then professional advisor. However, he did not provide details of this advice. It is submitted that that under Section 15(1) of the Solicitors Act 1974, a solicitor's Practising Certificate is automatically suspended upon being made bankrupt and having been bankrupt previously in 1992/1993, he would have known 'only too well' of the significance of a bankruptcy event as far as his Regulator and the status of his Practising Certificate was concerned.

15.4. The Firm stated that the Respondent did not inform them of the 2014 bankruptcy.

Allegation 1.2 - False Annual Compliance Declarations Regarding IVA

15.5. It was alleged that the Respondent falsely stated on "Annual Compliance Declaration" forms submitted to the Firm on 21 February 2018, 19 February 2019, and 18 February 2020 that he had not, nor had he ever, entered into an IVA.

15.6 SRA enquiries with HMRC revealed that the Respondent entered into an IVA on 26 November 2009, which was subsequently terminated on 26 June 2012 due to

breaches. When presented with these declarations, the Firm assumed his "yes" answer to a question about prior bankruptcy referred to the 1992/1993 event, and did not seek clarification on the "no" answer regarding IVAs. The Applicant argued that given the significant debt (£150,026.06 owed to HMRC at the start of the IVA) and its connection to the subsequent bankruptcy, it was difficult to see how the Respondent could have either forgotten or overlooked this event.

Allegation 1.3 - Failed to disclose to the SRA that he had been made subject to a Bankruptcy Order on 10 March 2014.

15.7 This was in breach of Outcome 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code"), Regulation 15.1 (c) of the SRA Practising Regulations 2011 ("the 2011 Practising Regulations") and Principles 2 and 6 and 7 of the 2011 Principles. Also, Rule 7.6(b) of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code") and Principles 2, 4 and 5 of the 2019 Principles

Allegation 1.4 - Non-Disclosure of 2015 Bankruptcy Restrictions Undertaking (BRU)

15.8 He failed to disclose to the SRA that he was made subject to a BRU on 17 March 2015.

15.9 The BRU was entered into after the Assistant Official Receiver applied for a Bankruptcy Restrictions Order. Correspondence from The Insolvency Service in March 2015, copies of which were provided by the Respondent to the SRA, clearly stated the BRU would last for seven years. The Applicant argued that this non-disclosure was a continuation of the failure to report the 2014 bankruptcy, as disclosing the BRU would have revealed the prior bankruptcy and the lack of action to reinstate his Practising Certificate.

Allegation 1.5 - Practising Whilst Practising Certificate Suspended

15.10 It was said that he had practised as a solicitor from approximately 11 March 2014 to approximately June 2020 whilst his Practising Certificate was automatically suspended due to the 2014 bankruptcy. Section 15 of the Solicitors Act 1974 automatically suspends a solicitor's Practising Certificate upon bankruptcy. Section 16 of the same Act allows for an application for reinstatement. It was said that the Respondent made no such application prior to June 2020. Given his prior bankruptcy, the Applicant argued that the Respondent would have known full well of the effects of his 2014 bankruptcy on his Practising Certificate.

Dishonesty

15.11 The Applicant advanced all five allegations with dishonesty as an aggravating feature, though this was not an essential ingredient for proving the allegations themselves.

Specific Arguments for Dishonesty

15.12 Failure to disclose 2014 bankruptcy to the Firm**:** Given his prior experience, it was said that the Respondent knew the significance of bankruptcy for a solicitor's practice. His silence was akin to dishonestly failing to notify a change of circumstances.

False IVA declarations

15.13 Knowingly providing incorrect financial information on three separate occasions, especially when viewed alongside the non-disclosure of bankruptcy, was indicative of a deliberate concealment.

Failure to disclose 2014 bankruptcy to the SRA

15.14 A deliberate decision to conceal this event from his Regulator, knowing the requirements and potential impact, would be viewed as dishonest.

Failure to disclose 2015 BRU to the SRA

15.15 This was seen as a continuation of the concealment of the bankruptcy.

Practising whilst suspended

15.16 Deliberately continuing to practise knowing his Practising Certificate was suspended implied a dishonest assertion of his authorisation to clients and his firm.

The Respondent's Position and SRA Investigation

15.17 He queried the basis of the SRA's initial enquiry but subsequently confirmed the date of his bankruptcy and his reason for non-disclosure (tax-related, discussed with advisor). He later stated he believed he was automatically discharged after one year and was unaware the BRU prevented this.

15.18 Regarding his first bankruptcy, he claimed the SRA and his firm (Sherringtons, the predecessor to Brightstone) were aware, and the Law Society at the time determined it would not lead to suspension. In response to the Notice of Referral to the Tribunal, the Respondent cited health issues and stated he did not feel he could respond fairly at that time.

The Respondent's Case

15.19 The Respondent was 75, he had 45 years' experience as a solicitor. He had a strong work ethic and he provided good service to his clients, building a strong following and a reputation for being a competent, hard-working solicitor. However, he had had setbacks. He became a partner at Ronald Nathan, where he primarily practised in litigation, family, and personal injury law. The firm went bankrupt after the senior partner absconded with the firm's money. As a partner, the Respondent incurred financial losses despite being personally unaware of the senior partner's actions and not having done anything wrong himself. This event led to his own bankruptcy in 1993, which he petitioned for himself. He notified the SRA (then the Law Society) and he was informed it would not result in suspension.

15.20 After the collapse of Ronald Nathan, the Respondent worked for various firms before finding stable employment at Sherringtons Solicitors (later succeeded by The Firm in 2008). Both firms were aware of his prior bankruptcy. Despite professional success, he faced personal financial struggles, including arrears of tax owed to HMRC.

15.21 A significant turning point was the senior partner at The Firm's unilateral decision in 2009 to remove personal injury work from the Respondent's' practice, which was an important source of earnings. This dramatic reduction in earnings was the prime reason which led to his financial problems. In 2009, the Respondent entered into an Individual Voluntary Arrangement (IVA) but was unable to comply, and it was terminated in 2012. Subsequently, on 10 March 2014, a bankruptcy order was made against him due to the debt owed to HMRC.

15.22 The Respondent admitted he did not inform the Firm or the SRA about the 2014 bankruptcy proceedings or the bankruptcy order. His belief was it was an entirely personal matter and a personal problem, and not something which was related to or affected his practice as a solicitor or his work or the firm, and not something that arose out of his work as a solicitor or out of anything untoward that had occurred at the Firm. He concluded that his clients would not need to know about the bankruptcy as he could continue to provide them with the same level of service that he had always provided them. Although not set out in his written evidence, he had acted on the advice of his accountant. This advice had not been confirmed in writing, and he had no way of substantiating the advice as his accountant was now dead. In cross-examination he denied Ms Stevens assertion that he had received no such advice. It was put to him that a debt to HMRC, arising from his earnings as a solicitor, had clearly been relevant to his practice and the regulations concerning financial stability. He accepted that he had been wrong to follow the advice but he had placed genuine, albeit mistaken reliance upon it.

15.23 The Respondent admitted breaching Principle 7 of the 2011 Regulations in relation to non-disclosure of their second bankruptcy to both the Firm and the SRA. His stated belief for non-disclosure was that the second bankruptcy was due to events wholly extraneous to his practice as a solicitor as it related to personal financial problems and therefore it was not a matter, he had to specifically notify the Firm about. He cited the same reason for the non-disclosure to the SRA.

15.24 Despite this belief, the Respondent acknowledged that the Firm was aware of his serious financial problems generally. This awareness led to the Firm removing the Respondent from lucrative personal injury work, significantly impacting his income.

15.25 The Respondent maintained that he honestly did not know that he ought to have so disclosed the second bankruptcy to the SRA.

15.26 The Respondent admitted breaching Principle 7 of the 2011 Regulations for not disclosing an IVA to the Firm. The Respondent did not consciously and deliberately misstate that he had not entered into an IVA, rather, at all material times he had forgotten about the IVA he had entered into.

15.27 The Respondent denied any obligation to notify the SRA about a Bankruptcy Restrictions Undertaking (BRU) he entered into. He pointed out that he was automatically discharged from his second bankruptcy one year after the adjudication: that is by about 10 March 2015, and the BRU was applied for after this discharge. The BRU was not a relevant change to material information triggering a notification obligation under Outcome 10.3 of the 2011 Code, or Regulation 15(c) of the 2011

Practising Regulations, as it was not a *"bankruptcy proceeding."* The Respondent noted that the SRA had not alleged that non-disclosure of the BRU breached the 2019 code.

15.28 As to the allegations of dishonesty he denied that he was dishonest. His subjective state of mind, as outlined in his explanations for non-disclosure (honest, but mistaken, belief of no obligation, forgetfulness regarding the IVA), was presented as rebuttal to dishonesty.

15.29 He stated that he had believed the senior partner of the Firm had been aware of his financial problems and suspected he knew about the IVA, although he cannot definitively say he told him.

15.30 In closing, Mr Giles referred the Tribunal to the test for dishonesty as set out in *Ivey v Genting Casinos* test for dishonesty. Mr. Giles said that the Tribunal must first ascertain the Respondent's actual state of mind, and that the unreasonableness of his belief was not the determining factor for dishonesty, but rather whether the belief was genuinely held . When viewed in this light the Respondent's failure to disclose would not have been viewed as dishonest by the standards of ordinary decent people.

The Tribunal's Findings

15.31 The Tribunal reminded itself that with respect to all the allegations the burden was solely upon the Applicant to prove its case to the requisite standard, namely on the balance of probabilities. Mr Clay was not bound to prove that he did not commit the alleged acts, and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on his part.

15.32 The Tribunal recognised that the civil standard of proof is finite and unvarying and there is no sliding scale of proof dependent upon the seriousness of the allegations. Cogent evidence is required in all cases.

15.33 The Tribunal noted that there was very little between the parties on the facts save that the Respondent did not accept that the BRU had been reportable

15.34. However, having carried out a careful review of the evidence it had heard and read the Tribunal found all five allegations against the Respondent proved including dishonesty, pleaded in each allegation.

Tribunal's Reasoning:

Allegation 1.1: Non-disclosure to The Firm (2014 Bankruptcy)

15.35 The Tribunal found the Respondent's explanation that the 2014 bankruptcy was a "personal financial problem" and his attempt to contrast it with his 1993 bankruptcy lacking credibility. Given the implications of bankruptcy, including the impact on insurance, borrowing, trust, credit rating, and many other significant factors, the Tribunal did not find this argument credible. The Respondent accepted that his culpability for the 2014 bankruptcy (non-payment of personal tax) was greater than it was for his 1993 bankruptcy. This alone should have instilled in him the importance of the bankruptcy as a relevant and significant matter requiring disclosure to his firm. The

Tribunal concluded that it was more likely than not that the Respondent had utilised the existence of the earlier 1993 bankruptcy to camouflage the existence, and therefore, the need to report the proceedings relating to the 2014 bankruptcy. Dishonesty was found in relation to this allegation.

Allegation 1.2: Inaccurate Answers to Firm's Questionnaire (IVA):

15.36 The Tribunal rejected the Respondent's claim of forgetfulness regarding his IVA, finding it neither credible nor believable. The Respondent stated in his oral evidence that he incorrectly answered the firm's questionnaire concerning previous IVAs because he had forgotten due to other matters, including a later bankruptcy, which had distracted him from the accuracy of events which led to hm wrongly completing questionnaires on 3 occasions over 3 years. The Respondent became somewhat agitated when questioned over this. It was put to him that he was suggesting that he had "simply" forgotten, to which he responded, somewhat indignantly, that he had not "simply" forgotten, he didn't remember. Given the significance of the imposition of an IVA and the failure of the Respondent to accurately answer these questions, the Tribunal did not find the Respondent's evidence on this allegation either credible or believable. The assertion that these events concerning the later bankruptcy proceedings "crowded" out of his mind the existence of the IVA was found to be implausible. Dishonesty was also found in relation to this allegation.

Allegation 1.3: Non-disclosure to the SRA (2014 Bankruptcy):

15.37 The Tribunal deemed the Respondent's suggestion that the bankruptcy was not linked to his work as not credible, emphasising again the significant implications of bankruptcy for a practising solicitor. The Tribunal found that the reasons behind any bankruptcy do not provide an exclusion for the imperative to disclose its fact to the Regulator. Reflecting its reasoning for the non-disclosure to the Firm, the Tribunal also found dishonesty in relation to this allegation.

Allegation 1.4: Non-disclosure to the SRA (BRU):

15.38 The Tribunal found as a fact that the BRU was an insolvency event as it was a direct consequence of the Respondent being subject to bankruptcy proceedings. The Respondent himself acknowledged that the existence of the BRU meant that he was unable to apply for credit. It considered the non-reporting of the BRU as a continuation of the concealment which had commenced in 2014. Dishonesty was also proved.

Allegation 1.5: Practising While Suspended:

15.39 The Tribunal found as a matter of fact that the Respondent had practised as a solicitor while automatically suspended due to the bankruptcy. The Tribunal found his explanation of seeking advice from his accountant and his steadfast reliance upon such unrecorded advice from a non-specialist and in relation to such a significant issue to be entirely unconvincing. The Tribunal found dishonesty proved.

Dishonesty

15.40 The Tribunal applied the test in *Ivey* and it found all allegations of dishonesty proved on the balance of probabilities. The Tribunal found that the Respondent, an experienced solicitor, generally, and one with specific and personal knowledge of bankruptcy would have been well aware of the significance of bankruptcy for a solicitor, including the suspension of his practicing certificate and the duty to disclose. This experience negated any plausible claim of ignorance regarding disclosure obligations. His stated reliance, on the advice of his accountant, which he said in evidence had been a mistaken reliance, was inherently implausible. While the Respondent was not obliged to prove any matter in his defence it was observed that the Respondent did not produce any material to suggest the existence of the accountant other than this person's name and his assertion that this person did not follow up his advice in writing and was in fact now deceased.

15.41 He had permitted the Firm to operate under the assumption that his negative responses on compliance declarations regarding bankruptcy only referred to the earlier 1993 event. Even, if this had been an initial mistake it was one, he had repeated in each subsequent declaration over a period of 3 years.

15.42 Given his knowledge and experience it was more likely than not that he had not genuinely believed that he was not under a professional obligation to notify the Firm and his regulator of the fact of his bankruptcy and the associated matters flowing from that event. His conduct in not doing so would be viewed as dishonest by the standards of ordinary decent people.

Other breaches of the Principles and Code

15.43 It was clear that a solicitor who was found to have been dishonest would lack integrity and a failure to maintain *"the higher standards which society expects from professional persons and which the professions expect from their own members" (Wingate).* Further, findings of dishonesty would undermine public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. The Tribunal considered that the public would be shocked to think that a solicitor would not report such events to the professional regulator.

15.44 Additionally, the Respondent's conduct was found to have been a failure to achieve: SRA Code of Conduct 2011 Outcome 10.3: *you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook.*

15.45 Regulation 15.1(c): *In addition to any requirements under section 84 of the SA or any other rules applicable by virtue of that Act, a solicitor, REL or RFL must inform the SRA within seven days if he or she: is made the subject of bankruptcy proceedings.*

15.46 SRA Code of Conduct for Solicitors, RELs and RFLs 2019 Rule 7.6(b:) *You notify the SRA promptly if: a relevant insolvency event occurs in relation to you.*

15.47 In conclusion, the Tribunal found, on the balance of probabilities, all the allegations proved in full.

Previous Disciplinary Matters

16. On January 24, 1996, the Tribunal found proved breaches of Solicitors Accounts Rules and the non-payment of Counsels' fees. While acknowledging shortcomings in his oversight, particularly concerning a wrongful transfer orchestrated by Mr. Nathan, the Tribunal did not find the Respondent to have been dishonest. Ultimately, he was fined £5,000 and ordered to pay £1,500 in costs.

Application by Applicant to be heard on sanction

17. The Tribunal granted Ms Stevens' application.

18. Ms Stevens, argued for a strike-off, citing the seriousness of the conduct, the Respondent's culpability (including his experience and prior bankruptcy knowledge), the potential harm (including lack of Professional Indemnity Insurance (PII) coverage while practicing without a certificate), and the deliberate and repeated nature of the deception over six years.

19. Ms. Stevens highlighted the Tribunal's earlier observation that the bankruptcy led to the "camouflage" of the BRU**.** While acknowledging the Respondent's partial admission of facts as potential mitigation, Ms Stevens argued this was a breach of public trust, a breach of integrity and a dishonest conduct for a period of sometime from a senior and experienced person and the finding of dishonesty warranted a strike-off, with no exceptional circumstances present in the Respondent's case to avoid such sanction.

Mitigation

20. Mr. Giles urged the Tribunal to consider the Respondent's position in the round, highlighting his many years as a solicitor, his enjoyment of the profession, and the absence of complaints about his client care.

21. Mr Giles referred to the Tribunal's Guidance Note on Sanctions, emphasising the principles of proportionality, choosing the least severe outcome, and weighing the public interest against the practitioner's rights. He cited the decision in Raschid v GMC which urges the Tribunal to impose the *"least severe outcome that deals adequately with the issues identified while protecting the public interest."*

22. He argued that the allegations fell under "one umbrella of wrongdoing" – the failure to make timely and appropriate disclosures. While acknowledging the harm to the profession's reputation and the potential harm of practicing without a certificate, he said that it had not been suggested the Respondent had not been a diligent and competent lawyer.

23. Regarding aggravating factors, while accepting the repeated and deliberate nature of the non-disclosure and the finding of dishonesty, Mr Giles questioned whether the conduct was "calculated," suggesting it had in fact been a series of very serious errors of judgment.

24. As mitigating factors, he pointed to the Respondent's age (75), his long working history, and the fact that the SRA had previously granted him practicing certificates with

conditions despite knowing about the bankruptcy and BRU. He argued this indicated the SRA had assessed the risk to the public and allowed him to continue practicing safely under supervision since the early 2020s.

25. Mr. Giles argued against a strike-off, suggesting that a suspension would be sufficient, given the Respondent's age and the unlikelihood of him practicing again.

Sanction

26. 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".*

27. The Tribunal next considered the Guidance Note on Sanction (11th Edition) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

28. In assessing culpability, the Tribunal found the Respondent's motivation had been to conceal his bankruptcy and to keep working. His actions were not spontaneous, he had pursued a considered path of conduct, and he had had direct and total control and responsibility for the circumstances giving rise to the misconduct.

29. The Respondent had been a solicitor since 1980. He had substantial experience in the profession, more than enough to understand the nature of his conduct and the consequences which flowed from them. A solicitor of any level of experience would know they had a duty to report serious financial difficulty, particularly bankruptcy, to their regulator and firm. The failure to do so placed an employer and clients at obvious and significant risk.

30. Overall, the Tribunal assessed the Respondent's culpability as very high.

31. The Tribunal next considered the issue of harm. There was no evidence of actual harm but there had been a risk of harm. The Respondent had practised when he should not have done. This may have impacted upon the Firm's insurance and liabilities. The consequential damage to the reputation of the profession by the Respondent's misconduct was significant as the public would trust a solicitor to make timely and open disclosures to his regulator. The Respondent's conduct was a significant departure from the complete integrity, probity and trustworthiness expected of a solicitor.

32. The extent the harm was reasonably and entirely foreseeable by the Respondent who would have had a clear knowledge of his actions.

33. The Tribunal assessed the harm caused as very high.

34. The Tribunal then considered aggravating factors. The Tribunal, in its finding of fact, had found that the Respondent had acted dishonestly. His conduct had been repeated and deliberate over a number of years.

35. The Tribunal considered mitigating factors. It noted that the Respondent had a previous disciplinary finding recorded against him, but this was of some antiquity (1996) and it therefore treated him as a person of 'good character.' The Respondent was now aged 75 and he had experienced serious health issues in the recent past.

36. However, there was limited evidence of any genuine insight. In all the circumstances of this case the Tribunal considered the seriousness of the misconduct to be extremely high: this was perhaps an inevitable conclusion given finding of dishonesty. In addition, the Respondent's conduct had been found to have lacked integrity and he had failed to uphold public trust in the provision of legal services.

37. In the Judgment of the Divisional Court in SRA v Sharma [2010] EWHC 2022 (Admin) it had been held that *"save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll….that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary or over a lengthy period of time whether it was a benefit to the solicitor, and whether it had an adverse effect on others."*

38. In SRA v James, MacGregor and Naylor it was said that exceptional circumstances must relate in some way to the dishonesty and that as a matter of principle nothing was to be excluded as being relevant to the evaluation, which could include personal mitigation.

39. In evaluating whether there were exceptional circumstances justifying a lesser sanction in this case the focus of the Tribunal was on the nature and extent of the dishonesty and degree of culpability and then to engage in a balancing exercise as part of that evaluation between those critical questions on the one hand and matters such as personal mitigation and health issues on the other.

40. In this case the Tribunal had been presented with no relevant personal mitigation and there had been nothing before the Tribunal to allow it to conclude that he had not known the difference between honesty and dishonesty. The Tribunal observed that this had not been a fleeting or momentary lapse of judgment, but it had been repeated involving dishonesty and deliberate concealment.

41. The Tribunal therefore could find no exceptional circumstances within the meaning of Sharma and James in the Respondent's case.

42. The Tribunal considered that to make No Order, or to order a Reprimand, a Fine or Suspension (either fixed term or indefinite) would not be sufficient to mark the seriousness of the conduct in this case for the reasons set out above.

43. The Respondent had been dishonest, and his misconduct could only be viewed as extremely serious. This, together with the need to protect the reputation of the legal profession, required that Strike Off from the Roll was the only appropriate sanction.

44. It had been said before that the profession has no place for dishonest solicitors. However, this case could be justly characterised as having a tragic dimension. The Respondent, who in all other respects had been a highly capable, diligent and competent solicitor with over 40 years' experience in the profession, had no doubt encountered serious problems. His decision to conceal those problems instead of making frank disclosures to his Firm and regulator was an error of judgment. Whilst not a given, had he taken the appropriate action, as he had been obliged to do, he may have been allowed to continue practising as a solicitor albeit with safeguards in place. His failure to do so ultimately resulted in his strike off from the Roll of Solicitors. This could have been avoided.

Costs

45. Ms. Stevens submitted that all work was properly done and proportionate, providing a breakdown of costs totalling £40,293.60. She explained changes in fee arrangements with their legal representatives and detailed the history of the case, including three Substantive Hearing fixtures and multiple case management hearings, and that delays were not attributable to the SRA.

46. Mr. Giles acknowledged that costs generally follow the event but raised two points regarding the SRA's costs claim. He argued that the SRA could have saved costs by adjourning the matter in early 2024 following a medical expert's recommendation that an adjournment of up to a year would be reasonable due to the Respondent's health. He specifically questioned the necessity of hearings in June and August of the previous year.

47. He also drew the Tribunal's attention to the Respondent's financial circumstances, referencing a means statement from November 2023, and citing a Tribunal case where a costs order was not enforced without leave of the court due to the solicitor's suspension and financial situation.

Tribunal's Decision on Costs

48. 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.

49. 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.

50. The Tribunal found the case had been properly brought by the Applicant and that it had complied with the directions and deadlines set. The Respondent had engaged intermittently at the start though his engagement had improved. The Tribunal also noted the following factors:

- The Substantive Hearing had taken two days though originally listed for four)
- This had not been a case of legal complexity, and the matters had been straightforward with much of the factual matrix agreed.
- The Applicant had been successful on all allegations.
- The rates at which the Applicant claimed its costs appeared proportionate and reasonable.
- The Respondent had provided evidence of his limited means.

51. As usual in dealing with costs applications the Tribunal adopted a 'broad brush' approach to the costs and looked at matters in the round. The Tribunal found that the costs claimed by the Applicant were proportionate and reasonable. However, the Tribunal decided it was just and fair not to make an order for costs in this case. In reaching this decision the Tribunal had within its contemplation the matters set out in Barnes v SRA Ltd [2022] EWHC 677 (Admin).

52. The Tribunal 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. Therefore, considering the sanction it had imposed, the Respondent's limited means and earning potential, his age and health no order for costs was the most appropriate decision in the circumstances.

Statement of Full Order

53. The Tribunal ORDERED that the Respondent, STEPHEN BRIAN SIMMONS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that there be no order for costs.

Dated this 6th day of May 2025
On behalf of the Tribunal

R. Nicholas

Mr. R Nicholas
Chair