SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12489-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ANDREW LYNSEY JONES Respondent

Before:

Mr M N Millin (in the chair)
Ms H Appleby
Dr A Richards

Date of Hearing: 19 – 20 December 2023

Appearances

Matthew Edwards, counsel, of Capsticks LLP 1 St. Georges Road, Wimbledon, London, SW19 4DR, appeared on behalf of the Applicant.

Mr Jones attended and was unrepresented.

JUDGMENT

Allegations

1. The allegations against Mr Andrew Lynsey Jones made by the SRA are that, while in practice as a solicitor at MSP Legal Services LLP ("the Firm"):

1.1 Between 8 February 2012 and 4 September 2015, he made statements to his client as to the instruction of a barrister in relation to proceedings which he was conducting on his client's behalf which were untrue and were likely to mislead and which he knew, or ought to have known, were liable to have this effect at the time he made them. In doing so he breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011 ("the Principles").

PROVED

1.2 On 29 June 2012, he made a statement to representatives of the proposed defendant in his client's matter as to having received views of a barrister purportedly instructed on behalf of his client, which was untrue and was likely to mislead and which he knew, or ought to have known, was liable to have this effect at the time he made it. In doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011.

PROVED

1.3 On 20 September 2018, he made statements to his client's son as to the listing of a hearing in relation to the proceedings he was conducting on his client's behalf, which were untrue and were likely to mislead and which he knew, or ought to have known, were liable to have this effect at the time he made them. In doing so he breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.

PROVED

1.4 [withdrawn]

2. In addition, all of the allegations set out above, namely allegations 1.1 to 1.3 inclusive are advanced on the basis that Mr Jones's conduct was dishonest.

3. Dishonesty is alleged as an aggravating feature of Mr Jones's misconduct but is not an essential ingredient in proving the allegations.

PROVED

Executive Summary

4. The allegations relate to Mr Jones's conduct on the Client A matter. Mr Jones failed to progress Client A's claim, made false representations as to the progress of the case to Client A, his opponent in litigation and Client A's son (who took over conduct of the matter on his father's behalf). Client A made a complaint to the Firm as regards the delays in his matter which ultimately was determined by the Legal Ombudsman who made findings against Mr Jones and reported him to the Applicant.

Sanction

5. Mr Jones was sanctioned to an Order Striking him from the Roll of Solicitors. He was further Ordered to pay the Applicant's costs, fixed in the sum of £9,970.00.

Documents

6. The Tribunal considered all of the documents in the case which included:

- Rule 12 Statement dated 14 August 2023 and Exhibit LT1.
- Mr Jones's Answer to the Rule 12 Statement (entitled "Statement in Response") which was unsigned and undated.

Preliminary Matters

7. Applicant's Application: Amendment of allegations

7.1 Mr Edwards applied to amend the allegations in the following manner:

(i) Withdrawal of Allegation 1.4 which had been included in error in that it referred to narrative within the body of the Rule 12 Statement as opposed to a freestanding allegation of misconduct.

(ii) Numbering the aggravating feature of dishonesty within the body of the Rule 12 Statement as "Allegation 2". Mr Edwards submitted that the omission to do so in the original Rule 12 Statement may have contributed to Mr Jones's lack of formal response to the same in his Answer given that it was not contained within the schedule of allegations as a separate allegation in and of itself.

Respondent's Position

7.2 Mr Jones did not oppose the application.

The Tribunal's Decision

7.3 The Tribunal carefully considered the application, the purpose of which was to remedy defects in the allegations as currently drafted. The application was not opposed by Mr Jones. The Tribunal found that no prejudice or injustice was caused to him or the proceedings. Conversely, the amendments sought would provide clarity as opposed to unfairness.

7.4 The Tribunal therefore GRANTED the application.

8. Applicant's Application: Anonymity

8.1 Mr Edwards applied for anonymity as regards Client A as well as all associated persons and entities so as to avoid jigsaw identification of Client A. Mr Edwards relied upon SRA v Williams[2023] EWHC 2151 (Admin) in which Mr Justice Knowles made plain that anonymity should be granted when issues of Legal Professional Privilege ("LPP")

were present. LPP remained a fundamental right which cannot be displaced other than by express waiver on the part of the client or statutory authority. Mr Edwards submitted that neither exception applied in the present matter and that anonymity should be granted not only for Client A but as regards any individual or entity that could lead to his identification.

Respondent's Position

8.2 Mr Jones did not oppose the application.

The Tribunal's Decision

8.3 The Tribunal carefully considered the unopposed application and applied the principles promulgated in Williams. In so doing it determined that LPP was clearly engaged as regards all communications pertaining to the Client A matter. Neither Client A nor his son had waived LPP. There was no statutory basis to displace the protection afforded by LPP. Anonymisation of Client A alone was not sufficient. There was a real risk, in the event that anonymity was not granted as sought, that Client A could be identified, not least by jigsaw means, namely piecing together named people and / or entities, which would then vitiate the fundamental protection afforded to Client A.

8.4 Given those circumstances and facts, the Tribunal GRANTED the application.

Factual Background

9. Mr Jones was admitted to the Roll of Solicitors in November 2000. At all material times, Mr Jones was a member, manager and owner of the Firm, which was based in Hartlepool. Further, he was the Firm's Compliance Officer for Legal Practice ("COLP"), Money Laundering Reporting Officer ("MLRO") and Money Laundering Compliance Officer ("MLCO").

10. Mr Jones last held a Practising Certificate for the practice year 2022 to 2023, which was free from conditions. His Practising Certificate was suspended on 5 April 2023 when the SRA intervened in the Firm.

11. The conduct in this matter came to the attention of the SRA when the Legal Ombudsman on 21 July 2020 reported the firm, which employed Mr Jones at all material times, ("the Firm"), following receipt of a complaint on behalf of a client ("Client A").

12. The alleged conduct occurred between approximately February 2012 and September 2018. In summary, Client A instructed the Firm in March 2010 to negotiate a financial settlement in relation to a claim against his former partners at a medical practice who had dissolved their partnership. The Firm's terms of engagement dated 18 March 2010 confirmed that Mr Jones was responsible for carrying out the work on Client A's matter and he was the client contact partner responsible for overall supervision for the matter.

13. Client A instructed Mr Jones that he wanted a quick resolution of the dispute and was prepared to settle the case. Mr Jones confirmed to Client A in a letter dated 31 March 2010 that it was on this basis that an offer letter was submitted to the Defendants'

representative. The Defendants made an offer to settle the case around 9 April 2010 which Client A rejected.

14. On 1 April 2011, the Defendants' representative wrote to Mr Jones on a "without prejudice save as to costs" basis in terms that their client would be happy to attend a without prejudice meeting with legal advisors and accountants present, but before doing so wished to see a detailed agenda identifying all issues to be discussed and full details of any financial claim.

15. On 8 February 2012, Mr Jones wrote to Client A and explained that he had "retained" Counsel in relation to the case with a view to providing an opinion and settling the Court documentation. On 29 June 2012, Mr Jones told the Defendants' representative that he had received final views from an independent accountant and also from Counsel.

16. Thereafter, little progress was made as the Defendants and their representative had stopped responding to Mr Jones's correspondence and Mr Jones was trying to deal with Client A's legal expenses cover. Mr Jones continued to gather information in support of Client A's claim and issued proceedings in the High Court on 20 August 2014. Mr Jones confirmed to Client A in a letter dated 23 September 2014 that he had received the sealed papers from the Court. Mr Jones also advised Client A that he would proceed formally to serve the papers on the Defendants.

17. The claim form should have been served on the Defendants within four months of issue, namely before 20 December 2014. Mr Jones neither served the claim form nor did he seek an extension of time to do so from the High Court.

18. Mr Jones continued to correspond with the Defendants and Client A from 2016 to 2020, with some of the correspondence referring to Client A trying to avoid court action.

19. On 18 March 2020, Mr Jones wrote to the Defendants confirming that Client A would be prepared to accept the Defendants' offer in full and final settlement of all heads of claim together with costs and disbursements to be assessed on the standard basis in the absence of an agreement. Mr Jones did this notwithstanding the fact that Client A had already rejected a similar offer in 2010.

20. Mr Jones led Client A to believe that he was progressing the claim, albeit slowly. Client A became increasingly concerned with the lack of progress in the matter, and so his son raised concerns with Mr Jones on 22 October 2018 and again on 24 June 2019. Client A had provided written authorisation to Mr Jones on 5 November 2018 and again on 18 June 2019 for his son to act on his behalf and liaise with Mr Jones.

21. On 19 May 2019, Client A's son made a complaint to the Legal Ombudsman. The Legal Ombudsman concluded on 1 July 2020 in its case decision that Mr Jones had:

- Failed to progress Client A's claim over several years and failed to provide Client A with any update on the status of the case even when specifically asked to do so.

- Failed to follow Client A's instructions to pursue an out of court settlement.

- Failed to provide Client A with a statement of account evidencing all payments made to them or to provide an estimate of future costs.

- Failed to provide Client A with copies of correspondence to evidence any work done on the matter despite Client A's offer to cover their reasonable copying costs.

22. The Legal Ombudsman concluded that the firm's service fell below a reasonable standard. It recommended that the firm should (a) pay £7,267.34 to Client A, which represented a full refund of costs and disbursements, (b) write-off unbilled work in progress in the sum of £9,861.03; and (c) pay compensation to Client A in the sum of £2,500 for the distress and inconvenience caused as a direct result of the poor service.

Witnesses

23. 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 submissions made by the parties. The Tribunal did not receive any oral evidence.

24. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

25. 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 Jones'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.

26. Allegation 1.1 Untrue statements made to Client A

Applicant's Case

26.1 On 8 February 2012, Mr Jones sent an email to client A in which he stated:

> *"... I have now retained Counsel in relation to your case with a view to providing and opinion and also settling the necessary Court documentation. It may well be that Counsel will require a Conference with us before finalising his advice, but I will know this in advance. A Conference is simply a meeting with the Barrister to discuss certain aspects of the case and/or provide points of clarification. This can either take place in person or by telephone meeting. I have notified the other side [sic] of our position in this respect and I hope that this will continue to apply pressure and make the Drs aware that his matter is not going away and ultimately unless it is settled by compromise, we will push*

towards a day in Court. I am not suggesting for one minute that we will get to that point, but I believe it is a robust tactical approach to adopt at this stage.

I will contact you as soon as I have heard from the Barrister…"

26.2 Client A sent an email to Mr Jones on 23 June 2012 in which he asked for an update and made plain:

"… Our understanding was that barristers were in the process of being instructed but since our conversation earlier in the year we have not heard anything more. It would be most appreciated if you could let us know where we are in the process and what the next steps would be…"

26.3 On 5 September 2013, Mr Jones attended Client A's home. The attendance note recorded that Mr Jones told Client A:

"… I said upon receipt of that information I then intended instructing a Barrister to provide us with an opinion…"

26.4 On 23 September 2013, an assistant at Mr Jones's firm sent an email to Client A, which had been dictated by Mr Jones. In that email, Mr Jones told Client A:

"… As agreed, upon receipt of your further views it would be my intention to instruct a barrister to settle the Court papers and provide an advice…"

26.5 Mr Jones spoke to Client A on 18 October 2013. The telephone note recorded that he (a) explained to Client A that he was waiting for further information to quantify Client A's losses, (b) was not in position to proceed without this information and (c) advised Client A to contact him immediately upon receipt of the information following which he:

"… would immediately advise counsel in relation to the preparation of the Court documentation..."

26.6 Mr Jones confirmed to Client A in a letter dated 23 September 2014 that he had received the sealed papers from the Court. Mr Jones advised Client A that:

"… Prior to service of proceedings I think it will be likely we will need a meeting and I am currently considering whether on that occasion the Barrister should also be present…"

26.7 On 9 October 2014, Mr Jones sent an email to Client A in which he stated:

"… Our barrister is away on holiday so I can do nothing until he returns towards the end of next week regarding his availability to meet…"

26.8 On 4 September 2015, Mr Jones sent an email to Client A in which he stated:

"… I am grateful for your continued patience and will call you as soon as I receive the call back from the barrister who has been in London today..."

26.9 Client A's spouse confirmed that Mr Jones advised that he would engage expert Counsel to offer advice and that Counsel would provide a realistic idea as to whether to pursue the claim or accept the original settlement offer. Client A's spouse also confirmed that over the next couple of years, Mr Jones advised on numerous occasions that he had engaged Counsel. Client A's spouse considered that Mr Jones had misled them by the references to Counsel in letters and emails because they now knew that he had never engaged the services of a barrister.

26.10 In his response to the SRA dated 3 January 2021, Mr Jones stated that there was a degree of misunderstanding in relation to the barrister instruction and the manner in which he told the client. Mr Jones further stated that his advisory letter should have expressed an "intention to instruct". Mr Jones admitted that he had not formally "retained" a barrister and that was supported by the fact that nothing was communicated to the client in this respect.

26.11 Mr Jones's representative, at that time, Weightmans LPP ("Weightmans") advised the Applicant on 10 February 2023 that:

> *"… Mr Jones accepts that the wording in his correspondence of 8February 2012 was "infelicitous". It was not unusual for a solicitor to say that they have "retained" (rather than instructed) Counsel. The words, taken in context suggest that Mr Jones had identified suitable Counsel but had not instructed him.*
>
> *Counsel was never formally instructed. It remains possible that provisional discussions were undertaken and that was consistent with the wording of the letter "a view to providing an opinion" and with Client A's understanding that Counsel was "in the process "of being instructed as recorded on 23 June 2012.*
>
> *The attendance note dated 5 September 2013 and the email dated 23 September 2013 [referred to at paragraphs 21 and 22 above] refer to a future intention to instruct a barrister and tend to indicate that Client A was aware that had not already happened.*
>
> *The telephone note dated 18 October 2013 and the letter dated 23 September 2014 were more ambiguous in their wording. They could equally refer to the future intent to instruct a barrister…"*

26.12 Mr Edwards contended that Mr Jones's emails of 9 October 2014 and 4 September 2015 tended to indicate that Mr Jones was discussing a specific barrister with whom he intended to speak. Taken in isolation, they may be construed as misleading but must be viewed against Mr Jones's earlier comments that After the Event insurance needed to be obtained and the fact that there were omissions on the file regarding discussion as to the likely costs of instructing Counsel.

26.13 Mr Jones accepted that his conduct of the case was not as it should have been and that there were service failings, including in relation to the failure to serve the claim form.

Breach of the SRA Principles 2011

26.14 Principle 2 of the SRA Principles 2011 requires a solicitor to act with integrity. Principle 4 requires a solicitor to act in the best interests of each client. Principle 6 requires a solicitor to behave in a way that maintains the trust the public places in them and in the provision of legal services.

Principle 2 SRA Principles 2011 (integrity)

26.15 Mr Edwards submitted that Mr Jones's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles.

26.16 In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. Mr Jones failed to act with integrity in breach of Principle 2 in that:

- On 8 February 2012, Mr Jones told Client A that he "had retained" Counsel in relation to the case. He also told Client A that he could contact him as soon as he heard from the barrister. Those were clear statements on the part of Mr Jones. Mr Jones accepted that the wording was infelicitous. Mr Jones's representatives stated that it was not unusual for a solicitor to say they had retained counsel and that the words taken in context suggest that he had identified suitable Counsel but had not instructed him. However, Mr Jones did not tell Client A that he had identified any suitable Counsel nor did he provide Client A with the names of Counsel whom Mr Jones may have identified as suitable to deal with the case. The Applicant obtained the client file from Mr Jones and there was no evidence on the file which showed that Mr Jones had discussions with any barristers about the case.

- As of 23 June 2012, Client A believed that barristers were in the process of being instructed, as confirmed by Client A's email to Mr Jones. Mr Jones confirmed on 18 October 2013 that he was waiting for further information from Client A and would immediately advise Counsel in relation to the preparation of Court documentation once he received the information. Mr Jones also told Client A on 23 September 2014 that prior to the service of proceedings, it was likely that a meeting would be required, and he was considering whether a barrister should also be present. At no point did Mr Jones explain to Client A that he had not in fact instructed a barrister. The statements which Mr Jones made to Client A gave the impression that a barrister had already been instructed in circumstances where they had not.

- Mr Jones told Client A on 9 October 2014 that the barrister was away on holiday and that he could do nothing until the barrister returned regarding his availability to meet. Mr Jones did not contact Client A regarding the barrister's availability to meet and the reason he did not do so was because no barrister had been instructed to deal with the case. On 4 September 2015, Mr Jones told Client A that he would call him as soon as he heard from the barrister, who was in London. However, he did not call Client A because no barrister had been instructed. Both statements were therefore untrue.

- The correspondence which Mr Jones sent to Client A and the discussions that he had with Client A, cumulatively gave his client the impression that a barrister had been instructed. They were likely to mislead Client A. Mr Edwards submitted that a solicitor acting with integrity would have made it clear to their client that no barrister had been instructed yet, even if the intention had been to so instruct at a later date. Mr Jones ought to have known that his statements to Client A were likely to and did in fact mislead Client A. That occurred over a period of three years. Mr Jones could have corrected this when he received Client A's email on 23 June 2012 but he did not do so.

Principle 4 SRA Principles 2011 (best interests of the client)

26.17 Mr Jones was required to act in the best interests of Client A. Mr Edwards contended that he failed to do so because he allowed his client mistakenly to believe that a barrister had been instructed in the case due to the untrue statements that he made.

26.18 Had Mr Jones instructed a barrister, the outcome of the matter may well have been different for Client A. Mr Jones therefore failed to act in the best interests of his client and has breached Principle 4.

Principle 6 SRA Principles 2011 (maintaining trust)

26.19 Mr Edwards submitted that the conduct alleged also amounted to a breach by Mr Jones of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. The trust that the public places in solicitors, and in the provision of legal services, is predicated upon the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Solicitors are required to discharge their professional duties with integrity, probity, and trustworthiness.

26.20 Mr Edwards averred that in making statements to his client, which were untrue, likely to mislead and did in fact mislead his client, public confidence in Mr Jones and the provision of legal services is likely to be undermined and Mr Jones therefore breached Principle 6.

Dishonesty

26.21 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

> "…*When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the*

(objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest…"

26.22 During the course of the investigation, Mr Jones denied that his conduct was dishonest. However, at the time that Mr Jones made the statements to Client A he knew or believed the following matters:

- No barrister had been instructed in the matter when he told Client A on 8 February 2012 that he had retained Counsel in relation to the case.

- He had not had any discussions with a barrister regarding Client A's case or identified a suitable barrister to deal with Client A's case when he told Client A on 18 October 2013 that he would immediately advise Counsel in relation to the preparation of Court documentation.

- He had not instructed or retained a barrister when he told Client A on 9 October 2014 that the barrister was away on holiday, and he could do nothing until he returned.

- He had not instructed or retained a barrister when he told Client A on 4 September 2015 that he would call him as soon as he heard from the barrister who had been in London that day.

26.23 Given that Mr Jones admitted that he never formally instructed Counsel in the matter and in light of the material facts set out above, Mr Edwards therefore submitted that Mr Jones's conduct was dishonest by the standards of ordinary decent people.

Respondent's Position

26.24 Mr Jones admitted the factual matrix of Allegation 1.1 and the consequential Principle breaches in his Answer to the Rule 12 Statement. He confirmed those admissions before the Panel at the substantive hearing. Mr Jones made no formal admission or denial to the aggravating feature of dishonesty in his Answer. His position, gleaned from the Weightmans correspondence, appeared to be that he denied having acted dishonestly.

26.25 Mr Jones elected not to give evidence to the Tribunal. He was reminded of and confirmed his understanding of Practice Direction 5, which empowers the Tribunal to draw an adverse inference in circumstances whereby a Respondent does not give sworn evidence. In his unsworn oral submissions to the Panel Mr Jones denied the aggravating feature of dishonesty as alleged, and asserted that he had limited recollection of the material facts given the passage of time.

26.26 Mr Jones alluded to his personal circumstances at the material time which had detrimentally impacted upon his emotional wellbeing. Given the nature of the sensitive information Mr Jones proposed to disclose, the hearing convened in private in part for the Panel to receive the same. In short, Mr Jones suffered significant bereavements of close family members which he told the Tribunal undermined his judgment professionally and personally.

26.27 Mr Jones stated that he did not rely upon his difficult personal circumstances to justify his failings. He advanced them by way of explanation as to the same and to support the contention that he did not act dishonestly. Mr Jones submitted that he had "spoken to a direct access barrister" but did not name who that was. The "counsel in London" to whom he referred in correspondence was the individual he had spoken to. Mr Jones submitted that in deploying the word "retained" he meant that he had "placed counsel on notice" of future formal instruction. Mr Jones accepted that he now understood that what he meant "was not the case" in that it was not how it was received by Client A. Mr Jones stated that this was not recorded on Client A's file as his conversation with counsel was "part of a wider discussion of other ongoing cases" in which said counsel was already instructed.

26.28 Mr Jones expressed remorse and regret for his failures but asserted that Client A did not suffer in light of the compensation received from him as a consequence of the Legal Ombudsman decision. Mr Jones asked the Panel to note the Applicant's delay in the "late bringing of proceedings" which "surprised and disappointed" him. Mr Jones asked the Panel to take into account the fact that he cooperated fully with the Legal Ombudsman and the Applicant throughout.

The Tribunal's Findings

26.29 The Tribunal considered the admissions made by Mr Jones to the factual matrix of Allegation 1.1 and the consequential breaches of Principles 2, 4 and 6. In so doing, the Tribunal found the admissions to have been properly made in all of the circumstances and accepted the same.

26.30 The Tribunal therefore found the factual matrix and Principle breaches alleged in Allegation 1.1 PROVED on the basis of the evidence before it and Mr Jones's admissions.

26.31 As regards dishonesty, the Tribunal applied the Ivey test. In so doing, it firstly considered what Mr Jones's state of mind was at the material time in the context of the contemporaneous documentary evidence and the personal difficulties alluded to by Mr Jones in his oral submissions.

26.32 As regards the former, the Tribunal noted that there was no evidence to suggest that counsel had ever been spoken to let alone instructed to act on behalf of Client A. The unsworn and untested submissions of Mr Jones did not disavow that position. The Tribunal considered that Mr Jones explanation as to how he had deployed the term "retained" amounted to nothing more than semantics. He was an experienced solicitor at all material times, having been admitted to the Roll of Solicitors in 2000. At the start of the Client A matter, Mr Jones was 12 years' qualified. At the conclusion of the Client A matter, he was 18 years' qualified. The Tribunal rejected the assertion made by Mr Jones that his use of the term "retained" was "infelicitous" namely "unfortunate or inappropriate". The Tribunal considered that assertion sought to minimise the seriousness of the misconduct. Solicitors, and all providers of legal services, are well aware that precision of language is paramount in all communications.

26.33 The Tribunal could not and did not accept that, given the conspicuous lack of detail as to the identity of counsel even at the date of the substantive hearing, Mr Jones inadvertently misled Client A. The Tribunal found that Mr Jones intentionally misled Client A (by way of email dated 8 February 2012, and in person on 5 September 2013, by way of email dated 23 September 2013, in a telephone call on 18 October 2013, in correspondence dated 23 September 2014, by way of email dated 9 October 2014 and by way of email dated 4 September 2015) by referring to having retained, spoken to, communicated with unnamed counsel in circumstances where he plainly had not and knew that he had not.

26.34 The Tribunal considered the personal circumstances advanced by Mr Jones. Whilst sympathetic to the same, the Tribunal did not consider that those difficult circumstances vitiated the fundamental fact that counsel had not been instructed. Against that backdrop, Mr Jones elected on seven occasions over a two-year period to present the impression that counsel had been identified, spoken to and instructed.

26.35 In applying the Ivey test the Tribunal therefore found on a balance of probabilities, the aggravating feature of dishonesty.

PROVED

27. Allegation 1.2 Untrue statements made to the Defendant's representatives.

Applicant's Case

27.1 Mr Jones sent an email to Client A on 8 February 2012 in which he explained that he had retained Counsel in relation to the case and had notified the other side of the position. Mr Jones also explained to Client A that he hoped this would continue to apply pressure and that it was a robust tactical approach to adopt.

27.2 On 23 June 2012, Client A sent an email to Mr Jones requesting an update, stating that he understood barristers were in the process of being instructed.

27.3 On 29 June 2012, Mr Jones wrote to the Defendants' representatives and stated that:

> *"… Further to the above matter, we confirm that we have now received final views from our appointed independent accountant and also from Counsel.*
>
> *We are now in position to proceed and intend forwarding to you within the course of the next 14 days a formal letter before action.*
>
> *We should be grateful within that time scale for confirmation that you are still instructed as in the absence of hearing from you the letter before action will be forwarded to your clients direct..."*

27.4 During the course of the Applicant's investigation, and via his legal representatives at that time, Mr Jones:

- Accepted that there was a careless mistake in his letter of 29 June 2012 to the Defendant's representatives.

- Denied that this was dishonest or that it lacked integrity because it was a genuine error which he failed to spot when reviewing dictation.

- Accepted that it was wrong, careless and that the allegation of breach of Principle 6 is made out.

Breach of the SRA Principles 2011

Principle 2 SRA Principles 2011 (integrity)

27.5 Mr Edwards submitted that Mr Jones' actions amounted to a failure to act with integrity in that he failed to act with moral soundness, rectitude and a steady adherence to an ethical code. Mr Jones accepted that there was a careless mistake in his letter of 29 June 2012. However, Mr Jones had previously told Client A that he had retained Counsel and had notified the other side of the position, as he hoped this would continue to apply pressure. Mr Jones also told Client A that this was a robust tactical approach to adopt.

27.6 A solicitor acting with integrity would not have told the representatives of the proposed defendant in his client's matter that they had received final views from Counsel when this was not true. A Solicitor acting with integrity would not adopt a tactical approach which involved misleading the defendants' representatives. A solicitor who had made a genuine error or a careless mistake in correspondence would rectify the error as soon as they became aware of it. Mr Jones did not do so. Mr Jones made a statement, which was untrue and which he knew was untrue, as he had not instructed Counsel on the matter or received any views from Counsel. Mr Jones ought to have known that such a statement would be likely to mislead the defendants' representatives at the time that he made it. Mr Jones's actions therefore lacked integrity in breach of Principle 2.

Principle 6 SRA Principles 2011 (maintaining trust)

27.7 Mr Edwards submitted that the trust that the public places in solicitors, and in the provision of legal services, depends upon the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Solicitors are required to discharge their professional duties with integrity, probity and trustworthiness. Mr Jones did not do so.

27.8 The statement which Mr Jones made to the defendants' representatives was untrue and Mr Jones ought to have known that the statement was likely to mislead the defendants' representative as a result. Public confidence in Mr Jones and the provision of legal services is likely to be undermined by Mr Jones's actions and he has therefore breached Principle 6.

Dishonesty

27.9 As to Mr Jones's knowledge and belief as to the facts, Mr Edwards contended that Mr Jones:

- Knew that he had not instructed a barrister in the matter when he told the defendants' representatives that he had received final views from the independent accountant and also from Counsel.

- Previously told Client A that he had retained Counsel and had notified the other side of the position, as he hoped this would continue to apply pressure. Mr Jones also told Client A that this was a robust tactical approach to adopt. Mr Jones knew that the statements to his client about retaining Counsel and those he made to the defendants' representative were untrue, and his motive for making the statement to the defendants' representative was tactical, to apply pressure to progress and settle the case.

- Therefore, made the statement to the defendants' representative knowing that it was untrue at the time that he made it. Mr Jones must have known that that this was likely to mislead the defendants' representatives because it was untrue.

- Admitted that Counsel was never formally instructed in the matter so the statement he made to the defendants' representative was untrue.

27.10 Mr Edwards therefore submitted that, in applying the Ivey test, Mr Jones's conduct was dishonest by the standards of ordinary decent people.

Respondent's Position

27.11 Mr Jones admitted the factual matrix of Allegation 1.2 and the consequential Principle breaches in his Answer to the Rule 12 Statement. He confirmed those admissions before the Panel at the substantive hearing. Mr Jones made no formal admission or denial to the aggravating feature of dishonesty in his Answer. His position, gleaned from the Weightmans correspondence, appeared to be that he denied having acted dishonestly.

27.12 Mr Jones elected not to give evidence to the Tribunal. He was reminded of and confirmed his understanding of Practice Direction 5 which empowers the Tribunal to draw an adverse inference in circumstances whereby a Respondent does not give sworn evidence. In his unsworn oral submissions to the Panel Mr Jones denied the aggravating feature of dishonesty as alleged.

27.13 In addition to his position set out at §26.25 - §26.28 above, Mr Jones submitted that his letter of 29 June 2012 contained a "careless mistake" and a "genuine error".

The Tribunal's Findings

27.14 The Tribunal considered the admissions made by Mr Jones to the factual matrix of Allegation 1.2 and the consequential breaches of Principles 2 and 6. In so doing, the Tribunal found the admissions to have been properly made in all of the circumstances and accepted the same.

27.15 The Tribunal therefore found the factual matrix and Principle breaches alleged in Allegation 1.2 PROVED on the basis of the evidence before it and Mr Jones's admissions.

27.16 The Tribunal rejected Mr Jones's submission that he had made a "careless mistake" in the offending letter. Mr Jones stated in that correspondence to his opponent in contested litigation that the final views of counsel had been sought in circumstances whereby counsel had not been instructed. The Tribunal did not accept that its insertion was, as suggested by Mr Jones, for "tactical reasons" or that it was a "careless mistake" or a "genuine error". The Tribunal found that mention of having received final views of counsel was designed to intentionally mislead.

27.17 In applying the Ivey test the Tribunal therefore found, on a balance of probabilities, the aggravating feature of dishonesty PROVED.

28. Allegation 1.3 Untrue statements made to Client A's son

Applicant's Case

28.1 As little progress had been made on Client A's claim after proceedings were issued on

20 August 2014, Client A wrote to Mr Jones on 3 December 2016. Client A stated:

> *"… I am taking "stock of the situation" – if I hear nothing further soon then I will be in touch again outlining my thoughts. I re-iterate that this case is taking a toll on me and I am becoming exhausted…"*

28.2 Client A wrote to Mr Jones on or around 11 March 2017 raising concerns about the lack of communication from Mr Jones and the fact that no agreement had been reached. Client A asked Mr Jones to provide a full audit trail from initial instructions to the present, including time spent, fees charged, a full explanation of all delays and actions taken by the firm.

28.3 Mr Jones wrote to Client A on 18 June 2017 and stated:

> *"… I have been reviewing my emails and note that there has been some indication that you intend having your friend "John" present at the meeting "who is an accountant". I have to say that I am becoming increasingly disheartened by your implied uncertainty at my acting for you and, yet again,* On *the suggestion that I am to be the subject of third party scrutiny. If indeed that is your intention for the meeting tomorrow, then I am sorry to say that I fail to see why I should attend. I am not for one minute leaving myself open to some sort of third party inquisition. I have already received a letter from you, which*

I do not believe was drafted by you, expressing your concerns, but if the meeting tomorrow is to be an extension of that then I do not think that my 2 hour drive to you is going to achieve anything…"

28.4 7 February 2018, Client A wrote to Mr Jones in the following terms:

"… if everything you have done has failed after several years, please let us know…"

28.5 On 22 October 2018, Client A's son wrote to Mr Jones and stated:

"… In our discussion on 20th September I was advised that the final hearing of the case was due to be held within October 2018 however we have not received any update whatsoever. Notwithstanding the numerous telephone requests to your office that you have not had the courtesy to answer or provide an update through formal correspondence.

My father [Client A] is extremely distressed regarding the handling of the case for the past many years and we do not believe any progress has been made or the case has been treated seriously. If you are unable to provide any update, we shall forward a formal complaint regarding your handling of the case to the Legal Ombudsman…"

28.6 Client A's son wrote to Mr Jones again on 15 November 2018 and asked Mr Jones to provide a summary of the case to date, including details of court hearings and scheduled future hearings. Client A's son referred to the fact this information was requested during a telephone conversation on 20 September.

28.7 On 24 June 2019, Client A's son, on behalf of Client A, made a complaint to the firm about the firm's service and the lack of progress in which he stated that:

"… During discussions within September 2018 between myself and Andrew Jones of MSP Solicitors, Andrew Jones advised me verbally that the final hearing of my father's case … … was due to be held within October 2018. To date no information in respect of the court hearing has been provided.

…

The service provided by MSP Solicitors is completely unsatisfactory and unprofessional. This situation has caused my father extreme distress. Over eight years have passed since MSP Solicitors commenced working on the case with no real evidence of progress. MSP Solicitors have continually advised my father verbally that the case is progressing in a positive nature, that court dates are being booked and barristers engaged without providing any documentary evidence in this regard.

…

Please provide the summary status of the case to date including details of court hearings and scheduled future hearings, as requested in my telephone conversation with Andrew Jones on 20 September 2018..."

28.8 When Client A's son wrote to the firm on 22 October 2018 and made a formal complaint to the firm, he had Client A's specific authority to act on Client A's behalf. The firm acknowledged receipt of Client A's son's letter on 3 July 2019. The Legal Ombudsman wrote to the firm on 22 August 2019 and 21 February 2020 explaining that it had received a complaint from Client A who had not received a response to the complaint made on 24 June 2019. The firm sent documents to the Legal Ombudsman on 7 May 2020.

28.9 During the Applicant's investigation, Client A's son provided a witness statement, dated 9 November 2022, in which he stated that he had a discussion over the telephone with Mr Jones on or around 20 September 2018. Client A's son was in Dubai at the time and he telephoned Mr Jones. Whilst Client A's son was unable to recall the exact words, he stated that Respondent told him that *"court bookings had been made for the court hearing"* of Client A's case. Client A's son also stated that Mr Jones led him to believe that an application for the court hearing had been made and the final date was awaited. Client A's son confirmed that Mr Jones advised him that the hearing was due to take place in October 2018.

28.10 Client A's son further confirmed that Mr Jones did not refer to a hearing when he responded to the complaint on 2 November 2018.

28.11 During the course of the Applicant's investigation, and via his legal representatives at that time, Mr Jones:

- Did not accept the admissibility of the witness statement, which Client A's son provided, in its current form. The evidence contained in the witness statement is that Client A's son cannot recall what words were spoken by Mr Jones in September 2018.

- Considered the evidence as to what was said was somewhat contradictory but accepted that Client A's son now genuinely believed that he was told of a hearing to take place in October 2018 and this was likely to have been an issue, which had been revisited in his mind on several occasions. It was possible that this was a misunderstanding arising from a conversation which was necessarily limited, as Mr Jones only had verbal authority to speak with Client A's son.

- Could not recall what occurred during the telephone call as he was ill at the time.

- Believed that the issue was one of miscommunication and that he is unable to recall what was said due to the passage of time.

- Denied the allegation.

Breach of the SRA Principles 2011

Principle 2 SRA Principles 2011 (integrity)

28.12 Mr Edwards submitted that Mr Jones's actions amounted to a failure to act with integrity in that he failed to act with moral soundness, rectitude and a steady adherence to an ethical code.

28.13 Whilst Client A's son was unable to recall the exact words used during his telephone conversation with Mr Jones on 20 September 2018, Client A's son was clear in his subsequent correspondence with Mr Jones and the firm that Mr Jones told him a final hearing was due to be held in October 2018. Mr Jones did not deny that there was a telephone call. He stated that he was unable to recall what occurred during the telephone call and that he believed the issue was one of miscommunication.

28.14 Mr Jones had ample opportunity to correct any miscommunication especially when he responded to Client A's son's letter on 2 November 2018. Mr Jones did not state in his response that there had been any miscommunication. In fact, he did not address the issue of the hearing date at all in his response; if Mr Jones had not mentioned a hearing date previously, he would have made this clear now.

28.15 A solicitor acting with integrity would have addressed any miscommunication so that their client and their client's son would not have been under the mistaken belief that the matter had been listed for a hearing when that was not the case.

28.16 A solicitor acting with integrity would not allow their client or their client's son to be misled about the true position of the case. Alternatively, the reason why Mr Jones did not correct the miscommunication was because there was no miscommunication and Mr Jones deliberately misled Client A's son about the hearing date to give the impression that the case was progressing.

28.17 It was clear from the correspondence that Client A's son was now dealing with the matter on behalf of his father, who was ill. Mr Jones should have been truthful with Client A's son and the failure to do was in breach of Principle 2.

Principle 4 SRA Principles 2011 (best interests of the client)

28.18 Mr Jones was required to act in the best interests of his client. Mr Edwards submitted that he did not do so because he told Client A's son that a final hearing was due to be held in October 2018.

28.19 Client A's son was dealing with the matter on behalf of Client A and Mr Jones must have known, or ought to have known, that any communications with Client A's son would be relayed back to Client A.

28.20 Mr Jones stated that there was a miscommunication (albeit without remembering exactly what he had said). However, if that was the case, Mr Jones took no steps to correct the miscommunication despite having ample opportunity to do so. Mr Jones allowed Client A's son and Client A to be misled about the listing of a hearing. Mr Jones therefore failed to act in the best interests of his client and has breached Principle 4.

Principle 6 SRA Principles 2011 (maintaining trust)

28.21 Mr Edwards contended that the conduct alleged also amounted to a breach by Mr Jones of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Mr Jones must have made a statement

or statements to his client's son regarding the listing of a hearing because Client A's son believed that the matter was listed for a final hearing in October 2018 when in fact it was not. Mr Jones stated that there was a miscommunication, but he did not take any steps to correct this error.

28.22 Solicitors are required to discharge their professional duties with integrity, probity and trustworthiness and Mr Jones did not do so because he allowed Client A's son to be misled about the listing of a hearing.

28.23 Public confidence in Mr Jones and the provision of legal services is likely to be undermined by Mr Jones's actions because solicitors should be accurate in all of their dealings with clients and other individuals. Mr Jones's actions have undermined public confidence in him and in the provision of legal services and he has therefore breached Principle 6.

Dishonesty

28.24 Mr Edwards submitted that, as to Mr Jones's knowledge and belief as to the facts:

- He must have made a statement or statements to his client's son regarding the listing of a hearing because Client A's son believed that the matter was listed for a final hearing in October 2018.

- Client A's son referred to a hearing in his letter of 22 October 2018, which Mr Jones received. Mr Jones replied to this letter on 2 November 2018 but did not address this issue.

- As regards the assertion that there was a misunderstanding, Client A's son wrote to Mr Jones on 15 November 2018 requesting details of court hearings and scheduled future hearings. Client A's son also wrote to the firm on 24 June 2019 and received no response. There was ample opportunity for Mr Jones and the firm to correct any miscommunication had there genuinely been a miscommunication.

- There was no final hearing in October 2018.

- Mr Jones, in not correcting this error, was deliberately misleading Client A's son about the listing of a hearing to give the impression that the case was progressing.

28.25 Mr Edwards therefore submitted that, in applying the Ivey test, Mr Jones's conduct was dishonest by the standards of ordinary decent people.

Respondent's Position

28.26 Mr Jones admitted the factual matrix of Allegation 1.3 and the consequential Principle breaches in his Answer to the Rule 12 Statement. He confirmed those admissions before the Panel at the substantive hearing. Mr Jones made no formal admission or denial to the aggravating feature of dishonesty in his Answer. His position, gleaned from the Weightmans correspondence, appeared to be that he denied having acted dishonestly.

28.27 Mr Jones elected not to give evidence to the Tribunal. He was reminded of and confirmed his understanding of Practice Direction 5 which empowers the Tribunal to draw an adverse inference in circumstances whereby a Respondent does not give sworn evidence. In his unsworn oral submissions to the Panel Mr Jones denied the aggravating feature of dishonesty as alleged.

28.28 In addition to his position set out at §26.28 – 26.28 above, Mr Jones maintained that he could not recall what was said in the telephone conversation with Client A's son on or around 20 September 2018 given his ill health at that time. Mr Jones did not dispute that Client A's son genuinely believed what was a false recollection of the conversation given the passage of time and the contradictions in the same. Mr Jones denied that he acted dishonestly during the course of that telephone conversation and asserted that there had been a "miscommunication" which had led to a "misunderstanding" on the part of Client A's son.

The Tribunal's Findings

28.29 The Tribunal considered the admissions made by Mr Jones to the factual matrix of Allegation 1.3 and the consequential breaches of Principles 2, 4 and 6. In so doing, the Tribunal found the admissions to have been properly made in all of the circumstances and accepted the same.

28.30 The Tribunal therefore found the factual matrix and Principle breaches alleged in Allegation 1.3 PROVED on the basis of the evidence before it and Mr Jones's admissions.

28.31 As regards the aggravating feature of dishonesty, the Tribunal had before it a signed witness statement containing a declaration of truth dated 9 November 2022 from Client A's son in which he stated that:

> *"… During this telephone conversation Mr Jones led me to believe that an application for the court hearing had been made and the final date was awaited. Mr Jones advised me that the hearing was due to take place in October 2018…"*

28.32 Mr Jones did not require the attendance of Client A's son to give evidence at the substantive hearing and be cross-examined on his recollection. Mr Jones maintained that during the course of the offending telephone call, there had been a "miscommunication" and/or "misunderstanding" between himself and Client A's son. The Tribunal rejected that contention and accepted the sworn, written and unchallenged witness statement of Client A's son.

28.33 In so doing and in applying the Ivey test the Tribunal therefore found, on a balance of probabilities, the aggravating feature of dishonesty PROVED.

Previous Disciplinary Matters

29. None.

Mitigation

30. Mr Jones reiterated his regret and remorse in relation to the misconduct found. He submitted that his failures pertain to one client and one matter thus should be viewed as isolated in nature.

Sanction

31. The Tribunal considered and applied the Guidance Note on Sanctions (Tenth Edition: June 2022). The Tribunal assessed the seriousness of the misconduct by considering Mr Jones's culpability, the level of harm caused together with any aggravating or mitigating factors.

32. Mr Jones had made admissions to serious Allegations predicated on misleading a client, an opposing party to litigation and the client's son. Whilst Mr Jones had denied the aggravating feature of dishonesty, the Tribunal had found that he had acted dishonestly on numerous occasions, in respect of three separate individuals, repeated over a protracted period of time (from 2012 – 2018). Mr Jones had alluded, during the course of the investigation and in his oral submissions to the Tribunal, to personal circumstances and health issues at the material time. Mr Jones did not adduce any medical evidence to support his submissions. Nor did he give evidence in relation to them. Whilst the Tribunal did not draw an adverse inference in that regard, it did not need to do so as the facts were found proved on the basis of the evidence before it and the admissions made by Mr Jones.

33. Given the fact that dishonesty had been found proved, only exceptional circumstances could justify a sanction other than a strike-off. No such circumstances were advanced by Mr Jones, and the Tribunal identified none from the material before it.

34. The Tribunal therefore determined that the only appropriate sanction was an Order Striking Mr Jones from the Roll of Solicitors.

Costs

<u>Applicant's Application</u>

35. Mr Edwards applied for costs in the reduced sum of £9,970.00. The reduction reflected the change in prosecution advocate, his increased hourly rate but lesser claim in hours as regards hearing preparation.

36. Mr Edwards reminded the Tribunal that the onus was on Mr Jones to advance evidence of financial means which he had failed to do in documentary form.

<u>Respondent's Position</u>

37. Mr Jones apologised for not having filed a "Statement of Means" as he was required to do. Mr Jones asserted that was an oversight on his behalf.

38. As regards his financial position, Mr Jones stated that he was unemployed but held a temporary "warehouse job stacking shelves". He submitted that he was in receipt of

state benefits, did not own a property and had no savings. He understood that he would be liable to pay the Applicant's costs but did not have the means to do so.

The Tribunal's Decision

39. When determining sanction, the Tribunal considered R43of the Solicitors (Disciplinary Proceedings) Rules 2019 which provides:

> *"…(4) The Tribunal will first decide whether to make an order for costs and will identify the paying party. When deciding whether to make an order for costs, against which party, and for what amount, the Tribunal will consider all relevant matters including the following—*
>
> *(a) the conduct of the parties and whether any or all of the allegations were pursued or defended reasonably;*
> *(b) whether the Tribunal's directions and time limits imposed were complied with;*
> *(c) whether the amount of time spent on the matter was proportionate and reasonable;*
> *(d) whether any hourly rate and the amount of disbursements claimed is proportionate and reasonable;*
> *(e) the paying party's means…*
>
> *(5) If the respondent makes representations about the respondent's means, the representations must be supported by a Statement which includes details of the respondent's assets, income and expenditure (including but not limited to property, savings, income and outgoings) which must be supported by documentary evidence…"*

40. The Tribunal also considered the Standard Directions, issued on 16 August 2023, in particular Direction 12 which provides:

> *"…If at the substantive hearing the Respondent wishes their financial position to be taken into consideration by the Tribunal in relation to possible sanctions and/or costs, they shall, in accordance with SDPR Rule 43(5) by no later than 4:30 P.M. on Tuesday 21 November 2023 file at the Tribunal and serve on every other party a Statement of Means including full details of assets (including, but not limited to, property]/income/outgoings supported by documentary evidence. Any failure to comply with this requirement may result in the Tribunal drawing such inference as it considers appropriate, and the Tribunal will be entitled to determine the sanction and/or costs without regard to the Respondent's means…"*

41. In so doing, the Tribunal determined that (a) given the nature of the allegations and the findings made, an order for costs should be made in favour of the Applicant, (b) Mr Jones's failure to comply with Rule 43(5) and Standard Direction 12, (c) the time spent by the Applicant on the matter was reasonable and proportionate, (d) the hourly rate of between £130 and £145 was reasonable and proportionate (no disbursements had been claimed) and (e) the limited weight to be attached to Mr Jones's submissions as regards impecuniosity given his failure to document and/or evidence the same.

42. The Tribunal therefore GRANTED the application for costs in the sum of £9,970.00.

Statement of Full Order

43. The Tribunal Ordered that Andrew Lynsey Jones, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,970.00.

Dated this 19 day of January 2024
On behalf of the Tribunal

M.N Millin

M N Millin
Chair