

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12408-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ASHISH BHATIA

Respondent

Before:

Mr A Ghosh (in the chair)
Mr M N Millin
Mrs C Valentine

Date of Hearing: 27-29 March 2023

Appearances

Victoria Sheppard-Jones, barrister of Capsticks LLP for the Applicant.

Gregory Treverton-Jones KC, barrister of 39 Essex Chambers for the Respondent

JUDGMENT

Allegations

1. The allegations against Mr Bhatia were that, while in practice as a Director at Bhatia Best Limited (“the Firm”):
 - 1.1 He discriminated against an employee of the Firm, Miss Elaina Brown, by treating her unfavourably, because of her pregnancy and maternity, at both or either, in a meeting on 8 August 2017 and in her subsequent dismissal on 9 August 2017. He therefore breached any or all of Principles 2, 6 and 9 of the SRA Principles 2011 (“the Principles”) and failed to achieve Outcome (2.1) of the SRA Code of Conduct 2011 (“the Code”)

NOT PROVED.

- 1.2 He failed to notify the SRA of the Employment Tribunal judgement dated 17 April 2019. He therefore breached Principles 7 of the SRA Principles and failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011 (“the Code)

PROVED.

Executive Summary

2. An Employment Tribunal had found that Mr Bhatia’s firm had discriminated against its employee, Miss Brown, on the grounds of pregnancy and maternity. The SRA made that Allegation against Mr Bhatia, along with alleging that he had failed to report the Employment Tribunal’s Judgment to the SRA.
3. Mr Bhatia denied the Allegation that he had discriminated against Miss Brown on the grounds of pregnancy and maternity and further denied that he had been under an obligation to report the Employment Tribunal’s Judgment to the SRA.
4. The Tribunal found that Miss Brown had been unfavourably treated by Mr Bhatia, but it was not satisfied that the reason for this was her pregnancy and maternity. There were other reasons for this and in those circumstances, Allegation 1.1 was not proved.
5. Allegation 1.2 was proved on the basis that Mr Bhatia knew he ought to have reported the matter to the SRA and had failed to do so.

Sanction

6. Mr Bhatia was reprimanded and ordered to pay the SRA’s costs fixed in the sum of £1,000.

Documents

7. The Tribunal considered all of the documents in the case which were contained in an agreed electronic hearing bundle.

Preliminary Matters

8. Respondent's Application to amend his Answer

Respondent's Submissions

8.1 Mr Treverton-Jones submitted that paragraph 7 of Mr Bhatia's Answer may be ambiguous. It read as follows:

“7. The Respondent accepts the analysis of the Employment Tribunal and its conclusion that the meeting of 8th August 2017 constituted unfavourable treatment of Miss Brown on grounds of pregnancy.”

8.2 He therefore applied for leave to amend the Answer to read as follows (proposed changes underlined):

“The Respondent accepts the analysis of the Employment Tribunal on the facts found by that Tribunal, and its conclusion that the meeting of 8th August 2017 constituted unfavourable treatment of Miss Brown on grounds of pregnancy. The Respondent does not accept the facts found by the Employment Tribunal upon which that legal conclusion was based.”

8.3 Mr Treverton-Jones submitted that the proposed amendment was a clarification that caused no prejudice to the SRA.

Applicant's Submissions

8.4 Ms Sheppard-Jones opposed the application. She submitted that the Answer, as currently drafted, showed a clear admission that the Mr Bhatia accepted that his conduct on 8 August 2017 constituted discrimination. It went on to say that it does not amount to professional misconduct. Ms Sheppard-Jones submitted that the Answer would have been drafted with care, by experienced counsel after two extensions of time for it to be served and she rejected the suggestion that it was ambiguous.

8.5 Ms Sheppard-Jones submitted that the application to amend the paragraph was a material amendment because it effectively sought to resile from the admission clearly made. The argument as advanced in Mr Treverton-Jones' skeleton may be how it the case was now argued, but that was not how it was argued in January when the Answer was served.

8.6 Ms Sheppard-Jones submitted that the SRA was prejudiced, particularly if Mr Bhatia chose not to give evidence, as he could not be cross-examined about the change in his defence. Mr Treverton-Jones indicated that Mr Bhatia intended to give evidence (which he did) and Ms Sheppard-Jones acknowledged that in those circumstances, she could cross-examine him.

The Tribunal's Decision

8.7 The Tribunal noted that Mr Bhatia, through the skeleton argument, and in the rest of his Answer, had already made it clear that he disputed the findings of fact on the part

of the Employment Tribunal. Ms Sheppard-Jones would have an opportunity to cross-examine Mr Bhatia on the point and so there was no prejudice to the SRA. The Tribunal therefore granted the application.

9. Respondent's Application to adduce an additional witness statement out of time

Respondent's Submissions

- 9.1 Mr Treverton-Jones applied for leave to serve an additional witness statement from Mr Bhatia, together with an exhibit in the form of an email from HMRC. He said that the SRA had been asked to obtain relevant records, using the SRA's powers, to ascertain whether Miss Brown had ever alerted the government to the fact that she was married and as that was relevant as to the validity of Mr Bhatia's suspicion or belief that Miss Brown had never told the government that she was married was correct. The SRA had refused.
- 9.2 Mr Bhatia's solicitors had tried to obtain this from the DWP and HMRC, both of whom had been unhelpful. It was eventually established that the DWP did not have relevant documentation. HMRC had confirmed it did not have any documentation showing Miss Brown had claimed as a married woman rather than as a single woman. Mr Treverton-Jones submitted that it was important where truth lay in this case. He submitted that the material could not have been obtained any earlier.

Applicant's Submissions

- 9.3 Ms Sheppard-Jones opposed the application on the grounds that the late service of the material was prejudicial and that it was irrelevant to the issues that the Tribunal had to determine. Ms Sheppard-Jones stated that, if the material were to be admitted, the SRA would seek an adjournment.
- 9.4 Ms Sheppard-Jones pointed out that the standard directions required Mr Bhatia to serve all documents on which he intended to rely by 19 January 2023, subsequently extended to 13 February 2023. At a previous Case Management Hearing on 30 January 2023 this issue had been raised by Mr Bhatia's solicitors, who had indicated they were seeking the material. Nothing further had been heard until 24 March 2023 when Ms Sheppard-Jones received an email from Mr Treverton-Jones. The material was received by the SRA at 5pm that day and instructions were taken before the hearing began.
- 9.5 Ms Sheppard-Jones submitted that the material appeared to have been produced following service of a witness summons on HMRC. Ms Sheppard-Jones said it was unclear when that summons had been applied for, but it had been issued on 3 March 2023. The email that Mr Treverton-Jones sought to adduce was dated 22 March 2023. Ms Sheppard-Jones submitted that the SRA was in a difficult position because it was unable to challenge that material if it was adduced and the case went ahead.
- 9.6 Ms Sheppard-Jones further submitted that the material was irrelevant. The issue for this Tribunal was the same issue that the Employment Tribunal had to determine, which was whether Mr Bhatia had a genuine belief that Miss Brown was involved in benefit fraud. It was his state of mind in August 2017 that was relevant and a

document created six years later could not be relevant as to his state of mind as he would not have seen that document at the time of Miss Brown's dismissal. Ms Sheppard-Jones told the Tribunal that the email, which it had not seen, was short, was from a paralegal, and set out no detail of any investigation.

- 9.7 If the Tribunal considered the email was relevant then the SRA would apply for adjournment so that it could seek evidence from HMRC. The SRA's position on this had been that looking into this matter was speculative and disproportionate and it was open to Mr Bhatia to seek an order from the High Court, which he had done.

Respondent's Further Submissions

- 9.8 Mr Treverton-Jones described the SRA's position as "completely untenable" in relation to applying to adjourn if the material was admitted. He submitted that the material was relevant on the basis that if the overall picture showed that in all likelihood Miss Brown was committing a fraud then the Tribunal would be more likely to find Mr Bhatia's belief was genuine.
- 9.9 Mr Treverton-Jones told the Tribunal that if it found the material relevant but was minded to adjourn then Mr Bhatia would not seek to adduce it, as he wanted the matter resolved without any further delay.
- 9.10 The Tribunal sought clarification and submissions on the question of whether Mr Treverton-Jones was seeking to adduce the material in order to attack the credibility of Miss Brown. Mr Treverton-Jones told the Tribunal that the principal reason for wanting to adduce the evidence was that Mr Bhatia wanted to get to the truth of this issue. If it emerged, on all the evidence, that his belief was a reasonable and correct belief then it would be easier for the Tribunal to resolve the issue about whether he had the belief in the first place. Mr Treverton-Jones submitted that this would undermine Miss Brown's credibility, but that factor was more remote as she was not going to be a live witness in these proceedings.

The Tribunal's Decision (majority)

- 9.11 The Tribunal concluded that the material was irrelevant and should not be admitted out of time. The purpose of these proceedings was not to establish whether or not Miss Brown had committed benefit fraud and the Tribunal was not required to make a finding on that point. The Tribunal would be required to make a determination as to whether Mr Bhatia had discriminated against Miss Brown on the grounds of pregnancy and maternity. In the course of determining that issue the Tribunal would consider Mr Bhatia's case that he had genuinely believed that Miss Brown had committed benefit fraud and that this was the reason for dismissing her. In considering whether Mr Bhatia had a genuine belief at the time, the Tribunal would consider the information available to him at the time, not material that came to his attention several years after the events in question. It was possible, for example, that Mr Bhatia could have genuinely believed she was guilty of fraud, but been wrong. It was also possible, for example, that Mr Bhatia could have had no genuine belief but turned out to be correct. What was relevant therefore, was not whether or not Miss Brown was guilty of benefit fraud, but whether Mr Bhatia had a genuine belief in her guilt. That could only be assessed by considering the material available to him at the

time he took the actions he did. Therefore an email produced six years later did not assist the Tribunal in its analysis and was irrelevant. The application was therefore refused.

Dissenting ruling

9.12 The Chair dissented from his two colleagues and would have allowed the material to be admitted. The Chair considered that the material was potentially relevant to Mr Bhatia's belief at the time and as to Miss Brown's credibility. The burden of proof was on the SRA and the appropriate way to deal with this material was to admit it and then to determine what weight to attach to it when deliberating at the conclusion of the case.

10. Evidential status of the Employment Tribunal Judgment

10.1 The Chair raised a legal point in relation to the status of the Employment Tribunal Judgment and its admissibility in these proceedings. He invited submissions from the parties having regard to the judgment of the Court of Appeal in Irwell Insurance Company v Watson and Others [2021] EWCA Civ 67.

Applicant's Submissions

10.2 Ms Sheppard-Jones submitted that the relevant section of Irwell was [42] which stated as follows:

“Accordingly, despite the series of points which Mr Mitchell deployed with skill and ingenuity, I am in no doubt that an ET is a “court” within the meaning of s 2(6) of the 2010 Act.”

10.3 Ms Sheppard-Jones submitted that there was no doubt that the Employment Tribunal was a ‘Court’ for the purposes of SDPR Rule 32(2) and as such the Judgment was admissible.

Respondent's Submissions

10.4 Mr Treverton-Jones told the Tribunal that he did not dissent from Ms Sheppard-Jones on this point.

The Tribunal's Decision

10.5 Rule 32(2) states:

“(2) The judgment of any civil court, or any Tribunal exercising a professional or disciplinary jurisdiction, in or outside England and Wales (other than the Tribunal) may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based is admissible as proof but not conclusive proof of those facts.”

- 10.6 The Tribunal noted that Rule 32(2) referred to “a civil court *or any Tribunal exercising a professional or disciplinary jurisdiction*”. These words singled out only Tribunals which exercised a professional or disciplinary jurisdiction as being within the ambit of the Rule. The Tribunal did not, therefore, consider that an Employment Tribunal was a civil court for the purposes of Rule 32(2) and as such the Employment Tribunal Judgment was inadmissible. However, even if the Tribunal was wrong as to that point, it made no material difference in this particular case. The Tribunal would need to determine the same issues of fact as the Employment Tribunal had been required to as the findings of fact set out in the Employment Tribunal Judgment were not conclusive proof of those facts under Rule 32(2). The burden of proof in these proceedings remained on the SRA throughout. Mr Bhatia did not have to prove anything.

Factual Background

11. Mr Bhatia was admitted to the Roll on 2 September 1985. He was at the relevant time and at the time of the hearing one of the beneficial share owners and directors of the Firm. At the relevant time the Firm had three offices, in Nottingham, Mansfield and Derby. The Firm employed over 120 staff with approximately 90 staff working at the head office in Nottingham. At the time of the hearing Mr Bhatia held an unconditional Practising Certificate.
12. This matter came to the attention of the SRA from a review of an article in the Nottingham Post. The article referred to the Firm as being a party in an employment matter regarding a former employee, Miss Brown, who had been dismissed as a paralegal in the Firm’s family law department in 2017. The Employment Tribunal had upheld her claim of maternity and pregnancy discrimination following a hearing. After making its findings, the Firm and Miss Brown had agreed a settlement in advance of the remedies hearing. This provided that the Firm paid compensation to Miss Brown in the sum of £50,000 and paid her legal fees in the sum of £30,000.
13. Miss Brown was employed by the Firm on two occasions. The first period of employment commenced on 1 April 2015 and ended when Miss Brown left the Firm on 27 May 2016, when she took up a post at Derby City Council. During her first period of employment Miss Brown frequently used her married surname of Shaw in employment documentation.
14. Miss Brown commenced her second period of employment at the Firm on 4 July 2016 as a paralegal in the department of Matthew Best, a Director at the Firm and Head of the Family Department. Miss Brown’s employment contract was in the name of Elaina Shaw as were documents relating to appraisals. Other documentation for this period, such as medical documentation, was in the name of Miss Brown. In this Judgment, she is referred to as Miss Brown throughout, unless the reference to Shaw is necessary to understand the evidence or findings.
15. In March 2017 Miss Brown discovered she was pregnant with her fifth child and notified the Firm in April 2017, due to her becoming quite ill at work as a result of her pregnancy. Miss Brown’s health continued to deteriorate. As a result, Miss Brown decided to take her maternity leave early and notified the Firm of this on 2 August 2017. Miss Brown explained that the expected date of delivery of her baby,

was 16 November 2017, but she proposed to start her maternity leave on 25 September 2017, which was earlier than she had first anticipated, stating; “that it is only fair on both myself and the company for me to take leave earlier than expected”. This notification was done in the name of Elaina Brown.

16. Miss Brown also completed a “Request for leave Form” for the morning of 7 August 2017 for half day for an antenatal appointment. This was approved by the Mr Best. The appointment overran, and she missed a previously arranged meeting with a client later that day.
17. The same evening there was email communication between Miss Brown and Mr Bhatia. Miss Brown sent the following email to Mr Bhatia:

“Hi Ash,

Please accept my sincere apologies for contacting you outside of office hours. I have just spoken with Lucy Keiller who informed me that earlier today you contacted her to ask if my husband was living with her. I can confirm that he doesn’t, he has his own flat in gedling [sic] but was staying with her for around a week whilst he was in the process of getting his own place ... Things at home have not been good for a considerable period of time. Mainly since he gave up his job working away a few months back and so resulting in him seeking his own accommodation. I just wondered if there was a reason you required this information. I am aware that I have had a considerable period of sickness due to a terrible pregnancy and wondered if you thought maybe my personal circumstances had impacted on that and that I am in some kind of trouble. Would you like me to come and speak with you tomorrow. I’m happy to answer any questions.

kindest regards Elaina Brown”

18. Mr Bhatia replied to this email at 20.24 the same evening, as follows:

“Elaina

You’re right in deducing that I am concerned. A number of issues have come to my attention which quite rightly have caused me to make more detailed enquiries about you, your health and general well being, and your domestic situation. The fact that you are pregnant, have had pregnancy related difficulties, and not least that you are the sole carer of 4 children (already) simply exacerbates my concerns. It’s right that I spoke with Lucy, and she may have reported to you that my initial question was targeted at whether you were living at her home. A little while ago I heard that following your recent marriage you had decided to seek a divorce. I didn’t know what came of that, but it’s now clear that things are far from settled given that your husband and you currently live apart. Unfortunately you were absent for much of today, and when I was told you’d returned you were seeing clients. I would like to talk to you in person and it’s perhaps best if that can be arranged for tomorrow. Please liaise with Sue in the morning. The fact that Matt has found it necessary to speak with you about your absences from work, and in particular the departmental burdens created by what appears to be your unreliable attendance record mean it’s right that I look at everything in more

detail, and in the round. Ordinarily your personal and domestic circumstances would not be of interest to me, as they are private matters. But here it looks like there may be an impact on the firm, which is worrying, and there may be a need for some pastoral care.

It's right that I'm open and transparent with you, so let me be blunt. Your situation seems far from ideal. Indeed far from ordinary or straightforward. I'm not at all clear about how this is going to play out. And I'm concerned about your 4 children. In your situation it can't be easy to address the various demands placed upon you. Although we've yet to receive a MAT1 certificate, and your due date is some time away, it seems your pregnancy is a causing some medical concern. You care for your 4 children about whom there are historic issues which add to your responsibility. You are separated from your husband, or at least not living together, so left to deal with things alone. I don't know about the commencement of your LPC studies, or indeed if that is still on track, let alone how you might cope with the demands of such an intense course while heavily pregnant or as a new mother. All of this is framed in the context of you holding down a 3 day per week professional job, which requires you to contend with the woes of demanding clients. These are not matters about which I can just turn a blind eye. I carry legal duties as your employer, and am also required to comply with my obligations under the solicitors code of conduct 2011, and our legal aid contracts, as well as ensuring adequate supervision, and a proper service to clients. I hope this suffices to explain why I want to talk to you, what I want to talk about, and why that should be sooner than later. So tomorrow would be best but otherwise agree a time with Sue for Wednesday."

19. As a result, a meeting was arranged on 8 August 2017.

8 August 2017 meeting

20. Mr Bhatia produced notes that he told the Tribunal were taken at the meeting. The SRA's case was that at least some of the notes were made after the meeting. In the 'conclusion' section of the notes, Mr Bhatia had recorded the following:

"Conclusions

- 1 If any aspect of Benefit Fraud/wrongdoing emerges Elaina will be summarily dismissed. She understands its her responsibility to report any change in circs. Firm cannot be associated with such behaviour.
- 2 True "capacity" issues are revealed. Albeit not "culpability", nor even "capability", she seems to have too many problems of a concurrent nature so lacks the capacity to hold down her job and properly discharge her duties.
- 3 In such circumstances the firm is able to terminate her employment on notice. She doesn't have security of employment anyway. And to be open, provided termination is not referable to pregnancy (so directly or indirectly sex discrimination) I am at liberty to sack her. Even the

statute (unfair dismissal) provides that it is reasonable if there is “some other commercial/substantial reason”.

- 4 However. I am NOT minded to terminate employment today. Why?
 - a. To do so would be horrific for her.
 - b. She is due to take maternity leave shortly, so best to be permitted to do so and focus on pregnancy and baby.
 - c. Disproportionate response in all the circumstances.

- 5 Nevertheless Elaina must understand that the nature of capacity issues and her unreliability is not acceptable. Intrusive and burdensome on the others in the department, and the firm has to treat others properly also. So there is a balancing act to be weighed. For now I say the balance is in her favour. I hope her personal life issues will have improved. Accordingly I’ve drawn a line in terms of what is acceptable and what is expected.

- 6 I strongly recommend that she does NOT take up the LPC place in Sept 2017, and does NOT draw down the student finance loan. Although career progression will be deployed, and that will be disappointing to her, in my honest view her chances of her passing the LPC in her current circumstances is very low. Pregnancy, health issues, 4 children, new baby, sleepless nights, abandoned by husband, negligible support structure, are all factors in context of a very demanding 1 year course. She must not be beguiled by Trent University acknowledging her pregnancy. That means nothing. Universities are nowadays commercial entities and so focused on receipt of course fees. The loan will be hers and hers alone. No indemnity or immunity exists and the work must still be done sufficient to pass. This could not come at a more difficult time for her.

An LPC, even if she passes, is of little value unless she secures a training contract. I have never offered one or indicated that I will. Also it would present as an obstacle for someone working 3 days/week as that could only give rise to a part time TC. Moreover extra issues would arise in relation to rotation of seats of training. Capacity and unreliability concerns do not help either.

- 7 Elaina enjoys a right to return to work following mat leave. She also has a right to request a contract variation under the flexible working regime. None of that is for now. Everything can be looked at, and afresh, when she returns to work or makes a request for variation. But I underscore the importance of being reliable and addressing capacity concerns. Hopefully when she returns things will improve.

- 8 From now until mat leave is taken, I understand that primacy must be given to the pregnancy and her health. Accordingly whatever time off is needed must be taken. No issue will arise, and I do not intend to revisit today’s conversation. However she is asked to organise herself

and offer notice of warning to the firm whenever possible I don't want to see a mix as currently seen, of pregnancy related absence, other absence, and also ex post facto (emergency) holiday requests. The next few weeks ca and should be managed more sensibly. A genuine pregnancy or health problem is quite different.

- 9 Given the number of plates spinning, the concurrent weighty responsibilities, and unfortunate domestic circumstances Elaina encouraged to take advice, turn to others for help, and improve her coping mechanisms. Her various problems must be broken down into separate issues, and addressed one by one. Delaying the LPC is an example. Marriage counselling another. Arranging medical appointments on Thursdays and Fridays (non-working days) another. In that way she may avoid; a) becoming overwhelmed, b) separating work from personal issues.
- 10 I am concerned that Elaina does not give sufficient importance to her job. It is noteworthy that income from employment is far less than value of welfare benefits received. Also that absences have arisen because of poor arrangements being made (Elaina giving priority to anything rather than job) manifest as emergency leave and ex post facto holiday requests. Also that LPC start date is prior to mat leave so job rendered unimportant. Elaina encouraged to grasp that her mindset must change. She must recognise that her job is important. She risks losing her job otherwise. Sympathy empathy and understanding of her life circumstances will shortly expire.

Ash”

21. The next day, 9 August 2017, Mr Bhatia made enquiries with the Department of Work and Pensions and the Benefits Fraud Hotline. Following those enquiries, a disciplinary meeting was held with the Miss Brown later that day.

9 August 2017 meeting

22. There were no notes of this meeting. It was not in dispute that Mr Bhatia informed Miss Brown at this meeting that he believed she had been committing benefit fraud and he dismissed her with immediate effect. This was confirmed in a letter to her dated 15 August 2017. In that letter, the reason given for her dismissal was as follows:

“5 Reason for dismissal: I was satisfied that you have engaged in a welfare benefits fraud. That amounts to dishonesty and is a criminal offence. Accordingly that is gross misconduct. I had before me 3 letters from DWP regarding attachment of earnings orders spanning 13 months from March 2016 until April 2017 which described you as “Miss Elaina Brown”. Of course you were married in 2014 and hence the 3 letters which post dated your marriage are prima facie evidence that you have made a false declaration and/or failed to report a change in your circumstances. In terms you have caused the Benefits Agency to believe you are a single mother of 4 children. Further, during

telephone calls which I made to DWP it was confirmed to me that; all of their records recite you as Miss Elaina Brown, that this is a fraud, and because of the fraud they declined to disclose anything further to me. The standard of proof in such employment matters is the civil standard, meaning a balance of probabilities. In fact I am satisfied to the higher criminal standard i.e. beyond reasonable doubt. Especially as you were unable to offer an explanation beyond a self serving assertion that you have notified “tax credits by telephone”.

23. The appeal process was set out as follows:

- “9 Appeal: You are entitled to appeal my decision to terminate your employment. An extract from the office manual is enclosed which explains. However, in this instance I am prepared to modify (in your favour) the process for appeal. I do so in case it takes you longer to secure documentary evidence from DWP or elsewhere. Accordingly and in a nutshell please note the following:
- a. If you want to appeal you must tell me in writing within 7 days of the date of this letter.
 - b. Thereafter I will delay convening an appeal hearing until the expiry of one month, unless you tell me you need more time which I now confirm I will grant by way of reasonable time extension.
 - c. You may appeal on any ground and for any reason you see fit. However, if you are able to provide documentary evidence from DWP which confirms that you did notify and update about all of your circumstances, and the 3 letters describing you as “Miss Elaina Brown” were in error because the DWP have made a mistake I would expect your appeal to be successful.
 - d. As a matter of fairness I can have no involvement in the appeal hearing. Likewise I cannot bind the hands or improperly influence the appeal panel which will comprise 3 independent individuals. Nevertheless it is my personal view that your appeal will be successful if you produce evidence as mentioned above.
 - e. If you are able to successfully appeal, and I have been notified by the appeal panel, I will be able to confirm i) your reinstatement, ii) refund of salary lost from termination. to maternity leave date notified by you already.
 - f. For the avoidance of doubt if you fail to lodge written notice of appeal as mentioned at a) above your right to appeal will be lost.”

24. Miss Brown lodged an appeal against her dismissal and provided her reasons in a letter dated 21 August 2017. Miss Brown stated in this letter that she had spoken to the Tax Credits Office and in the adviser's opinion, having looked back through the records, confirmed "that I had made the relevant declarations and that Tax Credits had no issue with the claims I had made." Miss Brown had further stated that the adviser spoke with her manager, and the Tax Credit Department had confirmed the next day, "that I had made the relevant declarations and that Tax Credits had no issue with the claims I had made."
25. On the 5 October 2017 Miss Brown provided an email from Pamela Andrews, FES Local Service Compliance Officer for the DWP, confirming they were satisfied with the evidence provided and were closing their case. The email from Ms Andrews stated: "Following your interview on 5 October 2017 regarding the case of your living together with Darren Shaw. We are satisfied following our discussions and with evidence provided and we have therefore close (sic) this case."
26. On 13 October 2017 Mr Bhatia asked for a standalone PDF attachment of the email from Pamela Andrews and signed authority for the release to the Firm of all information relating to her benefit claims. Miss Brown did not provide this. In her witness statement for the Employment Tribunal proceedings, she stated that this had been on legal advice. Miss Brown did not provide a witness statement in these proceedings and was not called as a witness.
27. The appeal took place and, in a letter, dated 23 October 2017, the Firm set out its findings. Miss Brown's appeal was unsuccessful, and the dismissal was upheld on the basis of alleged benefit fraud.
28. Miss Brown submitted a claim to the Employment Tribunal on 22 December 2017. The case was heard on 2, 3 and 18 February 2019.
29. The Employment Tribunal Judgment dated 17 April 2019 dismissed the complaints of direct sex discrimination and automatic unfair dismissal under s99 of the Employment Rights Act 1996 but the complaint of pregnancy and maternity discrimination succeeded. The matter was subsequently settled in the terms described above.
30. Mr Bhatia did not report the Judgment of the Employment Tribunal to the SRA. As explained above, the SRA discovered the details from a press article.

Witnesses

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

32. Ashish Bhatia – Respondent

- 32.1 Mr Bhatia told the Tribunal that his witness statement was true to the best of his knowledge and belief and he adopted it as his examination in chief in these proceedings.
- 32.2 Mr Bhatia stated that he had examined the two copies of the e-mail from Ms Andrews that was being produced by Miss Brown. The Firm's external advisors it had been concluded that Ms Andrews e-mail address had been redacted from the second version of the e-mail that was presented to him.
- 32.3 In cross examination Mr Bhatia told the Tribunal that he was aware that Miss Brown was married to Mr Shaw as she had disclosed this as part of her application for employment. Mr Bhatia agreed with Ms Sheppard-Jones that there was no requirement for a woman to change her name legally when she got married and that she was entitled to keep her name. Mr Bhatia confirmed that he knew that she went by the name Miss Brown and he also agreed that it was possible to tell the tax credits office that you had got married without changing your name.
- 32.4 Mr Bhatia told the Tribunal that before the meeting commenced on 8 August 2017 he had a quick look at Miss Brown's file, was aware that there were letters from the DWP existence, thought nothing of them and closed the file. It was only after speaking to another colleague that the issue of Miss Brown's marriage appeared significant and that was why he had telephoned the DWP to ask if their records were correct. Mr Bhatia told the Tribunal that the DWP had told him the records only referred to Miss Brown and that they were unaware of the marriage. Mr Bhatia told the Tribunal that he had hoped did there have been administrative error on the part of the DWP but instead he was told to telephone at the fraud helpline.
- 32.5 Ms Sheppard-Jones put to Mr Bhatia that the events leading up to the meeting on the 8 August 2017 related to an antenatal appointment on the 7 August 2017. Mr Bhatia said that he did not know that at the time but subsequently became aware of it. He accepted that Miss Brown had no control over that and then she should have taken as long as she needed at the appointment. Mr Bhatia told the Tribunal that the meeting was about Miss Brown's separation from her husband and that at the time of the meeting he was unaware of the issues that had arisen the previous day. Ms Sheppard-Jones put to Mr Bhatia that he had raised Miss Brown's pregnancy as an issue in the email. Mr Bhatia agreed that he had mentioned the pregnancy as he was aware she was pregnant and had experienced medical problems. Ms Sheppard-Jones asked Mr Bhatia if he was seriously suggesting the e-mail of 7 August was intended to be supportive. Mr Bhatia confirmed this was the case. He had responded to the e-mail at 6:30pm after a long day because he did not want to leave it until the next day to reply. Mr Bhatia told the Tribunal that Miss Brown had been one of his staff and that he always looked after his staff. He had taken the trouble to read her e-mail and in doing so had concluded that she was in the midst of a crisis and that it merited at least a reply. Mr Bhatia told the Tribunal that he had not summoned her to a meeting but was of course happy to meet her.

- 32.6 Mr Bhatia told the Tribunal that during the meeting he had taken the topics for discussion in the order that Miss Brown wanted. Mr Bhatia denied that the meeting constituted unfavourable treatment and denied making such an admission to that effect in his Answer prior to it being amended.
- 32.7 Ms Sheppard-Jones put to Mr Bhatia that the Employment Tribunal concluded that he had likely added to his notes of the meeting of 8 August 2017 after the meeting had concluded. Mr Bhatia stated that the Employment Tribunal had been wrong and he denied writing the conclusions after the end of the meeting. Ms Sheppard-Jones asked Mr Bhatia why it was necessary to make the points in the third conclusion that he was clear that he would not be dismissing Miss Brown on the grounds of pregnancy. Ms Sheppard-Jones put to Mr Bhatia that this was a self-serving paragraph. Mr Bhatia denied this. He invited the Tribunal to look at the fourth conclusion, which were his reasons for not dismissing Miss Brown. He wanted her to focus on the birth. There were six weeks to get through until her maternity leave. He considered that dismissing her would have been disproportionate in all the circumstances and he had already supported her by reducing her days from five days to three days been giving her a significant pay rise to make up for the loss of the two days.
- 32.8 Ms Sheppard-Jones referred to the link in the meeting notes to unreliability at work. Mr Bhatia told the Tribunal that these were not his words but Miss Brown's words. He had unreliability on the agenda and she had said that it was pregnancy related. Mr Bhatia had denied making that link and told the Tribunal that pregnancy and health were completely different issues. He had told Miss Brown that she should take as much time off as she needed. Ms Sheppard-Jones put to Mr Bhatia that this was a "dressing-down" meeting, something that he denied. He told the Tribunal that he had sat and listened to Miss Brown and was providing "real world practical advice". The truth was that Miss Brown did not want help and she was a strong willed independent self-sufficient person. Mr Bhatia denied that he had been telling her off because she was causing issues partly related to her pregnancy.
- 32.9 In relation to the telephone calls to the DWP on 9 August 2017, Ms Sheppard-Jones put to Mr Bhatia that he could not possibly have reached the conclusion that Miss Brown was guilty of fraud at that stage. Mr Bhatia stated that he came to a greater suspicion that she may have committed fraud now that this was a phased process. He told the Tribunal that he had not been looking for a problem but was mindful that he could not turn a blind eye if wrongdoing came to light. He told the Tribunal that during the phone call he explained who he was and he chose not to be anonymous. He adopted the same approach when he was on the phone call to the fraud hotline. Mr Bhatia told the Tribunal that the name was not the determinant factor, it was the issue of reporting the marriage that he was focused on.
- 32.10 Ms Sheppard-Jones put to Mr Bhatia that it was "extraordinary" that there were no notes taken of the dismissal meeting on 9 August 2017 when there had been several pages of notes of the meeting held the day before. Mr Bhatia told the Tribunal that it had not started off as a dismissal meeting but it was a disciplinary meeting in order to put to Miss Brown, openly and honestly, what was being alleged or suspected. Mr Bhatia told the Tribunal that Miss Brown had told him that she had done nothing wrong and that she had reported her marriage and done so by telephone. Mr Bhatia had told her that he could not take her word for it as the DWP were informing him

that she had not told them. Miss Brown had told him that she had no paperwork available and Mr Bhatia told the Tribunal that he had concluded that Miss Brown was lying about this, as the government would not hand out substantial sums of money without some paperwork. It was for this reason that Mr Bhatia had dismissed her immediately rather than, for example, suspending her pending a full investigation. Mr Bhatia reiterated that Miss Brown had lied to him and he told the Tribunal that she had admitted to doing so in the Employment Tribunal proceedings. Mr Bhatia stated that in his opinion there had been no time to lose, but he had told Miss Brown that if she was successful at her appeal she would be reinstated and any money lost in the interim would be reimbursed. He had also made clear that she would continue to receive her maternity pay, in line with statutory requirements.

- 32.11 Ms Sheppard Jones asked Mr Bhatia why he had not contacted Pam Andrews upon receipt of her e-mail from Miss Brown. Mr Bhatia stated that he had asked for Miss Brown's authority to do so but that had been refused.
- 32.12 Mr Bhatia told the Tribunal that he had settled the case with Miss Brown rather than appeal it, having taken a commercial decision not to incur more costs. Ms Sheppard-Jones put to him that nothing in the settlement agreement expands the Judgment. Mr Bhatia replied that he had understood that it did. He referred to the clause inserted by Miss Brown's counsel which provides a liability waiver for Miss Brown from Mr Bhatia. Mr Bhatia accepted that the SRA should be notified of such adverse findings but he did not think that he was under an obligation after the oral Judgment had been announced all the written reasons issued and by the time the matter was concluded on 2 July 2017, his belief was that the findings had been expunged and the reason to report therefore no longer existed.
- 32.13 Ms Sheppard-Jones put to Mr Bhatia that his actions had lacked integrity. Mr Bhatia denied this and described himself and Mr Best as Miss Brown's "fairy godmothers" and said that he would talk to her like a daughter. Mr Bhatia told the Tribunal that the only reason he had dismissed her was because he truly believed that she was lying and had committed fraud and he had to protect the Firm. He had hoped that she would be successful in her internal appeal.
- 32.14 In response to a request for clarification from the Tribunal, Mr Bhatia told the Tribunal that the conclusions set out in his notes of the meeting of 8 August 2017 were written while Miss Brown was sitting in front of him during the meeting. He said that he would write one conclusion out and read it to her. He would ask her if she understood it and then move on to the next one. He described this as perfectly normal practice for him as it involved taking matters slowly in bite sized bits, so as to be completely clear. Mr Bhatia told the Tribunal that Miss Brown had indicated acknowledgement to each of the conclusions but did not given any substantial response.
- 32.15 In response to a further request for clarification from the Tribunal, Mr Bhatia said that he did not consider that Miss Brown was emotional at the meeting on 8 August 2017 and she had impressed upon him that everything was fine and did not appear to be worried. Mr Bhatia had recommended that she should seek advice from other people.

33. Matthew Best – Director

- 33.1 Mr Best confirmed that his witness statements were true to the best of his knowledge and belief.
- 33.2 Mr Best was asked a number of questions about the use of the names Brown/Shaw, which related to the belief about benefit fraud. The details of this evidence are not set out as Mr Best’s opinion on whether Miss Brown had or had not committed fraud was of limited relevance to the question of Mr Bhatia’s belief on the point. Mr Best was not facing proceedings and just because Mr Best believed something did not mean that Mr Bhatia necessarily shared Mr Best’s belief.
- 33.3 Mr Best had chaired the appeal panel and stated that he was completely satisfied that the process had been fair to Miss Brown. He considered that there had been significant evidence of fraud.

Findings of Fact and Law

34. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the civil standard. 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 the Respondent’s rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

35. **Allegation 1.1**

Applicant’s Submissions

- 35.1 Ms Sheppard-Jones submitted that the evidence showed that pregnancy and maternity were factors in Mr Bhatia treating Miss Brown unfavourably at the meeting on the 8 August 2017 and in her dismissal on 9 August 2017 and that he had, therefore, discriminated against her. Ms Sheppard-Jones referred to the email to Miss Brown of 7 August 2017, which referred to pregnancy-related difficulties and absences from work, as well as the notes of the meeting on 8 August 2017 in which one of the topics under ‘Unreliability at Work’ was “Pregnancy related”.
- 35.2 Ms Sheppard-Jones submitted that although the benefit fraud issue was mentioned on 8 August 2017, it was not deemed to be serious enough to merit action until the following day when Miss Brown was dismissed.
- 35.3 Ms Sheppard-Jones reminded the Tribunal that there was no legal requirement for a woman to change her name on marriage and Miss Brown was entitled to use either name. Miss Brown did use both names interchangeably at work and had done so since 2015. Ms Sheppard-Jones submitted that Mr Bhatia would have known this and that it was “nonsensical” to suggest that he only became aware of this when he looked at the file on 8 August 2017. Mr Bhatia had been involved in recruiting her and had access to her personnel file. The Applicant’s case was that it was “inconceivable” that with this knowledge Mr Bhatia could have concluded that Miss Brown had been

committing benefit fraud because of her use of the names Brown and Shaw on different documents.

- 35.4 Ms Sheppard-Jones submitted that the reference in the notes of the meeting on 8 August 2017 to not dismissing on grounds of pregnancy was “self-serving” and demonstrated that Mr Bhatia knew that he could not use that as a reason to sack Miss Brown. Ms Sheppard-Jones submitted that the meeting itself was a punitive meeting that amounted to a warning to Miss Brown which related to her pregnancy. This amounted to unfavourable treatment due to that pregnancy.
- 35.5 Ms Sheppard-Jones submitted that the enquiries made on 9 August 2017 were “superficial” and that any information provided would have not been based on detailed information. Ms Sheppard-Jones submitted that it was “wholly implausible” that Mr Bhatia was satisfied to the criminal standard that Miss Brown was engaged in benefit fraud. She submitted that the reality of the matter was that he was concerned about her pregnancy and personal matters and that this was a vehicle he could use to dismiss Miss Brown.
- 35.6 Miss Brown subsequently produced the email from Pam Andrews dated 5 October 2017. Mr Bhatia had every opportunity to follow this up as the email contained contact details for Ms Andrews.
- 35.7 Ms Sheppard-Jones submitted that by consciously and deliberately discriminating against Miss Brown, Mr Bhatia had failed to act with integrity. She referenced the test in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, in which it was said that integrity connoted adherence to the ethical standards of one’s own profession. Ms Sheppard-Jones submitted that if Mr Bhatia had been acting with integrity, he would not have brought matters up relating to Miss Brown’s pregnancy at the “dressing down meeting” on 8 August 2017. In addition, he would not have dismissed her on “flimsy” evidence concerning alleged benefit fraud.
- 35.8 Ms Sheppard-Jones further submitted that the public would be concerned that a solicitor had acted in a discriminatory way in their dealings with an employee, by treating them unfavourably, because of their pregnancy and maternity in breach of the Equality Act. These actions would impact on the trust the public placed in Mr Bhatia and in the provision of legal services. Ms Sheppard-Jones therefore submitted that Mr Bhatia had breached Principle 6.
- 35.9 Ms Sheppard-Jones submitted that Mr Bhatia had also breached Principle 9 and Outcome 2.1 of the Code.

Respondent’s Submissions

- 35.10 Mr Treverton-Jones submitted that the relevant issue was whether on 8 and 9 August 2017, Mr Bhatia had unlawfully discriminated against Miss Brown because she was pregnant.
- 35.11 Mr Treverton-Jones submitted that the Tribunal did not need to make a finding as to whether or not Mr Bhatia adopted fair procedures or whether Miss Brown was guilty of fraud. Mr Treverton-Jones reminded the Tribunal that there was no reversal of the

burden of proof in the Solicitors Disciplinary Tribunal's proceedings, as there was in Employment Tribunals.

- 35.12 He submitted that the case came down to a) whether the Tribunal was satisfied that meeting on 8 August 2017 was punitive in nature, and b) whether the Tribunal was satisfied that on 9 August 2017, Mr Bhatia had no genuine belief that Miss Brown was engaged in a benefit fraud.
- 35.13 Mr Treverton-Jones accepted that if a solicitor deliberately set up a smokescreen, that could lead to a finding of professional misconduct, but, he submitted, that the evidence did not come close to demonstrating that.
- 35.14 Mr Treverton-Jones submitted that the Tribunal could not be satisfied that the meeting on 8 August 2017 was punitive in nature and therefore could not find that Miss Brown was unfavourably treated at that meeting. He referred the Tribunal to Mr Bhatia's notes of the meeting, which, he submitted, were full and accurate. He invited the Tribunal to accept Mr Bhatia's evidence as to how the notes came to be made. He argued that even if the Tribunal did not accept his submissions on discrimination, any breach of the rule was insufficiently serious to justify a finding of professional misconduct against Mr Bhatia.
- 35.15 Mr Treverton-Jones submitted that it was clear from the email of 7 August 2017 that Mr Bhatia was concerned for Miss Brown, not about her. There was nothing inappropriate or stern in the email.
- 35.16 On 8 August 2017, Mr Treverton-Jones submitted that no sensible employer could ignore an employee's pregnancy or the difficulties arising from it. There was no reference to misconduct on the part of Miss Brown, no punishment and no reference to it being a disciplinary meeting. The unreliability issue was unacceptable but it was clear from the notes of the meeting that Mr Bhatia was expecting Miss Brown to take her maternity leave and then return to work. Mr Treverton-Jones submitted that this was a pastoral meeting.
- 35.17 Mr Treverton-Jones told get Tribunal that at the time of the 8 August 2017 meeting, the conversation was about the 'living together' issue and Mr Bhatia was satisfied that the separation was genuine. Mr Treverton-Jones submitted that Mr Bhatia subsequently formed an honest belief that Miss Brown was engaged in benefit fraud on the basis of failing to declare she was married. Mr Treverton-Jones submitted that the alternative explanation was that Mr Bhatia had invented this as a smokescreen, which was "vanishingly unlikely" as it was not the sort of person Mr Bhatia was.
- 35.18 Mr Treverton-Jones argued that if Mr Bhatia had wanted to dismiss Miss Brown, he could or would have done so on 8 August and he did not have to go "through the charade" of doing so next day on a trumped up charge.
- 35.19 The appeal panel had looked at the matters afresh and had also concluded that Miss Brown was guilty of benefit fraud. Mr Treverton-Jones identified four factors which, in his submissions, had led Mr Bhatia to reach this conclusion:

- She described herself as Miss – not Ms or Mrs. clearly representing herself to be unmarried. If she had told DWP of her marriage then there would have been no problem.
- Mr Bhatia was, on his evidence, told by two individuals at the DWP that this was a suspected fraud. Mr Bhatia was hoping that what he would learn would clear her but instead it increased his suspicions.
- At the meeting Miss Brown had lied about having no paperwork, something she had admitted in the Employment Tribunal hearing.
- Miss Brown had refused to look for paperwork or give authority to Mr Bhatia to obtain the paperwork. Mr Treverton-Jones submitted that Mr Bhatia was entitled to form view that if she was innocent, she would have produced this material.

35.20 Mr Treverton-Jones referred the Tribunal to the agreed evidence of Ms Sheehan, the Firm's practice manager. He submitted that this evidence entirely corroborated Mr Bhatia's account of the 9 August 2017 meeting. That meeting was about the alleged benefit fraud and not Miss Brown's pregnancy.

35.21 Mr Treverton-Jones reminded the Tribunal of the details of the appeals procedure, which included Miss Brown being allowed to nominate one member of the appeal panel. Mr Treverton-Jones further referred to the evidence of Mr Best, describing it as "lethal" to the SRA's case. He told the Tribunal that nobody had accused Mr Best of discrimination and he had reached the same conclusions as Mr Bhatia.

35.22 Mr Treverton-Jones made a number of criticisms of the reasoning in the Employment Tribunal Judgment. These are not recited in this Judgment as this Tribunal was required to reach its own conclusions independently of the Employment Tribunal's findings.

35.23 Mr Treverton-Jones submitted that Mr Bhatia had suffered an injustice in this case and ought to have been successful before the Employment Tribunal. He had sought to get to the truth of the benefit matters but had been thwarted at every turn.

The Tribunal's Findings

35.24 The Tribunal considered the Allegations relating to 8 and 9 August 2017 in turn.

8 August 2017

35.25 The background and context to this meeting was the email exchange that took place on 7 August 2017. Miss Brown had emailed Mr Bhatia to ask if she was "in some kind of trouble", having referred to various personal circumstances including, but not limited to, her pregnancy.

35.26 Mr Bhatia had replied and confirmed that he was concerned about a number of issues. In that email he had stated that the fact that Miss Brown was pregnant "exacerbates my concerns". The Tribunal considered that the tone and content of the email reflected the fact that Mr Bhatia was concerned about various issues relating to Miss

Brown's personal circumstances, which included her pregnancy, but went wider than that single issue. The Tribunal did not consider the email to be a pastoral care enquiry, but to be an expression of concern on the effect on the Firm. This was evidenced by the fact that Mr Bhatia acknowledged in the email that ordinarily Miss Brown's personal circumstances would be of no concern to him, but that "there may be an impact on the firm". Mr Bhatia did go onto refer to pastoral care as a possible way of addressing that impact. Mr Bhatia referred to Miss Brown taking time off, her health issues, her intention to enrol on the LPC and her relationship with her husband.

35.27 This was clearly the agenda for the meeting that took place the following day. This was evidenced by the penultimate sentence, which read:

"I hope this suffices to explain why I want to talk to you, what I want to talk about, and why that should be sooner than later."

35.28 In the meeting itself, the issues listed as topics for discussion were "Looking at divorce", "unreliability at work" – which included four matters, one of which was "pregnancy related" and "time off re: children".

35.29 The Tribunal did not accept Mr Bhatia's evidence that the conclusions were written up during the meeting. It was implausible that Mr Bhatia would have sat at the meeting writing them up and reading them to Miss Brown, with no reply from her to any of them. The Tribunal found that Mr Bhatia had written that part of the notes after the meeting.

35.30 The conclusions were inconsistent with a meeting that was seeking merely to offer support to Miss Brown. The first conclusion, relating to benefit fraud, was out of context in circumstances where there were no notes of a discussion about benefit fraud and on Mr Bhatia's evidence, he had only looked briefly at her file before the meeting. The first conclusion contained a threat of summary dismissal.

35.31 The second and third conclusions found that Miss Brown lacked the capacity to do her job properly and noted that Mr Bhatia had the right to dismiss her on notice. The fifth conclusion set out that Miss Brown "must understand" that her "unreliability" was unacceptable. The final conclusion warned, again, that Miss Brown's job was at risk and noted that Mr Bhatia's sympathy and understanding "will shortly expire".

35.32 The Tribunal completely rejected the characterisation of Mr Bhatia's role at this meeting as that of a "fairly godmother". The meeting may have included some supportive comments, but overall it amounted to a robust telling-off of Miss Brown, with the clear message being that if she did not improve her reliability she risked being dismissed. The Tribunal was satisfied on the balance of probabilities that Mr Bhatia had treated Miss Brown unfavourably at the meeting on 8 August 2017.

35.33 The Allegation went further than that, however. The Allegation was that the unfavourable treatment was "because of her pregnancy and maternity". The Tribunal noted that pregnancy and maternity were clearly discussed in the meeting. However other issues were also raised, including wider health and family issues and Miss Brown's study plans.

35.34 The eighth conclusion was of particular relevance to this question.

“8. From now until mat leave is taken, I understand that primacy must be given to the pregnancy and her health. Accordingly whatever time off is needed must be taken. No issue will arise, and I do not intend to revisit today’s conversation. However she is asked to organise herself and offer notice of warning to the firm whenever possible I don’t want to see a mix as currently seen, of pregnancy related absence, other absence, and also ex post facto (emergency) holiday requests. The next few weeks can and should be managed more sensibly. A genuine pregnancy or health problem is quite different.”

35.35 In assessing whether the unfavourable treatment was “because” of Miss Brown’s pregnancy and maternity, the Tribunal considered whether Miss Brown would have been treated unfavourably even if she had not been pregnant. The Tribunal was of the opinion that the answer this question was ‘yes’. Mr Bhatia had raised numerous issues with Miss Brown and taken her to task on them in relation to how it impacted on the business. That included pregnancy and maternity but that was not wholly or mainly the focus of his concerns. In his email of 7 August 2017 he had referred to the pregnancy issues exacerbating his concerns, which was evidence that Mr Bhatia had a series of concerns and this was just one of them. The main reason for the unfavourable treatment was Miss Brown’s absences from work. The reason for those absences were multiple and varied and included, on occasion, pregnancy-related matters, although Mr Bhatia drew some distinction as to those in his eighth conclusion.

35.36 The Tribunal was not satisfied on the balance of probabilities that the unfavourable treatment on 8 August 2017 was because of Miss Brown’s maternity or pregnancy. The meeting would still have taken place even if Miss Brown had not been pregnant, and the content and outcome of that meeting would have been substantially the same.

9 August 2017 meeting

35.37 At this meeting Miss Brown was summarily dismissed. This was obviously unfavourable treatment as Miss Brown lost her job with immediate effect. The question for the Tribunal was whether that dismissal was because of her pregnancy and maternity or whether she would have been dismissed anyway.

35.38 The Tribunal did not accept that Mr Bhatia had a genuine belief that Miss Brown had committed benefit fraud. At most he may have had some suspicions. His enquiries, undertaken that morning, had been cursory and no conclusion had been reached. According to Ms Sheehan’s witness statement, Mr Bhatia had been told that the DWP were opening a fraud investigation into Miss Brown, not that they had concluded that Miss Brown was guilty of any fraud.

35.39 The Tribunal found the focus on Miss Brown’s title, in evidence and submissions, surprising in circumstances where Miss Brown, like anyone else, was perfectly entitled to be referred to by whatever title and name she chose. The issue with regard to her benefit status was whether she had made all the appropriate notifications to the

DWP and HMRC. The fact that she used the title “Miss” was irrelevant to that question.

35.40 In her witness statement, Ms Sheehan stated that the dismissal took place as a result of Mr Bhatia concluding that Miss Brown had lied to him. Mr Bhatia gave evidence in similar terms. This was distinct from dismissing her for benefit fraud, of which there was no evidence. Ms Sheehan had also stated that Mr Bhatia had told her that there was “no time to lose”. The Tribunal did not accept that Mr Bhatia could have concluded that. He would have known, as an experienced criminal defence solicitor, that the opening of an investigation did not equate to guilt. Mr Bhatia could have suspended Miss Brown pending the outcome of the investigation, for example, if he had concerns about the fact of the investigation itself. It was Mr Bhatia who had called the fraud hotline, and so there would have been no impact on the Firm’s reputation.

35.41 The Tribunal did not accept that Mr Bhatia dismissed her because of a genuine belief that she had committed benefit fraud. Rather, having lacked a reason to dismiss her the day before, he had latched on to this issue as a pretext for dismissing her. The Tribunal found that Mr Bhatia was motivated to dismiss Miss Brown by the performance issues that had been discussed on 8 August in the meeting and 7 August by email. In the 8 August meeting Mr Bhatia had clearly considered dismissing Miss Brown but had decided not to “on balance” as he did not have a reason to do so. He had subsequently used this issue to seek to justify his decision to dismiss her.

35.42 The Tribunal had already found that the 8 August meeting did not take place because of Miss Brown’s pregnancy or maternity and would have occurred anyway. The issues raised in that meeting went wider than that issue. The Tribunal found that the decision to dismiss Miss Brown on 9 August was for the reasons set out in the meeting of 8 August. The Tribunal again asked itself if Mr Bhatia would still have dismissed Miss Brown if she had not been pregnant. Once again, the answer was ‘yes’. The Tribunal was satisfied that Mr Bhatia wanted to dismiss Miss Brown for performance-related matters rather than her pregnancy. The Tribunal did not accept that he dismissed her due to alleged benefit fraud, but it was also not satisfied, on the balance of probabilities, that he did so because of her maternity or pregnancy.

35.43 The Tribunal therefore found Allegation 1.1 not proved.

36. **Allegation 1.2**

Applicant’s Submissions

36.1 Ms Sheppard-Jones submitted that Mr Bhatia’s explanation that he had believed that the settlement expunged the decision of the Employment Tribunal was “nonsense”. Mr Bhatia had been under a duty to notify the SRA of the Judgment and had failed to do so. He had therefore breached Principle 7 and Outcome 10.3 of the Code.

Respondent’s Submissions

36.2 Mr Treverton-Jones submitted that the Firm was intending to report the matter to the SRA, as evidenced by the management committee minutes. He argued that the clause

relating to ‘waiver of liability’ in the settlement agreement put this in a different category from, for example, a fine imposed in the Magistrates Court. He referred to the Tribunal case of SRA v Senior and Others in which the Respondent in that case had failed to report, but this had not led to a finding of professional misconduct and the Tribunal had concluded that there was a subjective test to be applied.

The Tribunal’s Findings

- 36.3 The Tribunal found that Mr Bhatia was clearly aware of his duty to report such matters to the SRA. This is evidenced by the minutes of Management Committee meeting on 16 May 2019, when there was reference to consideration of reporting to the SRA (and Legal Aid Agency) “after appeal and case conclusion”. There was discussion in the same meeting as to whether to appeal, having regard to “commercial considerations”. At that stage the Firm was waiting for the extended reasons, having received a summary of the Employment Tribunal’s decision.
- 36.4 At the meeting on 20 June 2019, by which time the full Employment Tribunal Judgment has been received, it is noted “SRA report after appeal/case end”.
- 36.5 At the meeting on 11 July 2019, after the case had been settled, the minutes noted:
- “Remedies hearing 2.7.19. Did not proceed. Settlement under an ACAS COT3 agreement. Important components - withdrawal of claims. Confidentiality. EB insisted on these. £80k inc costs now paid. Treated as a settlement just like any other within ET proceedings and case concluded. Concern that the written reasons judgment has been published, but only after the hearing on 2.7.19. Shouldn’t have happened.”
- 36.6 There was no longer any reference to reporting the matter to the SRA, despite the case being “concluded”.
- 36.7 The Tribunal was therefore satisfied that Mr Bhatia was aware that an adverse finding against the Firm of discrimination was the sort of matter that ought to be reported to the SRA. The Tribunal rejected his evidence as to his belief about the impact of the waiver of liability in the settlement agreement on that obligation. The Employment Tribunal findings stood until and unless they were overturned on any appeal. The Tribunal was satisfied on the balance of probabilities that Mr Bhatia knew he ought to have reported the matter but failed to do so.
- 36.8 The Tribunal therefore found Allegation 1.2 proved, including the breach of Principle 7 and the failure to achieve Outcome 10.3 – the latter on the basis that a finding of discrimination was a material change in the circumstances of the Firm.

Previous Disciplinary Matters

37. There were no previous findings recorded at the Tribunal.

Mitigation

38. Mr Treverton-Jones submitted that the non-reporting was at bottom of the scale of seriousness. He submitted that there was plainly no intention to conceal, as was clear from the management meeting minutes. The matter was not concealed from the SRA deliberately. In those circumstances Mr Treverton-Jones submitted that the appropriate sanction would ordinarily be a modest fine. Mr Treverton-Jones invited the Tribunal to bear in mind that Allegation 1.1 had not been proved and, had the non-reporting been the only issue, the matter would not have been referred to the Tribunal. Therefore, rather than a modest fine, Mr Treverton-Jones invited the Tribunal to make no order or to impose a reprimand. He told the Tribunal that Mr Bhatia was already “tens of thousands of pounds out of pocket”.

Sanction

39. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering the Mr Bhatia’s culpability, the level of harm caused together with any aggravating or mitigating factors.
40. In assessing culpability, the Tribunal found that Mr Bhatia did not want the inconvenience of reporting the matter to the SRA. To that extent the omission was planned. Mr Bhatia was a senior, named director at the Firm and had full control and responsibility for the failure to report. He was a highly experienced solicitor.
41. There was no harm caused by the failure to report. The SRA had found out about the matter anyway, by way of a newspaper article following publication of the Employment Tribunal Judgment.
42. The Tribunal identified no aggravating factors. The conduct was mitigated by the fact that the failure to report was a single episode in a previously unblemished career, as evidenced by the character references presented as part of Mr Bhatia’s defence to the Allegations.
43. Failing to report matters that ought to be reported to the SRA was too serious for the Tribunal to make no order. In this case, however, it was at the lower end of the scale of seriousness. There had been no harm caused and the likelihood of a repeat of the misconduct was unlikely. In the circumstances, the reputation of the profession and the protection of the public did not require a greater sanction than a reprimand.

Costs

44. Ms Sheppard-Jones applied for costs, based on a cost schedule in the sum of £19,390. Ms Sheppard-Jones noted that the hearing had been concluded in three days rather than five and so there would be a reduction of £2,000 plus VAT in respect of her refresher fees. Ms Sheppard-Jones accepted that a large part of the case dealt with Allegation 1.1, which had not been proved. It had, nevertheless, been perfectly proper to bring the case based on the conclusions of the Employment Tribunal Judgment. Ms Sheppard-Jones submitted that the work undertaken was reasonable and proportionate.

45. Mr Treverton-Jones submitted that this was a surprising application given that 95% of the case had been concerned with Allegation 1.1. He reminded the Tribunal of the principles in Broomhead v Solicitors Regulation Authority [2014] EWHC 2772 (Admin) and submitted that the default position would be that the SRA should not get more than 5% of its costs. Mr Treverton-Jones submitted that in this case there should be no order for costs, having regard to how much it had cost Mr Bhatia to defend Allegation 1.1.

The Tribunal's Decision

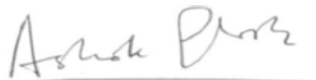
46. The Tribunal had regard to the principles in Broomhead. Whilst the case had been properly brought, the most serious allegation, which comprised the bulk of the matter, had not been proved. The appropriate reduction was 95% and the Tribunal therefore ordered Mr Bhatia to pay costs in the sum of £1,000. There had been no statement of means provided and so there was no basis for any further reduction.

Statement of Full Order

47. The Tribunal Ordered that the Respondent ASHISH BHATIA, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

Dated this 17th day of May 2023
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
17 MAY 2023



A Ghosh
Chair