

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12524-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

And

MATTHEW JAMES MACHEN BARKER

Respondent

Before:

Mrs C Evans (in the Chair)

Ms C Rigby

Mr A Pygram

Date of Hearing: 04 June 2024

Appearances

Louise Culleton, barrister employed by Capsticks Solicitors LLP of 1 St George's Road, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

The Allegations

1. The allegation against the Respondent, Matthew James Machen Barker, made by the SRA is that, while in practice as a Solicitor at Clarke Willmott LLP (“the Firm”):
 - 1.1. On 16 June 2012, whilst at a partners’ away weekend at the Hallmark Hotel, Gloucester arranged by the Firm, he engaged in the following conduct that was inappropriate and/or unwanted and/or sexually motivated:
 - 1.1.1. He entered the hotel room of Person A without invitation and sat on the bed;
 - 1.1.2. He refused to leave the hotel room of Person A despite being asked to leave by Person A [repeatedly];
 - 1.1.3. He asked Person A if he could lie next to her all night, or words to that effect;
 - 1.1.4. He said to Person A that she would be safe because “his prick didn’t work” or words to that effect;
 - 1.1.5. He asked Person A for a hug and then went on to rub Person A’s back;
 - 1.1.6. He tried to pull Person A over to the bed;
 - 1.1.7. He said to Person A that he “would really like to fuck her” or words to that effect;
 - 1.1.8. He sent a text message to Person A, at 05:08 am saying “Needing a cuddle”.
 - 1.2. In doing so, he breached one or both of Principles 2 and 6 of the SRA Principles 2011 and/or failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included (but were not limited to):
 - Rule 12 Statement and Exhibit LIC1 dated 12 December 2023
 - Applicant’s Schedule of Costs dated 24 May 2022

Preliminary Matters

Proceeding in the Respondent’s absence

3. The Respondent did not attend the hearing and was not represented. Counsel for the Applicant informed the Tribunal that the Respondent had not applied to adjourn or vacate the hearing and there had been no engagement from the Respondent throughout the proceedings.
4. Counsel set out the relevant chronology.

5. The Rule 12 Statement was dated 8 December 2023. The Tribunal issued Standard Directions on 13 December 2023.
6. Counsel explained that service of the proceedings had been effected by email on an email address provided by the Respondent by email of 31 January 2023 and from which the Respondent had communicated with the SRA subsequently up to 1 June 2023. It was submitted that the Respondent had been correctly served with the proceedings in accordance with Rule 13(5) the Solicitors Disciplinary Procedure Rules 2019 (“SDPR 2019”).
7. Counsel admitted that no attempts had been made by the Applicant to bring the fact of the present hearing to the Respondent’s attention by different means of communication.
8. The Respondent had not engaged at any point in the proceedings, and he had not served an Answer or Statement of Means as he had been required to do. His non engagement had resulted in a non-compliance hearing before a senior clerk of the Tribunal on 17 January 2024. Standard Directions 2 and 3, relating respectively to the service of the Answer and service of documents, were varied to permit the Respondent more time.
9. At the non-compliance hearing a date was set for a Case Management Hearing (“CMH”) on 12 February 2024. The Respondent did not attend that hearing and made no application to adjourn.
10. Counsel submitted that in accordance with the relevant case law, it was in the interests of justice for the hearing to proceed without adjournment and in the Respondent’s absence.
11. The Tribunal was aware of the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion which a Tribunal should exercise with the utmost care and caution bearing in mind the following factors:
 - The nature and circumstances of the Respondent’s behaviour in absenting himself from the hearing;
 - Whether an adjournment would resolve the Respondent’s absence;
 - The likely length of any such adjournment;
 - Whether the Respondent had voluntarily absented himself from the proceedings and the disadvantage to the Respondent in not being able to present his case.
12. It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-
 - the Tribunal’s decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
 - it would run entirely counter to the protection of the public if a Respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
 - there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.
13. Bearing those factors in mind and applying them to the circumstances of this case, along with the submissions made by Counsel, the Tribunal was concerned that service had not been attempted by alternative means but upon careful consideration the Tribunal found that the Applicant had met the test for service (just). Having considered the Respondent had been served in accordance with Rule 44 and was or ought to have been aware of the date of the proceedings, the Tribunal could therefore only conclude that the Respondent's non-attendance was voluntary. It was in the interests of justice to proceed with the hearing in the Respondent's absence on the basis that it did not appear that an adjournment of any length would ensure the Respondent's attendance.
14. The Tribunal took into account the serious nature of the allegations which had been made against the Respondent. These involved events that had allegedly taken place in 2012 and which had only come to the Applicant's attention in 2019. A significant period of time had elapsed since then and it was therefore in the public interest that this case should be concluded expeditiously and without further delay.
15. The Respondent had a duty to engage but had not done so.

Factual Background

16. The Respondent is a solicitor having been admitted to the Roll on 1 December 1995.
17. At the time of the alleged misconduct the Respondent worked at Clarke Willmott LLP. He was employed as a partner at Clarke Willmott from 1 December 2004 to 31 May 2009 (when it was a partnership) and a member of Clarke Willmott LLP from 1 June 2009 to 31 October 2019 after it became an LLP.
18. The Respondent is not currently employed as a solicitor. He held a practising certificate in the 2022/2023 year but did not renew his practising certificate for the 2023/2024 year.

Witnesses

19. Person A was available to give evidence by video conference. Given the Respondent's absence and the documentary evidence on file, Counsel for the Applicant did not require Person A to be called. Person A was accordingly released by the Tribunal.

Findings of Fact and Law

20. Under the 2019 Rules, the Applicant was required to prove the allegations on the balance of probabilities. Given the date at which the events had allegedly occurred, the Tribunal proceeded to consider whether the allegations were proven beyond reasonable doubt.
21. 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 Barker'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.
22. **Allegation 1.1 - On 16 June 2012, whilst at a partners' away weekend at the Hallmark Hotel, Gloucester arranged by the Firm, he engaged in the following conduct that was inappropriate and/or unwanted and/or sexually motivated:**
- 1.1.1 He entered the hotel room of Person A without invitation and sat on the bed;**
- 1.1.2 He refused to leave the hotel room of Person A despite being asked to leave by Person A [repeatedly];**
- 1.1.3 He asked Person A if he could lie next to her all night, or words to that effect;**
- 1.1.4 He said to Person A that she would be safe because "his prick didn't work" or words to that effect;**
- 1.1.5 He asked Person A for a hug and then went on to rub Person A's back;**
- 1.1.6 He tried to pull Person A over to the bed;**
- 1.1.7 He said to Person A that he "would really like to fuck her" or words to that effect;**
- 1.1.8 He sent a text message to Person A, at 05:08 am saying "Needing a cuddle".**

Allegation 1.2 - In doing so, he breached one or both of Principles 2 and 6 of the SRA Principles 2011 and/or failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.

Person A's evidence

- 22.1 Person A attended her first partners' away weekend with the Firm on 15 June 2012, having been promoted to partner in May of that year. The event comprised a conference and Annual General Meeting during the day followed by a dinner in the evening, drinks at the hotel bar afterwards, with hotel rooms being booked for the attendees by the Firm.

- 22.2 She stated that after dinner, the partners moved to the hotel bar. She became engaged in a conversation with the Respondent, whom she had not met before. She stated that when she was starting to tell him about her background at the Firm, he became aggressive, and that this continued after she became disgruntled at his behaviour, with him telling her that he was on the management board. Person A stated that it seemed that the Respondent was on a power trip as he boasted about how he had made another newly promoted female partner (CW) cry earlier in the evening. Person A then moved away from the Respondent and confided in a colleague, OS.
- 22.3 In the early hours of 16 June 2012, Person A engaged in further conversation with the Respondent, at which point she says that he wanted to apologise to her. Other partners had started to leave to go to their hotel rooms and the Respondent offered to walk Person A back to her room to show there were no hard feelings.
- 22.4 On arrival at the door to her hotel room, the Respondent asked for a glass of water, and Person A opened the door and went into the bathroom to get a glass of water. When she came out of the bathroom, she realised that the Respondent had come into the room and sat on the bed. Person A said that she asked the Respondent to leave as she was tired, but he didn't leave. She said that she became upset as she couldn't understand why he was behaving in this manner towards her. The Respondent then became upset and told her that his son was unwell.
- 22.5 Person A said that she informed the Respondent that her two year old son was ill and that she needed to go home to him in the morning and so needed to go to sleep. Person A stated that when she was standing by the door the Respondent came over and asked if he could stay. She replied that he could not. The Respondent then asked for a hug and Person A said that, in an effort to persuade him to leave and to show that there were no hard feelings, she gave him a hug, but that he then started rubbing her back. Person A stated that she became irritated and that the Respondent then tried to pull her towards the bed.
- 22.6 Person A stated that in a final effort to get the Respondent to leave, she suggested that they walk back to his room together and, as they started walking down the corridor, she took the opportunity to escape the situation and turned and walked quickly back to her room without the Respondent.
- 22.7 Person A then described how she confided in another partner, LB, the next morning, which led to Person A meeting SL on Monday 18 June 2012. At the meeting with SL, a note was taken of Person A's experience. Shortly after the meeting, Person A was sent a copy of the notes taken at the meeting with SL.
- 22.8 In the notes of this meeting, Person A explained the background that when she first met the Respondent he had asked her to tell him a bit about herself and that when she started to do so, he had responded that he "didn't ask for her fucking CV". Person A went on to describe the conversation between her and the Respondent and that she felt that she was being grilled by him and that she had asked whether it was just her who he was targeting, following which the Respondent had said that another partner (CW) had been crying after he had spoken to her. Person A said that she asked him whether he was trying to break a new partner or whether it was a power trip, following which she broke away from the conversation.

- 22.9 Later, she went back to speak to the Respondent, at which time he apologised and tried to backtrack. She said that it was about 3 am when most of the partners had gone to bed and she was left with the Respondent and she told him that she didn't want "any agro" or to have "issues with any partners", and he responded "No, we're fine". He then offered to walk her to her room.
- 22.10 The notes of the meeting also provide some further detail as to what took place once the Respondent was inside Person A's hotel room. It is recorded that Person A had repeated her request that the Respondent should leave several times but he did not leave. Person A then started crying and said to the Respondent "you tried to break me. Is that what you tried to do? Congratulations you've broken me, I'm crying". She said that the Respondent became upset and said that he had been a "cunt", that he had spoiled her evening and he said, "My problem is attractive women". She responded that he must come across attractive women all the time and he laughed saying, "I love it, I love it, you haven't denied it", following which he started to get upset again. When Person A again asked the Respondent to leave, he asked if he could lie next to her all night. The Respondent said that she would be safe and "proceeded to explain that his prick didn't work". He then asked for a hug, to which Person A agreed, and as they were hugging he started to rub her back. The record of the meeting states that Person A had responded knowingly saying "oh, this is all too easy isn't it?" to which the Respondent replied, "yes it would be easy" and then tried to pull Person A over to the bed (from where she was standing by the door). Person A resisted this and said that she needed to go to bed and the note records that the Respondent said that he "would really like to fuck her". She then managed to get him out of her room in the manner set out above, realising that it was daylight outside and that it was approximately 5 am.
- 22.11 The following day, she saw a text message from the Respondent, timed 5:08 (on Saturday 16 June 2012) which said, "Needing a cuddle".
- 22.12 Person A stated that she was told to expect an apology from the Respondent by the Firm, however she did not receive any communication from him and is unaware of any action taken by the Firm against him as a result of his behaviour towards her.

The Firm's investigatory meeting with the Respondent on 20 June 2012

- 22.13 An attendance note from the Firm of a meeting with the Respondent on 20 June 2012 sets out that SR met with the Respondent and explained that he had called the meeting to discuss allegations of inappropriate behaviour by the Respondent on 15 – 16 June.
- 22.14 The attendance note records that the Respondent said that he was not surprised about the purpose of the meeting, that he had made a fool of himself, was on medication and acted out of character. He said that he was "filled with regret and monumentally apologetic" and that he had nothing further to say other than that he felt like a fool and had behaved like one and was very sorry. He stated that his recollection of the evening was "patchy" and that he was unable to provide full details but was fully aware that his behaviour was unacceptable and not justifiable.
- 22.15 He also accepted that as a consequence, it might not be credible for him to stay on as a partner within the Firm and volunteered to step down from his position on the Board, saying that "he had inflicted this on himself and he deserves what is coming to him".

He said that whatever the outcome, he would not bear a grudge against the two partners concerned and that he would not feel any less of anyone other than himself. He reiterated that he was very embarrassed by the incident, saying that he did not normally drink, by way of explanation rather than excuse, that he had been under some pressure with both work and due to pressures at home with his son who was unwell. He said that there was an opportunity to relax after the partners' meeting and he took it and has been questioning himself ever since and simply could not understand his behaviour.

- 22.16 When asked whether he was fully aware as to the extent of what he had done during the course of the evening and it was set out that he had made CW and Person A cry at different points of the evening, that he had gone into Person A's hotel room and she had found it difficult to get him to leave and that he had sent an inappropriate text message, the Respondent acknowledged those matters and made no attempt to deny them. The Respondent said that he knew that he should not have sent the text and that he should not have been in Person A's hotel room, indicating that he would like to convey to both partners his unreserved apology.

Respondent's representations to the SRA

- 22.17 Although the Respondent was not present at the hearing, he had made representations to the SRA in relation to the events that took place in June 2012.
- 22.18 The Respondent was contacted by the SRA on 1 December 2020 when a summary of the concerns had been put to him and Person A's witness statement was provided.
- 22.19 On 13 August 2021, the Respondent provided a letter from his GP. [REDACTED]
- 22.20 On 14 January 2022, the Respondent provided his response to the matters set out in Person A's witness statement, as well as providing details of his personal and work circumstances in the preceding years and at the time of the incident.
- 22.21 He stated that as the matters were a long time ago his memory of events is hazy, as well as being hazy because it was a painful time in his life and some memory is therefore suppressed.
- 22.22 He stated that shortly before the event, he recalled being on a course of antibiotics but that he had thought nothing particular of this and had drunk a fair amount of alcohol. He states that the alcohol had particularly affected him, which he did not understand.[REDACTED].
- 22.23 He accepted ending up in the hotel room of Person A but indicates that his memory is not very good due to both the amount of time that has elapsed and [REDACTED]. Consequently, he said that he is unable to provide a 'line by line response' and can only say how he is as a person and how he usually characteristically behaves.
- 22.24 He stated that he does not recognise himself in how he is described that he has never behaved as alleged and is not an aggressive man. He said that he would not have had a sexual mind-set, was married which he took very seriously, [REDACTED].

- 22.25 He stated that in trying to think over the events, he thought that they were being friends, but that obviously he was very mistaken. He further stated that it was at the end of a long evening when all of the people present in the bar, late on, had drunk a lot and he therefore does not think that anyone's memory can be accurate.
- 22.26 He described the meeting he had with SR and reiterates that he was, and remains, absolutely mortified that he had upset someone so much, that he hates to upset anyone and feels guilty for upsetting her. He said that he wanted to apologise in person, or in writing, but that SR had said that he thought it was best that he did not, and so the Respondent asked SR to pass on his apologies and he does not know whether that happened or not.
- 22.27 The Respondent stated that he immediately resigned from the Board, largely because of the situation which had arisen with Person A as he felt it was impossible for him to stay in a position of management in light of that. He subsequently left the Firm for various reasons.
- 22.28 He ended his response by setting out further health and family related matters and reiterating that he was sorry for causing distress.

SRA's position following the Respondent's response

- 22.29 Notwithstanding that the conduct alleged took place in 2012, and the Respondent indicating that he does not think that anyone's memory can be accurate due to everyone having had a lot to drink by the early hours of the morning of 16 June 2012, Counsel for the Applicant invited the Tribunal to consider that Person A spoke to a colleague on 16 June 2012 itself about what had happened, which then led to a meeting within the Firm with SL on 18 June 2012. There was, therefore, a recorded account from Person A just two days after, where she was able to recall and describe what she had experienced in a reasonable amount of detail.
- 22.30 Person A had clearly been upset and affected by the Registrant's conduct towards her, sufficient to immediately talk about it to a colleague and to then provide an account in a meeting to members of the Firm.
- 22.31 This is in contrast to the Respondent's ability to recall the detail at the time of the meeting he had within the Firm on 20 June 2012, other than accepting he was in the wrong to have been in Person A's hotel room and to have sent her the text message.

Principle 2 of the SRA Principles 2011 – Integrity

- 22.32 Inappropriate sexual behaviour is capable of engaging the SRA Principles 2011, depending on its nature and nexus to a solicitor's profession.
- 22.33 In Wingate and Evans v Solicitors Regulation Authority [2018] EWCA Civ 366, it was said that: "In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards." (paragraph 97)

22.34 In Beckwith v SRA [2020] EWHC 3231 (Admin), it was held:

“There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person’s private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person’s private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook”. (paragraph 54).

22.35 The SRA’s Guidance, “Acting with integrity”, last updated on 1 September 2022 states:

“In the Beckwith case the court considered the application of the principle of integrity to a solicitor’s private life and was clear that the conduct must touch realistically upon the individual’s practice of the profession and in a way that is demonstrably relevant.

We take the approach that the closer any behaviour is to the individual’s professional activities, workplace or relationships, and/or the more it reflects how they might behave in a professional context, the more seriously we are likely to view it.

However, where no such connection exists we will still take action where the conduct is sufficiently serious and morally culpable as to call into question whether they meet the high personal standards expected from a member of the solicitors’ profession”.

22.36 Whilst this Guidance post-dates the events with which the allegations are concerned, it is relevant to refer to it in the context of how the relevant authorities of Wingate and Beckwith are to be considered and applied in such cases.

22.37 The Tribunal carefully considered the above authorities and principles and concluded that the conduct in this matter did not take place within the Respondent’s private life. It took place at a partners’ event organised over a weekend by the Firm and was attended by employees/partners of the Firm. It was also directed towards a person who had only recently been promoted and with whom the Respondent, a more senior partner, had a purely professional relationship.

22.38 There was consistent and uncontradicted evidence that the Respondent’s conduct towards Person A at the event was inappropriate, unwanted, left her feeling uncomfortable and was upsetting.

22.39 It was clear from the evidence that Person A had only gone back to sit next to the Respondent at the bar following his initially aggressive behaviour because she did not want to start off badly in the partnership. This set the stage for subsequent events where the Respondent entered Person A’s hotel room in the early hours of the morning without invitation, sat on her bed (rather than standing at the door), did not leave despite being asked to, asked if he could lie next to her all night and although indicated that he was

impotent (in more crude terms) then said that he “would really like to fuck her”, having asked for a hug, which Person A consented to, but then he continued to rub her back and pull her to the bed, referring to his problem being attractive women. The later text message again indicated a desire for intimate, personal physical contact.

- 22.40 By acting in such a way, and making such comments, in themselves and particularly in the context of his behaviour earlier in the bar, the Respondent acted without integrity; that is he failed to act with “moral soundness, rectitude and steady adherence to an ethical code” (as per Newell-Austin v SRA [2017] EWHC 411 cited in Wingate). His conduct contravened the higher standard of professionalism expected as a solicitor. He thereby breached Principle 2.

Principle 6 of the SRA Principles 2011 – maintaining public trust

- 22.41 The conduct alleged also amounted to a breach by the Respondent 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.
- 22.42 The public would not expect a partner of a firm to act in such an inappropriate, unwanted and sexually motivated way towards another partner at their firm, particularly when Person A was a newly promoted partner in contrast to the Respondent’s seniority and position within the Firm, which created an imbalance of power. The Respondent himself had referenced the imbalance in power during his earlier aggressive conversation with Person A.
- 22.43 By engaging in inappropriate and unwanted physical contact, suggesting intimate physical contact and using sexually explicit language towards a colleague in such circumstances as alleged, Mr Barker undermined public trust in the legal profession and therefore breached Principle 6.

Outcome 11.1 of the SRA Code of Conduct 2011

- 22.44 Outcome 11.1 requires solicitors not to take unfair advantage of third parties in either their professional or personal capacity.
- 22.45 The Respondent was a more senior partner at the Firm, Person A having only recently been promoted. He was also a member of the Firm’s Management Board, a fact he had sought to impart to Person A to indicate his superiority, authority and even power over her, when he spoke of having made another female partner cry earlier in the evening.
- 22.46 There was therefore a clear power imbalance, notwithstanding Person A seeking to essentially stand up for herself in both the earlier and later interactions with the Respondent, but nonetheless being upset by the Respondent’s apparent attack on her and his aggressive approach.
- 22.47 The conduct of the Respondent which followed must be seen in that context and his subsequent conduct to enter her hotel room, not leave when asked to, engage in the physical contact as set out and to make the various inappropriate and sexual comments/requests, was clearly taking unfair advantage of Person A.

Sexual Motivation

- 22.48 The case of Basson v GMC [2018] EWHC 505 (Admin) defines sexual motivation as conduct which is done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.
- 22.49 The only reasonable inference of the Respondent's motivation for such conduct as alleged above, is that it was sexually motivated as per the above definition.
- 22.50 The Respondent's comments and physical actions towards Person A can only indicate either the pursuit of sexual gratification there and then and/or the pursuit of a future sexual relationship. While the Respondent had behaved in a way which Person A felt was upsetting and aggressive while in the hotel bar, the Respondent's comments and physical actions did not occur until he was alone with Person A in her hotel room. He entered Person A's hotel room without invitation, sat on her bed (rather than waiting at the door or in the doorway), refused to leave her room despite being repeatedly asked to by Person A, asked her if he could lie next to her all night, and although indicating that he was impotent in more crude language, then said that he "would really like to fuck her", having rubbed her back after Person A had consented to a hug and then having attempted to pull her onto the bed, as well as having commented that his problem was attractive women. This was all in the context of Person A becoming upset, her repeated requests for the Respondent to leave and then having effectively to trick him out of her room in order to get out of the situation he had created.

The Tribunal's Findings

- 22.51 The Tribunal reviewed all the material before it including the detailed and uncontradicted documentary evidence from just two days after the event and, for all the reasons stated above, found the allegations proved beyond reasonable doubt.

Previous Disciplinary Matters

23. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

24. The Respondent had not engaged with proceedings but the Tribunal considered all information before it which the Tribunal could factor into its decision below.

Sanction

25. Counsel for the Applicant applied to the Tribunal for an opportunity to address the question of sanctions, conceding that the SRA had only recently started making such applications and that sanctions were to be left entirely to the Tribunal's professional judgment. The Tribunal stated that it was fully aware of the guidance on sanctions but would be open to hearing any particular matter which Counsel wished to bring to its attention. Counsel stated that there was no such matter.
26. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – December 2022).

27. The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
28. The approach set out in Fuglers and Others v Solicitors Regulation Authority [2014] EWHC 179 (per Popplewell J) was followed:

“There are three stages to the approach... The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.”

29. In assessing culpability, the Tribunal found that the Respondent's motivation for the misconduct was sexual but not planned. At the time he was an experienced solicitor, in a Senior Position within the firm. The complainant was a 'new partner' and less Senior within the firm. On balance, the Tribunal concluded that his level of culpability was high.
30. In assessing harm, the Tribunal noted that Person A had been irritated and upset and that the misconduct of Respondent potentially caused harm to the reputation of the legal profession.
31. The Respondent's abuse of power or authority was factored in as an aggravating factor.
32. The Tribunal considered the following mitigating factors –
- 32.1 the Respondent had promptly apologised unreservedly;
 - 32.2 the Respondent had stepped down from the Management Board;
 - 32.3 the misconduct was a single episode in a previously unblemished career;
 - 32.4 there had been genuine insight on the basis of the evidence;
 - 32.5 there had been open and frank admissions at an early stage.
33. The Tribunal further noted that the incident occurred in 2012 and a number of factors had affected the Respondent's personal and professional life in that period, as set out in both letters from the Respondent's GP.
34. On the basis of the above, and given the seriousness of the misconduct, the Tribunal did not consider that a fine would be sufficient or appropriate. The Tribunal ordered a fixed term suspension of 9 months.

Costs

35. Counsel for the Applicant relied on the Schedule of Costs dated 24 May 2024, which after a reduction to cater for the fact that the hearing which had been listed for three days had lasted only one day, amounted to a total of £12,000.⁸⁴ Counsel stated that since the Applicant had proved its case, it was entitled to its costs.

36. The Tribunal found the case had been properly brought by the Applicant as it had raised allegations of an intrinsically serious and concerning nature requiring the Tribunal's scrutiny.
37. The Tribunal carefully considered the matter of costs and found that it was appropriate for the Applicant to recover costs which it assessed at £11,000.00 as being just and reasonable given the work undertaken.

Miscellaneous

38. The Tribunal obtained an assurance from the Applicant that its Order will also be served on the Respondent by pre-paid first class post following verification of his address.

Statement of Full Order

39. The Tribunal ORDERED that the Respondent, MATTHEW JAMES MACHEN BARKER, solicitor, be suspended from practice as a solicitor for the period of 9 months to commence on the 4th day of June 2024 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £11,000.00.

Dated this 12th day of July 2024
On behalf of the Tribunal

C Evans

C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
12 JULY 2024