

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No.12507-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

JASSEN VENKATASAMY

Respondent

Before:

Mr G Sydenham (in the chair)

Mrs F Kyriacou

Ms L Hawkins

Date of Hearing: 26 - 27 March 2024

Appearances

Victoria Sheppard-Jones, counsel, in the employ of Capsticks LLP for the Applicant.

Jonathan Goodwin, solicitor-advocate of Jonathan Goodwin Solicitor-Advocate Ltd, for the Respondent.

JUDGMENT

Allegations

1. The allegation made against Mr Venkatasamy by the Solicitors Regulation Authority Limited (“SRA”) was that while in practice as a Solicitor at Deloitte LLP (“the Firm”):
 - 1.1 On 17 March 2022, whilst attending a social event organised by the Firm at the Waldorf Hotel, he kissed Person A on the lips, which was inappropriate and/or unwanted and/or sexually motivated. In doing so, he thereby breached any or all of Principles 2 and/or 5 of the SRA Principles 2019 (“the Principles”) and/or Paragraph 1.2 of the Code of Conduct for Solicitors, RELs and RFLs (“the Code”).

Executive Summary

2. Mr Venkatasamy denied the allegation he faced. The Tribunal found the evidence of the witnesses to be plausible. It did not prefer the evidence of the Applicant’s witnesses over that of the Respondent. Accordingly, as the Tribunal was not satisfied on the balance of probabilities that Mr Venkatasamy had misconducted himself as alleged, the Tribunal found the allegation not proved.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):
 - Rule 12 Statement and Exhibit LJF1 dated 11 October 2023
 - Respondent’s Answer and Exhibits dated
 - Applicant’s Schedule of Costs dated

Preliminary Matters

Application for anonymity for Ms Bennett

4. She was named in the Rule 12. Application made due to concerns raised by her. She worked at the same firm and is the only eye witness. Her concerns, simply being named in proceedings.

Factual Background

5. Mr Venkatasamy was a solicitor, having been admitted to the Roll in September 2018. He joined the Firm prior to qualification, in September 2014. He remained with the Firm after his qualification and was appointed an associate on 25 January 2021.
6. The alleged incident took place on 17 March 2022. Mr Venkatasamy left the Firm (for unconnected reasons) on 6 May 2022. At the time that he left, Mr Venkatasamy had not been identified as the male involved in the alleged incident.

Witnesses

7. The following witnesses provided statements and gave oral evidence:
- Person A
 - Ms K Bennett
 - Mr Venkatasamy
8. The written and oral evidence of the 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. 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.

Findings of Fact and Law

9. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Venkatasamy'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.

Integrity

10. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

“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 ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession”.

11. **Allegation 1.1 - On 17 March 2022, whilst attending a social event organised by the Firm at the Waldorf Hotel, Mr Venkatasamy kissed Person A on the lips, which was inappropriate and/or unwanted and/or sexually motivated. In doing so, he thereby breached any or all of Principles 2 and/or 5 of the Principles and/or Paragraph 1.2 of the Code.**

The Applicant's Case

- 11.1 On 20 June 2022, the Firm reported the incident to the SRA, which summarised that an employee of the Firm, Person A, had reported to the Firm that she had been the recipient of an unwanted kiss by a male solicitor at the Firm's Legal Spring party that had taken place at an external venue on 17 March 2022.
- 11.2 At the time of the report to the Firm, Person A did not know the identity of the solicitor involved but, with support from the Firm, she had later identified the person as Mr Venkatasamy. By the time the identification had been made, Mr Venkatasamy no

longer worked at the Firm and had not been contacted by the Firm in relation to the alleged events.

- 11.3 Attached to the Firm's report were a witness statement of Person A that the Firm had taken during its internal investigation, and a record of a call with Ms Bennett, who witnessed the incident.
- 11.4 The report detailed a chronology of events (including the report of the incident by Person A the following day) and steps taken to provide Person A with support as well as the steps taken to identify Mr Venkatasamy.
- 11.5 Upon receipt of the report, the SRA commenced an investigation, during the course of which it obtained witness statements from Person A and Ms Bennett.
- 11.6 In summary, Person A alleged that at the end of the Spring Legal party, whilst she was sat outside the cloakroom changing her shoes, Mr Venkatasamy (who was unknown to her at the time) engaged in conversation with her. During the conversation he asked for a hug, which Person A thought was a strange request but one she consented to. However, as they were going in to hug, Mr Venkatasamy leaned in and kissed her on the lips, which she did not consent to. Person A was shocked and confused and stood up to go and speak to a colleague. Person A was very upset and immediately told a number of colleagues what had happened. She made her complaint to the Firm on the following day.
- 11.7 Person A's account was supported by the account of Ms Bennett, who in summary stated that, as she was leaving the toilet at the end of the evening, she saw Person A sat outside the cloakroom, talking to a man, who was sat next to her. She saw Person A and the man move towards each other as if to hug, when the man moved his head around and kissed Person A on the lips. Person A moved her head back before moving back to a hug. She described Person A as looking shocked. She saw Person A about ten minutes later, she was crying and had complained to others that a male had kissed her without her consent.
- 11.8 The SRA first contacted Mr Venkatasamy in respect of this matter on 18 October 2022. On 30 November 2022, the SRA shared a redacted version of the Firm's report and a copy of the witness statement of Person A obtained by the SRA, with Mr Venkatasamy's legal representative, Mr Goodwin, and asked for Mr Venkatasamy's comments in respect of the same.
- 11.9 Mr Goodwin provided a response on 14 December 2022 on his behalf, in which it was stated that the Firm had not sought to contact Mr Venkatasamy in relation to the incident and he had left the Firm on good terms. Mr Venkatasamy admitted being the male identified by Person A. He recalled having a conversation with Person A towards the end of the evening and that it was

“his invariable practice and common courtesy.. provide a hug and intended kiss on the cheek.. in the context of saying goodbye”.

He recalled that he made a clumsy attempt at a kiss on the cheek but “inadvertently made contact with [Person A's] lips, the duration of which lasted less than one second.”

- 11.10 Person A provided two witness statements in relation to this matter. The first was provided to the Firm on 18 May 2022. The second was provided to the SRA and was dated 3 November 2022.
- 11.11 Person A stated that she joined the Firm at the end of October 2021. She was one of the most junior members of staff in her team at the time. In February 2022, she was approached in relation to changing roles and was due to start a new role in May 2022. Therefore, at the time of the incident in March 2022, she was in between roles.
- 11.12 On 17 March 2022, Person A attended the Firm's Spring Legal Party. When she arrived, Person A dropped her coat at the cloakroom, and then went into the main hall for the drinks reception which lasted about an hour. Person A was not feeling her best when she attended the party because she was not enjoying the job she was doing at the time and did not know many people at the party.
- 11.13 After the drinks reception, everyone went through to the dining hall for a sit down meal. Wine was served with the meal, and Person A stated that by the end of the meal some people seemed "*merry*". She had consumed a small glass of champagne and a glass of wine by this point and did not feel intoxicated. After dinner, Person A danced with some people from her team and started to enjoy the evening more.
- 11.14 Person A decided to leave the party around midnight, by which point she had drunk a gin and tonic in addition to the drinks she had consumed earlier. Whilst she could feel that she had had something to drink, she stated,

"I was perfectly fine walking and talking and mostly just felt tired."

- 11.15 As she was walking to the cloakroom, a colleague she knew was in front of her, although she does not think that he knew she was behind him. That colleague said "*hello*" to a man who was walking in the opposite direction away from the cloakroom. Person A now knew that man was Mr Venkatasamy, although she did not know that at the time. Mr Venkatasamy then said "*hello*" to Person A, and although she did not know him, Person A replied with "*hello*" and "*Oh, I may have seen you around the office before*". This was a "*polite white lie*" which Person A had used a few times that evening as a way of speaking to people and being nice. Mr Venkatasamy replied, "*No you haven't*", which struck Person A as a strange response. Person A continued on her route to the cloakroom.
- 11.16 Having collected her coat, Person A sat on a chair outside the cloakroom in order to change into her trainers. Mr Venkatasamy then came over and sat down next to her. He challenged her about why she had said she had seen him in the office because he never went into the office. Person A replied, "*Ok, right, sorry.*" Mr Venkatasamy then stood up and held his mobile phone towards her saying "*give me your number*". He was looking away from her as he asked this, and it felt to Person A that he was "*full of himself and that I had somehow pissed him off.*" Person A felt a bit "*nervous and sick*" because Mr Venkatasamy was "*freaking her out*" and his body language was "*very aggressive*". Person A refused the request by telling Mr Venkatasamy that she had a boyfriend.

- 11.17 Person A states that Mr Venkatasamy sat back down next to her and appeared annoyed. He put his hands over his head and made frustrated “groans” saying, “*oh my god*” and “*why did you say you had seen me in the office?*” Person A felt intimidated and a bit scared, so she tried to diffuse the situation by telling him to calm down and asked him questions about himself. He told her he was a corporate lawyer. As he was talking Person A noticed that his eyes were bloodshot and that he looked quite drunk.
- 11.18 Person A could not recall all of the conversation. However, whilst they were talking, Mr Venkatasamy said, “*Can I give you a hug?*” Person A thought this was an odd request, but she said “*ok*” and lent towards him but did not put her hands out. As she did so, Mr Venkatasamy, “*leaned in and quickly kissed me on the lips*”. Person A stated that whilst she did not know if “*he used his tongue, it was a slobbery kiss, not just a peck, with him putting his lips around my closed mouth.*”
- 11.19 Person A said it was “*disgusting*” and “*intrusive*”. She “*froze*” and then he pulled away. She described feeling “*sick*” and “*embarrassed*” because she had recently joined the Firm.
- 11.20 Person A then saw a colleague she knew, so she got up and walked across to him. Mr Venkatasamy seemed to follow her over but then walked into the main hall. Person A’s colleague asked if she was ok, to which she immediately told him that “*that guy has just kissed me*” and she said, “*I hate men; I hate men.*”
- 11.21 Another colleague joined them, and Person A continued saying “*I hate men*” whilst adding that she did not include her two colleagues with whom she was talking when she said that. On reflection, Person A considered that she was talking in a “*panicked*” way.
- 11.22 Person A and her two colleagues walked back into the main hall to say goodbye to others but as she walked into the room she began to cry as she thought about what had just happened. A number of colleagues then gathered around her and she told them that a guy had just kissed her. She could see Mr Venkatasamy about 15 metres away and tried to point him out to her colleagues.
- 11.23 Person A was escorted out of the venue by her colleagues who stood outside with her whilst she ordered a taxi.
- 11.24 The following day, Person A spoke to a colleague on Skype and during the call mentioned what had happened the night before and asked what she should do. Her colleague advised her to speak to Callum Murray, the Firm’s People Partner. Following which Person A emailed Callum Murray and asked if he was free for a call in relation to an incident that had occurred at the party the night before. A call was arranged for later that day. There followed a number of email exchanges with Callum Murray and individuals at the Firm in relation to progressing the complaint.
- 11.25 The Firm had difficulty in identifying Mr Venkatasamy as the male involved in the incident. Eventually, Person A was able to identify Mr Venkatasamy.
- 11.26 Person A provided a description of the person involved in the incident in her statement. She describes him as follows,

a male with dark brown/black hair cut short, but not too short. He had caramel brown skin colour, and while I cannot assume his ethnicity, I would think that he had the complexion who was perhaps half Indian or Iranian. I recall that he had distinctly pretty eyes, quite light, and a little bit of facial hair. He was about 5 foot 8 inches tall, sort of slight build; not particularly broad or skinny. He had a well-spoken, South London accent, but also could have been a Kent or Buckinghamshire accent.”

- 11.27 Person A further stated that when she first emailed Callum Murray, she described the male involved as wearing a grey suit, but she now knew this to be incorrect because she had subsequently seen a photo of him wearing a black suit that evening. Ms Sheppard Jones submitted that the description provided by Person A was not of paramount importance as Mr Venkatasamy accepted that he was the person involved in the incident; there was no dispute that Mr Venkatasamy was the male referred to by Person A.
- 11.28 Person A described the impact of the incident as making her feel “*more scared out in public*” and also that it affected her confidence. She worried that she might give off the wrong impression to people and generally felt less trustful of men. She stated that on the whole: “*I feel a lot more vulnerable and angrier.*”
- 11.29 Person A provided a further statement dated 28 September 2023 in which she provides further details of the impact this incident has had on her, both professionally and personally.
- 11.30 Ms Bennett provided an account to the Firm on 19 May 2022, which was recorded in a telephone attendance note. She also provided a witness statement to the SRA dated 12 January 2023.
- 11.31 Ms Bennett stated that she joined the Firm in August 2021. In April 2022, she was assigned to a different team. Ms Bennett, who worked from home, stated that whilst she had not worked with Person A, she believed that they had met and spoken during the Spring Party.
- 11.32 Ms Bennett was seated on the same table for dinner as Person A. However, after the meal Person A was socialising with other people at the event and Ms Bennett did not see much of Person A. Ms Bennett stated that she drank one and a half glasses of wine with dinner and three or four single rum and cokes during the evening after dinner. She did not feel drunk.
- 11.33 Towards the end of the evening, she was standing in the main hall with a group of other colleagues, when Person A approached them to say she was getting her coat. Person A, who Ms Bennett described as a “*bubbly*” person, appeared perfectly fine at that stage.
- 11.34 A few minutes later, Ms Bennett decided to go to the toilet, which was located near the cloakroom. When she left the toilet, she noticed Person A sitting on a chair outside the cloakroom. There was a man she did not recognise sat next to her. The two of them were in conversation when they appeared to go in to hug each other. Person A had her belongings on her lap and appeared to just turn her upper body, whereas the male leaned right over. As they were about to hug, Ms Bennett saw the male

“manoeuvre his head around more than his body and kiss [Person A] on the lips. It looked like a quick peck, as [Person A] seemed to pull her head back and then moved back into a hug.”

11.35 Ms Bennett described Person A as looking *“taken aback – shocked”* and in retrospect *“panic stricken”* but Ms Bennett did not register this at the time. Ms Bennett believed that Person A went back in for the hug *“because she did not know what to do”*.

11.36 Ms Bennett described looking at Person A and the male for about 30 seconds, from a distance of three to four metres. She could not recall the lighting but stated that as the function room was quite light she imagined it was also quite bright outside the cloakroom. There were no obstructions to her view. The male involved had a darker complexion and was possibly of Indian ethnicity. She described his hair as not shaven but not long, and that he was wearing a tuxedo.

11.37 Ms Bennett did not think anything of what she had seen straight away and walked back to the main hall. However, around ten minutes later she saw Person A crying. Person A seemed

“very shaken up” and kept saying “I need to go home” repeatedly.”

11.38 Ms Bennett asked Person A what had happened, and another colleague replied saying that someone had kissed her. It was at this point Ms Bennett realised that she had witnessed the kiss. There was some speculation amongst her colleagues as to who was responsible. Ms Bennett clarified that she knew what he looked like, but she could not see the male anywhere.

11.39 Ms Bennett spoke to Person A the following day and told her that she had witnessed the incident and would assist if possible. Around eight weeks later she was contacted by the Firm and gave her account. She then took part in an identification procedure over “Teams” a couple of weeks later. She was unable to pick anyone out with certainty from the photos provided to her.

11.40 On 14 December 2022, Mr Venkatasamy provided initial representations, through Mr Goodwin, to the Firm’s report and Person A’s witness statement.

11.41 He stated that the Firm had not contacted him in relation to the incident and that the delay in being notified of the complaint was unexplained, unfair and prejudicial.

11.42 Despite the delay, Mr Venkatasamy did recall the event and admitted that he was the male involved in the incident described. However, he stated that he had a brief conversation with Person A lasting no more than a couple of minutes, after which, as was his *“practice and common courtesy”* he provided a hug and intended to kiss Person A on the cheek, but that he

“inadvertently made contact with [Person A’s] lips, the duration of which lasted less than one second”. He stated that the kiss on the lips was *“entirely inadvertent”*, a *“mistake”* and that he was embarrassed and walked away.

- 11.43 Mr Venkatasamy denied being drunk at the party. He further denied being aggressive or annoyed during his conversation with Person A. He stated that he was in a relationship at the time and had no intention of pursuing anyone else.
- 11.44 Mr Venkatasamy challenged the description of him given by Person A and the reliability of her account. He also criticised the delays in the Firm’s investigation.
- 11.45 Following receipt of the Notice Recommending Referral to the Tribunal, Mr Venkatasamy provided further representations, through Mr Goodwin, setting out his denial of the allegation and the alleged breaches. In those representations, Mr Venkatasamy relied upon the account and representations made in December 2022 and maintained his denial of the allegation in its entirety.
- 11.46 He stated that he was “*extremely sorry*” for any misunderstanding and upset caused to Person A. He set out the impact that the investigation had caused to him, including that his employer had terminated his contract as a result of the allegation.
- 11.47 The representations stated that there was no imbalance of power between the parties in this matter. Furthermore, that whilst the event was a work party it was arguable that it was not connected to his practice and in any event there was no evidence of sexual motivation in circumstances where only he knew what his intentions were.
- 11.48 The representations challenged the account and credibility of Person A and stated that the description of the kiss as provided by Ms Bennett was more consistent with his explanation.
- 11.49 Ms Sheppard-Jones submitted that inappropriate sexual behaviour was capable of engaging the SRA Principles, depending on its nature and nexus to a solicitor’s profession.

In Wingate 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)

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

“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).

The SRA's Guidance, "Acting with integrity", last updated on 1 September 2022 stated that:

"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."

11.50 The conduct in this matter did not take place within Mr Venkatasamy's private life. It took place at a Spring Legal party, a social event organised by the Firm and attended only by employees of the Firm. It took place in connection with the workplace and with work colleagues. Accordingly, the SRA standards were clearly engaged.

11.51 Person A's consistent evidence from the moment the incident occurred until the provision of her witness statement for these proceedings, was that the kiss from Mr Venkatasamy was unwanted, non-consensual and left her very upset. The kiss had followed an earlier period when Mr Venkatasamy had held his mobile phone towards her face saying:

"give me your number" and was "freaking [her] out a little bit, as his body language was very aggressive and overpowering."

11.52 Such conduct, it was submitted, was considered by the Applicant to be serious misconduct. The incident was witnessed by Ms Bennett, who provided a consistent account that Mr Venkatasamy turned his head to kiss Person A and that Person A looked shocked. Furthermore, Ms Bennett witnessed the immediate aftermath of the incident during which Person A was crying and clearly very upset by what had occurred. This was not, it was submitted, an accidental kiss or error. If it was inadvertent, one would expect an immediate and profuse apology. Instead, he walked away. Ms Sheppard-Jones submitted that Mr Venkatasamy's account was wholly incredible.

11.53 Given the nature of the conduct was a kiss on the lips, in circumstances where it was unwanted and therefore non-consensual, it can safely be inferred that the conduct was also sexually motivated and went far beyond the boundaries of, and therefore was not, an act of 'common courtesy' as described by Mr Venkatasamy.

11.54 By kissing Person A on the lips in these circumstances, Mr Venkatasamy failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. The Respondent therefore breached Principle 5 of the Principles.

- 11.55 With regard to sexual motivation, Ms Sheppard-Jones submitted that if the Tribunal determined that Mr Venkatasamy had deliberately kissed Person A as alleged, it followed that his actions were sexually motivated.
- 11.56 The conduct alleged also amounted to a breach by Mr Venkatasamy of the requirement to act in a way which maintains public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. Public confidence in the provision of legal services is undermined by the commission of sexual misconduct by members of the profession. The public would be appalled at the behaviour of Mr Venkatasamy in kissing a colleague, someone he had known for minutes, on the lips at a work event, in circumstances where that kiss was unwanted and non-consensual. Mr Venkatasamy therefore breached Principle 2 of the Principles.
- 11.57 Mr Venkatasamy's conduct took unfair advantage of Person A and breached paragraph 1.2 of the Code. Person A was a colleague of Mr Venkatasamy. She was entitled to attend a work party without being subject to non-consensual sexual behaviour. She was entitled to believe that she was safe at that event. Yet, Mr Venkatasamy took unfair advantage of Person A by kissing her on the lips whilst she was sat down, alone, getting ready to go home, in an environment where she ought to have been able to feel safe with colleagues from her Firm.
- 11.58 Due to the fact that Mr Venkatasamy was a lawyer at her Firm, and Person A was both junior and relatively new to the Firm, she felt obliged to hug him, when in fact she felt intimidated by his behaviour and outside of a work environment would have felt able to rebuff such an advance. Mr Venkatasamy took advantage of Person A's agreement to the hug, to move his head around and kiss her on the lips.
- 11.59 Furthermore, the statement from Ms Bennett described a deliberate act and intent on Mr Venkatasamy's part in relation to kissing Person A as she witnessed that he "*leaned right over...*" and him "*manoeuvre his head around more than his body and kiss [Person A] on the lips*".

The Respondent's Case

- 11.60 Mr Venkatasamy denied the allegation. In his Answer he stated that he had provided a consistent, plausible and innocent explanation for what had occurred. Person A had consented to a hug. There was no suggestion that this was inappropriate, unwanted or sexually motivated. The kiss on the lips was inadvertent and lasted for no longer than a second. Mr Venkatasamy had not intended to kiss Person A on the lips. It had been his intention to give her a peck on the cheek to say goodbye. Mr Venkatasamy denied that there had been any sexual motivation to the events either in pursuit of sexual gratification or in pursuit of a future sexual relationship.
- 11.61 Mr Venkatasamy stated that the evidence supported his plausible and innocent explanation of an inadvertent and momentary kiss on the lips. This was plainly more likely to be true than the case advanced by the Applicant.
- 11.62 Mr Venkatasamy considered that the version of events provided by Person A was inconsistent in numerous respects and was the result of

“a wholly inaccurate perception of the factual matrix and interaction had on the 17 March 2022.”

- 11.63 Mr Venkatasamy explained that he attended the event, estimating that there were over 100 people present. He had joined the party with a number of other employees from the legal team. He was in a “jovial” mood when he arrived and had taken photos with colleagues. He had socialised with people from different teams as was encouraged by the Firm.
- 11.64 At dinner Mr Venkatasamy was sat with other members of the legal team. Once dinner was concluded, he spent the night talking with colleagues and later dancing. Mr Venkatasamy denied that he was tipsy or intoxicated; he was able to recollect the evening with a significant degree of detail and certainty notwithstanding the passage of time.
- 11.65 Mr Venkatasamy explained that towards the end of the evening, he said hello to two people one of which he had spoken to earlier in the evening and the other being Person A. He did not know what the roles of either were but had said hello to be polite. He did not consider that saying hello in this manner could be deemed an “unwanted approach”. Person A stated that she had “seen [him] around the office before”. Mr Venkatasamy detailed that he formed the impression that Person A appeared jovial and had sought to begin a conversation. Mr Venkatasamy stated that he found Person A’s response to be “off-colour” as they had never had any prior interaction. Mr Venkatasamy did not consider his response to Person A to be strange. On the contrary,

“it [was] arguable that telling a lie from the offset of an interaction may be construed to be strange.”

- 11.66 With regard to the assertion that he had stated:

“why did you say you have seen me in the office as I never go in the office”,

- 11.67 Mr Venkatasamy did not believe that the interaction had taken place as described by Person A. He also denied that he had held his phone out, waving it aggressively towards Person A. At the time, he was replying to a message. Mr Venkatasamy noted that this alleged behaviour was not witnessed by anyone else who was in close proximity at the time. He had asked for Person A’s number with a view to arranging to meet for coffee when he next attended the office. This, it was explained, was actively encouraged by the Firm to aid in collaborative and cross-team working.
- 11.68 Mr Venkatasamy stated that the kiss was accidental. He had meant to kiss Person A on the cheek as was his cultural custom. He felt embarrassed by the incident and walked away. He had not intended to kiss Person A on the lips, and his conduct was not sexually motivated.
- 11.69 Mr Goodwin urged the Tribunal to accept Mr Venkatasamy’s consistent, plausible and innocent explanation of the encounter with Person A. Whilst Mr Venkatasamy did not seek to diminish Person A’s feelings, her version of events was the result of an inaccurate perception and was inconsistent. Mr Goodwin submitted that Person A’s recollection was inconsistent, and thus questionable, in the following ways:

- In the statement dated 18 May 2022, Person A made no mention of
 - (i) the ‘white lie’ she told Mr Venkatasamy when she stated that she had seen him in the office, knowing that she had not,
 - (ii) that she had consented to giving him a hug,
 - (iii) the nature and extent of the impact which was later detailed in Person A’s statements of November 2022 and September 2023,
 - (iv) the negative mindset she had prior to attending the function.
- Person A had stated that Mr Venkatasamy was wearing a grey suit, when in fact it was black. Mr Goodwin submitted that this error was relevant to an assessment of the clarity of Person A’s recollection of the events.
- Person A stated that no hug had occurred. Mr Venkatasamy confirmed that they did hug, as did Ms Bennett.
- Ms Bennett confirmed that it was a quick peck. This supported Mr Venkatasamy’s position.

11.70 Mr Goodwin submitted that Person A’s recollection of events was hazy:

- She could not recall whether she had worked in the office or was working from home on the date of the incident.
- She could not recall all of the people who were sitting at her table in the venue.
- She could not recall whether she had put her hands out for a hug.
- She could not recall whether Mr Venkatasamy had moved in the chair closer to her in order to hug/kiss her.
- She could not recall who suggested that she should go home.
- She had stated that Mr Venkatasamy was wearing a grey suit, when his suit was black.

11.71 Mr Goodwin submitted that it was inherently improbable that Mr Venkatasamy had acted in the way alleged by the Applicant. To find matters proved, the Tribunal would have to determine that it was more likely than not that Mr Venkatasamy had deliberately kissed Person A on the lips. The consistency of his explanation in this regard was, it was submitted, an important indicator of the truth; Mr Venkatasamy had consistently stated that the kiss on the lips was a genuine, inadvertent error. For the Tribunal to find the matter proved, it would need to reject Mr Venkatasamy’s evidence out of hand. Given the consistency of his explanation, and the inconsistencies of Person A’s explanation, it was submitted that the Applicant had failed to discharge the burden of proof to the required standard. Accordingly, the matter should be dismissed.

The Tribunal's Findings

- 11.72 The Tribunal considered the evidence with care. The Tribunal found all the witnesses to be witnesses of truth. It was plain that on the essential issue, the dispute between the parties was whether Mr Venkatasamy had deliberately kissed Person A on the lips as alleged, or whether it was an innocent error. The Tribunal considered the evidence of Ms Bennett did not advance the Applicant's case as regards the intention of Mr Venkatasamy. It agreed that her evidence was supportive of Mr Venkatasamy's position as to the kiss being a quick peck.
- 11.73 The Tribunal did not find that it could prefer the evidence of Person A over that of Mr Venkatasamy. Accordingly, the Tribunal could not find, on the balance of probabilities, that Mr Venkatasamy had deliberately kissed Person A on the lips knowing that she did not consent to such contact. The Tribunal thus determined that the Applicant had failed to discharge the burden of proof. The Tribunal therefore found the allegation not proved.

Costs

12. Ms Sheppard-Jones applied for the Applicant's costs in the sum of £22,895.52. The Tribunal was reminded of its discretion to award costs notwithstanding that the allegation had been found not proved. Ms Sheppard-Jones submitted that it was reasonable for the Applicant to prosecute the matter, which it had done appropriately.
13. Mr Goodwin confirmed that Mr Venkatasamy was not making an application for the costs incurred in defending the proceedings, notwithstanding that he was entitled to do so. As regards the Applicant's application for costs, the correct order in the circumstances, was for the Tribunal to make No Order as to costs.
14. The Tribunal determined that it was reasonable for the Applicant to prosecute the matter and that it had done so in a responsible and appropriate manner. The Tribunal did not find that there was anything in the way that Mr Venkatasamy had defended the case that meant he should be ordered to pay costs, his having successfully defended the allegation. Accordingly, the Tribunal considered that the appropriate Order was to make No Order as to costs.

Statement of Full Order

15. The Tribunal ORDERED that the allegation against the Respondent, JASSEN VENKATASAMY, solicitor, be DISMISSED and it further Ordered that there be No Order as to costs.

Dated this 8th day of April 2024
On behalf of the Tribunal

G Sydenham

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

8 APRIL 2024