

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12528-2023

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ANITA BARNETT

Respondent

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Before:

Mr M N Millin (in the Chair)

Mr U Sheikh

Dr A Richards

Date of Hearing: 21-23 May 2024 and 11 October 2024

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## **Appearances**

Mr Matthew McDonagh, barrister of Outer Temple Chambers, 222 Strand, London, WC2R 1BA, instructed by Ms Hannah Pilkington, solicitor of Capsticks Solicitors LLP of 1 St George's Road, Wimbledon, London SW19 4DR, for the Applicant.

Mr Kevin Saunders, barrister of 23 Essex Street Chambers, 1 Gray's Inn Square, Holborn, London, WC1R 5AA, instructed by Mr Steve Roberts, solicitor of Richard Nelson Solicitors LLP, Castle Court, 6 Cathedral Road, Pontcanna, Cardiff, CF11 9LJ, for the Respondent.

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## **JUDGMENT**

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## **Allegations**

1. The Allegations against the Respondent, Anita Barnett, made by the SRA, are that, whilst working as a solicitor at County Council A, she:
  - 1.1. On or around 12 June 2019, submitted a witness statement from Karen Webb to the High Court, Family Division, having made amendments to that witness statement, and did not:
    - 1.1.1. Obtain express confirmation from Karen Webb that she approved the amendments that had been made to her witness statement;
    - 1.1.2. Notify the High Court that the version of the witness statement that had been submitted had not been seen or approved by Karen Webb and in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”) and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011 (“the Code”).
2. The Applicant advanced the Allegation 1.1 above on the basis that the Respondent’s conduct was dishonest. The Applicant alleged dishonesty as an aggravating feature of the Respondent’s misconduct, but not as an essential ingredient in proving the allegation.
3. In the alternative to the allegation of dishonesty, the Applicant advanced Allegation 1.1 on the basis that the Respondent’s conduct was reckless. The Applicant asserted that recklessness was alleged as an aggravating feature of the Respondent’s misconduct, but it was not an essential ingredient in proving the allegation.
4. Principle 2 of the SRA Principles 2011 requires a solicitor to act with integrity. Principle 6 of the SRA Principles 2011 requires a solicitor to behave in a way that maintains the trust the public places in the solicitor and in the provision of legal services. Outcome 5.1 of the SRA Code of Conduct 2011 requires that a solicitor does not attempt to deceive or knowingly or recklessly mislead the court.

## **Executive Summary**

5. The Tribunal found, on the balance of probabilities, that the Applicant has proven the factual allegations that the Respondent did not obtain an express confirmation from Karen Webb that Mrs Webb approved the amendments that had been made to her witness statement and that the Respondent did not notify the High Court that the version of the witness statement that had been submitted had not been seen or approved by Karen Webb. However, the Tribunal found that the Applicant has not proven, to the requisite standard, that the said conduct was either dishonest or reckless and/or that the said conduct amounted to a breach of either Principles 2 or 6 of the SRA Principles 2011 or a failure to achieve Outcome 5.1 of the SRA Code of Conduct.

## **Sanction**

6. No sanction was imposed. The allegations against the Respondent were dismissed and the Tribunal further ordered that there be no order as to costs.

## Documents

7. The Tribunal reviewed and considered all of the documents in the case which included (but was not limited to):

### Applicant

- Rule 12 Statement and Exhibit HWP1 dated 13 December 2023
- Applicant’s Reply and Documents not previously filed dated 5 February 2024
- Applicant’s Schedule of Costs dated 13 December 2023, Final Schedule of Costs dated 14 May 2024 and Schedule of Costs for costs hearing, dated 3 October 2024
- Witness Statement of Timothy Charles Winn, dated 13 April 2023, and Exhibits
- Witness Statement of Jill Weston, dated 21 April 2023, and Exhibits

### Respondent

- Respondent’s Answer dated 29 January 2024
  - Respondent’s Further Answer dated 21 March 2024
  - Respondent’s Witness Statement dated 1 May 2024
  - Respondent’s Statement of Means
  - Respondent’s Character References
  - Respondent’s Schedule of Costs, dated 2 August 2024
8. Both the Applicant and Respondent relied on witness statements, authorities and documents which are a matter of record, and which have been read and considered by the Tribunal. References are made to those documents in so far as they are relevant to the issues determined by the Tribunal.

## Preliminary Matters

9. Anonymisation

- 9.1 The Tribunal noted that the High Court has made an injunction/ transparency order in 2019 in the underlying proceedings relating to a vulnerable adult AD, prohibiting publication of any material that would lead to the identification of:

- AD (the individual concerned in the proceedings); and
- The nature/ status of County Council A and the Clinical Commissioning Group B (the “CCG B”).

- 9.2 For the purposes of preparing its case in these proceedings, the Applicant has obtained an order from Mr Justice Hayden, dated 20 October 2023, authorizing the release and use in these proceedings of three versions of witness statements from Mrs Karen Webb. However, the order from Mr Justice Hayden confirmed that otherwise the 2019 transparency order remained intact.
- 9.3 On 24 November 2023, Mr Justice Hayden made a further order permitting the use of the names “County Council A” and “CCG B” in the present proceedings, notwithstanding the terms of paragraph 6(i) (c) of the original transparency order.
- 9.4 The Respondent confirmed that it had no issues with the anonymisation and that the anonymisation did not prejudice anyone.
10. Adjournment of the Hearing and Proceedings with respect to Costs
- 10.1 Following its findings on the factual matrix, the Tribunal acceded to the Applicant’s request to adjourn the Hearing and defer its consideration of any cost applications. The Applicant asserted that it was imperative for it to review the Tribunal’s reasoning in the Judgment to enable it to make an informed decision as to whether to apply for an order for costs. The Applicant further asserted that the adjournment would also provide the Parties with an opportunity to discuss and potentially reach an agreement as to costs. The Respondent did not object to the adjournment.
- 10.2 The Tribunal gave the following directions regarding the Parties’ respective potential applications for an Order of costs:
- 10.2.1 21 days after the receipt of the Tribunal’s written draft Judgment, the Applicant is permitted to make an application for an Order of costs, with notice to the Respondent.
- 10.2.2 The Respondent shall have 21 days to reply to any application for an Order of costs made by the Applicant, if any, and/or to make any application of its own for an Order of costs against the Applicant.
- 10.2.3 The Applicant shall thereafter have 14 days to reply to any application for an Order of costs made by the Respondent.
- 10.2.4 Any further hearing as to costs is to be reserved to this Tribunal and fixed administratively.
- 10.2.5 Either party shall be at liberty to apply for a hearing in respect of costs.
- 10.3 The draft judgment was circulated to the Parties on 21 June 2024.
- 10.4 In accordance with the Tribunal’s above directions, on 11 July 2024, the Applicant applied for there to be no order as to costs made. The Applicant considered this to be appropriate in all of the circumstances and advised that it would seek the Respondent’s agreement on this.

- 10.5 In accordance with the Tribunal's above directions, on 2 August 2024, the Respondent submitted an application for costs pursuant to Rule 43 of the Solicitors (Disciplinary Proceedings) Rules 2019, seeking an order for costs against the Applicant in the sum of £22,914.00. The Respondent submitted a skeleton argument and a schedule of costs in support of her application for costs.
- 10.6 The Applicant applied for a 7-day extension of time to submit their response to the Respondent's application for costs, which was granted by the Tribunal. On 22 August 2024, the Applicant submitted a skeleton argument, whereby it advised that it resists the Respondent's application for costs. The Applicant further submitted its Schedule of Costs in relation to the cost hearing on 11 October 2024.
- 10.7 The Tribunal heard the Parties' respective costs submissions in a hearing conducted on 11 October 2024. The Tribunal decided to make no order as to costs for the reasons set out in the section entitled 'Costs' below.

### **Factual Background**

11. The Respondent is a solicitor specialising in Adult Social Care Law, having been admitted to the Roll of Solicitors on 15 May 2012. The Respondent has a current practising certificate free from restrictions. At the time of these Allegations, the Respondent was working at County Council A as a Senior Solicitor in the Adult Social Care Team.
12. The Allegations arose from the Respondent's involvement in a case concerning County Council A's application for a Deprivation of Liberty Safeguards ("DoLS") authorisation to the Court of Protection and subsequently to the High Court Family Division, in relation to a vulnerable adult referred to as "AD." Whilst the application was first submitted to the Court of Protection, the matter was subsequently transferred from the Court of Protection to Mr Justice Hayden at the High Court Family Division.
13. At a hearing on 5 June 2019, Mr Justice Hayden ordered a witness statement to be filed from Mrs Karen Webb, who was a joint Funding Lead and Deputy Senior Responsible Officer (SRO) for Transforming Care, employed by the County Council A and seconded to CCG B. The witness statement was required to be filed by 4pm on 12 June 2019.
14. After the hearing on 5 June 2019, CCG B instructed a solicitor's firm, Mills & Reeve LLP, to act on their behalf as a result of criticism levelled at CCG B by Mr Justice Hayden in the hearing. Ms Jill Weston, a solicitor at Mills & Reeve, had the conduct of this case.
15. On 10 June 2019, at 12:19pm, the Respondent wrote to Ms Weston, advising her that whilst Mrs Webb would need to liaise with Mills & Reeve as solicitors of CCG B, the responsibility for filing the witness statement fell upon County Council A. The Respondent also requested a copy of Mrs Webb's witness statement by 4pm on 11 June 2019.
16. Whilst the CCG B subsequently applied to be joined as a party to the underlying proceedings at the High Court Family Division in the matter of AD, it is understood

that at the relevant time, CCG B was not yet a party to the application for DoLS authorisation concerning AD.

17. On 11 June 2019, at 13:10pm, an attendance note was created by a paralegal at County Council A, which reported as follows:

*“Karen Webb rang and came over to say she required came over to say she required some dates for a statement for [CCC B] but [Ms Barnett] will be submitting so could add any bits in there after Karen advised it had to be done now as is leaving for holiday tomorrow[sic]*

*I advised the application had been before my time also she advised we will start with the application notified to court of protection on 16/04/19 and us that timeline*

*She advised there were phone calls from [Ms Barnett] too [sic] court also but thinks she has enough and will let [Ms Barnett] add anything in she wishes.”*

18. At 5:46pm on 11 June 2019, Ms Weston emailed to Mrs Webb an unsigned draft copy of her witness statement and requested Mrs Webb to check the text and confirm whether or not she was happy with the statement.
19. At 7:38pm on 11 June 2019, Mrs Webb responded to Ms Weston confirming that she was happy with the content of the statement and advised that she would send Ms Weston her electronic signature in another email. Mrs Webb advised that she had not corrected the grammar on the statement, nor had she corrected a formatting issue that she had spotted as she knew that Ms Weston would sort out those issues. On a further email to Ms Weston at 7:43, Mrs Webb reiterated her approval of the contents of her witness statement and attached her electronic signature to the email for Ms Weston to use to finalise the statement.
20. At 11:22am on 12 June 2019, Ms Weston emailed a signed copy of Karen Webb’s witness statement to the Respondent for lodging with the court.
21. At 3:41pm on 12 June 2019, the Respondent responded to Ms Weston’s email, copying in Mrs Webb and attaching an amended version of Mrs Webb’s witness statement (the “Version 2”). The Respondent advised on her cover email that:

*“I have made some amendments to the statement. I have not track changed them as they were too numerous. Essentially, there were a lot of references to “we were” and it is not clear who the “we” was that Karen is referring to. Clearly she has taken instructions from the CCG and I did not want to give the incorrect impression that the “we” referred to was the local authority. As this is a personal statement, I have changed these references to “I” or left it somewhat ambiguous.*

*I have also clarified the timeline of the application. It may not be the most significant issue but I wanted to make it clear that there were issues raised by the Court of Protection on a number of occasions at the earlier stages but it was*

*not until the finalised application was sent to the court in May that the issues surrounding jurisdiction was picked up.*

*I understand Karen is now away from the office but I trust that, between us, she [sic] are content with the statement and it can be filed.”*

22. At 4:04pm on 12 June 2019, the Respondent filed a third version of Mrs Webb’s witness statement at the High Court (the “Version 3”), with Ms Weston copied into the email. The Version 3 differed from Version 2 in that the Court of Protection had been changed to the High Court of Justice Family Division and the words “on an application made by [County Council A]” had been added to the heading of the statement. The date of the statement was also changed to 12 June 2019.
23. Subsequently, on 13 June 2019, at 9:27am, Ms Weston responded to the Respondent’s email explaining that she had been unavailable between 3:40 and 4:10 on 12 June 2019 and the statement had already been filed when Ms Weston saw it. Ms Weston further advised that she had some significant concerns about amending the statement, particularly as she knew that paragraph 43 was, in her view, factually incorrect. Ms Weston stated that she would not amend any statement without express instructions from a witness and explained that she had herself had such express instructions in relation to a formatting of a paragraph. Ms Weston further noted that the Respondent had changed the date of the statement from 11 June 2019 to 12 June 2019.
24. On the same email, Ms Weston further advised that she was to speak to Mrs Webb upon her return from a holiday and anticipated that the majority of the amendments made by the Respondent would be acceptable to Mrs Webb, but not necessarily all of them. Ms Weston further advised that she was aware that the courts take “*a dim view*” of alterations to statements without prior authority from witnesses and she would need to review this further with Mrs Webb upon her return.
25. The Respondent replied to Ms Weston’s email at 12:24pm on 13 June 2019 by stating the following:

*“I wasn’t aware that Karen was out of the country. We did not have any discussions about the completion of the statement however, I did ask her to refer to you as I understood she had sought her advice from your clients and the majority of the statement was to surround actions which were outside of [County Council A]’s remit.*

*Karen was not clear throughout the statement where her instructions had [come] from and the statement was peppered with “we” references without clarifying who “we” referred to. Clearly, if the statement provides that she sought advice, the natural assumption by the Judge would be that that advice came from [County Council A] and the “we” referred to was also [County Council A]. In the majority of circumstances, this was not the case therefore much of the information in the statement was very misleading and it could not be filed as it was.*

*As you are aware, the local authority was required to file the witness statement as oppose [sic] to the [CCG B]. No doubt Karen can address the issues on her*

*return or you can seek permission to file your own statement.”*

26. Upon Mrs Webb’s return to work on 19 June 2019, at 10:16, Mrs Webb replied to the Respondent’s email of 12 June 2019 at 3:41pm by stating that:

*“First day back I m [sic] assuming the statement went in ok?”*

27. Ms Weston responded to Mrs Webb on the same day, 19 June 2019 at 10:37 by confirming that the statement had gone in but advising that there were “some issues.” Ms Weston also enquired if Mrs Webb had time for a chat on that day.
28. At 14:10 on 19 June 2019, Ms Weston sent a word comparison showing amendments made by the Respondent to the version of the statement that Mrs Webb had seen prior to her holiday. Ms Weston requested Mrs Webb to look at the amendments and let her know whether she accepted them as part of her statement or not. Ms Weston highlighted that Mrs Webb should feel under no pressure to do so, as the evidence that she gives should be her evidence and nobody else’s. Ms Weston further advised that once they had a clear idea of what Mrs Webb wants her evidence to say, a discussion as to how best to communicate this to the court could be had.
29. Following further correspondence between Mrs Webb and Ms Weston regarding Mrs Webb’s statement, on 24 June 2019 Ms Weston forwarded onto the Respondent a copy of the most recent version of Mrs Webb’s witness statement.
30. At 13:39 on 25 June 2019, Mrs Webb advised Ms Weston that she and the Respondent had gone through the latest version of her statement and “*a few minor tweaks*” had been made to the statement. Mrs Webb further confirmed that she was happy with these “tweaks” and advised that the Respondent was to send a copy of the statement to Mrs Webb and Ms Weston and would withdraw the current statement from the court explaining the reasons for it and would then file the revised statement later that afternoon.
31. On 28 June 2019, the Respondent filed the further revised version of Mrs Webb’s statement, dated 27 June 2019, to the court explaining the reasons for filing the revised statement as follows:

*“Pursuant to the order of Mr Justice Hayden, the local authority filed a statement by Karen Webb on 12th June 2019. Unfortunately, unknown to the writer, Mrs Webb was due to take annual leave and we were unable to discuss the final version of the statement before it was filed. Upon Mrs Webb’s return, the statement was reviewed both with the local authority and those representing the clinical commissioning group involved and whilst the majority of the statement is corrected, there were a few factual inaccuracies which Mrs Webb would like to clarify. These essentially pertain to clarifying the decision making and organisations referred to in the witness statement.*

*We would be grateful if the statement filed on 12th June could be withdrawn and the more accurate statement attached is filed in its place.*

*We apologise for any inconvenience caused.”*



32. This matter came to the attention of the SRA following a report from the Compliance Officer for Legal Practice (“COLP”) at Mills & Reeve, Mr Guy Hinchley on 24 July 2019. Following Mr Hinchley’s report, the SRA commenced the investigation of the complaint.
33. The Applicant first contacted the Respondent in relation to this incident on 5 December 2019. The Respondent had, according to the Applicant, provided a “fairly detailed response” on 23 December 2019.
34. On 23 October 2021, the Applicant wrote again to the Respondent seeking further information in relation to the discussions that had occurred with Mrs Webb following her return to work. On 26 October 2021, the Respondent responded to the Applicant on an email stating that:

*“Unfortunately, it appears that there is no note on file of my conversations with Karen Webb following her return from holiday in June 2019. I do not provide this as an excuse but during the time of this case, the local authority was going through a recruitment crisis and I was carrying the caseload of more than two people. It was a particularly difficult time and I can only apologise that appropriate records were not kept.”*
35. On 2 February 2022, the Respondent was sent a Notice recommending referral to the Tribunal. On 14 March 2022, representations in response to the Notice were submitted to the Applicant on behalf of the Respondent by Mr John Goodwin.

### **Witnesses**

36. The Respondent, Ms Barnett, gave oral evidence and was cross-examined at length in the Hearing.
37. The Respondent’s Counsel having advised that he had no cross examination questions for Ms Weston, and the Tribunal having concluded that it did not have any questions for Ms Weston either, the Tribunal decided that it was not necessary for Ms Weston to attend the hearing to give oral evidence and that her evidence was accepted as it was set out in her witness statement, dated 21 April 2023. No other witnesses were heard orally.
38. The oral evidence of the Respondent and the written evidence of witnesses is referred to or summarised in the Findings of Fact and Law below in so far as they are 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.

### **Findings of Fact and Law**

39. 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 the Respondent's right to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

40. **Allegation 1.1 - On or around 12 June 2019, submitted a witness statement from Karen Webb to the High Court, Family Division, having made amendments to that witness statement, and did not:**
- 1.1.1 Obtain express confirmation from Karen Webb that she approved the amendments that had been made to her witness statement;**
- 1.1.2 Notify the High Court that the version of the witness statement that had been submitted had not been seen or approved by Karen Webb and in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011 ("the Code").**

#### The Applicant's Case

- 40.1 The Applicant alleged that that by virtue of the Respondent submitting Version 3 of the witness statement of Mrs Webb to the High Court on 12 June 2019, the court received a document which purported to represent an account provided by, or approved by, Mrs Webb, while in fact the contents of that witness statement did not represent the approved account that had been provided by Mrs Webb. Therefore, if the subsequent steps to correct Mrs Webb's statement had not been taken, the court would have been entitled to assume that: 1) the contents of this witness statement represented the approved account provided by Mrs Webb; and 2) Mrs Webb had signed the statement, directly below the short statement of truth, on 12 June 2019, thereby confirming the truth of the statement's contents.
- 40.2 The Applicant further asserted that regardless of whether Respondent believed that she had Mrs Webb's consent or approval to amend her witness statement, when she submitted Mrs Webb's statement to the court, she was presenting the court with a document which no longer represented the approved account provided by Mrs Webb.
- 40.3 According to the Applicant, the subsequent amendments that had to be made to Mrs Webb's witness statement following her return from holiday, in any event, indicate that the Respondent had amended the witness statement (i) in ways with which Mrs Webb did not agree; and (ii) at times to make it factually incorrect.
- 40.4 In the Applicant's view, there would have been a number of other options available to the Respondent in the difficult position in which she found herself, but she chose instead to file Version 3 of the witness statement that did not represent an account provided by Mrs Webb.

#### *Allegation of Dishonesty*

- 40.5 The Applicant's case in relation to dishonesty relates primarily to the fact that, in amending the witness statement, the Respondent created an account which had not emanated from Mrs Webb. In submitting that account in the form of a witness statement

purportedly provided and signed by Mrs Webb, the Respondent was falsely holding out its contents as an account that had been provided by Mrs Webb.

- 40.6 The Applicant has acknowledged that four of the specified 26 changes made by the Respondent to the witness statement of Mrs Webb on 12 June 2019 were ultimately accepted by Mrs Webb but claims that Mrs Webb had to amend or return to their original form 22 of the changes made by the Respondent. In addition, the Applicant alleges that the changes demonstrate that the Respondent altered the statement in a way which meant it contained some factual inaccuracies.
- 40.7 The Applicant relied in the test for dishonesty set out in the Supreme Court judgment in Ivey v Genting Casinos [2017] UKSC 67. The Applicant alleges that at the time the Respondent submitted Version 3 of the witness statement on 12 June 2019, she knew that 1) she had made alterations to this document; and 2) these alterations had not been seen or approved by Mrs Webb.
- 40.8 The Applicant's case does not rest on the truthfulness or otherwise of the contents of the Version 3 of the statement. Instead, the Applicant's case is that the Respondent was clearly intending the court to accept that Version 3 of Mrs Webb's statement which she filed was the account that had been provided by Mrs Webb, when that was demonstrably not the case.
- 40.9 According to the Applicant, the changes made by the Respondent to the statement of Mrs Webb represent a clear attempt to improve the description of County Council A's conduct and to place a distance between County Council A and the conduct that Mrs Webb was describing and/or an attempt to protect the interests of County Council A over the obvious need to ensure that the court received a witness statement that did in fact contain an account which had been provided by that witness.
- 40.10 The Applicant alleged that falsely representing to the court that an altered witness statement does in fact represent the content of the account provided by that witness (which is precisely what the submission of that witness statement did), when that witness had never seen nor approved those alterations, is conduct that would be considered to be dishonest by the standards of ordinary decent people.

#### *Allegation of Recklessness*

- 40.11 In the alternative to the allegation of dishonesty, the Applicant alleged that the Respondent acted recklessly. The Applicant relied upon the test for recklessness which was set out in the case of Brett v SRA [2014] EWHC 1974. At paragraph 78 of that case, Mr Justice Wilkie adopted the working definition of recklessness from the case of R v G [2004] 1 AC 1034, according to which the word "*recklessly*" is satisfied: with respect to (i) a circumstance when {the solicitor} is aware of a risk that it exists or will exist and (ii) a result when {the solicitor} is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk.
- 40.12 The Applicant asserted that if the Respondent did not intend deliberately to mislead the court as to the fact that the contents of Version 3 of the witness statement from Mrs Webb did in fact represent an account that had been approved by Mrs Webb, she must have been aware that there was a risk that the court would assume this.

Notwithstanding the fact that this obvious risk must have been known to the Respondent, in the Applicant's view, the Respondent still chose to submit the witness statement in the manner that she did.

- 40.13 The Applicant further asserted that given the other options that were available to the Respondent, it was unreasonable for the Respondent to proceed in the manner that she did and run the risk of misleading the court as to the source of the account that featured in Version 3 of Mrs Webb's witness statement.

*Principle 2 (Integrity)*

- 40.14 The Applicant's case in relation to the alleged breach of Principle 2 is that, in submitting Version 3 of the witness statement to the court on 12 June 2019, the Respondent provided the court with a document which did not represent what it purported to do, namely a written account that had been provided by Mrs Webb. The Applicant asserted that regardless of the Respondent's motives for doing this, she must have been aware that the account she was providing to the court (regardless of whether she perceived Version 3 to contain the true factual position as opposed to Version 1) did not emanate from Mrs Webb. Despite this, the Applicant argued, the Respondent was still content to provide the witness statement as if it was one that had been drawn up and its contents approved by the author in the usual manner.
- 40.15 According to the Applicant, by acting in this manner, the Respondent created a real and genuine risk that the court would be misled in assuming that the account that featured in Version 3 had in fact emanated from and been approved by Mrs Webb. In the Applicant's view, this was, at best, a cavalier attitude which risked the court being misled and, thus, represented a lack of integrity in breach of Principle 2 is alleged.
- 40.16 The Applicant relied on Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, where it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence with an ethical code) would not have submitted to a court an altered version of a witness statement without either (i) obtaining the witness' express approval for those particular alterations; or (ii) identifying to the court that this was a draft or amended document, and the witness' final approval was still awaited for the amendments.
- 40.17 Whilst the Applicant acknowledges that the court was not in fact misled by the filing of Version 3 of the Witness Statement, it alleges that this was by luck rather than design on the Respondent's part. According to the Applicant, recklessly filing the witness statement which could have allowed the court to be misled was one of the six specific examples identified in Wingate.

*Principle 6 (Public Trust and Confidence)*

- 40.18 The Applicant's case for the alleged breach of Principle 6 is that the public would expect a solicitor to know that it would not be appropriate to submit to court a witness statement that had been altered in that manner without, at the same time, drawing the court's attention to the fact that the alterations had still not been approved by the purported author.

40.19 The Applicant submitted that in acting in this way, the Respondent failed to behave in a way that maintains the trust the public places in solicitors and in the provision of legal services. Therefore, the Applicant alleged that the Respondent had breached Principle 6.

*Outcome 5.1 (not to deceive or knowingly or recklessly mislead the court)*

40.20 The Applicant's case is that outcome 5.1 of the Code obliges solicitors not to attempt to deceive or knowingly or recklessly mislead the court. According to the Applicant, the attempt to deceive or mislead the court in this case emanates from the representation of Version 3 as representing an account provided by Mrs Webb, when it was clearly not.

40.21 Whether the Respondent believed that Version 3 contained a more truthful representation of the facts than Version 1 is, in the Applicant's view, academic. Instead, the Applicant stressed that the Respondent provided a witness statement to the court that no longer represented the account that had been provided by that witness. In the Applicant's view, it was highly likely, in those circumstances, that the court could have been misled into believing that Version 3 represented the account provided by Mrs Webb.

The Respondent's Case

40.22 The Respondent denied having acted dishonestly or recklessly and/or in breach of Principles 2 and 6 of the SRA Principles 2011 and denied having failed to achieve Outcome 5.1. of the SRA Code of Conduct 2011. This denial was on the basis that she believed she was authorised to make the amendments to the witness statement of Mrs Webb and that the amendments were factually accurate.

40.23 The Respondent nevertheless acknowledged that the amended witness statement had not been seen by Karen Webb nor had it been "re-signed" by Mrs Webb prior to submission to the Court. The Respondent has also accepted that she did not notify the Court that the version of the statement served on 12th June 2019 had not been seen or approved by Mrs Webb. However, the Respondent did not believe she was required to do so because she believed that she was authorised by Mrs Webb to make amendments to the statement and that the amendments were factually correct.

*Allegation of Dishonesty and Recklessness*

40.24 The Respondent denied having acted dishonestly or recklessly because at all material times she believed that she had authority from Karen Webb (either express or implied) to make amendments to the statement and that the amendments she made were factually accurate. The Respondent further clarified that her belief was that she was in effect acting as agent on behalf of Mrs Webb. It was therefore submitted on behalf of the Respondent, that the Applicant failed to prove that the Respondent was either dishonest or reckless.

40.25 According to the Respondent, the basis of the amendments was to make grammatical and formatting changes, change references to "we" to first person singular references within the statement and to make the statement factually accurate. The Respondent

asserts that she was aware that some of the information contained within Version 1 of the statement was factually inaccurate and that it was her belief that she was entitled to amend that information and that she had authority from the maker of the statement to do so given that Mrs Webb and the Respondent were both employees of County Council A on whose behalf the statement was being submitted.

- 40.26 Relying on the judgment in Peter Maxfield-Martin v SRA [2022] EWHC 307, at [85 89], the Respondent's Counsel argued that the Respondent's belief at all material times that she had the authority from Mrs Webb to make the amendments to her statement should be taken into account in assessing the second stage objective test for dishonesty laid down in Ivey v Genting Casinos [2017] UKSC 67.
- 40.27 The Respondent further submitted that the Applicant has not advanced a positive case as to whether or not the Respondent had in fact had an authority to file the statement. The Respondent acknowledged that the best practice would have been to obtain express confirmation from Mrs Webb for the amendments, but that she in any case had the authority to file the statement to court.
- 40.28 The Respondent further pointed out that there was a culture at County Council A to delegate electronic signatures and share responsibilities for making the statements. The preparation of Mrs Webb's statement had been a collaborative effort: input was required from the County Council A, the CCG B and Mrs Webb.
- 40.29 The Respondent's Counsel argued that the amendments that the Respondent made were not material and that in any case Version 2 of the Statement had been more accurate and Version 3 had been even more accurate than Version 1.
- 40.30 The Respondent's Counsel further submitted that the evidence showed that Mrs Webb had allowed others to use her electronic signature and had authorised both Jill Weston and the Respondent to make amendments to her statements. The attendance note written by a paralegal at County Council A's legal team further showed that Mrs Webb had said that the Respondent could "*add anything in she wishes.*" Since the Applicant had not obtained evidence from Mrs Webb in these proceedings, the Respondent's Counsel argued that the file note had to be interpreted in favour of the Respondent.
- 40.31 Among other things, the Respondent's Counsel also stressed that the Respondent had been "drowning" at work and had been under pressure to file the statement in difficult circumstances in accordance with the Court order, having received the statement only on the morning of 12 June 2019. Regardless, the Respondent had been seeking to be diligent. In making the amendments the Respondent was in her mind furthering the objective of not misleading the court as she was trying to make the statement clearer and more factually correct and thereby more beneficial to Mr Justice Hayden.
- 40.32 According to the Respondent, she had considered herself to be duty bound to review and amend the statement given the authority of Mrs Webb and the fact that both the Respondent and Mrs Webb were employees of County Council A, on whose behalf the statement was prepared. She did not consider that she was doing anything inappropriate; indeed, she had wanted to ensure that the facts presented in the statement were clear and accurate.

- 40.33 The fact that the Respondent copied both Mrs Webb and Ms Weston into the email to the Court, with which the Respondent submitted Version 3 of the statement, was, the Respondent's Counsel submitted, indicative of the Respondent's openness and transparency.
- 40.34 The Respondent's Counsel further argued that the Applicant had misunderstood the circumstances of AD's case and that the arguments advanced by the Applicant were speculative at best.
- 40.35 Counsel for the Respondent submitted that the Applicant had not proven that she had acted dishonestly or recklessly and that during cross-examination of the Respondent, the Applicant's Counsel had not been able to point out any statement in versions 2 or 3 of the witness statement, whereby the Respondent had sought to hide something or mislead the court. Instead, the Respondent had pointed out during her cross-examination that local authorities are always criticized and that it was in their interest to accept and learn from such criticism where it was warranted because there was no gain to be achieved by hiding anything.
- 40.36 In addition, the Respondent's Counsel relied on the character references submitted on behalf of the Respondent, which demonstrated the Respondent's good character and unblemished career.

*Principle 2 (Integrity)*

- 40.37 In relying on Peter Maxfield-Martin v SRA [2022] EWHC 307, at [97], the Respondent submitted that the Applicant's case for a breach of Principle 2 fails for the same reason as the allegation for dishonesty fails. The Respondent believed at all material times that that she was entitled to make amendments to the witness statement before submitting the same to Court and believed that those statements were accurate, and therefore, the Respondent did not breach the Principle 2.

*Principle 6 (Public Trust and Confidence)*

- 40.38 The Respondent submitted that the Applicant's case for a breach of Principle 6 also fails because the Respondent had a genuine belief that she was authorized to make the amendments and the evidence shows that she did in fact have such authority to amend the witness statement of Mrs Webb before submitting it to the court.

*Outcome 5.1 (not to deceive or knowingly or recklessly mislead the court)*

- 40.39 The Respondent denied failing to achieve Outcome 5.1 of the SRA Code of Conduct 2011 or that she was dishonest or reckless in acting in the way described in Allegation 1.1. The Respondent submitted that she believed that she had authority (either express or implied) to make amendments to the witness statement and then submit the same to the Court and therefore she cannot be said to have been aware that there was any risk that the Court would be misled. In making the amendments, the Respondent was seeking to achieve clarity and accuracy.

### The Tribunal's Findings

- 40.40 The Tribunal finds that the alleged facts in Allegation 1.1 were proven to the requisite standard, namely the balance of probabilities. The Respondent has accepted that she failed to obtain an express confirmation from Karen Webb that she approved the amendments that the Respondent had made to the Versions 2 and 3 of the statement before the statement was filed to the court on 12 June 2019. The Respondent also accepted that she did not notify the High Court that the version of the witness statement that had been submitted had not been seen or approved by Karen Webb.
- 40.41 The Tribunal then proceeded to consider whether in light of the proven facts the Respondent had been dishonest or reckless and whether the Respondent had breached any or all of Principles 2 and 6 and/or failed to achieve Outcome 5.1 of the Code.

### *Allegation of Dishonesty*

- 40.42 The test for dishonesty applied by the Tribunal was that laid down by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

*“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts.*

*The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”*

- 40.43 When considering dishonesty, the Tribunal first established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.
- 40.44 The Tribunal also considered the High Court’s judgment in Peter Maxfield-Martin v SRA [2022] EWHC 307, where Mr Justice Soole considered that the solicitor’s belief that he had the relevant authority to act as he did was potentially relevant to the second stage objective test for dishonesty in Ivey [85, 87]. On the facts of that case, the solicitor in question was alleged to have completed an application to the Law Society for mental health re-accreditation which contained declarations that needed to be signed by the solicitor in question and a partner of the firm. The solicitor was alleged to have been dishonest because he had completed and signed the form on behalf of the partner without the partner’s consent and without the partner even seeing the form.



- 40.45 The Court in Peter Maxfield-Martin v SRA found that there had been a pattern whereby the partner in question would not complete the declarations himself but would allow and trust others to do so on his behalf and that there was no material difference between the contents of the form completed by the solicitor in question and a similar re-accreditation form completed by another solicitor that had been approved by the partner in question[85-89]. The Court concluded that the finding of dishonesty in that case could not be sustained because the partner had authorised the solicitor in question to complete and sign the form in question.
- 40.46 Turning to the facts in the present case, the Tribunal found that the Respondent's witness testimony was credible and that she had a good character, which was also evident from the character references submitted on her behalf.
- 40.47 The Tribunal accepted the Respondent's evidence that the general practice at County Council A is that officers at County Council A would prepare their own witness statements when required for the Court of Protection and other adult social care proceedings, and that the officer would authorise the Respondent and/or other lawyers at the adult social care team to review and amend the statement to ensure that the statement was in a correct format and was otherwise correct. The Tribunal also accepted that the Respondent considered that in amending Mrs Webb's statement she was carrying out the role that she was expected to carry out as a Senior Solicitor at County Council A.
- 40.48 There was also a culture of officers delegating authority to use their electronic signatures to sign witness statements on their behalf. In fact, Mrs Webb had expressly authorised Ms Weston to insert Mrs Webb's electronic signature to Version 1 of the witness statement.
- 40.49 The Tribunal also considered that the circumstances in which the Respondent made the amendments and filed the statement on 12 June 2019 were difficult. At the relevant time there was a shortage of solicitors in the Adult Social Care team, and the Respondent was the only solicitor in the team. In fact, in the words of the Respondent at the material time she was "drowning" in work as she was doing the work of at least two solicitors. Mrs Webb had also gone on a holiday and could not be contacted, the court's deadline was "looming," and the Respondent had received the draft statement very late, at 11:22 on the morning of 12 June 2019. The Respondent was also aware of the urgency of the matter given the personal circumstances of AD and the impact of the proceedings on AD.
- 40.50 The Respondent explained during her cross-examination that she would normally check with the officer in question that they were happy with the statement before it was submitted, but in the above-described difficult circumstances she had not done so because she believed she had Mrs Webb's authority to make the amendments and believed that the amendments were factually correct. The Respondent further explained that she believed that her amendments were factually correct because she had worked very closely with Mrs Webb for several months on this matter and was very familiar with the facts and circumstances of the case.
- 40.51 The Respondent considered that Mr Justice Hayden had not been fully informed of the Parties involved in the matter and that for that reason it was important for her to make

sure that all the information included in the statement was correct. Therefore, the Respondent believed that the amendments that she made to the statement of Mrs Webb on 12 June 2019 were correct and that she was trying to prevent Mr Justice Hayden from being misled by changing the references from “we” to “I” and correcting other references to the Party names as she thought was correct.

- 40.52 The Respondent had also added a description of events on 17 April 2019 to the statement of Mrs Webb. However, the Tribunal accepts that the Respondent had express authority from Mrs Webb to add that description. The attendance note prepared by the paralegal at County Council A on 11 June 2019 evidenced that Mrs Webb had tried to find the Respondent because some dates were needed for her statement, and she had said to the paralegal that the Respondent could add “*any bits in there*” and could “*add anything in she wishes.*” This was also consistent with the collaborative culture and general practice at County Council A with respect to preparing witness statements.
- 40.53 The Tribunal found that the correspondence between Ms Weston and Mrs Webb on 23 and 24 June 2019 showed that the description of the events on 17 April 2019 was accepted by Mrs Webb upon her return from holiday and this description was included in the further revised statement of Mrs Webb, dated 23 June 2019, that Ms Weston forwarded to the Respondent on 24 June 2019.
- 40.54 It appears that the description relating to the event on 17 April 2024 was for some reason ultimately taken out of Mrs Webb’s revised statement sometime between 24 June 2019 and 28 June 2019, but this was after Mrs Webb had confirmed she was “*happy*” with the revised statement of 23 June 2019, and it had been forwarded for the Respondent’s review on 24 June 2019. The correspondence between Mrs Webb and Ms Weston on 25 June 2019 shows that Mrs Webb and the Respondent had made “*a few minor tweaks*” to the version, dated 23 June 2019. This time Mrs Webb expressly confirmed that she was happy with these tweaks. The description of the event on 17 Jun 2019 does not in any event appear to have been material to the proceedings concerning AD.
- 40.55 On the basis of the above, the Tribunal was not satisfied to the requisite standard that the Respondent had not genuinely believed that she had been authorised by Mrs Webb to make amendments to her witness statement after Ms Weston had inserted Mrs Webb’s electronic signature onto the statement. The evidence also established that the Respondent had specific authority to make amendments to Mrs Webb’s statement.
- 40.56 The Respondent had not sought to conceal the fact that she had made the amendments. In contrast, she had advised both Ms Weston and Mrs Webb about the amendments shortly before she filed the statement at court and had, thus, been open, transparent and had acted with integrity. The Respondent had considered that if Mrs Webb had wanted to change anything in the statement, there would be sufficient time before the hearing to correct her statement.
- 40.57 Accordingly, the Tribunal was satisfied that the Respondent did not have the requisite state of mind of intending to conceal. Thus, the subjective test for dishonesty under *Ivey* was not met.
- 40.58 Following the High Court’s Judgment in Peter Maxfield-Martin v SRA [2022] EWHC 307, the Tribunal was further satisfied that the objective test for dishonesty under *Ivey*

was also not met in the present case. It was the view of the Tribunal that ordinary decent people would not have perceived that the Respondent was dishonest in the above-described circumstances because Mrs Webb had authorised the Respondent to make the amendments, and there was culture of collaborative approach to the preparation of witness statements and delegating authority to use electronic signatures at County Council A.

- 40.59 The amendments that the Respondent made were not in any event materially different from the amendments that Mrs Webb ultimately wanted to make to her revised witness statement and/or did not materially change the original Version 1 of the witness statement of Mrs Webb. It seems likely that there would have been the need to amend Version 1 of the witness statement in any event.
- 40.60 Moreover, the Tribunal was unable to accept that the Respondent could have had any ulterior motive in amending Mrs Webb's statement other than seeking to make the statement clearer and more accurate. The Tribunal was also satisfied that the Respondent received no financial or other gain from making the amendments.
- 40.61 Whilst the Tribunal considered that the Respondent should have sought express confirmation from Mrs Webb that she was content with the amendments before the statement was submitted to the court and that she should have at least informed the court that Mrs Webb had not seen and expressly approved the version of the statement that was filed at court, the Tribunal finds on the balance of probabilities that the Respondent was not dishonest.

#### *Allegation of Recklessness*

- 40.62 The test for recklessness applied by the Tribunal was that set out in R v G [2003] UKHL 50, where Lord Bingham adopted the following definition:

*“A person acts recklessly with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk.”*

- 40.63 This test was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).
- 40.64 On the balance of probabilities, the Tribunal did not find that the Respondent had been reckless. The Respondent had not recognised that there had been any risk that the court would be misled. Indeed, there was no evidence before the Tribunal that Mr Justice Hayden had even read Version 3 of Mrs Webb's witness statement before it was replaced with the final version approved by Mrs Webb after her return from holiday. The Respondent's state of mind was that she considered her amendments to Mrs Webb's statement had made the statement clearer and more accurate and she was trying to make the statement more beneficial to Mr Justice Hayden. The Respondent also considered that there would be sufficient opportunity to further amend Mrs Webb's statement after her return from holiday if there was anything that needed to be changed.

- 40.65 The amendments made by the Respondent in Versions 2 and 3 of Mrs Webb’s statement were not material and it was likely that there would have been the need to amend Version 1 of the statement in any event.
- 40.66 The court was not in fact misled as Mrs Webb’s revised statement was filed on 28 June 2019 and the Respondent had openly advised the court about the amendments on her cover email on the same day.

*Outcome 5.1 (not to deceive or knowingly or recklessly mislead the court)*

- 40.67 For the reasons set out above, the Tribunal has already concluded that the Respondent was not dishonest, nor reckless. In sum, the Respondent’s state of mind was not to conceal anything from the court or from Mrs Webb. In contrast, the Respondent was open and transparent of the amendments that she made, and she had genuinely believed that she had Mrs Webb’s authority to make the amendments and that the amendments were correct. The Respondent’s intention was to make Mrs Webb’s statement clearer, more accurate and more beneficial to Mr Justice Hayden.
- 40.68 Version 1 of Mrs Webb’s statement would have likely to have been amended in any event. There was plenty of time to correct Mrs Webb’s statement before the hearing and a revised version of Mrs Webb’s statement was in fact filed at the court upon Mrs Webb’s return from holiday.
- 40.69 Given that the Tribunal did not find the Respondent to have been dishonest or reckless, the Tribunal also finds that the Respondent had not failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011.

*Principle 2 (Integrity)*

- 40.70 The test for integrity applied by the Tribunal 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. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.*

*The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors: ... (ii) Recklessly, but not dishonestly, allowing a court to be misled (Brett) ...*

*Obviously, neither courts nor professional tribunals must set unrealistically high standards ... The duty of integrity does not require professional people to*

*be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public.”*

- 40.71 On the balance of probabilities, the Tribunal considers that the Applicant has not proven that the Respondent’s actions created a real and genuine risk that the court would be misled and, thus, represented a lack of integrity on the part of the Respondent.
- 40.72 As described further above, the Tribunal is not persuaded that the Respondent had attempted to conceal something from the court or that her actions were motivated by some ulterior motive such as to enhance the image of County Council A. Contrary to the Applicant’s suggestion, the Tribunal understands that County Council A was not subject to any potential police investigation or the BBC Panorama programme. Thus, it is difficult to see what gain (other than seeking to make the statement clearer and more accurate) the Respondent could have possibly sought to have achieved by making the amendments to Mrs Webb’s statement that she was in any event authorised by Mrs Webb to make.
- 40.73 Moreover, the Tribunal considers that the Respondent had good intentions– she was attempting to make Mrs Webb’s statement clearer and more accurate and, thus, more beneficial to Mr Justice Hayden. The Respondent was further open and transparent about the amendments and had advised both Mrs Webb and Ms Weston about the amendments shortly before she filed the statement at court.
- 40.74 In addition, there was sufficient time before the High Court hearing in the proceedings to make any necessary corrections to Mrs Webb’s statement, there appeared to have been the need to amend Version 1 of Mrs Webb’s statement in any event and the amendments made by the Respondent in Versions 2 and 3 of Mrs Webb’s statement were not material to the substance of the High Court proceedings.
- 40.75 The Tribunal is also mindful of Lord Justice Jackson’s statement in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 that it is important not to set unrealistically high standards of integrity and that the duty of integrity does not require professionals to be paragons of virtue. Accordingly, the Tribunal considers that the severity of the Respondent’s actions was in any event mitigated by the fact that she had been “drowning in work” and was working under pressure, having received Mrs Webb’s statement very late on 12 June 2019.
- 40.76 On the basis of the above, the Tribunal finds that the Respondent did not act with lack of integrity and, therefore, did not breach Principle 2 of the SRA Principles 2011.

*Principle 6 (Public Trust and Confidence)*

- 40.77 The test for determining whether a solicitor has behaved in a way that maintains the trust the public places in a solicitor in question and the provision of legal services has been set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

*“Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest*

*incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes “manifest incompetence”; see Iqbal and Libby.*

*In applying Principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and will from time to time make slips which a court would characterise as negligent. Fortunately, no loss results from most such slips. But acts of manifest incompetence engaging the Principles of professional conduct are of a different order.”*

- 40.78 Whilst the Tribunal considers that the Respondent failed to obtain an express confirmation from Mrs Webb that she was content with the amendments that the Respondent had made to Version 1 of her statement and did not inform the court that Mrs Webb had not seen the version of the statement that was filed at the court, the Tribunal is of the view that the Respondent was not manifestly incompetent.
- 40.79 Assessing the Respondent’s action in the overall context in which they were taken, the Tribunal considers that the Respondent’s actions did not undermine the trust that the public placed on her as a solicitor working for County Council A.
- 40.80 In fact, the Tribunal considers that the public’s perception of solicitors working in-house is different from the perception of solicitors in private practice.
- 40.81 Both Mrs Webb and the Respondent were employed by County Council A and had been working very closely together on the matter in question for several months. There was also a culture of collaborative approach towards witness statement preparation at County Council A, according to which the Respondent was duty bound routinely to review and amend witness statements prepared by officers of the County Council A. There also appeared to be a culture of delegating the authority to use officers’ electronic signatures at County Council A. Moreover, Mrs Webb had authorised the Respondent to make the amendments that she made to Mrs Webb’s statement.
- 40.82 Therefore, on the particular facts of the case, the Tribunal found that the Respondent has not breached Principle 6 of the SRA Principles 2011.

### **Previous Disciplinary Matters**

41. There were no previous disciplinary matters against the Respondent.

### **Sanction**

42. Whilst the Tribunal found that the Applicant had proven the facts alleged in Allegation 1.1, the Tribunal did not find that the Respondent’s conduct was dishonest or reckless or amounted to a breach of either Principle 2 or Principle 6 of the SRA Principles 2011 or a failure to achieve Outcome 5.1 of the SRA Code of Conduct 2011.
43. Therefore, the Tribunal concluded that no sanction is to be imposed on the Respondent. Given that the Tribunal has found that the Applicant has proven the factual allegations

against the Respondent, the Tribunal will nevertheless proceed to consider the Parties' respective applications, if any, for an order of costs.

### Costs

44. As described above, on 11 July 2024, the Applicant applied for there to be no order as to costs made. On 2 August 2024, the Respondent submitted an application for costs against the Applicant, pursuant to Rule 43 of the Solicitors (Disciplinary Rules) 2019. The Respondent's application was supported by a schedule of costs amounting to £22,914.00. The Respondent has also submitted a Statement of Means.
45. The Applicant resisted the Respondent's application for costs and applied for its costs relating to the cost hearing on 11 October 2024. The Applicant's Schedule of Costs relating to the cost hearing of 11 October 2024 amounted to £9,390.96, including VAT and disbursements.

### The Respondent's application for costs

46. In support of her application for costs, the Respondent relied on *SRA v Tsang* [2024] EWHC 1150 (Admin), where it was held that whilst the starting point in cost applications against the SRA following an unsuccessful proceeding brought by the SRA before the Tribunal was no order as to costs, the Tribunal had been justified to depart from the starting point in that case because the proceedings in question had been advanced on a fundamentally flawed basis and involved inordinate delay in proceeding to a hearing and, thus, constituted a good reason for making a cost order against the SRA.
47. The Respondent asserted that the Applicant's case against the Respondent in the present proceedings had been fundamentally flawed because:
- 1 notwithstanding the Respondent's admission of facts relating to Allegation 1.1., the Applicant failed to establish on the basis of the admitted facts that the Respondent was either dishonest or reckless or that the Respondent's conduct amount to a breach of either Principles 2 or 6 of the SRA Principles 2011 or a failure to achieve Outcome 5.1. of the SRA Code of Conduct;
  - 2 The Applicant did not pursue witness statements from Mrs Webb or the paralegal at County Council A, which was indicative of the fact that the Applicant failed to adequately consider the significance of the Respondent's authority to amend and sign the witness statement of Ms Webb. This in turn gave rise to fundamental flaws in the Applicant's case that the conduct in Allegation 1.1 was either dishonest or reckless and/or that the said conduct amounted to amount to a breach of either Principles 2 or 6 of the SRA Principles 2011 or a failure to achieve Outcome 5.1. of the SRA Code of Conduct;
  - 3 The Applicant had properly failed to consider the file note from the paralegal of the County Council A, dated 11 June 2019, which showed that the "*Respondent had specific authority to make amendments to Mrs Webb's statement.*"

- 4 The Applicant had failed to adequately consider the significance of email correspondence between Karen Webb and Jill Weston, which proved that Mrs Webb alive to the collaborative nature of producing witness statements on behalf of the local authority, there was a pattern of Mrs Webb allowing others to make amendments on her behalf and allowing others to use her electronic signature.
  - 5 The Applicant had alleged dishonesty for the first time in the Rule 12 Statement on 13 December 2023, although there was no change in the substantive evidentiary basis that could reasonably justify the Applicant's decision to aver dishonest at the late juncture in the proceedings. The Applicant unreasonably pursued dishonesty.
  - 6 The Applicant's case on dishonesty did not rely on the truthfulness or accuracy of Version 3 of Mrs Webb's witness statement, but instead relied on the bare facts of Allegation 1.1, and thereby had failed to reflect the principles arising from the judgment of Soole J in *Maxfield-Martin v Solicitors Regulation Authority*.
  - 7 The SRA failed to adequately consider the Respondent's belief that she had authority to amend the witness statement as she did, which was relevant to both stages of enquiry as set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 at §74.
  - 8 The Applicant contended that amendments made by the Respondent appear "to have been an attempt to protect the interests of her client, County Council A." The Applicant made this assertion without any cogent basis or without the ability to provide a single concrete example of same.
  - 9 The Applicant failed to adequately consider the significance of email correspondence from the Respondent to Jill Weston on 12th June 2019 at 15:419, which showed that the Respondent was open and transparent about the amendments and had advised both Mrs Webb and Ms Weston about the amendments shortly before she filed the statement at court.
  - 10 The SRA case in respect of integrity was vitiated by the same flaws as those in relation to dishonesty and could not be sustained.
48. In addition, the Respondent alleged that the Applicant's delay in commencing this matter was unconscionable, given that the Applicant had commenced the matter 4 years and 5 months after the Respondent had provided a comprehensive response to the admitted factual allegation.

#### The Applicant's response to the Respondent's application for costs

49. The Applicant accepted that the Tribunal has a wide discretion as to award of costs under Rule 43(1) of the Solicitors (Disciplinary Rules) 2019. However, the Applicant asserted that there remains a constrain of the Tribunal's power to award costs against the SRA, as had been established in several authorities. In particular, the Applicant



relied on *Baxendale-Walker v. The Law Society* [2007] EWCA Civ 233, *Solicitors Regulation Authority v. Tsang* [2024] EWHC 1150 (Admin) (citing *Competition & Markets Authority v. Flynn-Pharma* [2022] UKSC 14).

50. Relying on the above authorities, the Applicant asserted that an improperly brought proceeding is not the only basis for costs order against the SRA, but there needs to be a good reason for departing from the starting point of no order of costs following an unsuccessful proceeding brought by the SRA. According to the Applicant, the matters that amount to a good reason for a cost order against the Applicant should of comparable gravity to “*shambles from start to finish.*”
51. The Applicant further argued that *Maxfield-Martin v Solicitors Regulation Authority* [2022] EWHC 307 (Admin) had turned on the particular facts of the case and it was not an authority for absolving a solicitor who follows an accepted practice involving solicitors from any criticism.
52. The Applicant asserted that the way the matter was presented at the Tribunal hearing was neither “*fundamentally flawed*” nor a “*shambles from the start.*” The Applicant merely did not discharge its burden of proof after the Tribunal’s careful consideration of the Respondent’s state of mind.
53. Among other things, the Applicant pointed out that the Respondent had admitted the factual basis of the allegations, but the Respondent’s state of mind remained a live issue in relation to dishonesty and recklessness, which required the Tribunal’s investigation at the hearing. The reliance on the file note from County Council A’s paralegal did not determine the matter and required the Tribunal to consider the impact of the file note on the Respondent’s state of mind. The lack of a witness statement from Mrs Webb was not indicative of fundamental flaws in the Applicant’s case, especially the Respondent had accepted that her actions in unilaterally amending the statement were inappropriate and amounted to an error of judgment.
54. The Applicant further asserted that the delay in proceeding the present matter to a hearing was not such that it was of a comparable gravity to the description of “*fundamentally flawed*” or a “*shambles.*” According to the Applicant, there was therefore no good reason to depart from the starting point of no order for costs in this case.
55. Moreover, the Applicant asserted that making a cost order against the Applicant in the present circumstances, where the Tribunal has concluded that the Respondent should have sought express confirmation from the witness that she was content with the amendments before the statement was filed at the court and should have informed the court of the situation, would have a “*chilling effect*” on the conduct of the Applicant. The effect would be particularly chilling if the Applicant did not bring a case on dishonesty for fear of costs in light of the public interest in doing so.

#### The Tribunal’s decision on costs

56. Having carefully considered both Parties’ submissions in their respective skeleton arguments and at the cost hearing on 11 October 2024, the Tribunal decided to make no order as to costs.

57. The Tribunal first noted that the present case was duly certified by the Tribunal and there is a public interest in such certified proceedings continuing (*Greene v Davies* [2022] EWCA Civ 414). In addition, the Tribunal noted that the Respondent had not made half time submissions as to no case to answer.
58. As the Tribunal has described in paragraph 40.61 above, the Tribunal considered that the Respondent should have sought express confirmation from Mrs Webb that she was content with the amendments to her witness statement before the statement was submitted to court and the Respondent should have at least informed the court that Mrs Webb had not seen and expressly approved the version of her statement that was filed at court. If the Respondent had done this, she would not have found herself in front of this Tribunal.
59. Accordingly, the Tribunal considered that the present proceedings did not amount to a “*fundamentally flawed*” proceedings, a “*shambles from the start*” or anything else of comparable gravity.
60. Instead, in the Tribunal’s view, the Applicant had brought the present proceedings properly because the Respondent’s conduct was on the face of it very serious and very serious consequences could have flown from it.
61. The Tribunal further agreed with the Applicant that although the Respondent had admitted the factual basis of the allegations, the Tribunal was required to consider the Respondent’s state of mind when it determined whether the Respondent had been dishonest and/or reckless and/or misled the Court in breach of the relevant SRA Principles and/or the SRA Code of Conduct.
62. Although the Tribunal ultimately dismissed the Applicant’s allegations against the Respondent, this was because the Applicant had failed to prove on the balance of probabilities that the Respondent had been dishonest and/or reckless when she submitted Version 3 of Mrs Webb’s statement to the court. This was a finely balanced decision on part of the Tribunal and did not mean that the Tribunal in any manner whatsoever approves, less endorses, the Respondent’s conduct or the culture of preparing witness statements at the County Council A. Instead, the Tribunal wishes that the Respondent has now learnt her lesson and will not make the same mistake in future.
63. The Tribunal nevertheless considered that the delay in bringing the proceedings to a hearing was regrettable but accepted that it was partly attributable to the Covid pandemic. In any event, the Tribunal considered that the delay was not such as to amount to a “*shambles from the start*” or anything of comparable gravity.
64. As regarded the Applicant’s application for costs arising from the cost hearing on 11 October 2024, the Tribunal further decided to make no order as to cost with respect to the Applicant’s application. The substantive hearing was adjourned because both Parties had wished to see the draft judgment before deciding what cost submissions, if any, the Parties wished to make. In addition, the cost hearing on 11 October 2024 was arranged in accordance with the Tribunal’s directions in the substantive hearing on 23 May 2024.

**Statement of Full Order**

65. The Tribunal ORDERED that the allegations against the Respondent, ANITA BARRETT solicitor, be DISMISSED.
66. The Tribunal further ORDERED that there be no Order as to costs.

Dated this 26<sup>th</sup> day of November 2024  
On behalf of the Tribunal

*M N Millin*

M N Millin  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**26 NOVEMBER 2024**