

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12552-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

And

RAJPAL PANESAR

Respondent

Before:

Mr P Lewis (in the Chair)
Mr J Abramson
Mrs C Valentine

Date of Hearing: 6-7 August 2024

Appearances

Montu Miah, counsel of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant

Tanveer Qureshi, counsel of 4-5 Greys Inn Square, London, WC1R 5AH for the Respondent

JUDGMENT

Allegations (proved)

1. The allegation against the Respondent, Rajpal Panesar is that while in practice as a partner at Taylor Rose TTKW (“the Firm”):
 - 1.1 On 23 March 2021, he instructed Person A (a junior colleague) to send an amended email to Client A containing information which was misleading and which was intended to mislead. In so doing he breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 and Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the Code for Solicitors”).

PROVED

Executive Summary

2. Mr Panesar was a managing partner in the property department of the Firm. He was the supervisor of Person A. Person A was a newly qualified solicitor, having been admitted to the Roll of Solicitors three weeks prior to the incident upon which the allegations relate.
3. The crux of the allegations levelled against Mr Panesar was that he instructed Person A to send an email to Client A which was misleading. Person A refused to do so and the email was not ultimately sent.
4. Mr Panesar admitted Allegation 1.1 save for the fact that he “instructed” Person A to send the email. Mr Panesar asserted that he “asked” Person A to do so, that the offending email was a draft and open for discussion.
5. The Tribunal rejected Mr Panesar’s assertion and found Allegation 1.1 proved in its entirety.

Sanction

6. Mr Panesar advanced exceptional circumstances in mitigation to the Tribunal. The Tribunal accepted that exceptional circumstances existed and therefore imposed a sanction of 9 months suspension. The Tribunal further Ordered that Mr Panesar pay the Applicant’s costs in the sum of £14,000.00
7. The Tribunal’s sanction and its reasoning on sanction can be found here: [Sanction](#)

Documents

8. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):
 - Rule 12 Statement and Exhibit AML1 dated 26 January 2024.
 - Respondent’s Answer and Exhibits dated 5 March 2024.

- Medical Report prepared by Dr Tizzard and filed on behalf of the Respondent dated 17 May 2024.
- Respondent's medical records.
- Applicant's Schedule of Costs.

Preliminary Matters

9. The Tribunal had previously heard and granted unopposed applications for anonymity in respect of the client to the transaction '*Client A*' and a witness for the SRA '*Person A*'.

Factual Background

10. Mr Panesar was a solicitor who was admitted to the Roll on 15 April 2004. At the time of the alleged misconduct, he was a managing partner in the property department of the Firm. Mr Panesar held a practising certificate free from conditions as at the time of the substantive hearing before the Tribunal.
11. The misconduct in this matter came to the attention of the Applicant when Person A copied the Applicant into an email that she had sent to the firm's Compliance Officer for Legal Practice ("the COLP"), dated 25 March 2021, reporting Mr Panesar's misconduct. Following an investigation by the COLP, the Respondent made a self-report to the SRA dated 1 April 2021 and the COLP made a report to the Applicant dated 8 April 2021.
12. Person A was a newly qualified solicitor working under the direct supervision of the Mr Panesar. At the time of the alleged misconduct, Person A had been qualified for approximately three weeks. Mr Panesar was acting for Client A on a conveyancing matter.
13. On Friday 19 March 2021, Mr Panesar emailed Client A and stated that he would arrange for a report to be sent to her on that day. The report encompassed Mr Panesar's assessment of the property. There were 12 documents to be photocopied and attached to the report. On 19 March 2021, Mr Panesar verbally instructed Person A to photocopy the documents to accompany the report and then to send the report, in the post, to the client.
14. On Monday 22 March 2021, the estate agent involved in the conveyancing matter emailed Mr Panesar to ask whether the report had been sent to the client. The email was received by him at 10.55. At 10.56, Mr Panesar emailed the estate agent confirming that the report had been sent to the client. Mr Panesar did not check with Person A for confirmation that the report had, in fact, been sent.
15. On 23 March 2021, Mr Panesar emailed Person A at 07.40 and asked if the report had been sent to the client "yesterday", meaning on 22 March. Person A replied, by email at 07.43, that the report had not yet been sent and that she had completed the photocopying of the documents. Mr Panesar told Person A that the matter was urgent and that he had already informed the client that the report had been sent.

16. Person A emailed Mr Panesar and suggested that the report could be sent to Client A by courier. Mr Panesar replied by email that this could not be done because Client A would then know that he had misled her when he emailed her the day before, saying that the report had already been sent in the post. He wrote:

“If she received it by courier, she will know that I was misleading her, so I suggest you scan or better still there is a Post Office 5 mins from the office.”

17. Person A drafted a covering email to the client, explaining that the report had not been sent earlier because there was a skeleton staff in the office, due to covid. Person A sent the draft email to Mr Panesar for approval at 13.43. Mr Panesar amended the email and returned it to Person A, at 13.53. Mr Panesar’s intention was that Person A would send his amended version to Client A instead.

18. Although it was Mr Panesar who re-drafted the email, he intended it to be sent by Person A, in Person A’s name. Mr Panesar’s version of the email stated that the report had been posted to Client A on 19 March but that, for an unknown reason, the report had been returned to the Firm so Person A was sending the report again. It stated:

“The Report was sent to you on Friday and returned to us today. Admin Team do not have a reason why it was returned to us, therefore, I checked with Raj and he confirmed your address as being [INSERT ADDRESS], so I have re- sent the report to you together with all the documentation by first class post today.”

19. Person A was not comfortable sending Mr Panesar’s version of the email to Client A as Person A knew that the contents were not true. The email would be sent in Person A’s name, meaning that Person A would be responsible for giving information to Client A which was untrue. At 14.20, Mr Panesar emailed Person A to ask whether the report had been posted. Person A emailed Mr Panesar at 14.40 to confirm that the report had been posted but that she had misgivings about sending the email as drafted by Mr Panesar. Person A wrote:

“I just don’t feel comfortable explaining the situation this way. I am sorry Raj.”

20. At 15.32 on 23 March 2021, Person A sent an email to Client A attaching the report and documents and confirming that they had been sent in the post that day. Person A did not send the misleading email, drafted by Mr Panesar. Prior to this, Mr Panesar sent an email to Person A at 14.42 asking her to call him which she did at approximately 14.45. Although Person A and Mr Panesar agreed that this call took place, their recollections differed as to what was discussed.

21. Person A stated that she cannot recall the detail of the conversation other than the fact that Mr Panesar persistently asked her to send the email that he had amended. Person A stated that there was no outcome or agreement following the conversation and that the conversation did not lead anywhere.

22. Mr Panesar’s recollection of the telephone call differed. He stated that Person A persuaded him that he should not put his anxiety before his regulatory responsibilities. He stated that he saw the sense of Person A’s argument and, by the end of the call, he had agreed that Person A was correct, that the misleading email should not be sent.

23. Person A maintained, however, that by the end of the call, Mr Panesar remained insistent that she should send the misleading email. She still, therefore, faced the ethical dilemma of what to do. Person A did not recall that there was any meeting of minds between herself and Mr Panesar by the time the call ended.
24. In his self-report, dated 1 April 2021, Mr Panesar stated that he was reporting a breach of the Principles of honesty and integrity. He set out his chronology of events and confirmed that he had informed an estate agent that a report had been sent to Client A without first checking that the report had, in fact, been sent. He went on to say that he then instructed a colleague to send an email to the client containing an explanation for why the report had not been received by the client. He admitted that the email that he had instructed the colleague to send contained information that he knew was untrue.
25. Ultimately, the fact that the report was sent on 23 March 2021 rather than on 19 March 2021 had no impact on the client nor on the transaction which completed successfully.

Witnesses

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

Findings of Fact and Law

27. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights 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.
28. **Allegation 1.1 - On 23 March 2021, he instructed Person A (a junior colleague) to send an amended email to Client A containing information which was misleading and which was intended to mislead. In so doing he breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 and Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors").**

The Applicant's Case

- 28.1 Mr Miah detailed the background facts in line with the summary above and submitted that on 23 March 2021, Mr Panesar asked Person A if the report had been posted to Client A. When Person A informed Mr Panesar that the report had not yet been posted, Mr Panesar realised that he had inadvertently misled Client A and the estate agent in his emails of 22 March 2021.
- 28.2 Instead of being transparent with Client A and the estate agent and informing them of his error, Mr Panesar sought to persuade Person A to send an email to Client A containing information which he knew was untrue. Mr Panesar did so by re-drafting Person A's email, adding amendments in red type, to invent a fictitious scenario whereby the report had been posted on 19 March, had been returned to the Firm, for an unknown reason, and was being re-sent by Person A on 23 March 2021.
- 28.3 At the time when Mr Panesar re-drafted Person A's email and instructed her to send it to Client A, Mr Panesar knew that the email was misleading and contained information that was not true. The effect of the wording of the email, as re-drafted by Mr Panesar, was that Client A would come to believe a version of events which was not true and would not identify that his emails of 22 March 2021 were not accurate.
- 28.4 Mr Panesar's initial explanation to the Firm was that he re-drafted the email because if Client A knew that the report had not been sent on or before 22 March, she would be angry with Person A and would complain and would not want Person A to continue to work on her matter. Mr Panesar said that he re-drafted the email to save himself from an embarrassing situation that, he said, had been caused by Person A. He said that he feared Client A's anger and said that Client A would not want Person A to work on any of her matters in the future. He maintained that he had told Person A that the report must be posted by 22 March at the latest. He also told the COLP that he had concerns about Person A's work and that he had raised these concerns with HR. He gave the same explanation to the Applicant in his self-report on 1 April 2021 when he appeared to hold Person A responsible for creating a situation which put him in an embarrassing position.
- 28.5 On 27 June 2022, Mr Panesar provided a different explanation to the Applicant. He said, in the fifth paragraph of a letter of that date,

“On re-reading my self-report, I feel that it may give the impression that I was blaming my assistant, [Person A], and if it does, I apologise. I would like to make it clear that I take full responsibility for my actions and I do not want it to appear that I am blaming someone else.”

He continued,

“ I was wrong to ask [Person A] to send an email to the client advising that the report had been sent out and returned when it had not been. I thought of it as a ‘white lie’ to save her from embarrassment but my duty was to be open and honest with my client and to encourage those values in Person A”.

- 28.6 Mr Panesar stated that he had been struggling with the volume of work generated by the SDLT holiday. He was ashamed that he could have behaved as he did and he believed that stress clouded his judgment. He further stated that he had arranged to undertake training in ethics at his own expense and had asked the Firm if he could provide an ethics training session to staff or be given a role looking after staff wellbeing in the workplace.
- 28.7 In a subsequent statement dated 27 November 2023, Mr Panesar advanced additional mitigation which had not previously been mentioned. He stated that, during a telephone conversation with Person A on the afternoon of 23 March 2021, Person A successfully persuaded him that it would be unethical to send the misleading email. He stated that he and Person A reached an agreement during the telephone call on that day, and that he confirmed to her that she should not send the misleading email but should send the email that she had originally drafted. Person A's recollection of the call differed. She did not recall reaching an agreement with Mr Panesar. Her recollection was that, when the call ended, Mr Panesar's instructions were still that she should send the misleading email.
- 28.8 Mr Miah submitted that an aggravating feature was that the Mr Panesar's misconduct had a devastating impact on Person A. She had only been qualified as a solicitor for three weeks and she had been instructed, indeed, pressurised to behave unethically by her supervising partner. She had joined the Firm as a paralegal in 2017 and had qualified with the Firm. She trusted and respected the partners and Mr Panesar had abused his authority by directing her to mislead a client.

Principle Breaches

- 28.9 Principle 2 requires solicitors to act in a way that upholds public trust and confidence in the solicitors profession and in legal services provided by authorised persons. Mr Miah submitted that Members of the public trust solicitors to be open and transparent with clients and to admit when errors occur. They do not expect solicitors to mislead clients in order to cover up mistakes or to save themselves or colleagues from embarrassment. By amending Person A's email and instructing Person A to send a misleading email to the client, with the specific intention to mislead the client, Mr Panesar diminished the trust and confidence that the public places in solicitors.
- 28.10 By instructing Person A to send a misleading email to the client, Mr Panesar also diminished the trust and confidence that junior colleagues place in senior solicitors who supervise them. Person A should have been able to trust Mr Panesar and should not have been placed in a position where he put pressure on her to behave unethically. Mr Miah therefore submitted that Mr Panesar breached Principle 2.
- 28.11 Principle 4 requires solicitors to act honestly. Mr Miah relied upon the test promulgated in *Ivey v Genting Casinos* [2017] UKSC 67 and submitted that at the time when Mr Panesar drafted the email for Person A to send to Client A, he knew that the report had not yet been sent in the post. However, he instructed Person A to send an email, in her name, informing Client A that the report had been posted on 19 March 2021, had been returned to the office for an unknown reason and was being posted by Person A, for a second time. On 23 March 2023, Mr Panesar knew or believed that:
- a) The report had not been posted to the client on 19 March 2021.

- b) The report had not been returned to the office for an unknown reason.
- c) The first time that the report was being posted by Person A was on 23 March 2021.
- d) He had misled the estate agent and the client on 22 March 2021 when he told them that the report had already been posted to the client.
- e) The wording of the re-drafted email contained information which was not true.
- f) The effect of the wording of the re-drafted email was that the client would come to believe a version of events which was not true and thereby, Client A would not identify that information in the emails of 22 March 2021 was misleading and not accurate. Mr Miah therefore submitted that in those circumstances, Mr Panesar was dishonest by the standards of ordinary decent people and thereby breached Principle 4.

28.12 Principle 5 requires solicitors to act with integrity. Mr Miah relied upon the test promulgated in *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, and submitted that a solicitor acting with integrity would have taken responsibility for his earlier error and explained the mistake to Client A. A solicitor acting with integrity would not have attempted to persuade a junior colleague to mislead a client in order to cover up for an earlier error. In so doing, Mr Panesar therefore breached Principle 5.

Breaches of the Code of Conduct for Solicitors 2019 (“the Code”)

28.13 Paragraph 1.4 of the Code imposes a duty on solicitors not to mislead clients or others. Mr. Miah submitted that by the morning of 23 March 2021, Mr. Panesar was aware that the report had not been posted. He, therefore, knew that the information that he had provided to Client A and to the estate agent, on 22 March, was incorrect. Rather than explaining that to the client, Mr. Panesar sought to mislead Client A by amending Person A’s email and creating a false explanation for why the report was being posted on 23 March.

28.14 Mr. Panesar did this by inventing a fictitious scenario in the email which was to be sent to Client A by Person A. He re-drafted Person A’s email to say that the report had been sent to Client A on 19 March but had been returned to the office, for an unknown reason. Having drafted this misleading email, Mr. Panesar then attempted to persuade Person A to send the email to the client. Mr. Miah therefore submitted that in so doing, Mr. Panesar attempted to mislead Client A through Person A.

The Respondent’s Case

28.15 Mr Panesar admitted the factual matrix of Allegation 1.1 save for the element of having “instructed” Person A to send the offending email.

28.16 Mr Qureshi submitted that Mr Panesar was entitled to know how the case was put in relation to the purported “instruction” to send the amended, misleading email. Mr Panesar’s state of mind was the key consideration as to whether he instructed Person A to send the email. The Tribunal was invited to consider what “instruct” meant

in the context of the profession. Emails are commonly prepared in draft by way of circulation amongst colleagues before they are finalised and sent to clients. The Tribunal should take care to correctly establish the Respondent's settled intention in amending the draft email.

- 28.17 In evidence, Mr Panesar stated that the email was a draft proposal in circulation between the Respondent and Person A. There was nothing in the chain of email where Mr Panesar had stated, "*I want you to send this email*". There was pushback, emails and phone calls exchanged before the finalised version of the email was eventually sent and Mr Panesar was clear in that he did not instruct Person A to send the email.
- 28.18 Mr Qureshi submitted that an instruction only manifests when there is a settled intention to do something. The email sent by Mr Panesar to Person A was in draft form and when he had cause subsequently to follow up with Person A to ask if she had sent the email, this was a genuine question seeking to establish the position rather than an instruction.
- 28.19 Person A stated that Mr Panesar was a polite, courteous and professional colleague and confirmed that there had been no previous issues between them prior to 23 March 2021. Mr Qureshi challenged the accuracy of Person A's recollection regarding her chronology of 23 March 2021 which he submitted was in error. Mr Qureshi specifically referenced Person A's recollection of being pressured by the Respondent over a period of 3 hours. Instead, he maintained, the exchange of emails and telephone call occurred over a period of approximately 90 minutes.
- 28.20 Mr Qureshi acknowledged that Person A was upset and observed that she had conceded that her evidence recalled how she felt during that 90-minute period and in the aftermath as opposed to accurately recalling the specifics of their interactions. Where Person A had given evidence of Mr Panesar's intentions this was speculation on her part and should be treated with caution.
- 28.21 Ms Lawal had provided her witness statement approximately three years after the incident in the absence of any documentation. Ms Lawal's evidence was of limited relevance and the SMS messages that she had produced were indicative of her perception and opinions only and were not necessarily in context.
- 28.22 Mr Panesar asserted that his conduct represented a moment of madness. The Applicant criticised this evidence submitting that the suggestion that this was a moment of madness was a recent addition to Mr Panesar's case. Mr Qureshi submitted that this was not correct as Mr Panesar had been suffering from ill-health and personal and professional stress for several years prior and had been clear on that from the early stages of the investigations into his conduct. Mr Qureshi referenced the short duration of the material conduct and submitted that it was resolved quickly which were features of a moment of madness on the part of the Respondent. Mr Qureshi referenced specific medical evidence filed by the Respondent and invited the Tribunal to have regard for that in deliberations.

The Tribunal's Findings

- 28.23 The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to Mr Panesar's right 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.

- 28.24 The Tribunal noted that that Mr Panesar accepted that the substance of the email was misleading and that it was intended to mislead. The Tribunal accepted that position as an admission, properly made by Mr Panesar who had the benefit of legal representation.
- 28.25 At the outset of the case, in response to a question posed by the Chair, Mr Miah agreed that the allegation would fail in its entirety if the Tribunal was not satisfied that Mr Panesar “instructed” Person A to send the email. Mr Miah confirmed that the definition of “instruct” in the context of these proceedings was the dictionary definition, which was clarified as being “*telling someone to do something in a formal way*”.
- 28.26 At the material time, Mr Panesar was acting for Client A in a property transaction. On 19 March 2021 Mr Panesar asked Person A (a solicitor who had been qualified for less than a month) to send working documents relating to the transaction to Client A for the client’s consideration. Person A did not action this request immediately, believing there was no urgency to the request.
- 28.27 Mr Panesar then told Client A that he had posted the documents to them. At the time of making that statement Mr Panesar: -
- a. had not personally posted the document; or
 - b. checked that someone else had posted them.
- 28.28 Mr Panesar left work on Friday 19 March 2021 to deal with personal matters. He worked from home at the beginning of the following week.
- 28.29 Early in the morning of 23 March 2021, Mr Panesar contacted Person A asking if documents had been sent to Client A as he had requested. At 07.43 on that day, Person A informed Mr Panesar that she had photocopied the documents but had not sent them out.
- 28.30 Mr Panesar said that that was the first occasion on which he was aware that the documents had not been sent out. He was not challenged on this.
- 28.31 At 08.13 Person A was again tasked with sending a copy of the Report and attachments to Client A by first class post. Person A was out of the office for most of the morning dealing with a professional commitment.
- 28.32 Just after noon, Person A suggested sending the documents by courier. Mr Panesar vetoed that solution on the basis that it would not be consistent with his statement to Client A that the documents had been sent out by post.
- 28.33 At or around 13.18 a short telephone call between Mr Panesar and Person A took place. Mr Panesar was concerned about the narrative which accompanied the report and documents.

- 28.34 At 13.43 Person A drafted an email she *proposed* to send to Client A explaining the delay in sending out the documents. The contents of that email were unimpeachable. Person A sent the draft email to Mr Panesar for his approval.
- 28.35 It is important to note that Person A did not believe she had the authority to send an email to Client A without Mr Panesar's approval. It was for that reason she sent the email to Mr Panesar; she explicitly sought his approval.
- 28.36 The email followed an earlier conversation in which Mr Panesar had engaged in the detail of what was being sent to Client A; how it was being sent and what was being said.
- 28.37 At 13.53, Mr Panesar replied to Person A with suggested amendments to her email. The amended email read:

'The Report was sent to you on Friday and returned to us today'.

- 28.38 Mr Panesar admitted in the Tribunal proceedings that both purported statements of fact in that draft amended email were untrue.
- 28.39 A further 30 minutes passed. At 14.20 Mr Panesar emailed Person A to ask whether she had sent the email with his proposed amendments to Client A. The second email was important and relevant to the allegation that Mr Panesar breached paragraph 1.4 of the Code of Conduct. The Tribunal was satisfied that Mr Panesar's amended email was more than merely preparatory and that he had clearly intended Person A to send an email to the client in the form that he had drafted.
- 28.40 At around 14.40, Person A explained why she was *'not comfortable'* sending the email in the terms proposed by Mr Panesar, preferring to provide Client A with an accurate account of what had occurred.
- 28.41 At 15.32 Person A sent the unamended email to Client A. She was thanked by Mr Panesar by email at 15.47 for sending that email
- 28.42 Mr Panesar's actions in amending the email in the way that he had done so weighed heavily on Person A's mind. At 23.00 on 25 March 2021, she reported her concerns to the Firm's COLP.
- 28.43 Thereafter, the firm investigated the matter. The Tribunal noted that the Firm's internal disciplinary process considered differently framed allegations against Mr Panesar and was careful to attach no weight to the Firm's findings or admissions made by Mr Panesar to the Firm. Reference was made to the Firm's investigation to the extent that the Tribunal noted that it was to Mr Panesar's credit that he did not deny sending the emails.
- 28.44 Mr Panesar self-reported the matter to the Applicant on 1 April 2021. There was no suggestion that Mr Panesar did not co-operate fully with the investigation against him. The decision to refer Mr Panesar to the Tribunal was taken some 30 months later in September 2023. It was not necessary at this stage of the proceedings to consider the impact of any delay. As he did at the time of the Firm's investigation, Mr Panesar admitted that he intended to mislead client A.

- 28.45 The narrow issue between the Applicant and Mr Panesar was whether Mr Panesar **‘instructed’** person A to send an email or stopped short of “instruction”.
- 28.46 It is submitted on behalf of the Respondent that he did not instruct Person A to send the email. It is submitted that instructions exist only there is a settled intention to do something and, that the email he sent to her was in draft form and sent as a question.
- 28.47 The Tribunal heard evidence from Person A. She adopted the contents of her witness statements and was cross-examined. She agreed that at work Mr Panesar was a polite, courteous and professional colleague.
- 28.48 When Person A reported the matter to the firm’s COLP she said that Mr Panesar **‘requested’** that she lie to Client A by telling them the documents were sent on Friday 19 March 2021 and returned and that that they were being resent on Tuesday 23 March 2021.
- 28.49 In her subsequent witness statement (which was not obtained from her until early in 2024), Person A was unable to provide specific details of what was said to her by Mr Panesar. Given the passage of time, the Tribunal found that to be unsurprising.
- 28.50 Person A described how she was under pressure for a period of about three hours to send the email in the terms drafted by Mr Panesar. It was submitted that Person A’s recollection was unreliable not through malice, but as a consequence of the passage of time and the understandable emotions she was feeling. The Tribunal accepted that submission.
- 28.51 The Tribunal found, however, that Person A’s account did not chime entirely with the email chain and documentary evidence before it. The evidence indicated that the scope of the exchanges was fewer than half a dozen emails and calls over a period of around 90 minutes.
- 28.52 The Tribunal found that Person A had provided little detail as to what occurred in that three-hour period and importantly -
- i) conceded that the language used in her witness statements reflected more how Person A **felt** rather than what was actually said **between her and Mr Panesar; and**
 - ii) **Person A’s feelings were genuinely held.**
- 28.53 The Tribunal also heard from Ms. Lawal. Although she did not provide a witness statement until much later, the Tribunal was satisfied that her account was clear, internally consistent, and chimed with text messages she had sent contemporaneously.
- 28.54 Ms. Lawal described being with Person A during a telephone call between Mr Panesar and Person A; the result of which was that Person A was in tears and what was described as Mr Panesar’s attempts to persuade her to, as she put it, *‘lie to a client’*. The crying attracted the attention of other colleagues.

28.55 Mr Panesar agreed that he did have a telephone call with Person A in which they discussed the proposed amendment.

- i) Mr Panesar's evidence was that he was not aware that Person A was crying.
- ii) He does not dispute that she may have been crying but says that, if she was, this was in response to a climate in the firm at the time when redundancies were being discussed and a perception that refusing to follow an instruction could count against her.
- iii) Ms Lawal's account indicated that that the fear of redundancy (whether real or not) caused distress to Person A because she felt under additional pressure to do as Mr Panesar had asked.

28.56 The Tribunal found that for the following reasons Mr Panesar did instruct Person A to send the amended email:

- i) he was clear that he intended the amended email to be sent. The email of 14.20 was an indication of his state of mind that he expected the amended email to have been sent. It was not a matter for discussion;
- ii) he sent the email from a leadership role;
- iii) Mr Panesar followed up his request with telephone call. The follow up email was to check that the email had been sent and not as the basis for a discussion; and
- iv) the amended email was intended as, and received as, an instruction.

28.57 The Tribunal felt it was important to note that it is not suggested, nor did the Tribunal find, that there was any explicit or implicit threat of sanction made to Person A. The Tribunal did find that the Respondent expected Person A to send the proposed email.

28.58 Mr Panesar stated that he acted in what he now described as a 'moment of madness'. Mr Panesar was criticised in cross-examination for not adopting that phrase earlier. The Tribunal found that criticism to be misplaced. Mr Panesar had, throughout the Firm's investigation and the Applicant's investigation, consistently referred to his mental health, his work place and other responsibilities. The Tribunal noted further that:

- i) the posting out of the report was not time sensitive; the short delay did not and could not have properly affected the transaction.
- ii) when Mr Panesar told Client A that the documents had been sent to her, that was what he genuinely believed would take place consistent with his instructions to Person A;
- iii) to the extent that Mr Panesar's motivation in proposing the email of 23 March 2021 was to prevent an enquiry by Client A as to why the documents were later than expected, that could have been properly explained in the manner in which Person A proposed; and

- iv) it was more complicated to craft a false narrative to the client than simply explain that which had occurred. This is consistent with the Respondent not thinking clearly at the time.
- 28.59 By amending Person A's email and instructing Person A to send a misleading email to the client, with the specific intention to mislead the client, Mr Panesar diminished the trust and confidence that the public places in solicitors. By instructing Person A to send a misleading email to the client, Mr Panesar also diminished the trust and confidence that junior colleagues place in senior solicitors who supervise them. The Tribunal found that Mr Panesar had breached Principle 2.
- 28.60 At the time when Mr Panesar drafted the email for Person A to send to Client A, he knew that the report had not yet been sent in the post. However, he instructed Person A to send an email, in her name, informing Client A that the report had been posted on 19 March 2021, had been returned to the office for an unknown reason and was being posted by Person A, for a second time on 23 March 2023. The Tribunal therefore found that Mr Panesar had acted dishonestly contrary to Principle 4.
- 28.61 A solicitor acting with integrity would not have attempted to persuade a junior colleague to mislead a client to cover up for an earlier error. In so doing the Tribunal found that Mr Panesar had therefore breached Principle 5.
- 28.62 The Tribunal found that Mr. Panesar had attempted to mislead Client A through Person A in breach of Paragraph 1.4 of the Code of Conduct for Solicitors 2019
- 28.63 Weighing all of the factors set out above the Tribunal found Allegation 1.1 PROVED in its entirety on a balance of probabilities.

Previous Disciplinary Matters

29. Mr Panesar had no previous disciplinary findings recorded against him.

Mitigation

30. Mr Panesar had an unblemished professional and regulatory history and at the relevant time, in 2021 had been qualified for 17 years. For almost 6 years Mr Panesar had been the managing partner of the property department of a commercial law firm.
31. Mr Panesar made full admissions from the outset, cooperating fully with his Firm's investigation which was said to be indicative of his insight.
32. Mr Panesar attended an ethics course of his own volition and expense after self-reporting the matter to the Applicant. The Tribunal noted that Mr Panesar's self-report to the Applicant followed advice from the firm's COLP.
33. Mr Panesar had been struggling with the volume of work and had caring responsibilities for his extended family.
34. It was submitted that the incident took place during the Covid pandemic. The Tribunal found that this was of limited relevance albeit it was noted that it created additional work

following a stamp duty holiday which had a bearing on Mr Panesar's practice. It was also submitted on behalf of Mr Panesar that it was to his credit that he thanked Person A for ultimately sending her version of the email to the client without any misleading content proposed by Mr Panesar.

35. In respect of determining culpability, the Tribunal were invited to regard Mr Panesar's conduct at the material time pursuant to Allegation 1.1 as a "*moment of madness*" which was more reflective of spontaneity than being planned.
36. It was submitted that the critical issue for the Tribunal to determine in view of the dishonesty finding is whether exceptional circumstances apply. It was advanced on behalf of Mr Panesar that the dishonest conduct was limited in duration, nature and scope. There was no benefit derived by Mr Panesar from his actions and there was no element of greed nor any effort on his part to avoid a penalty. It was acknowledged that personal mitigation was not enough pursuant to the applicable caselaw however the Tribunal was directed to the medical evidence supplied by Mr Panesar and the challenging working environment, which was said to have exacerbated his health issues. The Tribunal did not consider this to have directly corresponded to his misconduct.

Sanction

37. The Tribunal had regard for its Guidance Note on Sanction (10th Ed) and the proper approach to sanctions as set out in *Fuglers and others v SRA* [2014] EWHC 179. At **stage one** the Tribunal assesses the **seriousness** of the misconduct. In doing so the Tribunal considered both **culpability and harm**. The Tribunal found that:
 - i) Mr Panesar was dishonest; he was directly responsible for his actions;
 - ii) he was an experienced solicitor in a leadership role;
 - iii) the act of dishonesty was an isolated incident; it was not pre-planned, but the amended email had required some care and consideration. It was not an off the cuff remark;
 - iv) Mr Panesar's dishonesty was aggravated by the subsequent email and phone call;
 - v) he was motivated, in his words, to '*not be shouted at*' by his client.

The impact on person A

38. The Applicant says that an aggravating feature of Mr Panesar's misconduct was that it had a '*devastating impact*' on Person A. In Person A's witness statement of July 2023, she described the incident heavily impacting upon her mental-health and well-being. Immediately after this incident, Person A asked to move to a different office within the Firm. Person A stated that she required support for her mental health and had considered carefully whether she had a future in the legal profession for fear of a similar incident happening in future. Person A reported finding it hard to trust colleagues and described being '*extremely cautious at work*' since the incident.

Impact on Ms Lawal

39. Part of the incident was witnessed by Ms Lawal. The screenshots of text messages between her and person A at the time indicate her surprise at Mr Panesar's behaviour. The Tribunal was presented with no evidence of her being further impacted.

The impact on Client A

40. There was no evidence that Client A was affected by the proposed email which had never been sent.
41. The **second stage** for the Tribunal was to keep in mind the purpose for which sanctions are imposed. The Tribunal noted that an important purpose of sanction is to maintain the reputation of the solicitor's profession (*Bolton v The Law Society [1994] 1 WLR 512*). The Tribunal determined that the reputation of the profession was undermined in the circumstances here when a solicitor, particularly one in a senior role, proposes to lie to a client and encourages others to be complicit in that.
42. At **Stage three** the Tribunal determined the most appropriate sanction. A finding that an allegation of dishonesty had been proved ordinarily led to an order striking the solicitor from the roll save in exceptional circumstances. The Tribunal considered that such an order applied on the present facts.
43. Mr Qureshi advanced, and the Tribunal was asked to consider, whether exceptional circumstances existed on the present facts which might justify a sanction other than striking off. The Tribunal was referred to a number of other decisions of this Tribunal. Each of those decisions was made on its own facts. The Tribunal applied *SRA -v James [2018] EWHC 2058 (Admin)*, in particular §100:

*'... the most significant factor carrying most weight and which must be the primary focus of the evaluation is the **nature and extent of the dishonesty...**'*

44. The nature of the dishonesty was a proposed lie to Client A in order to avoid potential criticism from her if documents arrived in the post later than expected. That criticism was not relevant to the substance of the transaction nor did it in any way affect the client. If there was any benefit to Mr Panesar from the dishonesty, it was very marginal.
45. A junior employee, Person A, was affected. Mr Panesar was in a senior role and his proposal troubled Person A. Being asked to lie at an early stage in her career has clearly shaken her faith in the profession.
46. Matters of personal mitigation were not excluded from consideration – they can and should be considered as part of the balancing exercise required in the evaluation. The Tribunal considered the working conditions of Mr Panesar, his lack of support and the evidence relating to his mental health. The Tribunal had regard for these matters in its deliberations. It considered that they are of very limited weight.

47. More persuasive, as regards exceptional circumstances, was the fact that the dishonesty was between Mr Panesar and Person A only, lasted for a 90-minute period, was not premeditated, was not continued in that the offending email was not in fact sent to Client A, and did not prejudice the underlying transaction.
48. For the above reasons, the Tribunal found exceptional circumstances in this case: in place of a striking off from the roll of solicitors, the Tribunal determined that it was appropriate to suspend the Mr Panesar from practice for a period of nine months. In doing so the Tribunal reflected his remorse, admissions and the three years taken to bring this matter to the Tribunal during which Mr Panesar was issued with a practising certificate free from conditions.

Costs

49. Mr Miah applied for the Applicant's costs in the sum of £17,755.00 as particularised in the Statement of Costs dated 30 July 2024.
50. Mr Quereshi, on behalf of Mr Panesar, did not oppose the application.

The Tribunal's Decision on Costs

51. The Tribunal granted the application in principle but reduced the quantum sought to reflect the fact that the hearing concluded in 1½days as opposed to the 3 days for which it was listed.

Statement of Full Order

52. The Tribunal Ordered that the Respondent, **RAJPAL PANESAR**, solicitor, be **SUSPENDED** from practice as a Solicitor for the period of 9 months to commence on the 7th day of August 2024 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,000.00.

Dated this 2nd day of October 2024
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
02 OCT 2024

P Lewis

P Lewis
Chair