SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12517-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

BENJAMIN DAVID TISDALL Respondent

Before:

Ms A E Banks (in the chair)
Ms B Patel
Ms L Hawkins

Date of Hearing: 23 -24 October 2024

Appearances

Peter Robert Melleney, Barrister at Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, SW19 4DR (instructed by the Solicitors Regulation Authority) for the Applicant

Jonathan Goodwin, Solicitor-Advocate of JG Law, 69 Ridgewood Drive, Pensby, Wirral CH61 8RF, for the Respondent

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JUDGMENT

Allegations

The Allegations against the Respondent, Benjamin David Tisdall made by the Solicitors Regulation Authority ("SRA") are that, whilst in practice as a Solicitor and Partner at Fursdon Knapper ("the Firm"):

1. Between around 2 May 2018 and April 2020, the Respondent misled clients, Dr and Mrs A, in respect of their claim against Galliard Developments Ltd by:

    1.1. On or around 2 May 2018 making a statement to the effect that he had lodged a claim in court on their behalf when he knew that this was untrue;

    1.2. On or around 11 February 2019 stating that he had resubmitted paperwork in relation to their claim when he knew this was untrue;

    1.3. Between 2 May 2018 and April 2020, he created the misleading impression that he had issued proceedings when he had not.

    In doing so, and in respect of conduct which occurred before 25 November 2019, the Respondent breached any or all of Principles 2, 5 and 6 of the SRA Principles 2011.

    And in respect of conduct occurring from 25 November 2019, 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.

2. In relation to allegation 1 above insofar as it relates to the Respondent's conduct up to 25 November 2019, the Respondent acted dishonestly. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but not an essential ingredient in proving the allegations. For the avoidance of doubt the Respondent's conduct from 25 November 2019 was dishonest and thus breached Principle 4 of the SRA Principles 2019.

Executive Summary

3. The Respondent was a partner in a firm of solicitors and as fee earner was instructed by clients Dr A and Mrs A in a claim against a real estate development company concerning their option agreement for a number of plots of land and issues relating to their holiday lodge.

4. The allegations were that the Respondent misled the clients in respect of their claim against the company. Firstly, it was alleged he informed by them by email on 2 May 2018 that he had lodged a claim in court which he knew was untrue. Secondly, it was alleged that on 11 February 2019 by email informed them that he had resubmitted the claim which also he knew was untrue. Lastly, it was alleged that between May 2018 and April 2020 he had created a misleading impression that he had filed the proceedings when he had not done so.

5. The Respondent denied the allegations stating that he did not intend to convey by the words used in his emails on each occasion that he had lodged the claim or resubmitted the claim. He denied creating a misleading impression that he had issued proceedings

when he had not done so. He stated that even though he would have instructed a member of the team to file the proceedings, this had not been done and he had only discovered this in January 2020.

6. For the reasons set out below the Tribunal rejected the Respondent's explanation and found all of the allegations proved.

Sanction

7. The Respondent was struck off the Roll of solicitors. The Tribunal further offered that the Respondent pay the Applicant's costs of £19,877.04.

Documents

8. The Tribunal considered all of the documents in the case which included:

- The Applicant's Rule 12 Statement and exhibit bundle X1-X409;
- Application Notice for Hearsay Application dated 6 October 2024 and Application to Admit the witness statement of Dr A into evidence;
- The Applicant's Statement of Costs dated 7 October 2024.

Preliminary Matters

9. Application to Admit the Witness Statement of Dr A

9.1 The Applicant applied to admit the witness statement dated 10 August 2022 (the "Statement") of Dr A as he would not be called by the Applicant due to ill-health.

9.2 In support of the application, the Tribunal were informed that on 3 April 2024 the Applicant received an email from Mrs A, attaching a letter from Dr A's General Practitioner ("GP") dated 28 March 2024. Mrs A complained about the delay in the proceedings as well as the tension and anxiety it caused her husband. She requested that the GP report be considered and advised the Applicant to *'stop harassing us with further communication'*. The letter from the GP detailed Dr A's 'deteriorating health over the last few years. The deterioration was in relation to several health conditions of Dr A, who was 75 years old, had suffered a stroke in 2022. The letter further detailed that he would be unfit to travel to attend a hearing in person or attend remotely to be cross-examined: '*due to his health and the concern that the additional stress that this would have on him, on this health and risk of further stroke or similar cardiovascular complications.*'

9.3 The Respondent was informed on 13 September 2024 that Dr A would not be called, and the Statement would be relied upon in the proceedings. The response from the Respondent received on 14 October 2024 was that he objected to the Statement being admitted in evidence.

9.4 The Applicant would rely primarily on documentary evidence contained in the email correspondence between the Respondent and the clients. The statements alleged to have

been made by the Respondent were contained within those emails. It was the Applicant's case that each of the allegations could be proven on the documentary evidence alone.

9.5 The Tribunal were further informed that the representations on behalf of the Respondent dated 16 March 2023 indicated that although he denied each of the allegations, the Respondent accepted that no claim was ever lodged for the clients. The Applicant submitted that the only area of dispute was whether the Respondent's words to the clients meant that a claim had been lodged, and whether his statements to them were intended to mislead.

9.6 The Applicant submitted the following in support of the application:

(i). The statement of Dr A was not the sole or decisive evidence in support of the allegations which could be proven by the email correspondence and supported by the evidence of Mr Knapper;

(ii). It was unlikely that there would be any significant challenge to the evidence contained in the statement of Dr A;

(iii). There was no suggestion that Dr A had fabricated the allegation or any part of his evidence;

(iv). It was accepted that the allegations made were serious, including dishonesty, and that findings could adversely impact the Respondent's career;

(v). There was a good reason for the non-attendance of Dr A on health grounds as set out in the GP letter and email from Mrs A;

(vi). In light of the medical evidence provided and the terms of his Mrs A's email, it was reasonable in the circumstances for the Applicant to have taken the view to not call or summons Dr A, and;

(vii). The Respondent was put on notice of the Application on 13 September 2024.

In conclusion, it was asserted, applying Rule 27(2)(b)(iii) Solicitors Disciplinary Procedure Rules 2019 ("SDPR") that the admission of Dr A's statement would not be "*unfair, disproportionate or contrary to the interests of justice"* and should therefore be admitted.

<u>The Response to the Application by the Respondent</u>

9.7 The Tribunal were directed by to ***<u>R (Bonhoeffer) v GMC</u>*** *[2011*] EWHC 1585 (Admin) and invited to apply the principles derived from that case in relation to the two stages of assessing fairness when assessing hearsay evidence in regulatory proceedings as:

(a) Admissibility;

(b) Weight to be attached to the hearsay evidence given that it would not be capable of being tested in cross-examination.

The Tribunal were reminded of the three questions to be considered when deciding whether to admit or exclude hearsay evidence from an absent witness as follows:

- Was there a good reason for non-attendance?
- Whether the evidence of the absent witness constitutes the sole or decisive basis for factual findings in the proceedings?
- Are there sufficient counterbalancing factors to ensure a fair hearing?

9.8 The Respondent submitted that there was no good reason for Dr A's non-attendance. It had been indicated on 15 February 2024, after accepting service of Dr A's Statement, that he would be required to attend for cross examination. It was only on 13 September 2024 that correspondence was received attaching the letter from the GP dated 28 March 2024.

9.9 It was further pointed out as significant that the email from Dr A's Wife dated 3 April 2024 was not attached to the correspondence received and only seen for the first time on 18 October 2024 when the Application to admit the Hearsay Evidence was received. There was therefore no justification advanced by the Applicant for the delay in making the application since April 2024.

9.10 It was asserted that the GP's letter dated 28 March 2024 was now many months out of date and the Applicant had not outlined what steps had been taken to obtain recent medical evidence that would explain whether Dr A's health had improved or whether there was a possibility that he would be attend physically or remotely.

9.11 The evidence of Dr A was, in the submission of the Respondent, the sole or decisive basis for the factual findings upon which the Applicant based its case and to admit the hearsay evidence would be unfair and prejudicial.

9.12 The Tribunal were further directed on behalf of the Respondent to *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) where the relevant principles were summarised at Para 45 as follows:

(a) The admission of the statement of an absent witness should not be regarded as a routine matter. The FTP rules require the Panel to consider the issue of fairness before admitting the evidence;

(b) The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility;

(c) The existence or otherwise of a good and cogent reason for the non- attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence;

(d) Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit it requires the Panel to make a careful

assessment, weighing up the competing factors. To do so, the Panel must consider the issues in the case, the other evidence which is to be called and the potential consequences of admitting the evidence. The Panel must be satisfied either that the evidence is demonstrably reliable, or alternatively that there will be some means of testing its reliability.

9.13 The Respondent finally drew the Tribunal's attention to Rule 27(2)(b)(iii) SDPR which provided the Tribunal with the power to exclude evidence that would otherwise be admissible, where it would otherwise be unfair, disproportionate, or contrary to the interests of justice to admit the evidence.

The Applicant's Further Submissions

9.14 It was further submitted even though the allegations could be proved without the Dr A's Statement, it was essential that the Tribunal had the benefit of the Statement as it provided it a complete evidential picture. In addition, the statement was evidence which would be relevant when considering the impact of any breaches, on Dr A, of the SRA Principles should the factual matrix of the allegations be found proved.

9.15 The Applicant explained that once confirmation was received that the Application would be opposed, it was decided that the email was relevant to the Application and should be disclosed to the Respondent. The decision to disclose was reached on the basis that it demonstrated the reasonableness of the Applicant in deciding not to call Dr A to give oral evidence.

The Decision of the Tribunal

9.16 The Tribunal listened with care to the submissions made by the parties, and it had read the written material, including the Skeleton Argument, and further considered the authorities to which it had been directed to during the Application.

9.17 The Tribunal viewed as significant the fact that the medical evidence in support of the application was seven months old and there had been no attempt by the Applicant to update that medical evidence or establish whether there was a possibility that Dr A could attend or be cross-examined remotely.

9.18 In the absence of recent medical evidence supporting the Application, the Tribunal found that the only reason explaining the absence of the witness was an unwillingness to attend. This it found was expressed by Mrs A in her email to the Applicant. Having considered R (Bonhoeffer) v GMC *[2011*] EWHC 1585 (Admin), the Tribunal concluded there was no good or cogent reason for Dr A's absence or satisfactory explanation provided as to why the possibility of his remote attendance had not been explored.

9.19 The Tribunal in in accordance with Rule 27(2)(iii) SDPR decided, given the evidence explaining the circumstances of the absence of Dr A, that it would be contrary to the interests of justice to admit his Statement.

10. Application to Amend Allegation 1.3

10.1 The Applicant sought to amend allegation 1.3 of the Rule 12 Statement with a view to amend the date of May 2019 to May 2018. This was a typographical error which had been notified to the Respondent in advance of the hearing.

10.2 There was no opposition to the Application which was granted by the Tribunal.

Factual Background

11. The Respondent was admitted as a solicitor on 1 November 2013. At the time of the matters giving rise to these allegations he was employed as a solicitor and partner by the Firm. The Respondent is currently a regulated freelance solicitor. He has a practising certificate free from conditions.

Witnesses

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

Findings of Fact and Law

13. 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.

14. **Allegation 1.1: Between around 2 May 2018 and April 2020, the Respondent misled clients, Dr and Mrs A, in respect of their claim against Galliard Developments Ltd by: On or around 2 May 2018 making a statement to the effect that he had lodged a claim in court on their behalf when he knew that this was untrue.**

The Applicant's Case

14.1 Dr A's email of 15 April 2018 to the Respondent emphasised the need to urgently apply to court specifying dates when that should be completed. The Respondent's reply on 16 April 2018 by email: "*please be reassured we will get everything in place by that date*" indicated he would be lodging the claim as instructed.

14.2 The history of the email correspondence between the Dr A and Mrs A and the Respondent as set out fully in the Rule 12 Statement was critical to determining the

interpretation the Respondent's statement and what his knowledge was when he made that statement on the 2 May 2018. Examples of the words in some of the emails set out below established evidence of the knowledge of the Respondent.

14.3 The attention of the Tribunal was directed to the excerpts from emails sent by the Dr A or Mrs A to the Respondent before 2 May 2018:

- **30 April 2018 -** From Dr A *"[Mrs A] informed me you said on the phone that our Court claim will be lodged today- Monday in Northampton. She also said that you will confirm by email that the claim has been lodged by Monday afternoon ."*

- **1 May 2018** – From Mrs A "*Did you lodge the claim as you promised me on the phone Yesterday Monday"*

- **1 May 2018** – From Dr A "*can we please close the subject and put the claim in court?"*

14.4 There were in addition, emails sent by Reception staff of the Firm to the Respondent:

- **1 May 2018** "*Mrs A says that they (her husband and herself) would just like a 1 line email from you to confirm if you have lodged their case in Court or not?"*

- **On the same day** *"Perhaps you could let him know if you have lodge his case at Court when you get a minute"*

14.5 The Respondent emailed Dr A on the 2 May 2018 stated:

"*Your claim has been done on Monday, as I said it would be.**"***

The rest of the contents of the email of the 2 May 2018 explained to the clients how the Respondent had been advised in Plymouth Court about the possibility of delays and continued:

> *"you need to know that I may not have any news for you for some weeks however the matter is progressing, and we are following your instructions."*

14.6 The Applicant's submissions were that:

(a) once the contents of the Respondent's email were considered in the context of the previous email exchange, there could be no doubt as to the meaning of the words he used. He intended to make Dr A and Mrs A believe on the 2 May 2018 that he had lodged the claim as they had instructed;

(b) the information provided to Dr A and Mrs A was false and misleading as no claim had been submitted by the Respondent as claimed.

The Respondent's Case

14.7 The Respondent stated that before 2020, and the outbreak of the COVID pandemic, he attended courts covering widespread locations throughout England dealing with a variety of civil matters.

14.8 On an average day after he left court, he would return to the office to work till 8pm. As time progressed, he was spending more than 80% of the time in court and therefore was not in the office during weekdays. Saturday was the only day he worked from the office.

14.9 He was the highest fee earner in the Firm and dealt with about 40 clients at any one time. He had been under considerable pressure and he *'rushed out'* a lot of the correspondence to his clients many of which were written whilst he was commuting by train. His communications to clients were based on information received from members his team.

14.10 He recalled that he had a very good support team whom he relied on to take action on cases he was dealt with based on his instructions. He drafted instructions to the members of the team in the form of to-do lists, typically on a Sunday after he reviewed all of the files.

14.11 The Respondent acknowledged that there was no ambiguity in the instructions of the Clients which prior to May 2018 was for him to send off the claim.

14.12 Although he recalled having a telephone conversation with Mrs A on the 30 April 2018, he could not remember the exact details of the phone which had been over 6 years ago. The Respondent however denied confirming with Mrs A during that call that he would '*lodge the claim'* as claimed by Dr A in the email sent to the Respondent later that day.

14.13 The Respondent maintained that what he meant by the words used in the email dated 2 May 2018 to Dr and Mrs A was that he had commenced work on the claim with a view to issuing it. It estimated that it would have been, at that stage, 95% completed. He did not mean that he had lodged the claim.

14.14 The Respondent stated that any misunderstanding caused to Dr A and Mrs A by his email of the 2 May 2018 would have been as a result of his poor communication. He maintained that he had not consciously sought to mislead them.

14.15 The Respondent acknowledged that after receiving the subsequent reply to his email from Dr A, which conveyed the client's understanding that the case had been lodged, he did nothing to correct that impression. He suspected that he may have been in court when he received the email and eventually did not get round to responding to it.

14.16 Subsequently, the Respondent instructed a member of staff to send off the claim. As far as he was aware, it had been sent off by a member of the team in the post.

14.17 When emails from the Dr and Mrs A sought updates, he genuinely believed that the claim had been received at Northampton Court where there was a delay.

14.18 As of 2018, the court administration had become centralised, and the claim would have been dealt with at Northampton Court rather than a local court. Previously, it had been possible to physically visit a local court and make enquiries if there was a delay in a claim being issued, and this would be addressed by court staff. However, under the centralised system this option was not available.

14.19 The Respondent stated that given the slowness of the court administration, he was not surprised at having not heard anything from the court as it was not possible to make enquiries of claims that had been lodged until a claim number had been issued.

14.20 The Respondent stated that although there was no evidence of him instructing a member of staff to lodge the claim on his behalf, he may have issued the instruction to a member of the team over the phone.

15. **<u>Allegation 1.2</u>: Between around 2 May 2018 and April 2020, the Respondent misled clients, Dr and Mrs A, in respect of their claim against Galliard Developments Ltd by: On or around 11 February 2019 stating that he had resubmitted paperwork in relation to their claim when he knew this was untrue.**

<u>The Applicant's Case</u>

15.1 The content of emails exchanged between Mrs A and the Respondent provided a context for the words used in the email sent by the Respondent on the 11 February: Those emails are as follows: on 1 February 2019 from Ms A:

> *"'It is good you will resubmit the case as we all suspected it is lost in between, the first who our attention is a Solicitor friend of our son ... Can you please us tell the dates and the way you submitted it either online or by paperwork, would it better to submit by registered post to sign on delivery if possible so you have a proof that they received it.*"
>
> *We do not want to waste further time please keep on contacting them, can't they us [sic] consider the lost time if you have a proof to give priority. We must say it is a lousy system if the court channel lose cases.'*
>
> The Respondent's response to Mrs A on the same day: "*No, no case number to am (sic) arranging to have everything re-submitted – it may take some time to get a response, but I will make sure this is not left to drift."*

On 8 February 2019 from Mrs A:

> "*We are waiting for confirmation that you have resubmitted the options rewording case to be allocated to a court. Please could you give us the date of when this was done.*
>
> *Please could you supply details of how this was done, electronically or by post. If it was electronically do they acknowledge receipt in any way?*
> *If it was by post then was it registered or recorded and do you keep the proof of posting? Again, do they acknowledge receipt?*

We spoke to your office earlier today and the receptionist told us that you were not in the office, and although she asked your secretary about our submission it seems the secretary had no knowledge of this matter at all. which is slightly worrying as we expected she would be the one who had actually resubmitted the documents."

15.2 The Respondent's email of 11 February 2019 stated:

"I am (sic) resubmitted your paperwork, and sent this by DX, last week - which is secure post service through solicitors and the court. My "secretary' did not know about this, as it was a receptionist you spoke to, and I will personally be supervising the sending out of everything and everything on your file from now on. It may still be 3-4 weeks before we hear anything but I will keep on top of this and in touch with you."

15.3 The information provided to Mrs A in the email of 11 February 2019 contained false and misleading information, as no paperwork had been re-submitted and the Respondent knew this. The part of the email referring to his secretary not knowing about him resubmitting the paperwork purportedly sought to address Mrs A's concerns that his secretary was not the one who resubmitted it.

Principle Breaches (Allegations 1.1 and 1.2)

Integrity (Principle 2 of the SRA Principles 2011)

15.4 The Applicant stated that Principle 2 of the SRA Rules 2011 requires solicitors to act with integrity and referred the Tribunal the test set out in *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, where it was stated that integrity connotes adherence to the ethical standards of one's own profession.

15.5 It was submitted that a solicitor acting with integrity would not:

(a) have sent an email to clients which stated or implied that a claim had been lodged in court when the claim had not been and the solicitor knew it had not been lodged;

(b) have sent a further email to his clients informing them that he had resubmitted the claim when he knew this to be untrue given that no claim had been lodged originally.

It was alleged that the Respondent had therefore breached Principle 2 of the SRA Principles 2011.

Proper Standard of Service (Principle 5 SRA Principles 2011)

15.6 The Applicant submitted that providing a proper standard of service to clients would include filing a claim in court when instructed to do so and providing accurate information to clients. If further meant correcting any misunderstanding they might have had about whether a claim had been lodged or not.

15.7 It was alleged that the Respondent failed to provide a proper standard of service to Dr A and Mrs A by:

(a) failing to file a claim in court when instructed and informing the client on 2 May 2018 that a claim had been lodged in court when it had not, and;

(b) informing his clients that he had resubmitted the claim on 11 February 2019 when he knew this to be untrue. The Respondent had therefore breached Principle 5 of the SRA Principles 2011.

Maintaining trust public places in you (Principle 6 SRA Principles 2011)

15.8 The Applicant asserted that a solicitor was expected to behave in a way that maintains the trust the public places in them and in the provision of legal services. Public trust in solicitors would be undermined if the public became aware that a solicitor had given information which was false or misleading.

15.9 It was submitted by the Applicant that:

(a) failing to lodge a claim in court when instructed and informing the client that a claim had been lodged in court when it had not, and;

(b) informing his clients that he had resubmitted the claim when he knew this to be untrue as no claim had been originally lodged; were clear examples of a solicitor failing to behave in a way that maintains the trust that the public places in them. The Respondent had therefore breached Principle 6 SRA Principles 2011.

The Respondent's Case

15.10 In Relation to the email dated 11 February 2019 in which it was alleged that he had written to the Dr A confirming that he had resubmitted the paperwork, the Respondent explained that he would not have resubmitted it personally given the pressures of his work at court. In addition, he could not have explained that fact to Dr A given Dr A's expectation that he personally handle every single aspect of the case.

15.11 The Respondent stated that once he realised that the original claim sent to the court had not been dealt with, he would have asked a member of the team to print off the claim documentation and put it in the post to the court in the hope that a member of the team at Northampton Court would have received it and then processed the claim.

16. **Allegation 1.3: Between around 2 May 2018 and April 2020, the Respondent misled clients, Dr and Mrs A, in respect of their claim against Galliard Developments Ltd by: Between 2 May 2018 and April 2020, he created the misleading impression that he had issued proceedings when he had not.**

The Applicant's Case

16.1 After the 2 May 2018, there were numerous opportunities for the Respondent to correct any impression that the claim had either been lodged or resubmitted in his response to the emails sent to him by Dr A and Mrs A. The Applicant alleged that not only did the

Respondent fail to correct the client's impression about the status of the claim but used words in his own emails which created a misleading impression that the claim had been lodged or resubmitted. A few of the relevant emails where the Respondent could have corrected that impression were set out by the Applicant: Email sent by Dr and Mrs A dated 29 May 2018 to the Respondent:

> "*We feel very nervous that the whole option case might be lost because of delays hence we agreed to lodge the case on 27.01.2018 and in spite of our repeated e mails to lodge the case it is only has been lodged as you said on Monday 30.04.2018, then we have been notified there is a delay in courts for 6 weeks(4 weeks now).*

16.2 Email from Dr and Mrs A on the same date to the Respondent requesting him to consider the draft of a letter they were writing to purchasers of land forming the subject of the claim:

> "*We wish to advise you that we have initiated action in court against Galliards/Retallack Resort and Spa to exercise an option of 1 acre of our choosing of land…"*

16.3 These emails would have left the Respondent in no doubt as to the understanding of Dr and Mrs A that he had lodged the claim on 30 April 2018. All of the Respondent's responses to these emails did nothing to correct the belief they expressed that the claim had been lodged.

16.4 There were two further emails written by the Dr A to the Respondent:

(a) On 18 June 2019: "*IF it is 12 years it Is more reassuring for all of us as we already put the claim to court, please keep the pressure on the claim center to make them move on the claim we hope it should not be too long"*.

(b) On 1 October 2019: *"We tried to ring you last week with no luck as you were out of office and emailed you to see whether there have been any response from the Court centre for your complaint. It is really disgusting we have trying to go court claim for nearly 2 years with no success, I wonder!!! Very demoralising, appalling and very frustrating Any feedback is welcomed*"

16.5 The Applicant alleged that despite receiving both of the emails sent by Dr A, the Respondent again did nothing to correct Dr A's impression that proceedings had not been issued.

16.6 The Respondent had written on the 31 July 2019: *"I'm afraid that there is no way, to speed it up for example spend a fee. I wish there was. However, I am confident that we will here fairly shortly*. This was a response to Dr A's earlier email pointing out that the court website claimed that cases would be sorted out within 2 weeks. The Respondent's reply was clear evidence he furthered the impression that proceedings had been issued when he knew it had not.

Principle Breaches

Integrity (Principle 2 SRA Principles 2011/ Principle 5 SRA Principles 2019

16.7 The Applicant alleged that Principle 2 of the SRA Rules 2011 and Principle 5 SRA Principles 2019 require solicitors to act with integrity and relied on meaning of integrity as referred to in *Wingate v Solicitors Regulation Authority v Malins*

16.8 It was submitted that a solicitor acting with integrity would not create an impression that proceedings had been issued thereby misleading clients. A solicitor acting with integrity would immediately correct any mistaken impression in the minds of clients.

16.9 The Applicant alleged that the Respondent by continuing to create the impression that proceedings had been issued and continuing to mislead them, failed to act with integrity.

16.10 For the Respondent's conduct occurring prior to 25 November 2019 the Respondent breached Principle 2 SRA Principles 2011. For conduct occurring from 25 November 2019 the Respondent breached Principle 5 SRA Principles 2019.

Uphold Public Confidence (Principle 2 SRA Principles 2019)

16.11 Principle 2 requires solicitors to act in a way that upholds public trust and confidence in the solicitor's profession and in legal services provided to their clients.

16.12 It was submitted that the trust of members of the public in solicitors would be undermined if they became aware that through emails, a solicitor had created a misleading impression to clients that he had issued proceedings on behalf of a client when he had not done so.

16.12 The Applicant alleged that the Respondent by:

(a) Providing information which was false or misleading to Dr A and Mrs A about their claim;

(b) Failing to correctly advise them that the claim had not been issued. The Respondent had breached Principle 2 SRA Principles 2019.

Honesty (Principle 4 SRA Principles 2019)

16.13 The Applicant relied upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67:

16.14 It was submitted that the Respondent knew that:

(a) Dr and Mrs A had instructed him to lodge a claim in court and that, in the various telephone calls and emails between 25 January 2018 and 1 May 2018;

(b) At the time when he wrote his email of 2 May 2018, no claim had been lodged in court;

(c) He therefore knew that a statement to the effect that a claim had been lodged in court was false.

His email of dated 2 May 2018 which stated that he had lodged proceedings in court was therefore dishonest by the standards of ordinary decent people.

16.15 The Applicant further asserted the Respondent knew that:

(a) at the time when he wrote his email of 11 February 2019 no claim had been lodged in court and that he had not 'resubmitted' any paperwork to the court;

(b) the statement made in that email to the effect that he had resubmitted paperwork to court was false.

16.16 The Respondent's statement on the 11 February 2019 that the claim had been resubmitted was dishonest by the standards of ordinary decent people.

16.17 In respect of the period from 2 May 2018 until April 2020, it was submitted that the Respondent knew that:

(a) Dr and Mrs A believed that a claim had been lodged in court;

(b) no claim had been either lodged or resubmitted.

16.18 The Respondent failed to correct this misunderstanding by informing his clients of the correct position, namely that no claim had been lodged in court. He allowed their misunderstanding to continue by writing to them reinforcing their belief. This, it was submitted, was dishonest by the standards of ordinary decent people.

16.19 To the extent that the dishonesty took place from 25 November 2019, it was alleged that the Respondent breached Principle 4 SRA Principles 2019.

16.20 For the period before 25 November 2019, dishonesty was alleged as an aggravating factor of allegations 1.1 and 1.2 above.

SRA Code of Conduct for Solicitors RELs and RFS 2019

16.21 Paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019 requires solicitors not to mislead or attempt to mislead clients by acts or omissions.

16.22 The Respondent's conduct in continuing to mislead Dr and Mrs A between May 2019 and April 2020 in relation to the fact that their claim had been issued and failing to correct their mistaken belief, was a breach of the Paragraph for the period from 25 November 2019.

<u>The Respondent's Case</u>

16.23 The Respondent stated that he had only realised in January 2020 that the claim had not been submitted to the court.

16.24 Once he had discovered that the claim had not been submitted, his intention was to speak to Mr Knapper about what had happened with a view to trying to resolve the problem. However, as a result of the COVID pandemic there was considerable disruption in the firm, and he was not able to speak to Mr Knapper as intended.

16.25 He recalled being asked by Mr Knapper about the claim in February 2020 and immediately accepted that no claim had been lodged. He also accepted that he had no explanation to provide as to why this was so.

16.26 The Respondent was away from the office 80% of the time dealing with court commitments and was trying to cope with the pressures of a very busy work schedule. He had difficulties in managing work to be completed within the office and relied heavily on his team to provide him with assistance and support. He relied on them to provide him with information in relation to tasks that he instructed them to do**.**

16.27 The Respondent stated that sometimes when being chased for updates on the case, he provided them whilst commuting to court and this would account for some of his strange use of language and typographical errors.

The Tribunal's Findings

17. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's right to a fair trial and to respect his rights to private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

18. **Allegation 1.1**

18.1 The Tribunal carefully considered the language contained in each of the emails exchanged between the parties prior to the 2 May 2018 and noted that Dr A and Mrs A were very clear in their instructions that they wished the claim to be lodged in court urgently, such that the Respondent could be in no doubt as to what was expected of him.

18.2 The Tribunal considered the words used by the Respondent in the email dated 2 May 2018 and found on the balance of probabilities that the words: "*Your claim has been done on Monday, as I said it would be"* indicated he had complied with his clients' instructions and these words could have no meaning other than informing them that the claim had been lodged in court. The Tribunal also found, to the requisite standard, that the contents of the rest of that email informing Dr A and Mrs A about the information he had been provided by Plymouth court and delays were consistent with the information given to Dr A and Mrs A that he had lodged the claim.

18.3 The Tribunal additionally found on the balance of probabilities that the words used in the email were misleading as the Respondent knew that he had not lodged the claim.

19. **Allegation 1.2**

19.1 The Tribunal considered the various emails exchanged between Dr and Mrs A and the Respondent prior to 11 February 2019 and noted that the email to which the Respondent responded enquired whether the claim had been resubmitted.

19.2 The Tribunal found on the balance of probabilities that the words: "*I am resubmitted your paperwork, and sent this by DX, last week - which is secure post service through solicitors and the court"* against the background of the email exchanges between the parties, was meant by the Respondent to indicate to Dr A and Mrs A that he had personally resubmitted the claim. The Tribunal also found to the requisite standard that the words used by the Respondent were misleading in two respects: firstly, that a claim had not been previously submitted and secondly, he never personally resubmitted the claim or instructed any other member of the Firm to do so on his behalf.

19.3 Having found the factual matrix of all of the allegation 1.1 and 1.2 proved, the Tribunal went on to consider the alleged Principle Breaches.

Integrity (Principle 2 SRA Rules 2011)

19.4 The Tribunal found on the balance of probabilities that the Respondent, in informing his clients that he had lodged and subsequently resubmitted the claims to court when he knew this to be untrue, failed to adhere to a steady moral and ethical code. He had therefore failed to act with integrity in breach of Principle 2.

Maintaining Public Confidence (Principle 6 SRA Rules 2011

19.5 The Tribunal also found to the requisite standard that members of the public would not expect a solicitor to provide misleading information as alleged and then accordingly the Respondent had breached principle 6 by failing to behave in a way that maintained the trust of the public placed in him and the provision of legal services.

Proper Standard of Service (Principle 5 SRA Principles 2011)

19.6 The Tribunal found on the balance of probabilities that the Respondent in failing to act as instructed by Dr A and Mrs A and providing them with misleading information had failed to provide a proper standard of service to them and had therefore breached Principle 9.

20. **Allegation 1.3**

20.1 The Tribunal found on the balance of probabilities that through the email exchange between the Respondent and Dr A and Mrs A between the period 2 May 2018 till he left the Firm in April 2020, the Respondent misled the clients by creating an impression that he had issued proceedings when he had not done so. The Tribunal found to the requisite standard that the Respondent had ample opportunity after receiving a number of emails sent by his clients within the period, to correct any impression that the proceedings had been issued. The Tribunal also found on the balance of probabilities that there were a number of emails the Respondent sent to the clients after 2 May 2018

that actively created the impression that he had issued the proceedings when he knew he had not.

20.2 Having found the factual matrix of all of the allegation 1.3 proved, the Tribunal went on to consider the alleged Principle Breaches.

Integrity (Principle 5 of the SRA Principles 2019)

20.3 The Tribunal found on the balance of probabilities that the Respondent in creating a false impression that proceedings had been issued when they had not, over a significant period of time, failed to adhere to a steady moral and ethical code. The Respondent had therefore failed to act with integrity in breach of Principle 9.

Uphold Public Confidence (Principle 2 SRA Principles 2019)

20.4 The Tribunal found that members of the public would not expect a solicitor to create a misleading impression in the mind of client and where a mistaken impression had been formed, a solicitor would take steps to correct it promptly. Accordingly, the Tribunal found to the requisite standard that the Respondent had not behaved in a way that would uphold public trust and confidence in the solicitor's profession and in legal services provided.

Honesty (Principle 4 SRA Principles 2019)

20.5 The Tribunal had regards to the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 as follows:

> *"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."*

20.6 Tribunal found on the balance of probabilities that on the 2 May 2018 the Respondent knew that:

(a) Dr and Mrs A had instructed him to lodge a claim in court;

(b) at the time when he wrote his email of 2 May 2018 no claim had been filed in court;

(c) a statement to the effect that a claim had been lodged in court was untrue.

The Respondent's email dated 2 May 2018 stating that he had lodged proceedings in court was therefore dishonest by the standards of ordinary decent people.

20.7 The Tribunal also found on the balance of probabilities that on the 11 February 2019 the Respondent knew that:

(a) no claim had been originally lodged in court and that he had not 'resubmitted' any paperwork to the court;

(b) the statement made in his email to the effect that he had resubmitted paperwork to court was untrue.

20.8 The Respondent's email dated 11 February 2019 stating that the claim had been resubmitted was therefore dishonest by the standards of ordinary decent people.

20.9 The Tribunal then found in respect of the period from 2 May 2018 until the Respondent left the Firm in April 2020, that the Respondent knew that:

(a) Dr and Mrs A believed that a claim had been lodged in court;

(b) no claim had been either lodged or resubmitted.

20.10 The conduct of the Respondent in failing to correct the understanding of his clients as to the correct status of their claim and continuing to write to them to create the impression that the proceedings had been issued was dishonest by the standards of ordinary decent people.

20.11 The Tribunal found that the dishonesty that took place from 25 November 2019 till the Respondent left the firm in April 2020 breached Principle 4 SRA Principles 2019.

20.12 The Tribunal further found that for the period before 25 November 2019 the Respondent's dishonesty was an aggravating factor of the conduct alleged in allegations 1.1 and 1.2.

SRA Code of Conduct for Solicitors RELs and RFS 2019

20.13 The Tribunal found on the balance of probabilities that the Respondent, by his actions, continued to mislead Dr and Mrs A between May 2019 till he left the Firm in April 2020. It therefore found the Respondent to be in breach of the Code of Conduct for Solicitors, REL and RFLs 2019.

Previous Disciplinary Matters

21. The Respondent had no previous disciplinary findings recorded against him.

Mitigation

22. The Respondent had an unblemished and exemplary professional and regulatory history.

23. At the relevant time, in 2018, the Respondent had been qualified for 5 years and at the time of the conduct had become a partner within the Firm.

24. During the period of the misconduct the Respondent struggled with the volume of work he was undertaking and was faced with a challenging work schedule resulting in him being in court 80% of the time whilst trying to manage commitments in the office.

25. The Respondent acknowledged that he had offered a poor service to Dr A and Mrs A regarding his communication with them.

Sanction

26. The Tribunal referred to its Guidance Note on Sanctions (10th Edition, December 2022) when considering sanction.

27. 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.

28. The Tribunal assessed the seriousness of the misconduct and in doing so it considered both culpability and harm.

29. The Tribunal found that: the Respondent was dishonest and had been directly responsible for his actions. In addition, there was a clear breach of trust involved in his conduct. The Respondent had stated that he had an excellent relationship with Dr A and Mrs A and till he left the Firm, they trusted and relied on him. Although the initial action of informing Dr A and Mrs A that he had filed the claim may not have been deliberately planned, the subsequent action in consistently maintaining that proceedings were issued involved some degree of planning.

30. When considering the harm caused by the Respondent's conduct, the Tribunal took account of the fact that the misconduct had a considerable impact on the clients. From the number of the emails they had sent and the tone of the emails, they experienced a high degree of stress as a result of the actions of the Respondent. The impact of the Respondent's actions extended to junior staff of the Firm who were repeatedly contacted by the clients wanting to obtain updates from the Respondent through them.

31. The Tribunal concluded that the Respondent's culpability was high**.**

32. The Respondent's conduct was aggravated by the fact that it was dishonest and repeated over a two-year period. Given his level of experience and his position as a partner in the firm, he should have known that his conduct was a material breach of obligation.

33. Matters of personal mitigation were not excluded from consideration as such matters can and should be considered as part of the balancing exercise required in the evaluation. The Tribunal considered the Respondent's considerable workload and the pressures of work that he experienced during the period. The Tribunal also considered the remorse he expressed at the poor level of service that he had provided to Dr A and Mrs A. The Tribunal however afforded all of these factors of mitigation limited weight during the balancing exercise.

34. Next, the Tribunal considered the purpose for which sanctions are imposed. The Tribunal noted that an important purpose of a 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 where a solicitor, particularly one in a senior role, misled clients over a significant period of time.

35. The Tribunal, having determined that the conduct in question was dishonest, observed that a finding of dishonesty would, absent exceptional circumstances, require an order striking the solicitor from the roll.

36. Having considered the authorities, in particular: *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin) and also SRA -v James [2018] EWHC 2058 (Admin), the Tribunal could not find any exceptional circumstances justifying any lesser sanction other than a striking off.

37. The Tribunal concluded that sanctions such as a Reprimand, Fine, Restriction Order or Suspension did not adequately reflect the seriousness of the misconduct. The Tribunal found, given the finding of dishonesty against the Respondent, the normal necessary penalty should follow. Therefore, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of solicitors.

Costs

38. The Applicant applied for costs in the sum of £20, 899.44. It was submitted that the amount claimed in the statement of costs dated 7 October 2024 would need to be reduced given the hearing had lasted shorter than the two days listed. The Applicant further applied for the additional costs of £309.31 being hotel expenses for an absent witness whose evidence had been agreed shortly before the start of the hearing. It was further submitted that in circumstances where the witness had been told that he would not receive a refund, the costs of the hotel booking should not be borne by the Applicant.

39. The Respondent queried the Applicant's claim for costs in excess of 18 hours for the drafting of the Rule 12 Statement and 9 hours for updating it. This was submitted to be excessive given the nature of the allegations.

40. The Tribunal considered the costs schedule and the additional claim for hotel costs and decided that it was just and proportionate to allow the costs sought by the Applicant for preparation and updating of the Rule 12 Statement. The Tribunal ordered the costs in the original sum sought, less a reduction of £1,022.40 for the reduced duration of the hearing. The Tribunal ordered that the Respondent pay the costs of and incidental to the application fixed in the sum of £19,877.04.

Statement of Full Order

41. The Tribunal ORDERED that the Respondent, BENJAMIN DAVID TISDALL solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,877.04.

Dated this 31st day of January 2025
On behalf of the Tribunal

A Banks

JUDGMENT FILED WITH THE LAW SOCIETY
31 JANUARY 2025

A Banks
Chair