

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12572-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

SAMANTHA JANE DYSON.

Respondent

Before:

Ms T Cullen (in the Chair)

Ms C Rigby

Dr A Richards

Date of Hearing: 11 July 2024

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Samantha Jayne Dyson, made by the SRA are that, while in practice as a Solicitor at Plexus Legal LLP, 40 Gracechurch Street, London, EC3V 0BT (“the Firm”):

Filing of a Misleading Witness Statement

- 1.1. On or around 4 November 2021, she caused or allowed a witness statement containing her signed statement of truth to be filed with the court stating that: (i) there was no history of failures on her defendant client’s part and/or (ii) the defendant had fully complied with all other court orders and directions once received, when she knew or ought to have known that such an assertion was misleading and thereby breached any or all of Principles 2 and 5 of the SRA Principles (“the Principles”) and Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the Code for Solicitors”).

Failing to Inform Client or Insurer

- 1.2. Following a hearing on 8 November 2021, she failed to tell her client (Council B) or their insurer (Company A) that its defence and counterclaim had been struck out for failing to comply with the Unless Order dated 7 January 2021 and thereby breached any or all of Principles 2 and 5 of the Principles and Paragraphs 1.4, 3.2 and 7.11 of the Code for Solicitors.

Failing to Inform Firm

- 1.3. Following a hearing on 8 November 2021, she failed to tell the Firm that her client’s defence and counterclaim had been struck out for failing to comply with the Unless Order dated 7 January 2021 and thereby breached any or all of Principle 5 of the Principles and Paragraph 1.4 of the Code for Solicitors.

Recklessness

2. Recklessness is alleged as an aggravating feature of the Respondent’s misconduct but is not an essential ingredient in proving the allegations.

Respondent’s Admissions

3. The Respondent has admitted all the above allegations.

Withdrawal of an Allegation

4. The Applicant’s original allegations included an allegation of dishonesty (breach of Principle 4), but this was subsequently withdrawn.

Documents

5. The Tribunal had before it the following documents:
 - The Applicant’s Rule 12 Statement and Exhibit Bundle dated 4 March 2024

- The Respondent's Answer dated 3 May 2024
- Applicant's Schedule of Costs dated 4 March 2024
- Respondent's statement of means dated 3 May 2024
- Application for an Agreed Outcome, dated 8 July 2024
- Statement of Agreed Facts and Outcome between the Parties dated 17 June 2024 and Statement of Agreed Facts and Outcome between the Parties dated 8 July 2024

Background

6. The Respondent is a solicitor having been admitted to the Roll of Solicitors on 3 September 2018. At all material times she worked in the litigation department, specifically in the "*Public Sector team*," at Plexus Legal LLP (the "Firm") from 20 August 2012 and practised as a solicitor at the Firm from her admission to the Roll of Solicitors on 3 September 2018 until she left the Firm on 16 February 2022. The Respondent does not have a current practising certificate and is not employed by a firm of solicitors.
7. This matter concerns misleading statements made by the Respondent in a witness statement filed with the Court. This matter also concerns the Respondent's subsequent failure to notify either her client/their insurer or her superiors within the Firm of the Court's refusal of an application for relief from sanction following non-compliance with orders. A consequence of the non-compliance was an automatic strike out of the client's insurer's defence and counterclaim.
8. The conduct complained of in this matter came to the attention of the SRA when the Director of Compliance/COLP of Plexus Legal LLP submitted a self-report, dated 21 January 2022, to the SRA on behalf of the Firm. The Firm raised concerns in relation to the Respondent's competency and openness.
9. The details of the SRA's investigation and other relevant facts are set out in the Statement of Agreed Facts and Outcome annexed to this Judgment.

Application for the matter to be resolved by way of Agreed Outcome

10. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.
11. The Tribunal noted that the first version of the Statement of Agreed Facts and Outcome, dated and signed on 17 June 2024, had not been approved by the previous Tribunal because no explanation had at that time been provided for the Applicant's withdrawal of the allegation of dishonesty (Principle 4). However, this Tribunal was satisfied that the Applicant had now provided sufficient reasons to explain its request to withdraw the allegation of dishonesty in the Statement of Agreed Facts and Outcome, dated and signed on 8 July 2024.

Findings of Fact and Law

12. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's 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.
13. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made. The Tribunal was also satisfied on the balance of probabilities that the Applicant had properly withdrawn the allegation of dishonesty (Principle 4). The reasons for the Applicant's withdrawal of the allegation of dishonesty has been explained on the Statement of Agreed Facts and Outcome annexed to this Judgment. The Tribunal was satisfied that the Respondent's employer had carried out a thorough investigation into the conduct of the Respondent, which had concluded that the Respondent had not been dishonest.
14. The Tribunal considered the Guidance Note on Sanction (10th Edition/ June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, the Tribunal's role was to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances. In determining the seriousness of the misconduct, the Tribunal was to consider the Respondent's culpability and harm identified together with the aggravating and mitigating factors that existed.
15. The Tribunal found that the Respondent's misconduct was serious, and it had been aggravated by the fact that she had been reckless and there was a risk that the court would be misled by her witness statement. The court must be able to rely on the statement of truth in a witness statement. The Respondent had also misled the Firm's client by not telling them about the strike out of the client's defence. The Tribunal further found that harm was caused to the reputation of the profession by virtue of the admitted misconduct.
16. As mitigating factors, the Tribunal considered that the Respondent was relatively inexperienced as a solicitor and that confusion had, to some extent, been caused by administrative errors that the Respondent was not responsible for and this had played some role in her conduct. The Respondent had also shown a genuine insight by admitting her misconduct and expressed deep regret for her misconduct.
17. The Tribunal determined that, given the serious nature of the Respondent's misconduct, there is a need to protect both the public and the reputation of the legal professional from future harm from the Respondent by removing her ability to practise for a fixed period but neither the protection of the public nor the protection of the reputation of the legal profession justifies striking the Respondent off the Roll of Solicitors. The Tribunal was satisfied that the agreed suspension of 12 months was required to maintain the public confidence in the profession and to send a deterrent message to solicitors who found themselves in a similar predicament.

18. Accordingly, the Tribunal concluded that the sanction proposed by the SRA and the Respondent appropriately reflected the seriousness of the misconduct and was required in the public interest. The Tribunal therefore GRANTED the application for an Agreed Outcome.

Costs

19. The parties agreed costs in the sum of £2,469.17. The Tribunal found the agreed amount to be proportionate and reasonable. Accordingly, the Tribunal ordered Ms Dyson to pay costs in the agreed sum.

Statement of Full Order

20. The Tribunal ORDERED that the Respondent, SAMANTHA JAYNE DYSON solicitor, be suspended from practice as solicitor for the period of 12 months to commence on the 11th day of July 2024 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,469.17.

Dated this 5th day of September 2024
On behalf of the Tribunal

T Cullen

T. Cullen
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
5 SEPTEMBER 2024

IN THE MATTER OF THE SOLICITORS ACT 1974
And
IN THE MATTER OF SAMANTHA JAYNE DYSON
BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

And

SAMANTHA JAYNE DYSON

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. I, Shaun O'Malley am a Solicitor employed as a Senior Legal Adviser in the Legal & Enforcement Directorate at the Solicitors Regulation Authority, the address of which is the Cube, 199 Wharfside Street, Birmingham B1 1RN. I make this application on behalf of the Solicitors Regulation Authority (SRA).

ALLEGATIONS

2. The allegations against the Respondent were that whilst practising as a solicitor at Plexus Legal LLP, she:
 - 2.1 On or around 4 November 2021, she caused or allowed a witness statement containing her signed statement of truth to be filed with the court stating that: (i) there was no history of failures on her defendant client's part and/or (ii) the defendant had fully complied with all other court orders and directions once received, when she knew or ought to have known that such an assertion was misleading and thereby breached any or all of Principles 2, 4 and 5 of the SRA Principles ("the Principles") and Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors").

2.2 Following a hearing on 8 November 2021, she failed to tell her client (Council B) or their insurer (Company A) that its defence and counterclaim had been struck out for failing to comply with the Unless Order dated 7 January 2021 and thereby breached any or all of Principles 2, 4 and 5 of the Principles and Paragraphs 1.4, 3.2 and 7.11 of the Code for Solicitors.

2.3 Following a hearing on 8 November 2021, she failed to tell the Firm that her client's defence and counterclaim had been struck out for failing to comply with the Unless Order dated 7 January 2021 and thereby breached any or all of Principles 4 and 5 of the Principles and Paragraph 1.4 of the Code for Solicitors.

3. Recklessness is alleged as an alternative to a breach of Principle 4 (act with honesty) in respect of allegation 2.1 above. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation.

ADMISSIONS & SANCTION

4. The Respondent admits the following allegations:

4.1. On or around 4 November 2021, she caused or allowed a witness statement containing her signed statement of truth to be filed with the court stating that: (i) there was no history of failures on her defendant client's part and/or (ii) the defendant had fully complied with all other court orders and directions once received, when she ought to have known that such an assertion was misleading and thereby breached any or all of Principles 2 and 5 of the SRA Principles ("the Principles").

4.2. Following a hearing on 8 November 2021, she failed to tell her client (Council B) that its defence and counterclaim had been struck out for failing to comply with the Unless Order dated 7 January 2021 and thereby breached any or all of Principles 2 and 5 of the Principles and Paragraph 7.11 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors").

4.3. Following a hearing on 8 November 2021, she failed to tell the Firm that her client's defence and counterclaim had been struck out for failing to

comply with the Unless Order dated 7 January 2021 and thereby breached any or all of Principles 5 of the Principles and Paragraph 1.4 of the Code for Solicitors.

5. The Respondent also admits that she was reckless in respect of allegation 4.1 above. The Respondent accepts that she should be suspended from the roll of solicitors for a fixed term of 12 months.
6. The Applicant accepts the Respondent's admissions following a review of the matter and receipt of further information on her circumstances and her Answer to the Applicant's statement sent in support of their application to the Tribunal. The Respondent admits that her statement filed with the court was incorrect and misleading and that she ought to have taken steps to inform her client and firm of the 8 November hearing outcome immediately but describes intervening illness due to Covid and denies that she intended to mislead or was dishonest. The Respondent describes that she made a careless mistake in relation to the statement. The Respondent expresses deep regret.
7. On reviewing the matter with specific reference to the earlier allegation of breach of Principle 4 (honesty) of the Principles and the Respondent's knowledge at the material time, the Applicant has noted, amongst other factors, that:
 - the conduct followed an error during the file inception (for which the Respondent was not responsible) resulting in the court not sending the primary unless order to the firm. Further, the later communications and orders received from the courts would, on balance, have caused the Respondent to reasonably conclude, when drafting her statement to the court, both that the proceedings were continuing and the court did not consider that there had been an earlier failure to comply with court orders on her client's part.
 - It is also noted that, when the other side in the proceedings specifically flagged concerns with the veracity of the Respondent's statement to the Judge in the matter, the Judge criticised the Respondent's handling of the case generally but not the contents of her statement.
 - On considering the matter in the round, the Applicant accepts the Respondent's account of her knowledge at the material time and seeks to withdraw the allegations of breaches of Principle 4. As part of its detailed analysis leading to this decision, the Applicant's considerations have included both whether, on the balance of

probabilities, the evidence proves that the Respondent failed to act with honesty and proportionality in light of the extent of the Respondent's admissions.

BACKGROUND

8. The Respondent was admitted as a solicitor on 3 September 2018 and is 34 years old. At all material times she worked in the litigation department, specifically the "*Public Sector team*", at Plexus Legal LLP ('the Firm') from 20 August 2012 and practised as a solicitor at the Firm from her admission to the roll on 3 September 2018 until she left the Firm on 16 February 2022.
9. The Respondent does not have a current practising certificate and is not employed by a firm of solicitors.

Background

Facts and matters relied upon in support of allegations

10. This matter concerns misleading statements made by the Respondent in a witness statement filed with the Court. This matter also concerns the Respondent's subsequent failure to notify either her client/their insurer or her superiors within the Firm of the Court's refusal of an application for relief from sanction following non-compliance with orders. A consequence of the non-compliance was an automatic strike out of the client's insurer's defence and counterclaim.
11. The conduct complained of in this matter came to the attention of the SRA when the Director of Compliance/COLP of the Firm submitted a self-report, dated 21 January 2022, to the SRA on behalf of the Firm. The Firm raised concerns in relation to the Respondent's competency and openness.

The relevant client matter

12. In the specific relevant client matter, the Respondent acted for Company A, an insurance company (the defendant in the civil claim), defending a personal injury claim brought against its insured (Council B) by a Ms. C. The claim arose from a road traffic accident which occurred on 24 June 2019. The Respondent's instructions to represent Company A came from Company D. Company D were claims adjusters acting for Company A. The Firm described their client as Council B, albeit Company A (as the insurer) were the defendants in the proceedings, and a client care letter was issued to Council B.

13. Due to a system administrative error within the Firm on the inception of the file, the matter file incorrectly referred to Liverpool County Court. This error had been caused by another department within the Firm and was not the fault of the Respondent. The claim form originally showed Liverpool County Court as the issuing court but was stamped over by the County Court Money Claims Centre (CCMCC), which issued the claim on 23 December 2019.
14. On 22 January 2020, the Respondent acknowledged service of the claim by way of an email sent to Liverpool County Court instead of the CCMCC. The Respondent indicated her client's intention to defend the claim. On 23 January 2020, the Respondent told Council B that she had received instructions to act for them and issued a client care letter.
15. Following an agreed extension, the Respondent sent Company A's defence to Liverpool County Court on 17 February 2020. Following updates to Council B on 31 March 2020, and also Company D on 27 April 2020, 7 September 2020 and 9 November 2020, the Respondent wrote to the CCMCC on 10 November 2020 stating:

*"We have been advised by the Claimant's Solicitor that the Court has not received a copy of the Defence. Please find attached the Defence, together with correspondence filing the same at Court in which the claim was issued.

Should an Officer of the Court have any queries he should not hesitate to contact the writer."*

The Unless Order

16. On 7 January 2021, the following Order was made within the proceedings by a Court Officer of the CCMCC (the Unless Order):

*"The Defendant must file the Directions Questionnaire on or before **21 January 2021**...If you do not comply with this order, your defence/counterclaim will automatically be struck out without further order of the court and the Claimant be at liberty to enter judgment."*
17. As a consequence of the administrative error within the Firm when incepting the file, the CCMCC sent the Unless Order directly to Company A rather than to the Firm/the Respondent. The Unless Order was first brought to the Respondent's attention on 17 February 2021 when a claim adjuster at Company D dealing with the matter, emailed her a copy explaining:

"It would seem that the Judgment was sent to [Company A] in January but with no reference details so they have been trying to find this out and then sent to us.

Please can you deal with the Judgement?"

18. On the same date, the Respondent emailed CCMCC enclosing a completed Directions Questionnaire. She explained that, although the Firm was on record for the defendant and had filed a defence, including a further copy when informed by the claimant that it had been received, it had not received any correspondence from the court. The Respondent also sought confirmation that the Court had not struck out the defence. The Directions Questionnaire also indicated that a future trial at Huddersfield County Court would be convenient for the parties.

Transfer from CCMCC to Huddersfield County Court

19. Following chasers sent by the Respondent on 2 and 16 March 2021, the CCMCC responded on 18 March 2021 requesting a Notice of Acting (which the Respondent provided the same day) and confirming that the case had been transferred to Huddersfield County Court. On 29 March 2021, Huddersfield County Court confirmed to the Respondent by email that the file had been referred to the District Judge that day and a response would be provided.
20. On 28 April 2021, an email on the Respondent's behalf was sent to the Huddersfield County Court asking, *"I should be very grateful if you would confirm that the Defence has not been struck out and that the Directions Questionnaire is being processed."* The Respondent further chased the Court on 8 June 2021. On 9 June 2021, Huddersfield County Court emailed the Respondent and informed her:
- "Directions Questionnaire was filed 19 March 2021 (sic). I can see no record of the defence having been struck out."*
21. The Respondent acknowledged their response, saying she looked forward to receiving directions. Following a chaser email from the Respondent on 13 July 2021, the Court responded on 14 July 2021 that the file had been referred to the District Judge for directions. The Firm chased further on 30 July 2021.
22. On 12 August 2021, Huddersfield County Court responded providing orders and a Notice of Allocation which, in effect, confirmed that *"a case and costs management conference"* was listed for 8 November 2021. The Respondent updated Company D and Council B on 23 August 2021, informing of the 8 November 2021 hearing and that she had reserved Counsel to attend and would provide an update

following the hearing if nothing arose before. On 1 November 2021, the Respondent filed Precedent R (recording discussions on the parties' respective budgets prior to the case and costs management conference).

Application for relief from sanctions

23. Under Rule 3.13(1)(b) of the Civil Procedure Rules¹, the Respondent had to file a costs budget in the form of a standard precedent ('Form H') with the court "not later than 21 days before the first case management conference" (i.e. by 18 October 2021) but, as asserted by the Respondent in her witness statement, it was filed and served eight clear days (29 October 2021) prior to the case and costs management hearing. To address that failure, on 4 November 2021, the Respondent applied for relief from sanctions in relation to the late filing/service of the defendant's Precedent H.
24. In her supporting witness statement dated 4 November 2021 ("the 4 November 2021 statement"), the Respondent addressed the three-stage test for relief from any sanction as set out by the Court of Appeal in *Denton v White [2014] EWCA Civ. 906* and its application to the circumstances of the case. An element of the Denton test requires the Court to consider all the circumstances of the case. In relation to this element, the Respondent identified that the court would take into account past breaches of the rules, practice directions and court orders as relevant as the Respondent stated the following at paragraph 13 of the 4 November 2021 statement as her primary submission on the "Relevant circumstances" element of the Denton test:
- "There is no history of other failures on the Defendant's part and the Defendant has fully complied with all other Court Orders and directions once received."*
25. On 5 November 2021, the claimant's solicitor, David Croot of Bond Turner, emailed the Respondent and the court, serving/filing a witness statement dated 4 November 2021, on behalf of the claimant, in response to the Respondent's application for Relief from Sanctions. Mr Croot asserted that the Respondent had not filed a Precedent H until 29 October 2021 and stated as follows:
- "31. Whilst I hesitate to state the same, I believe that Ms Dyson has sought to underplay the significance of this breach and her role in it, and it is clear to me that, given the previous conduct, this breach is not an isolated event; contrary to the assertions in her statement in support of the application..."*

¹ Rule 3.13 of the Civil Procedure Rules is set out at Appendix 1.

36. Finally, I would also highlight to the Court paragraph 13 of Ms Dyson's statement in which she clearly states that the Defendant "has fully complied with all other Court Order and directions once received". As the Court will note from above, this is clearly incorrect and Ms Dyson could not have had a true and honest belief when making this statement."

26. Counsel, Abigail Telford, instructed by the Respondent for the case conference, emailed the Respondent on 5 November 2021 to enquire whether she had filed a Directions Questionnaire. The Respondent responded:

"Yes I did. There was some confusion and I was not receiving Court Orders even though I had filed a Defence as you will see from the email."

Costs and Case Management Hearing – 8 November 2021

27. At the hearing on 8 November 2021, the Deputy District Judge noted that the defendant's defence had been automatically struck out on 21 January 2021, by virtue of the order of 7 January 2021, because of the defendant's Directions Questionnaire not being filed until 17 February 2021. The Judge refused to set aside the order striking out the defence and counterclaim and refused to grant relief in respect of the costs budget. The Judge made a costs order against the defendant in the sum of £1,200.00 inclusive of VAT. Ms Telford recorded in her attendance note of the hearing sent to the Respondent on 8 November 2021, that the Judge commented:

"In terms of the application on the part of the Defendant for failing to file and serve a costs budget [Precedent H] in time. Again, Denton applies. No solicitor can say they are under a misapprehension as to how seriously the court takes those principles...Was it serious and significant; yes. Mitchell and Denton made clear how seriously the court takes these issues. No solicitor can be under any illusions about this..."

Allegation 4.1 – Filing a witness statement containing a misleading assertion with the court.

28. It is the wording of paragraph 13 of the Respondent's witness statement dated 4 November 2021 which the Applicant asserts was misleading and is the focus of Allegation 4.1.

29. The Respondent explained her actions in her responses as follows:

- 29.1. That the only occasion on which she *"personally failed to comply with a Court Order"* was her failure to file the Precedent H 21 days prior to the costs and case management conference on 8 November 2021.
- 29.2. That the failure for the delay of the Unless Order not coming to her attention was as an error of the court.
- 29.3. That the email from Huddersfield County Court dated 9 June 2021, informing that the defence had not been struck out, *"was clear and unambiguous, and in [her] view, [she] reasonably continued with the case on this basis"*.
- 29.4. That she did not recall the exact wording but it was a mistake on her part, and not a deliberate attempt to mislead the Court and: *"At the time of signing the statement of truth, I thought that the Defendant was [Council B], who on all accounts are self-insured for matters such as this, not QBE, who the Court Order was sent to."*
- 29.5. *"Lastly, in terms of the statement of truth signed by myself, the sentence in question states that the Defendant complied with Court Orders once received....By 'received', I meant considered...Whilst I make no excuse for the fact that a Court Order was not complied with and indeed I do not agree with the same, I merely seek to explain the content of my witness statement that supplemented the Court Application for relief from sanctions."*
30. As of the 17 February 2021, the Respondent had been working at the Firm for almost eight and a half years and had just under two and a half years post qualified experience (PQE) as a solicitor. The Respondent has admitted that she was aware of the importance of complying with Court Orders and applying for relief promptly when this has not been achieved and that she *"had vast experience in litigated files"* (albeit mainly in relation to fast-track public liability cases, not multi-track credit hire cases).
31. The Unless Order stated that:
- 31.1. The defendant had failed to file the Directions Questionnaire with the court by the date specified in Notice N149.²

² The Unless Order stated that a Notice N149 had been sent which specified a date by which the defendant was to return a Directions Questionnaire and confirmed that the defendant had failed to file the Directions Questionnaire by the date specified in the Notice N149. The Form N149 would have been issued by the court under Rule 26.3(1) of the Civil Procedure Rules. The copy issued to the Claimant's solicitors states that the Directions Questionnaire was to be filed by 15 December 2020 originally.

31.2. The defendant was ordered to "file the Directions Questionnaire on or before 21 January 2021", and

31.3. "If you do not comply with this order, your defence/counterclaim will automatically be struck out without further order of the court and the Claimant be at liberty to enter judgment."

32. The Respondent was aware of the significance of the Unless Order and that the non-compliance related specifically to the earlier failure to file a Directions Questionnaire. This was reflected by her email to the court on 17 February 2021 seeking to address that specific issue in which she flagged the Firm's involvement, attached a Directions Questionnaire, proposed directions and requested confirmation that the defence had not been struck out. Indeed, Company D had earlier asked the Respondent specifically "to deal with the Judgement" thus it was clear that non-compliance had resulted in a judgement which the Respondent was instructed to address. The Respondent was aware that:

32.1. The CCMCC had previously issued a Notice N149 specifying a date for the defendant to return their Directions Questionnaire (as it was stated on the Unless Order) and the defendant would have failed to file the Directions Questionnaire by the date specified.

32.2. The CCMC had issued an Unless Order dated 7 January 2021 requiring the defendant to file their Directions Questionnaire with the Court on or before 21 January 2021.

32.3. The Unless Order had stated that the consequence of non-compliance would be that the defence/counterclaim would "automatically be struck out without further order of the court".

32.4. The defendant had not filed their Directions Questionnaire with the Court by 21 January 2021.

32.5. As a consequence of the failure by the defendant to file a Directions Questionnaire, the defendant had failed to comply with the Unless Order dated 7 January 2021.

33. In tandem with the Respondent's knowledge of the Unless Order and her communications with Huddersfield County Court, her assertion at paragraph 13 of the 4 November 2021 statement that there "is no history of other failures on the Defendant's part" was clearly not the true position. The Respondent ought to have known, when she signed the statement of truth on the 4 November 2021 statement and filed the statement, that the defendant had not complied with the Unless Order. This order had followed an earlier Notice N149 issued and, therefore, there had

been at least one earlier failure on the defendant's part to comply with court orders issued in the case.

34. The Respondent's assertion at paragraph 13 of the 4 November 2021 statement that "*the Defendant has fully complied with all other Court Orders and directions once received*" was also misleading. The Respondent ought to have known, on 4 November 2021, that the defendant had not fully complied with all Court Orders and directions once received as a result of the following:

34.1. The Respondent was aware of the significance of the Unless Order and the resulting strike-out which followed non-compliance as set out at paragraph 32 above.

34.2. The email dated 17 February 2021 from Company D to the Respondent described that; "*It would seem that the Judgement was sent to [Company A] in January but with no reference details so they have been trying to find this out and then sent to us*".

34.3. The Respondent's own email of 17 February 2021 to the CCMCC raised a specific enquiry of the Court to confirm that the "*Defence had not been struck out*", demonstrated that she was aware that such a strike out was the consequence of the Unless Order. The explanation in the first paragraph of the Respondent's email assumed that Court correspondence had been sent to Company A, with the resulting failure to respond. Even such an assumption by the Respondent did not change the fact that she would have known that there had been non-compliance with the Notice N149 and the subsequent Unless Order.

Principle 2 SRA Principles - You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons

35. The Respondent made misleading assertions in a formal witness statement containing a statement of truth filed with the Court to accompany an application to the Court. The public and the profession expect that solicitors will not mislead or attempt to mislead the Court. Any failure to do so could damage public trust and confidence in the profession. The trust that the public places in solicitors and in the provision of legal services provided by authorised persons depends on the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.

36. Public trust and confidence in the profession requires that a solicitor take particular care to ensure that the information which they are giving to the Courts, their clients and others is accurate and complete. The Courts are reliant upon solicitors, as officers of the Court, to ensure that they are given full and accurate information. In **Brett v SRA [2014] EWHC 2974 (Admin)** at paragraph 110 Lord Thomas of Cwmgiedd, CJ stated:

“Every lawyer must be alive to the fact that circumstances can arise during the course of any lawyer’s professional practice when matters come to his knowledge (or are obvious to him) which have the effect of making his duty to the court his paramount duty and to act in the interests of justice...the reputation of the system of the administration of justice in England and Wales and the standing of the profession depends particularly on the discharge of duties owed to the court.”

37. The conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by a solicitor who has made assertions in a formal witness statement containing a statement of truth which she ought to have known were misleading and then filing the same with the Court and serving on an opposing party to litigation. The Respondent therefore breached Principle 2 of the SRA Principles.

Principle 5 SRA Principles – You act with integrity

38. In **Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366**, it was said that integrity (i.e. moral soundness, rectitude and steady adherence to an ethical code) connotes adherence to the ethical standards of one’s own profession. It was stated from paragraph 97 of the judgment in Wingate that integrity:

“is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members...the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards...Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty...a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

39. The significance of misleading the court was referred to again in *Brett v SRA [2014] EWHC 2974 (Admin)* at paragraph 111 where Lord Thomas of Cwmgiedd, CJ stated:

"It is not simply a breach of a rule of a game, but a fundamental affront to a rules designed to safeguard the fairness and justice of proceedings...That is in part because our system for the administration of justice relies so heavily upon the integrity of the profession and the full discharge of the profession's duties and in part because the privilege of conducting litigation or appearing in court is granted on terms that the rules are observed not merely in their letter but in their spirit."

40. The Respondent had caused or allowed the 4 November 2021 statement to be filed containing assertions which she ought to have known was misleading. By causing or allowing her witness statement to be filed with such misleading assertions, the Respondent also failed to act with integrity in breach of Principle 5 of the SRA Principles. A solicitor acting with integrity would not have permitted a witness statement containing assertions which she ought to have known were misleading to be filed with the court and would have been scrupulous about the accuracy of such a statement.

Recklessness (in relation to allegation 4.1)

41. The Applicant alleges that the Respondent acted recklessly (which she admits) and relies upon the test for recklessness which was set out in the case of *Brett v SRA [2014] EWHC 1974*. At paragraph 78 in that case, Wilkie J said that for the purposes of the Brett appeal, he adopted the working definition of recklessness from the case of *R v G [2004] 1 AC 1034*. He said that the word recklessly is satisfied: with respect to (i) a circumstance when {the solicitor} is aware of a risk that it exists or will exist and (ii) a result when {the solicitor} is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk.

42. The facts and matters set out in paragraphs 28 to 34 above demonstrate that the Respondent was reckless as to whether the information which she provided in her witness statement filed with the Court fully and accurately reflected the events concerning compliance by the defendant with previous court orders and directions.

The potential consequences of not fully and accurately reflecting the previous non-compliance with court orders and directions is that the court would have presumed that there had been full compliance by the defendant with all previous orders/directions which was an issue relevant to the court's discretion on whether the defendant should be relieved from sanction as a consequence of the most recent non-compliance. Further, there was a risk that the Court would be misled into believing that there had been full compliance on the defendant's part when that was not the case. It was unreasonable for the Respondent to run the risk of the court not being fully appraised of the true position or misled in relation to the defendant's previous compliance.

Allegation 4.2 – Failing to tell client of strike out following the hearing on 8 November 2021

43. The SRA relies upon paragraphs 10 to 27 above. Additionally, the SRA relies upon the following facts and matters.

44. Instructed counsel had emailed the Respondent on 8 November 2021 following the case management hearing confirming that *"As you will see, the hearing did not go well because it emerged that the court had automatically struck out the Defence and Counterclaim"*. Counsel also attached an attendance note detailing the Judge's criticisms of the Firm. Following the hearing on 8 November 2021, the Respondent emailed the Firm's Regulatory & Compliance Team on 18 November 2021 as follows:

*"Good Morning,
Just to put you on notice that a CI Sol is going to raise a complaint about me as he is of the opinion that I signed a statement of truth knowing that facts within the statement were in correct. This is not the case. I am out for a few days but will submit a report when I am back.
Many thanks."*

45. This email had followed an email from Mr Croot of Bond Turner to the Respondent in which he was seeking details of her complaints partner.

46. While instructed counsel indicated on 8 November 2021 that she was awaiting a copy of the order, the Respondent was on notice that the client's defence and counterclaim had been struck out and an adverse costs order had been made against her client. The Respondent would have been aware of the serious consequences of the strike out for her client/their insurer but, despite previously telling her client on 23 August 2021 that the case management conference had been listed on 8 November 2021 and that she would "provide an update following the hearing if nothing arises before", she failed to inform her client or their insurer (the defendant in the proceedings).
47. The Respondent was then away from the office from around 18 November 2021 initially for a few days leave and then due to ill health when the order was received by the Firm. The Respondent's explanation was that she:
- "...was not aware of the full outcome in relation to costs as I understand that there was an issue in relation to the same. I was therefore waiting to receive the Court Order before advising the client and my supervisor of what I considered to be the best way forward in terms of appeals and the cost of such...the workload remained heavy. Therefore, I wanted to provide a solution as opposed to just a problem. I conceded that this was not the correct view to take, and in hindsight I should have informed a senior member of staff immediately. I can only apologise for this, however again, I was not attempting to conceal anything.*
- If I recall correctly, the Court Order was received whilst I was on sickness with Covid 19 which made me very poorly. However, despite being poorly, I was still being contacted by work and expected to deal with certain matters, this made me even more poorly and resulted in my GP signing me off work with stress and anxiety. I therefore did not get the opportunity to prepare an advice to the client and discuss the same with a colleague after the Court Order was received."*
48. The Respondent's client's insurer had been made subject to an adverse costs order in the sum of £1,200.00 inclusive of VAT by the Judge on 8 November 2021. The Respondent should have informed Council B (as her client) promptly of the result of the 8 November 2021, including the fact that the Judge had made an adverse costs order against Company A. The Firm has since reported that the overall outcome was that *"...our client is unable to defend a substantial claim (Circa*

£80,000 – 90,000), unable to pursue a counterclaim (circa £2200) and is disadvantaged as to costs. We confirm that we have made a full report to our client and Professional Negligence insurers, who have accepted the claim. We can confirm that our client will not suffer any financial detriment.”.

Principle 2 SRA Principles - You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons

49. The Respondent failed to inform her client of the fact that the court had struck out their defence and counterclaim and that an adverse costs order had been made against the insurer. The Respondent would have been under no doubt from the detailed attendance note provided by her instructed counsel of the Judge's criticisms of her and the Firm's dealings with the case. The attendance note recorded that the Judge had commented; *“I conclude that the Defendant's solicitor made a mess of this case and had not applied diligence to try to get this case under control...This Defendant has had every opportunity to get its case in order and it seems to me that they have simply flailed around for some 9-10 months. I cannot see any justification for setting aside the judgment.”*

50. The conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by a solicitor who fails to inform their client of significant events relating to their litigation and the impact of an adverse costs order made. The Respondent therefore breached Principle 2 of the SRA Principles.

Principle 5 SRA Principles – You act with integrity

51. The relevant test from *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366* is set out at paragraph 38 above.

52. The Respondent had failed to inform her client of the outcome of the 8 November 2021 and has failed to act with integrity in breach of Principle 5 of the SRA Principles. A solicitor acting with integrity would have informed their client promptly

after the 8 November 2021 flagging the outcome, the impact on their case and the implications of the adverse cost order made.

Paragraph 7.11 of the Code for Solicitors - You are honest and open with clients if things go wrong, and if a client suffers loss or harm as a result you put matters right (if possible) and explain fully and promptly what has happened and the likely impact. If requested to do so by the SRA you investigate whether anyone may have a claim against you, provide the SRA with a report on the outcome of your investigation, and notify relevant persons that they may have such a claim, accordingly.

53. Having been made aware of the orders made on 8 November 2021 following her unsuccessful application for relief (which her client/their insurer was unaware of), the Respondent should have informed Council B of the outcome of the hearing explaining fully and promptly what had happened and the likely impact. The Respondent asserted that she was waiting for the order of 8 November 2021 to see if this should be appealed and to come up with a solution. The arrival of the written order was not necessary in light of the detailed attendance note provided by instructed counsel to the Respondent by email on 8 November 2021. The Respondent breached paragraph 7.1 of the Code for Solicitors by not explaining to Council B fully and promptly what had happened and the likely impact.

Allegation 4.3 – Failing to tell the Firm following the 8 November 2021 hearing

54. Despite the events on 8 November 2021 and receipt of the detailed attendance note from her instructed counsel on the same date, the Respondent failed to report the outcome to the Firm via her supervisor, her Team Leader or her Operating Partner. The Respondent had also failed to file the attendance note prepared by instructed counsel of the hearing on 8 November 2021 on the Firm's case management system, Vectus. To find out the outcome of the 8 November 2021 hearing in the Respondent's absence, the Firm had contacted instructed counsel. The Respondent had also failed to mention the events of 8 November 2021 in her email to the Firm's Regulatory and Compliance Team on 18 November 2021 and only mentioned the anticipated complaint from the Claimant's solicitors concerning her witness statement.

55. Having worked in the Firm for over nine years and with just over three years post qualified experience (PQE) as a solicitor by November 2021, the Respondent would have understood the serious consequences of the orders made on 8 November 2021.

56. The Respondent had attained a 90% pass rate on an SRA e-learning module 'SRA Accounts Rule Breaches' on 11 October 2021, which included the procedure for notifying a potential professional indemnity claim. The Firm's policy on 'SRA Breaches – Errors and Omissions' (the SRA breaches policy) included the following incidents which the policy stated "**must always be reported to its Regulatory & Compliance Team**":

- *"Entry of a judgment in default of filing a defence after the Firm has been instructed;*
- *Failure to comply with a court order, which results in the need to make an application for relief from sanctions. **NB the need to make an application for relief from sanctions must be reported to the Regulatory & Compliance team;***
- *Any sanction arising including a debarring order being made;*
- *Any adverse costs order against the client or any notice to show cause as to why costs should not be paid by the Firm personally (or any other costs order under CPR44.11.)"*

57. The Respondent confirmed during the Firm's disciplinary process that she had completed training on the SRA breaches policy but could not say that she knew the policy "*inside out*". She understood the importance of complying with the policy and acknowledged that she had not adhered to the internal reporting procedure. The Respondent later explained to the Firm that she did not know it was necessary to report the "Precedent H" issue to her supervisor under the SRA breaches policy. She explained that she mirrored the actions her supervisor had taken when the same issue arose on a file of his previously and she did not report the outcome of the 8 November 2021 hearing under the policy as "*...she was trying to deal with everything, and the intention was to deal with it once the court order came in and she wasn't thinking clearly.*" When asked why she had not mentioned the striking out to the Firm's Risk & Compliance team when warning them about the potential

complaint from Bond Turner, her response was records as "she didn't realise there was anything breached so didn't think it was her fault".

Principle 5 SRA Principles – You act with integrity

58. The relevant test from *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366* is set out at paragraph 38 above.

59. The Respondent had failed to inform her Firm of the outcome of the 8 November 2021 hearing and failed to act with integrity in breach of Principle 5 of the SRA Principles. While the Respondent informed the Risk & Compliance team on 18 November of the potential complaint arising from a Claimant's solicitor's "opinion that [she] signed a statement of truth knowing that facts within the statement were incorrect" she chose not to avail herself of the opportunity to inform the Firm's Risk & Compliance team of the outcome of the 8 November 2021 hearing. A solicitor acting with integrity would have informed their Firm promptly following the 8 November 2021 hearing either through their supervisor or the Risk & Compliance team when contacting them.

MITIGATION

60. The following mitigation is put forward by the Respondent but is not endorsed by the SRA:

- She made an incorrect and misleading statement in her witness statement dated 4 November 2021 which was a careless mistake made under pressure.
- She was not the most experienced in multi-track cases.
- She was working in a team with increasing workloads and less staff leading to a heightened sense of stress.
- She was attempting to resolve issues herself with the aim of not troubling others in her team who were also working under heavy workloads and stress.
- She was unwell just after the 8 November hearing with Covid (during which work were still contacting her) and she was then signed off by her GP with stress and anxiety.

- She has apologised for her conduct and was apologetic and contrite during the Firm's internal disciplinary process.
- She accepts that she should have taken action immediately after the 8 November hearing and deeply regrets now not seeking advice and guidance from her firm immediately.
- She subsequently lost a more senior role secured at another solicitors' firm apparently on account of the SRA's investigation.
- A stressful two-year period since the misconduct has had an adverse effect on her health.
- She now has a young child (born during the investigations) and is of low financial means.

PROPOSED SANCTION

61. The proposed outcome is that the Respondent is suspended from the Roll of Solicitors for a fixed term of 12 months and pays the SRA costs in the fixed sum of £2,469.17.

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

62. The Respondent is highly culpable for her actions. This is because:

- She had direct responsibility for the misconduct. Rather than providing a full and transparent account of her client's compliance with previous court orders, she provided a statement to the court which was misleading and she ought to have known was misleading without being scrupulous concerning its accuracy. Thereafter, despite the Court striking out the defence and making an adverse costs order, she failed to inform her client or her firm. Her conduct lacked integrity.
- The potential for the Court to be misled and for her client/firm to be adversely affected by the outcome of the 8 November hearing could be reasonably foreseen (particularly by a solicitor of her experience).
- Her actions in relation to her statement to the court were reckless.
- The motivation for her actions was to avoid her client's defence being struck out and then to attempt to resolve problems arising from the 8 November hearing without informing her client or firm.

- Her actions involved a breach of trust that her client and her firm placed in her.
63. The Respondent's conduct could have potentially caused the Court to be misled when determining an application in proceedings and resulted in both her client and her firm not being informed of an adverse costs order.
64. The Respondent's conduct resulted in the Firm reporting the matter to their client and their Professional negligence insurers who accepted the claim and the Firm has confirmed that the client will not suffer any financial detriment.
65. The Respondent's conduct is aggravated by:
- repeated misconduct in failing to inform her client or her firm.
 - misconduct continuing over a period of time in that she failed to inform her client of the outcome of the 8 November hearing or mention the striking out to the Firm's Risk & Compliance team when warning them about the potential complaint from Bond Turner on 18 November 2021.
 - misconduct where she ought to have reasonably known that her conduct was in material breach of obligations to protect the public and the reputation of the legal profession. The Respondent should have known of the importance of drafting witness statements with scrupulous care to ensure precision and informing clients/her firm of outcomes adverse to their interests.
66. Mitigating features of her conduct are:
- There were contributory third-party factors in the lead-up to the misconduct, namely the file being opened incorrectly by others within the Firm in not identifying the correct court and information received by the Respondent from the court which suggested that her client's defence had not been struck out and the proceedings were ongoing.
 - Partial admissions were made at an early stage and the Respondent cooperated with both the Firm's internal and the SRA investigations.
67. The Respondent's misconduct is so serious that neither a restriction Order, reprimand nor a fine is a sufficient sanction or in all the circumstances appropriate. Protection of the public and public confidence in the provision of legal services requires the Respondent to be suspended from the roll, and thereby from practice, for a fixed period.

68. The parties invite the SDT to impose the sanction proposed as it meets the seriousness of the admitted misconduct and is proportionate to the misconduct in all the circumstances.

Dated this *8th* July 2024

Signed..

ANNABEL JOESTER
Head of Legal
Legal & Enforcement
For and on behalf of the Solicitors Regulation Authority
The Cube
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Signed..

SAMANTHA JAYNE DYSON