SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12579-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

SAMIRA MOHAMMED SETH

Respondent

Before:

Mrs C Evans (Chair)
Mr R Nicholas
Mr A Pygram

Date of Hearing: 15 October 2024

Appearances

Tom Walker, Counsel employed by Blake Morgan LLP of New Kings Court, Chandlers Ford, Eastleigh, SO53 3LG for the Applicant

The Respondent represented herself

JUDGMENT

Allegations

The Allegations against the Respondent, Samira Mohamed Seth, made by the SRA are that, whilst in practice as a Solicitor, sole manager, COLP and COFA at Seth Law Limited ("the Firm"): Between on or around February 2020 and June 2022:

1. By failing to advise clients adequately or at all on their other options in relation to their Mortgage Mis-selling Claim (besides instructing the Firm) the Respondent breached all or any of:

   a) Principle 2 of the SRA Principles 2019 ("the Principles");

   b) Principle 7 of the Principles; and

   c) Paragraph 8.6 of the Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors");

   PROVED

2. By not sending to the insurer, either at all or in a timely manner, adverse counsel opinion(s) on the merits of the cases of both Client A and Client B, the Respondent breached all or any of:

   a) Principle 2 of the Principles;

   b) Principle 5 of the Principles;

   c) Principle 7 of the Principles; and

   d) 1.4 of the Code for Solicitors;

   PROVED

3 By failing to seek prior approval from insurers to issue claims, the Respondent put client/s' After the Event Insurance policies / cover ('ATE Policy') at risk. In doing so, the Respondent breached either or both of:

   a) Principle 2 of the Principles; and

   b) Principle 7 of the Principles.

   PROVED

4 In relation to the Respondent's conduct at Allegations 2 and 3, the Respondent acted recklessly. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving Allegations 2 or 3

   PROVED

Executive Summary

5. The Respondent was a solicitor and the sole manager, Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") of the Firm.

6. Between on or around February 2020 and June 2022 the Respondent had conduct of and supervised junior staff acting for clients on mortgage mis-selling claims ("MMS claims").

7. When advising clients on MMS claims, the Respondent failed to inform clients as to other options in relation to such claims besides instructing the Firm to pursue litigation. Additionally, the Respondent failed to send adverse counsel's opinion to the After-the-Event ("ATE") insurer at all (in respect of Client A's matter) or in a timely manner (in respect of Client B's matter). She also failed to seek prior approval from the ATE insurers to issue claims. This placed the Firm's clients' ATE insurance policies at risk.

8. The Respondent admitted the case against her including Allegations 1 – 3 and also admitted acting recklessly pursuant to Allegation 4.

9. The Tribunal found the allegations proved in their entirety.

Sanction

10. The Tribunal ordered that the Respondent pay a fine of £7,000.00.

11. In addition, the Tribunal imposed a Restriction Order in the following terms: -

12. The Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows: The Respondent may not:

    - practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

    - be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration.

13. The Tribunal further ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00

14. The Tribunal's sanction and its reasoning on sanction can be found [here].

Documents

15. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

    - Rule 12 Statement and Exhibit PD1 dated 19 March 2024

    - Respondent's Answer and Exhibits dated 23 April 2024

- Agreed Statement of Facts dated 14 October 2024
- Respondent's Mitigation statement dated 15 October 2024
- Applicant's Schedule of Costs.

Agreed Factual Background

16. The parties had agreed the following factual background which the Tribunal accepted:

17. The Respondent is a solicitor having been admitted to the Roll of Solicitors on 15 August 2006. The Firm was authorised by the SRA as a recognised body on 1 February 2012. It specialised in Immigration, Personal Injury, Family and Civil Law but was subject to a winding up order on 24 April 2024 before entering into liquidation and being subject to intervention by the SRA, as a closed firm.

18. The Firm commenced acting for clients on MMS Claims in February 2020 via Introduction agents, initially Dolfin Tech Limited up to December 2021 and then subsequently, from 27 January 2022, Claims Hunters Limited.

19. By 31 December 2021, the Firm had accepted instructions on 539 MMS claims. By 18 March 2022, the Firm had issued proceedings on 36 claims and served proceedings on the proposed opponent/mortgage company on 4 claims.

20. **Allegation 1 (failing to advise clients adequately or at all on their other options in relation to MMS claims)**

20.1 MMS claims can be resolved by pursuing litigation, or by other routes which include pursuing either a complaint direct with the mortgage company or broker, requesting that the Financial Ombudsman Service ("FOS") investigate and/or by pursuing a claim for compensation for poor mortgage advice from the Financial Services Compensation Scheme ("FSCS"). Both the FOS and FSCS are free for consumers to use.

20.2 At the outset of the MMS claims the Firm did not detail these other routes to clients as an alternative to litigation, either during initial telephone calls with clients or within Client Care or other documentation.

20.3 The Client Care letter sent to Mr and Mrs Client B dated 14 September 2020 is an example of the client care letters sent to MMS clients. This Client Care Letter confirmed that the Firm was instructed to

> *"pursue your mortgage provider in respect of a potential claim for damages and loss arising from a mortgage which may have been mis-sold to you". It also enclosed information within the Client Care Booklet on the costs of and funding options for litigation, and set out the preliminary work that would be required:*
> *"...*
> *2. Once all relevant information / documentation is in place, your representative will draft an initial advice to you which sets out their views and strategy together with a document known as a Letter of Claim which is to go to the mortgage provider and sets out your claim.*

3. Following your approval of the Letter of Claim, this will be served on the Defendant who will have up to three months to provide their formal response to your claim; once this time frame has expired, we will be in a position to advise you as to your options, in particular, whether it is necessary to issue this claim at Court or if negotiation will be possible.
4. During the three-month period, we will take steps to prepare to issue the claim at Court which will include arranging for your Particulars of Claim and Witness Statement to be drafted. This will place us in a position where if it is necessary to issue the claim at Court we will be able to do so as soon as possible."

20.4 The Client Care letters, or other documentation provided to clients made no reference to other options that may be pursued other than litigation.

20.5 The Respondent stated in her interview with the Applicant's Forensic Investigation Officer ("FIO") on 20 April 2022 "*Well yeah, we tell them briefly that there's a complaint process because it's an Ombudsman, you just have to write a letter and you have to complain*". When asked what the Respondent told clients in terms of the FOS and the FSCS, the Respondent stated: "*We don't give them, we just tell them that there's other avenues, there's other options…We don't detail that…*"

20.6 The Applicant's Forensic Investigation Officer ("FIO") reviewed 21 MMS files as part of the SRA's investigation. The FIO Report of 16 June 2022 ("FIO Report") states:

> *"…client care letters to clients stated that it specialised in financial claims. Neither these letters nor any other documentation issued to clients in respect of these 21 files made any reference to other financial redress routes available to clients other*
> *than using the services of the firm".*

The FIO Report further states:

> *"According to Mrs Seth, the firm verbally informed clients that other options existed other than using the service of the firm…There were no file notes in the client files reviewed…to support Mrs Seth's assertion above."*

20.7 An undated template agreement which states the following was provided by the Respondent during the investigation, but the Respondent stated that it only applied to a minimal number of around 20 clients who had instructed the Firm to pursue complaints via the FOS or FSCS:

> "*As you have been informed that your matter is not in a position to be pursued by way of commencing proceedings, therefore we advise you that your matter will be progressed by way of the Financial Ombudsman Service or the Financial Services Compensation Scheme. Please could you kindly confirm that you are satisfied for your matter to be progressed through these avenues.*"

20.8 However, the Respondent neither provided names of clients nor evidence for the client care letters/engagement letters or other documents provided to any of these 20 clients. Therefore, there was no objective contemporaneous evidence that any MMS clients

were told of alternatives other than litigation, or of the full alternative costs consequences. The Respondent accepted:

- There was no evidence, including no file notes, within any of the 21 MMS client files reviewed by the FIO that indicated that clients were informed of alternative options to litigation.

- No contemporaneous written evidence was provided to the FIO that advice and/or consideration relating to the FOS, FSCS or other financial redress routes open to clients was incorporated into any of the initial Client Care documents/engagement letters reviewed. The complete Client Care letters reviewed by the FIO did not refer to any options other than pursuing litigation through the Firm.

- That MMS clients were neither informed verbally nor in written documents:

  - that other options existed other than pursuing litigation through the Firm.

  - of any detail regarding the FOS or FSCS complaints process.

- That the Respondent failed to ensure that clients were in a position to make informed choices about the services they need and the options available to them, including pursuing the FOS or FSCS options without seeking legal assistance. Such information or advice should be provided.

- The Respondent/Firm's focus on one particular course of action may have affected the MMS clients adversely, with clients given limited information and not put in a position to make informed decisions.

- By her conduct, the Respondent also failed to act in the MMS clients' best interests and reduced public trust and confidence in the profession, breaching Principles 2 and 7 of the Principles and breached Paragraph 8.6 of the Code for solicitors.

21. **Allegation 2 (not sending to the insurer, either at all or in a timely manner, adverse counsel opinion(s) on the merits of the cases of both Client A and Client B)**

21.1 The Firm asked each MMS client to sign up to a Conditional Fee Agreement ("CFA") which indicated that if they lost their claim they would not pay any of the Firm's charges, but they may be required to pay expenses and disbursements unless they had purchased ATE insurance. The Demands and Needs Statement within the Firm's client care pack stated that the Firm advised clients to utilise an ATE insurance policy to protect them against the risks of having to pay the Firm's expenses and disbursements, together with the opponent's costs if they lost all or part of their claim.

21.2 The Firm therefore took out ATE insurance policies for each MMS client with either Bastion Insurance Company Limited or Financial & Legal Insurance Company, via an insurance broker called Amberis (a trading style of Parker Colby Insurance Brokers Ltd, regulated by the Financial Conduct Authority).

21.3 Once an ATE policy had been issued the Respondent was under an obligation to comply with the policy terms and conditions and the Terms of Business Agreement. Any

relevant matters ought to have been reported to the insurer, via the broker, as and when they arose in order that the insurer could review and set out their approval/concerns.

21.4 It was necessary for the Respondent to comply with the Delegated Authority Insurance Facility Agreement ("Delegated Authority Agreement") dated 22 January 2020. This was subject to Amberis' standard ATE operating manual contained at Schedule 2 of the Delegated Authority Agreement. This states various provisions within numbered paragraphs, including:

> 1.3: "*At all times during the duration of a case, the Solicitor agrees to abide by the Agreement, the terms of the Policy and this Manual*."
>
> 3.2: "*The Solicitor* [a term defined in the operating manual as a reference to the Firm, as opposed to an individual solicitor] *is responsible for….risk assessing the case in accordance with the Insurer's criteria and ensuring that the Insurer's requirements as set out in the Policy, the Agreement and the Manual are met*."
>
> 3.3: "*In circumstances where liability is not admitted, the Solicitor must obtain the Insurer's consent prior to incurring insured Disbursements. The Insurer will not indemnify for any Disbursements incurred at any time that the Legal Action does not have the prospects of success required by the Insurer as specified in the Policy…*".
>
> 6.1: "*The Solicitor acknowledges and agrees to abide by all of the operative terms in the Policy and, in particular, all requirements of the Insurer in respect of conduct of the Legal Action*."
>
> 6.4.1: "[The solicitor must:] *comply with the provisions of the policy at all times*."
>
> 6.4.6: "[The solicitor must:] *seek the consent of the insurer via the Agent to continue with the indemnity where information or knowledge is received whereupon the information might adversely affect its decision to insure the legal dispute*."
>
> 8.1: "*Where the Insurer's prior authority is required, a submission for an indemnity review will be made to the Insurer via the Agent which provides full details of the material developments including, but not limited to, any admission/denial of liability…the opinion from counsel (where available)…*".
>
> 11.5: "*The Insurer will consider a claim on the Policy in the light of the terms and conditions contained in the Policy, the Agreement and this Manual*."

21.5 The ATE insurance documentation between a client of the Firm, for example as exemplified between Client B and Amberis, also comprised of:

21.6 An After the Event Insurance Product Information Document ("Product Information Document") which sets out various obligations including but not limited to:

> *"We agree to continue to provide the insurance cover in this policy providing you or your solicitor immediately notify us in writing of the following as soon as they occur: ✓ The discovery of any facts, evidence, development or circumstance, barrister's opinion or expert report which may materially affect whether or not your legal dispute has a good chance of success, and/or alter our or your solicitor's professional opinion on whether your legal dispute has a good chance of success, or otherwise alter the risk, or which may give rise to a claim on policy".*

21.7 Out of 21 MMS files reviewed by the FIO, the Firm only had Counsel's advice on two claims, the file for Mr and Mrs Client A and Mr and Mrs Client B.

Client A's case

21.8 The value of Client A's mis-selling claim was initially assessed by an expert (Mr Walker, of Audit Partners Ltd on 4 February 2021), to be £46,913.76.

21.9 On 1 October 2021 the Firm issued proceedings in relation to Client A's claim against Rooftop Mortgages Limited ("Rooftop"), Intermediary Servicing Limited and Lakehouse Mortgages Limited ("Lakehouse").

21.10 A counsel's opinion dated 1 February 2022 on Client A's case was received by the Respondent from Andrew Clerk, 9 St John Street Chambers. Counsel's opinion indicated that there were serious difficulties with the proposed claim, including that:

- the prospects of success in relation to an allegation of irresponsible lending was insufficient for inclusion in the particulars of claim;

- claim that annual statements were defective caused no loss to Client A;

- Rooftop and Lakehouse were entitled to recover administrative costs and there was no evidence that fees charged were excessive or interest charges exceeded those indicated to Client A in the welcome letter to her; and

- A claim based on excessive charges could not be pursued as it required a district judge ordering extensive disclosure in respect of an unparticularised allegation.

- The opinion requested that Mr Walker indicate that if all other allegations were not pursued, on counsel's advice, whether interest had been overcharged at all, the amount of such interest, and whether he could explain the difference in methodology between his calculation and the mortgagee's calculation.

> *"In all the circumstances, the only cause of action that I consider would have reasonable prospects of success is that in relation to the overcharging of interest and even that cause of action should be pursued only if Mr Walker is able to provide the additional information requested earlier in this advice*."

- Mr Walker set out his revised assessment in an email to the Firm dated 1 February 2022 stating that 'the audit' still showed an interest overcharge of £5,378.30 but he could not explain the difference in methodology between his

calculation and the mortgagee's calculation, even if he received the rate the lender charged on the account during the lifetime of the mortgage.

21.11 The Respondent, or one of her colleagues at the Firm under her supervision, had to provide counsel's opinion to the insurer as soon as possible upon receipt to enable the insurer to determine whether the prospects of success had changed and whether the opinion adversely affected its decision to provide ATE cover.

21.12 The Firm served the proceedings on Client A's case on 2 February 2022, the day after counsel's opinion had been received, and notwithstanding the failure to provide a copy to the insurer.

21.13 On 17 February 2022, following contact from the Applicant, the Firm sought retrospective consent from the insurer to issue proceedings in Client A's case; however, Counsel's adverse opinion was not provided. No evidence was provided to the Applicant's FIO that counsel's adverse opinion was ever sent to Amberis on Client A's case.

21.14 In an e-mail response to the SRA dated 1 November 2023 from Pinsent Masons, the Firm's former representatives, in the context of an admission to the failure to disclose counsel's opinion to the insurer, it was stated "*Upon receipt of their request it is evident that this document hasn't been disclosed".* In the 29 February 2024 representations, Murdochs Solicitors, on behalf of the Respondent stated that the omission of Counsel's adverse opinion from the paperwork provided when requesting retrospective approval*:*

> *"was not deliberate, certainly on the part of* [the Respondent]… [*the Respondent] accepts that she saw these letters, but did not read them carefully, or did not spot the omission, she believes as a result of being too busy and failing to give the letter sufficient attention…."*

<u>Client B's case</u>

21.15 The value of Client B's mis-selling claim was also assessed by Mr Walker of Audit Partners Ltd. In his report, dated 19 May 2021, he initially assessed the value to be £32,732.66.

21.16 The Firm issued proceedings on Client B's case on 5 November 2021.

21.17 Counsel's opinion on Client B's case was received by the Respondent on or around late February 2022. This advice stated that counsel was instructed to advise in respect of the claim issued by the Firm on Mrs Client B's behalf arising from a mortgage advance made on or around 4 October 2007. The claim was issued against NRAM Limited, Landmark Mortgages Limited and Your-Move.co.uk Limited. Counsel's opinion set out various problems and/or errors in the proposed claim and concluded:

> "*In view of the fact that I am unable to identify any part of the claim that has reasonable prospects of success, I should be grateful for my instructing solicitors' further instructions in relation to whether and, if so, on what basis, I should settle the particulars of claim".*

21.18 On 7 March 2022, the Firm sought from Amberis a retrospective request to issue proceedings, but without providing a copy of Counsel's adverse opinion. In an email from Amberis to the Firm dated 17 March 2022, a copy of counsel's advice (if obtained) was requested in respect of various client files for which the Firm had recently sought retrospective approval from the insurer to issue legal proceedings. The list of files included a reference for Client B's matter which demonstrates that counsel's opinion had not been provided to either Amberis or the ATE insurer before. Amberis confirmed, in their email of 7 February 2024, that:

> "*when a solicitor contacts the insurer to seek permission on any specific issue or to generally advise of steps being taken it is common practice for an insurer to request a copy of an advice if one is available to assist in decision making*."

21.19 The Respondent provided the adverse counsel's opinion to Amberis on Client B's case on 5 May 2022. This was six months after the claim was issued on 5 November 2021 and over two months after the adverse opinion was received by the Respondent, on or around late February 2022. This timeframe evidenced that the Respondent did not send adverse counsel's opinion to the ATE insurer, via Amberis, in a timely manner.

21.20 In representations on behalf of the Respondent dated 29 February 2024, Murdochs solicitors admitted to the SRA, that in relation to Client B's claim:

> *"Incorrectly, on 7 March 2022, the Firm requested of Amberis, consent to issue proceedings, and furthermore did not disclose counsel's advice.* [The Respondent] *deeply regrets that she failed to connect the letter to the insurer, seeking consent to issue, with counsel's advice that the claim was without merit and can only speculate that she was too busy that she did not give the matter her proper attention.* [The Respondent] *accepts that, quite clearly, no such consent should have been sought."*

21.21 The Respondent accepted that:

- She was required to properly familiarise herself with the ATE insurance provisions.

- She was required to comply with the terms of the ATE operating manual and the Product Information Document. This required counsel's opinion to be provided immediately to the insurer if it materially affected the prospects of success of the claim.

- She was required to scrutinise and supervise appropriately any documentation or information provided to Amberis by her staff to determine whether any key information was missing. The Respondent's position on the issue of her knowledge of sending Counsel's opinion to insurers is that: "…[The Respondent] *knew that she ought to have sent counsel's opinion to insurers…in that she informed her staff to do so*, [but] *that she was aware* [of this] *post SRA involvement, i.e. when she was seeking retrospective consent from insurers...the SRA [had] made her alive to that."*

- She / a colleague under her supervision at the Firm failed to disclose a copy of counsel's opinion, as received on 1 February 2022 in respect of Client A's case, to the insurer.

- She / a colleague under her supervision at the Firm failed to disclose, in a timely manner, a copy of counsel's opinion, as received on or around February 2022, and later provided to Amberis on 5 May 2022, in respect of Client B's case.

21.22 By failing to send the adverse counsel's opinion to the insurer in respect of Client A's case, the insurer was left unaware and thus could not assess the:

- material adverse impact on Client A's case;

- whether Client A's case had or continued to have good prospects of success;

- whether the Respondent's professional opinion on prospects of success had changed; or

- whether counsel's opinion would affect its decision to insure the claim or lead to ATE cover being withdrawn.

21.23 By failing to send, in a timely manner, the adverse counsel's opinion to the insurer in respect of Client B's case, the insurer was not able to assess in a timely manner:

- the material adverse impact on Client B's case;

- whether Client B's MMS claims had or continued to have good prospects of success;

- whether the Respondent's professional opinion on prospects of success had changed; or

- whether counsel's opinion would affect its decision to insure the claim or lead to ATE cover being withdrawn.

- By not abiding by basic and central terms of the ATE insurance policy and/or appropriately scrutinising or supervising the actions of her colleagues, the Respondent accepts that she failed to act in a manner that would uphold public trust and confidence in the profession. She also failed to act in Client A or Client B's bests interests.

- The Respondent also misled the insurer by denying them counsel's opinion on Client A's case and providing the opinion on Client B's more than two months after receipt, but substantially after the firm sought retrospective permission to issue proceedings without disclosing the adverse counsel's opinion. As stated in the 29 February 2024 representations, by the "*firm's omission, insurers were not informed of information which ought to have been brought to their attention*."

- The Respondent failed to ensure potentially critical information was divulged to the insurer in a timely manner, when she knew that she and/or the firm were in possession of information that the insurer would want to know. The Respondent, in the 29 February 2024 representations, asserted that such matters involved "*carelessness and incompetence…and thus were not deliberate omissions"* but accepted that *"as there was a certain degree of recklessness…she lacked integrity in her dealings"* in relation to the MMS claims. Such conduct was repeated over a substantial period of time.

- By her conduct, the Respondent breached Principles 2, 5 and 7 of the Principles, and Paragraph 1.4 of the Code for solicitors.

22. **Allegation 3 (failing to seek prior approval from insurers to issue claims putting client/s' ATE Policies at risk)**

22.1 Amberis' ATE operating manual required the Respondent to liaise with Amberis as agent/broker, instead of with the insurer direct, to seek prior approval or consent from the insurer for court proceedings:

> *"[The solicitor must:] seek written authority from the Insurer via the Agent to continue indemnifying the Insured prior to the issue of Court proceedings".*
>
> *"[The solicitor must:] seek written authority from the Insurer via the Agent before issuing Court proceedings against more than one opponent"*

The Product Information Document, as issued to Client B, states:

> *"You or your solicitor on your behalf must notify us in writing of the following events in advance of their occurrence and obtain our written consent to: ✓issue legal proceedings in a court;"*

22.2 The Demands and Needs statement contained within the New client care pack provided to Client B stated:

> *"If the Claimant did not have an appropriate insurance policy in place then they would have to pay the adverse costs awarded against them; this figure could easily take up most, if not all, of the awarded damages and if it takes out all the damages, the Claimant could be liable to pay the difference personally."*

22.3 The Respondent was therefore expected to obtain written consent from the insurer prior to the issue of proceedings.

22.4 The FI Report states that:

> "*The firm had not sought prior written consent from the ATE insurer prior to issuing legal proceedings in court on the firm's 36 issued claims*".

22.5 When the FIO requested confirmation of whether the Firm had received written consent prior to issue of proceedings on MMS Claims, the Respondent stated in her email response of 8 April 2021: "Yet to be received".

22.6 Following contact from the SRA, the Respondent / the Firm subsequently sought retrospective consent from the insurers for 27 out of the 36 claims that had been already issued. The FIO Report states

> "*On 23 March 2022, the firm provided in an email to [the FIO], the emails that it had sent to Amberis in respect of 27 of the 36 requests for retrospective written consent. It was noted …that the requests were made between 15 February 2022 and 14 March 2022.*"

22.7 On 17 March 2022 Amberis responded to the Respondent to state:

> "*2….where multiple defendant's (sic) are named it seems more probable than not that the cover provided by the policy will be insufficient to cover the costs against multiple defendants…Please note that an increase in cover will likely be difficult to arrange and insureds' are required to commit sufficient resources to the pursuit of their case, in the event of abandonment due to insufficient resources any claim on the policy would likely be declined.*"

22.8 In relation to both Client A and Client B, proceedings were issued against more than one opponent.

22.9 The FIO reviewed multiple emails to Amberis on a variety of MMS claims seeking such retrospective consent which stated that the MMS

> "*matter was issued protectively in order to protect the Claimant's matter as the 15 year expiry date was afoot. I would be grateful if you could kindly confirm that you are satisfied and content for the Claimant to commence proceedings"*

22.10 For five out of the six issued claims arising from the 21 files reviewed by the FIO, retrospective consent was sought via Amberis between three to five months after the claim was issued before the courts. These included retrospective consent being sought as follows:

- Client A's claim was issued on 1 October 2021. The retrospective email request for consent was sent on 17 February 2022, which was four months later;

- Client Q's claim was issued on 20 October 2021 and Client B's claim was issued on 5 November 2021. The email seeking retrospective approval for the issue of proceedings was sent to Amberis on 7 March 2022, more than four months after proceedings were issued;

- Client K's claim was issued on 22 October 2021 and retrospective consent was sought on 15 February 2022, just under four months later; and

- Client G's claim was issued on 16 December 2021 and retrospective consent was sought on 10 March 2022, just under three months later;

22.11 The transcript of the Respondent's interview with the FIO on 20 April 2022 states:

"..you know we're getting to this junction, and we thought its best just getting it all T's and Cs covered and you've pointed it out as well. We thought yes, let's write to the ATE providers."

"All future cases, we will get the permission from the ATE providers first…If they say yeah, go ahead, we will then issue the claim and then, it would be the ATE that will cover the client."

22.12 Amberis confirmed, in an email to the Respondent on or around 5 May 2022 that *"…Insurers will only ever authorise the issue of legal proceedings where the case has been prepared to the stage whereby it is ready to be litigated and the prospects of a successful outcome are demonstrably better than not achieving a successful outcome…Significant work is required to demonstrate the legal argument and case authority in support of prospects of success being sufficiently strong to enable the insurer to review their decision."*

22.13 In line with the terms of the ATE insurance, the Respondent / the Firm did not have delegated authority to, and therefore could not, issue protective proceedings without first obtaining insurer approval. The failure to secure insurer approval in advance of the issue of proceedings on any of the 36 claims that were issued, including six out of the 21 files reviewed by the FIO, was in contravention of the terms of the ATE operating manual and Product Information Document.

22.14 No evidence was ever provided that the insurer gave retrospective consents.

22.15 Murdochs' solicitors stated in the 29 February 2024 representations to the SRA that the Respondent

"*had relied upon the word of her Business Development Manager… who, in 2019, indicated to her that he had spoken with Martin Doyle at Amberis, in relation to ATE policies in respect of road traffic related actions, and that Amberis had conveyed that the firm had delegated authority to issue proceedings without requiring further consent. [The Business Development Manager] conveyed that information…Ms Seth accepts that she should not have relied on the word of [the Business Development Manager] and should have checked the documents carefully, if necessary, seeking written clarification from Amberis…*".

22.16 The Respondent's 29 February 2024 representations further stated that the

"*firm did not intend or expect that any client would pay any element of its fees or expenses and therefore the litigation was to be conducted entirely at the risk of the firm*", with ATE insurance placed to indemnify clients "*in the event they should be subject to an adverse costs order*".

22.17 However, seeking retrospective approval for the issue of proceedings, as opposed to approval being obtained before proceedings were lodged, regardless of when the 15-year longstop date expired, would have still placed the Respondent's clients' ATE insurance policies at risk of being cancelled.

23. The Respondent accepted:

- She was obliged to have been more aware of and have fully understood the terms and conditions of the ATE insurance. In particular, as she / the Firm did not have delegated authority she was required, in compliance with Amberis' ATE operating manual and Product Information Document, to obtain prior approval from the insurer, via Amberis, before proceedings were lodged.

- She only sought to obtain retrospective approval for the issue of proceedings on 27 matters, after the SRA had made enquiries of her and put her on notice of various issues.

- The failure to seek prior approval before issuing claims across multiple MMS files was a failure to act in a manner that would uphold public trust and confidence in the profession.

- Her actions risked the Respondent's clients' ATE insurance policies being cancelled or becoming null and void, which could have led to the Respondent's clients' being exposed to a costs and liabilities risk for their own expenses and disbursements (including court costs and counsel's fees) and opponents' costs (basic charges, expenses and disbursements).

- In particular, the ATE cover for claims involving multiple defendants would be insufficient to cover all costs and insured clients would have to commit their own resources to pursue the claim if a claim on the policy were declined.

- Overall, the 29 February 2024 representations state that "Upon reflection, [the Respondent] accepts that…her failures to comply with insurance terms put clients' policies at risk" which therefore, in turn, put their ATE cover at risk. The Respondent failed to act in MMS clients' best interests.

- By her conduct, the Respondent breached Principles 2 and 7 of the Principles

24. **Allegation 4 - Recklessness** (in relation to Allegations 2 and 3)

24.1 The Respondent was aware that she had accepted, through the Firm, hundreds of matters relating to MMS claims on which ATE insurance was obtained. She was aware, or ought to have been aware, of the need to comply with the ATE insurance terms to minimise the risk to client's cover, particularly where formal claims were being considered or issued, or negative advice was received from Counsel.

24.2 In relation to Allegation 2, the Respondent was required to immediately notify the insurer in writing of a counsel's opinion that materially affected whether the claim had good prospects of success or would alter the insurer's or Respondent's professional opinion on whether the claim had a good chance of success.

24.3 The failure to send counsel's opinion on Client A's claim to the insurers at all and only sending counsel's opinion on Client B's case on 5 May 2022, over two months after it had been received (and nearly two months after retrospective approval to issue the claim was sought), was not timely and was:

- Reckless to the risk of not complying with the ATE insurance policy terms, in circumstances where only two Counsel's opinions were obtained and the Respondent ought to have been aware that Counsel's opinions would need to be shared with insurers.

- The consequence of that risk was that there may be an increased risk to the clients' ATE insurance cover, and clients may become liable for significant legal expenses and disbursements (including court costs and counsel's fees) and their opponent's costs.

- Sending counsel's opinion to the insurers immediately upon receipt was easy to undertake and therefore, under the circumstances, it was unreasonable for the Respondent to take a risk in this manner due to the harm that may be caused to Client A and Client B.

24.4 Murdochs solicitors indicate, in the 29 February 2024 representations, that the:

> "[Respondent] *accepts she is responsible for the firm's manifestly incompetent handling of the MMS claims and accepts with hindsight that the firm's operation was to a degree reckless…"*.

24.5 In relation to Allegation 3, the Respondent knew that her Firm were issuing multiple MMS Claims, incurring significant costs and taking formal steps to issue litigation against various third parties. This was done without insurers' prior approval. The Respondent has sought to explain that this occurred partly as she "*did not read the contract in any detail*" and that the work was very poorly handled and supervised. In the circumstances, the Respondent:

- Was reckless to the risk of increasing costs and risks to the MMS clients without insurer approval, and that the ATE insurance policies may be cancelled

- The consequence of that risk was that there may be an increased risk to the clients' ATE insurance cover, and clients may become liable for significant legal expenses and disbursements (including court costs and counsel's fees) and their opponent's costs

- Under the circumstances, it was unreasonable for the Respondent to:

  - Not properly familiarise herself with the terms of the ATE cover and with her and the Firm's responsibilities under it; and/or

  - Not seek prior approval, as she did not have delegated authority to issue claims without further reference to the insurer (as per the ATE operating manual and the Product Information Document);

24.6 With both the above steps being basic and straightforward steps to undertake.

24.7 The Respondent admitted her conduct overall was reckless. She accepted in the 29 February 2024 representations that:

"*in failing to read the insurance contracts carefully* [the Respondent] *acted recklessly*".

"*the failure to ensure that insurer consents were in place to issue and keep insurers advised of counsel's advice on* [Client A] *and* [Client B]*, were caused by carelessness and incompetence, rather than by design, and thus were not deliberate omissions. Nevertheless, as there was a certain degree of recklessness in the firm's operation of the claims* [the Respondent] *accepts that she lacked integrity in her dealings*".

24.8 The Respondent should have been mindful of the potential harm and risk that her conduct and the conduct of her colleagues, if not supervised sufficiently, may cause to clients and it was unreasonable for the Respondent to take that risk. The Respondent therefore acted recklessly.

Witnesses

25. No oral evidence was received, and the Tribunal considered all of the evidence and submissions made by the parties. The evidence 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. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

26. 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.

27. The position of the parties was set out in the Statement of Agreed Facts and they invited the Tribunal to make factual findings on that basis. Additionally, the Respondent had made full admissions to the Applicant's case and the alleged breaches of the Principles and the Code for Solicitors.

The Tribunal's Findings

28. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions to all the allegations were properly made.

29 **Allegation 1**

29.1 Principle 2 required the Respondent to act in a way that upheld public trust and confidence in the solicitors profession and in legal services provided by authorised

persons. Principle 7 required the Respondent to act in the best interests of each client. 8.6 of the Code of Conduct required that the Respondent provide information to clients in a way they can understand and to ensure clients are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them.

29.2 The public would expect a solicitor to adequately advise clients of their range of options prior to the commencement of litigation on their behalf. By advancing MMS litigation in the manner detailed above the Respondent failed to inform clients of alternative means to pursue their claims. This focus on one particular course of action (i.e. litigation) may have affected the MMS clients adversely, with clients given limited information and not put in a position to make informed decisions.

29.3 The Tribunal had regard for the evidence underpinning the allegation and found Allegation 1 proved in full including the breaches of Principle 2, Principle 7 and 8.6 of the Code of Conduct.

30. **Allegation 2**

30.1 Principle 5 required the Respondent to act with integrity. The Tribunal was referred to the test promulgated in *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366.* The Court of Appeal stated that integrity connotes "*moral soundness, rectitude and steady adherence to the ethical standards of one's profession*". In giving the leading judgement, Lord Justice Jackson said:

> *"Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members".*

30.2 The Respondent was required to comply with the terms of the ATE operating manual and the Product Information Document. This required counsel's opinion to be provided immediately to the insurer if it materially affected the prospects of success of the claim. By not sending the adverse counsel's opinion on Client A's case at all, and not sending the opinion on Client B's case until approximately two months after it was received, the insurers were not made aware, in a timely manner or at all, of the material impact on Client A and Client B's case.

30.3 The insurers were unable to assess whether their MMS claims had or continued to have a good chance of success or whether the Respondent's professional opinion on prospects of success had changed or altered the risk. Therefore, the insurers were unable to form a fully informed view on whether the claim should continue or be withdrawn. It would, or should, have been obvious to the Respondent that she would need to share counsel's opinion in a timely manner with the insurer, and the Respondent acknowledged that she knew this was the case.

30.4 A solicitor acting with integrity would ensure that, when acting on multiple matters involving arrangements with an ATE insurer, they properly familiarise themselves with the insurance provisions and ensure that central and potentially critical information is divulged to the insurer in line with the insurance terms.

30.5 The Respondent's failure to do so, and her failure to correspond with the insurer in a timely manner, when she knew that she was in possession of information that they would want to know, demonstrated a lack of integrity and a breach of Paragraph 1.4 of the Code of Conduct for Solicitors which sets out the requirement not to mislead the court, the client or others.

30.6 The public would expect a solicitor acting on behalf in clients in these circumstances to abide by basic and central terms of the ATE insurance policies in place to protect their clients and to appropriately supervise the actions of their colleagues as necessary. The Respondent had placed the client's interests in compliance with the terms of the policy at risk and therefore failed to act in the best interest of Client A and Client B in breach of Principle 7 and Principle 2.

30.7 The Tribunal had regard for the evidence underpinning the allegation and found Allegation 2 proved in full including the breaches of Principle 2, Principle 7 and Paragraph 1.4 of the Code for Solicitors.

31. **Allegation 3**

31.1 The Respondent placed clients' ATE policies at risk by failing to seek prior approval from insurers to issue claims. The consequence of that risk to the clients' ATE insurance cover was clients becoming liable for significant legal expenses and disbursements (including court costs and counsel's fees) and their opponent's costs.

31.2 The Tribunal had regard for the evidence underpinning the allegation and found Allegation 3 proved in full including the breaches of Principle 2 and Principle 7.

32 **Allegation 4 - Recklessness** (in relation to Allegations 2 and 3)

32.1 The Tribunal noted the agreed facts submitted by the parties alongside the supporting evidence and unequivocal admissions made by the Respondent which it considered were properly made.

32.2 The Tribunal applied the test for recklessness which was set out in the case of Brett v SRA [2014] EWHC 1974. At paragraph 78, 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*".

32.3 The Tribunal found that as the Respondent was required to immediately notify the insurer in writing of a counsel's opinion that materially affected the claim, by not sending to the insurer, either at all or in a timely manner, adverse counsel opinion(s) on the merits of the cases of both Client A and Client B the Respondent had acted recklessly as alleged pursuant to Allegation 2.

32.4 The Respondent knew that her Firm was issuing multiple MMS Claims, incurring

significant costs and taking formal steps to issue litigation against various third parties and this was done without insurers' prior approval.

32.5 The Respondent accepted that she had failed to adequately familiarise herself with the insurance contracts and that she had been reckless as to the risk of increasing costs and risks to the MMS clients without insurer approval as the ATE insurance policies may be cancelled. Ensuring familiarisation with contract/s, applicable operating manual and product information and seeking timely insurer approval represented basic and straightforward steps that the Respondent ought to have undertaken. The Tribunal found that Respondent was reckless as to the risks in pursuing this course of conduct pursuant to Allegation 3.

32.6 Consequently, the Tribunal found Allegation 4 proved in full.

Previous Disciplinary Matters

33. None.

Mitigation

34. The Respondent submitted that at the material time relating to the allegations she had been under great personal and professional pressures. The impact of the pandemic on the business and the efforts made to recover following the loss of work and staffing levels was immense. Concurrently the Respondent was dealing with difficulties in her family life and in poor health. All of which served collectively to impair the Respondent operating her business effectively.

35. The Respondent maintained that the issues identified during the investigation were not widespread and that two files had been identified in particular out of many hundreds. There had been no direct losses to clients identified in the Applicants case although their exposure to a potential financial risk was clear. The Respondent submitted that she had learned lessons from what had gone wrong, and she deeply regretted taking on work outside of her area of expertise.

36. She had delegated to experienced professionals but failed to ensure that there was effective oversight in place. The admitted misconduct was not deliberate or planned. The Respondent accepted that ultimate responsibility lay with her and that was why the admissions had been made in respect of the allegations brought by the Applicant.

37. The Respondent had an unblemished regulatory history stretching back over 18 years and was a sole practitioner for 12 years operating a compliant, successful business up until the Applicants investigation. As a passionate professional committed to upholding high standards and acting with honesty, the Respondent submitted that she had always sought to act in her clients' best interests.

38. The Respondent submitted that she did not benefit personally or financially from misconduct cited. The lengthy investigation and regulatory proceedings had taken their toll and had felt like a punishment in of themselves as they had prevented her from moving on and from securing alternative employment within the profession.

Sanction

39. 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 ("Fuglers"). The Tribunal considered the seriousness of the misconduct, assessing the Respondent's culpability and the extent of any harm.

40. This was a case which related to conduct by the Respondent as a sole practitioner which involved an admitted lack of integrity and reckless conduct in relation to over five hundred cases where the firm acted in relation to claims of mortgage mis-selling over a period of 2 years.

41. The Respondent was an experienced solicitor who either conducted or allowed business to be conducted in an area of practice where she had no experience or expertise. The Respondent failed sufficiently to familiarise herself with the details and the resulting failings underlying the allegations against her were foreseeable. The Tribunal found that there was insufficient or inadequate oversight of these files which meant that clients were not properly advised of alternative areas of redress.

42. Permission was not sought from the insurer to bring cases and information (such as an adverse opinion on the prospects of success) not provided as required by the conditions of the ATE insurance, potentially placing clients at risk. Such conduct invariably casts a shadow across the reputation of the profession.

43. The Tribunal considered factors that mitigate the seriousness of the misconduct. The Respondent had demonstrated genuine insight and had cooperated with the Applicant's investigation and made appropriate admissions in the course of the subsequent proceedings. The Respondent had no previous regulatory history and had operated the Firm for 12 years without regulatory concerns arising.

44. Tribunal found that this was a moderately serious case and noted that an important purpose of sanction is to maintain the reputation of the solicitor's profession *Bolton v The Law Society [1994] 1 WLR 512.*

45. The final stage pursuant to the guidance set down in the Fuglers case required the Tribunal *"...to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question"*.

46. The Tribunal considered that sanctions such as No Order and Reprimand did not adequately reflect the seriousness of the misconduct. The Tribunal was mindful of the paramount importance of protecting both the public and the reputation of the legal profession from future harm. However, in view of the level of seriousness identified the Tribunal did not consider that it was proportionate or necessary to remove the Respondent's ability to practise through a suspension. The Tribunal determined that a financial penalty was appropriate and having assessed the seriousness of the misconduct as moderate, it considered that a fine within the Level 2 band was appropriate. The Tribunal imposed a fine of £7,000.

Costs

47. The initial application for costs was made in the sum of £57,049.00 however on further enquiry by the Tribunal, in relation to any reduction for the reduced hearing time, the costs application was ultimately made in the amount of £52,000.00.

48. It was submitted by Mr Walker that the costs were proportionate in view of the significant amount of evidence prepared in support of the Applicant's case. Although the Respondent had engaged cooperatively with the Applicant throughout the investigation her admissions remained equivocal for the majority of the proceedings.

49. Mr Walker invited the Tribunal to make an allowance within the costs order so that in the event it was made "*not to be enforced without leave of the Tribunal*" the Applicant could submit a claim in the Respondent's bankruptcy estate (should a bankruptcy order be made) without having to revert to the Tribunal for permission.

50. The Respondent submitted that the costs claimed by the Applicant were disproportionate as she had cooperated with the Applicant and not sought to contest the matter. There remained disagreement between the parties though as to the extent to which the admissions made by the Respondent were equivocal. The Tribunal noted that the Statement of Agreed Facts had been filed shortly before the commencement of the hearing.

51. The Respondent had filed evidence of her means and financial circumstances for the Tribunal's scrutiny.

52. The Tribunal reviewed the financial information and evidence provided by the Respondent and determined that it was necessary to substantially reduce the costs ordered in light of the Respondents circumstances. The Tribunal therefore ordered costs to be paid in the sum of £20,000 not to be enforced without leave of the Tribunal, save for where there is a bankruptcy order against the Respondent. In the event of a bankruptcy order against the Respondent, the Applicant may submit a claim in the Respondent's bankruptcy estate without permission from the Tribunal being required.

Statement of Full Order

53. The Tribunal ORDERED that the Respondent, do pay a fine of £7,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00, such costs not to be enforced without leave of the Tribunal, save for where there is a bankruptcy order made against the Respondent a claim may be submitted in the Respondent's bankruptcy estate without such permission being required.

54. The Respondent shall be subject to conditions imposed indefinitely by the Tribunal as follows: The Respondent may not:

    - practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

- be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration.

Dated this 23rd day of December 2024
On behalf of the Tribunal

C. Evans

Mrs C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
23 DECEMBER 2024