SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12569-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

JAMES RAFFERTY Respondent

Before:

Ms A E Banks (Chair)
Ms B Patel
Ms J Rowe

Date of Hearing: 25 October 2024

Appearances

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

Mr Gregory Treverton-Jones KC, Counsel, 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DDfor the Respondent

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JUDGMENT

Allegations

1. The allegation against the Respondent, Mr James Rafferty, made by the SRA, is that:

1.1 On 9 May 2023, he failed to provide a specimen of breath for analysis in the course of an investigation into whether he had committed an offence under Section 3A, 4, 5 or 5A of the Road Traffic Act 1988. He thereby breached any or all of Principles 1, 2 and 5 of the SRA Principles 2019.

The Applicant relies on the Respondent's conviction, dated 9 June 2023, for the offence of failing without reasonable excuse to provide a specimen of breath for analysis by means of a device of a type approved by the Secretary of State pursuant to Section 7 of the Road Traffic Act 1988 in the course of an investigation into whether he had committed an offence under Section 3A, 4, 5 or 5A of the Road Traffic Act 1988, as evidence that the Respondent was guilty of that offence, and relies upon the findings of fact upon which that conviction was based as proof of those facts.

PROVED

Executive Summary

2. On 9 May 2023, the Respondent was pulled over in his vehicle by Police due to the nature of his driving. The Respondent refused to provide a sample of breath for analysis and was cautioned and arrested for failing to provide a specimen. On 10 May 2023 the Respondent was charged with an offence of failing to provide a specimen of breath contrary to Section 7(6) of the Road Traffic Act.

3. On 9 June 2023, at Teesside Magistrates Court the Respondent entered a guilty plea to that offence. He received a sentenced that included a 17-month driving ban (to be reduced by 17 weeks upon completion of a Drink-Drive Rehabilitation Course) and a fine of £3,846.00.

4. In respect of Allegation 1.1 and the alleged breaches of the SRA Principles 2019, the Tribunal found that the Respondent breached both Principle 1, in that he failed to act in a way that upheld the constitutional principle of the rule of law, and the proper administration of justice and Principle 2 in that he failed to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. The Tribunal found that there was no breach of Principle 5 which required the Respondent to act with integrity.

Sanction

5. The Tribunal imposed a fine of £2,500 and made no order as to costs.

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

Documents

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

- Rule 12 Statement and Exhibit AHJW1 dated 26 February 2024.
- Respondent's Answer and Exhibits dated 25 March 2024.
- Respondent's Skeleton Argument dated 18 October 2024
- Applicant's Schedule of Costs dated 17 October 2024
- Respondent's Schedule of Costs dated 3 October 2024

Preliminary Matters

7. Applicant's Application for admission of further evidence

7.1 The Applicant applied for additional material that had been disclosed by the Police ('the Police log') and was not within the hearing papers before the Tribunal to be admitted as late evidence.

7.2 Mr Miah, for the Applicant, submitted that it had taken six months for this information to be disclosed by the Police and therefore the delay in obtaining and filing the Police log was out of the Applicant's control.

7.3 Mr Miah referred to several of the Tribunal's powers in support of his application including Rule 27(2)(a) of The Solicitors (Disciplinary Proceedings) Rules 2019 ('the SDPR') which granted a wide discretion to admit any evidence whether or not it would be admissible in a civil trial in England and Wales. Additionally, Rule 38(2) SDPR enabled the Tribunal to dispense with the strict rules of evidence where appropriate to do so. Additionally, Rule 6(1) SDPR enabled the Tribunal to regulate its own procedures.

7.4 Mr Miah cited Rule 6(2) under which the Tribunal may dispense with any requirements of these Rules in respect of notices, Statements, witnesses, service or time in any case where it appears to the Tribunal to be just so to do. And finally, he referenced Rule 4 SDPR which detailed that the overriding objective of these Rules is to enable the Tribunal to deal with cases justly and at proportionate cost.

7.5 The Respondent had made submissions to the Applicant dated 7 July 2023 in which he admitted consuming a "*small amount of alcohol*". The Police log contradicted this and was therefore relevant as it corrected an inaccuracy.

7.6 Mr Miah submitted that the Police log goes to the Tribunal's assessment of seriousness. It was completed only 24 minutes after the Respondents arrest. It was also said to be relevant to insight.

7.7 In his mitigation to the Magistrates Court the Respondent had acknowledged the impact of his offending and expressed remorse appeared to accept the version of events presented by the Police. The Respondent later resiled from this position when communicating with the Applicant about the conviction.

7.8 Mr Miah submitted that the case of Beckwith [2020] EWHC 3231 (Admin) applied in relation to the alleged lack of integrity given there was an association between the notion of acting with integrity and the adherence to the ethical standards of the profession. Furthermore, that case sets out that professionals are held to higher standards to conduct.

It was therefore appropriate, in Mr Miah's submission, for the Police log to be admitted given its relevance to the contested issues in the case.

Respondent's Position

7.9 Mr Treverton-Jones KC, for the Respondent, opposed the application for the admission of this late evidence in the form of the Police log. He submitted that this was a thoroughly unattractive application connected to an equally unattractive case. The Respondent broke the criminal law and breached two SRA Principles but this was not enough for the Applicant who sought by way of this application to rely on 'double-hearsay 'evidence to 'beef up' its case because they had become concerned that their case may not succeed in respect of the allegation of a lack of integrity which was the only aspect of the Applicant's case that the Respondent denied. The Applicant was aware that in the absence of any aggravating features its case in respect of lack of integrity must fail.

7.10 Mr Treverton-Jones KC submitted that the parties and the Tribunal are essentially not allowed to know who made the Police log or who were the people/persons referred to within the Police log . No witness statement has been served exhibiting the Police log. It is heavily redacted, and there could be exculpatory material within the log.

7.11 Admissible evidence from the Police officer forms part of the Applicant's evidence in the case. The Police log differs from that evidence which was properly exhibited to a witness statement signed by the Police officer connected to the case. If the Police log was relevant, it would have been included within the police evidence exhibited to that witness statement.

7.12 Mr Treverton-Jones KC submitted that admission of this evidence would fly in the face of fairness to include this material, it was filed late and the Respondent will have no opportunity to challenge it.

7.13 The Tribunal has the power to admit this evidence under its rules but it would never make its way into criminal or civil proceedings elsewhere and should not before this Tribunal either, it is prejudicial hearsay evidence that is probative of nothing.

7.14 Mr Treverton-Jones KC therefore resisted this application and invited the Tribunal to dismiss it.

The Tribunal's Decision

7.15 In determining whether it was appropriate to admit the Police log the Tribunal noted that it was not clear from the material presented who the individuals referenced within it were. An example was the 'caller' whose identity was not clear. The document was heavily redacted and its accuracy could not be readily determined or sufficiently tested in the form in which it was presented. It had been persuasively argued by Mr Treverton-Jones KC that the document would not have been admissible in the criminal proceedings for that reason.

7.16 The condition of the material presented was such that it could not be tested without witness evidence to resolve the unknowns and uncertainties and as it was produced as hearsay cross-examination would not be possible.

7.17 The Police Log was inconsistent with the Police Officer's witness statement that was already before the Tribunal as part of the Applicant's case. This experienced Police Officer had not exhibited the material to his witness statement and there was no reason provided to the Tribunal as to why this was the case.

7.18 The Tribunal determined that it would be more prejudicial that probative to admit this late evidence and therefore refused the Applicant's application to rely on the Police log.

Factual Background

8. The Respondent is a solicitor, having been admitted to the Roll of Solicitors on 1 September 2010. The Respondent remains on the Roll of Solicitors and holds a current practising certificate free from conditions. The Respondent's current employer is Messrs Baker Mackenzie Solicitors.

9. On 12 May 2023, the Respondent reported to the SRA that, on 10 May 2023, he had been charged with an offence of failing to provide a specimen of breath contrary to Section 7(6) of the Road Traffic Act 1988.

10. On 9 May 2023, whilst driving a vehicle northbound on the A19 in Hartlepool, the Respondent was pulled over by a police officer of Cleveland Police due to the nature of his driving. The police officer stated that "*the speed of the vehicle varied between 65 and 90 mph*" and that "*the vehicle was wandering about the lanes and at one point the vehicle almost collided with a bus travelling in lane 1*."

11. After stopping the Respondent's vehicle and upon speaking with the Respondent, the police officer noted that he smelt of intoxicating liquor. The police officer asked the Respondent to provide a sample of breath for analysis. The Respondent refused to provide a sample of breath for analysis. The Respondent was then cautioned and arrested for failing to provide a specimen. On 9 June 2023, at Teesside Magistrates Court the Respondent entered a guilty plea to that offence. He received a sentence that included a 17-month driving ban (to be reduced by 17 weeks upon completion of a Drink-Drive Rehabilitation Course) and a fine of £3,846.00.

Witnesses

12. 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

13. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under Section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. **Allegation 1.1 - On 9 May 2023 the Respondent failed to provide a specimen of breath for analysis in the course of an investigation into whether he had committed an offence under Section 3A, 4, 5 or 5A of the Road Traffic Act 1988. He thereby breached any or all of Principles 1, 2 and 5 of the SRA Principles 2019.**

The Applicant's Case

14.1 Mr Miah referred to Rule 32 (1) of the Solicitors (Disciplinary Proceedings) Rules 2019 and submitted that the Applicant relied on a certified copy of the certificate of conviction (relating to the offence referenced within Allegation 1.1) as evidence that the Respondent was guilty of that offence and relied upon the findings of fact upon which the conviction was based as proof of those facts.

14.2 Mr Miah explained that the Respondent admitted the Applicant's case save for the breach of Principle 5 in that he denied failing to act with integrity.

14.3 In relation to Principle 1, the Respondent had failed to act in a way that upheld the constitutional principle of the rule of law, and the proper administration of justice. He had entered a guilty plea and was convicted of a criminal offence.

14.4 Mr Miah submitted that a failure to provide a specimen of breath for analysis in the course of a police investigation was not just a criminal conviction, but also a clear example of obstructing a public authority.

14.5 As a solicitor, the Respondent would be expected to comply with a lawful request made by a member of law enforcement; he had failed to do so and his conduct consequently placed him in breach of Principle 1 of the SRA Principles 2019.

14.6 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.

14.7 Mr Miah referenced SRA guidance regarding how this principle is applied which states that when a solicitor has been convicted of a criminal offence, it follows that they also be lack integrity, and it is likely that a breach of Principle 2 will also apply.

14.8 Mr Miah submitted that the trust that the public places in solicitors, both in the provision of legal services and outside of practice, is crucial to maintain the reputation of the solicitors' profession. This trust depends upon the reputation of the solicitors' profession as one in which every member may be trusted to the ends of the earth.

14.9 Mr Miah submitted that the Respondent's conduct, in failing to provide a specimen of breath for analysis in the course of an investigation, and then being convicted for this offence in the criminal courts, would be likely to undermine public trust and confidence in the solicitors' profession and in legal services provided by authorised persons; members of the public and other members of the profession would be shocked to learn that a solicitor had been convicted of a criminal offence of failing to provide a specimen without reasonable excuse, and failed to uphold the constitutional principle of the rule of law, and the proper administration of justice by obstructing a public authority during the course of its investigation.

14.10 Mr Miah submitted that the Respondent thereby breached of Principle 2 of the SRA Principles 2019.

14.11 Principle 5 of the SRA Principles 2019 required the Respondent to act with integrity. Mr Miah submitted that the SRA's guidance on criminal convictions states that a solicitor who is convicted of a criminal offence will usually be found to be lacking integrity: -

> *"Where there has been a wilful or reckless disregard of standards, rules, legal requirements or ethics, including an indifference to what the applicable provisions are or to the impacts or consequences of a breach."*

14.12 The Respondent was convicted of failing to provide a specimen of breath. He was asked to provide the sample by a member of law enforcement. Mr Miah submitted that the Respondent's conviction is a clear example of obstructing a public authority and by failing to comply with a lawful request he failed to uphold the constitutional principle of the rule of law, and the proper administration of justice.

14.13 By virtue of his conviction, the Respondent acted without moral soundness and rectitude and failed to demonstrate a steady adherence to an ethical code. In the case of *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366*, it was held that integrity connotes adherence to the ethical standards of one's own profession and is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Mr Miah submitted that the Respondent clearly failed to live up to these higher standards as a solicitor acting with integrity would have complied with the request from the police and provided a specimen of breath.

14.14 Irrespective of the Respondent's failure to provide a specimen of breath occurring outside of practice, his conduct demonstrated a failure to meet the higher standards expected of him due to this realistically touching upon his practice of the profession, Mr Miah submitted this was in line with the case of *Beckwith v SRA [2020] EWHC 3231 (Admin)*. Given the key role the Respondent holds as a solicitor in upholding the administration of justice, being convicted of an offence which shows a complete disregard for the administration of justice, can be said to realistically touch on his professional practise.

14.15 The offence of failing to provide a specimen of breath goes to the core of administration of justice. The Respondent obstructed a public authority in its duties in the

administration of justice. Mr Miah submitted that the Respondent therefore failed to act with integrity.

14.16 Mr Miah stated that determining any lack of integrity was an objective test and there was no requirement that the Respondent had an appreciation that he had breached Principle 5. The assessment of whether there was a lack of integrity was fact specific to this case.

14.17 Mr Miah submitted that there were several aggravating features of the case by which the Respondent's conduct engaged Principle 5. Firstly, in the course of the Respondent's engagement with the Police and refusing to provide the specimen of breath requested of him, the Respondent commented that "*I don't trust the Police*" and when asked if there were any medical issues that the Police needed to be made aware of the Respondent stated, "*that's not for you to know*."

14.18 Secondly, the Police records of the arrest noted that the Respondent was argumentative and uncooperative for a period of at least 42 minutes during which he refused to provide a specimen of breath on at least 3 occasions notwithstanding that he was required by law to do so.

14.19 Thirdly Mr Miah referenced the nature of the Respondent's driving which the police officer recited as "…*the speed of the vehicle varied between 65 and 90 mph*" and that "*the vehicle was wandering about the lanes and at one point the vehicle almost collided with a bus travelling in lane 1*."

14.20 Finally, the Respondent was said to lack insight. He had entered a guilty plea to the offence as charged with no basis of plea entered. However, in correspondence with the SRA following the self-report of his arrest and charge he had indicated that he did not accept the police officers observations regarding the circumstances of the offence particularly regarding the manner and speed of his driving.

14.21 Mr Miah submitted that the Respondent's conduct and the aggravating features of his offending engaged Principle 5 of the SRA Principles 2019 and it was therefore appropriate for the Applicant to bring this case before the Tribunal in view of his lack of integrity.

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

14.22 The Respondent had accepted throughout that because of his conviction he breached Principles 1 and 2 of the SRA Principles 2019. Mr Treverton-Jones KC submitted that he had demonstrated appropriate insight and remorse. It was a one-off incident at a time of extreme stress as indicated by supporting evidence produced in the course of the proceedings. The only remaining issue between the parties (other than sanction) is whether the Respondent behaved with a lack of integrity. The Tribunal was invited to dismiss this part of the Allegation as it was inconsistent with recent SRA in-house decisions on more serious facts. Mr Treverton-Jones KC submitted that although complete consistency of treatment in regulatory proceedings is impossible to achieve, ordinary considerations of fairness dictate that a statutory regulator, regulating in the public interest, cannot pick and choose between "regulatees" in such a way that a Respondent can be left with a justifiable sense of unfairness at the way in which they

have been singled out for more aggressive regulatory treatment than others in the same profession on similar facts.

14.23 Mr Treverton-Jones KC submitted that on the face of it this was, and should have been treated by the SRA as, a routine regulatory matter leading to a rebuke or a modest fine. The Respondent had been punished by the criminal courts and had repaid his debt to society in that way. Any additional punishment by his regulator should have been proportionate and moderate in the light of that, as the criminal offence to which he had pleaded guilty did not reflect adversely upon his ability to practise as a solicitor and only tangentially affected the reputation of the profession.

14.24 Mr Gregory Treverton-Jones KC was therefore critical of the Applicant in bringing this case before the Tribunal submitting that it would have been more appropriately dealt with under the Applicant's internal sanctioning process.

14.25 The decision-making process by which the SRA had determined its internal sanctioning powers were insufficient was said by Mr Gregory Treverton-Jones KC to be deeply flawed. Considering the range of regulatory cases arising from similar convictions it was clear they usually attracted a fine less than approximately £5,000.00. In the Respondent's case the Applicant had incorrectly indicated that a fine of more than ten times this amount was appropriate and erroneously concluded, therefore, that the fine applicable exceeded their statutory maximum and should be dealt with by the Tribunal.

14.26 Mr Gregory Treverton-Jones KC referred to several 2024 examples of regulatory cases arising from similar convictions dealt with by the SRA under its internal sanctioning procedure. In each case there was no allegation of lack of integrity, yet each set of facts was more serious than those in the Respondent's case. In one such case the solicitor failed to provide a specimen of breath for analysis and had a previous conviction for driving with excess alcohol. In another the solicitor was two and a half times over the legal limit and was found asleep at the wheel. In a further example the solicitor had been involved in a collision and was sentenced to a community service order with an unpaid work requirement of 80 hours.

14.27 Mr Gregory Treverton-Jones KC submitted that it was simply unfair for a regulator to assert lack of integrity in one case and not in others on similar (indeed, more serious) facts. A finding of lack of integrity carries a permanent stigma for a solicitor, and regulated professionals are entitled to demand a modicum of fairness and consistency from their regulator in making allegations of this sort.

14.28 Mr Treverton-Jones KC submitted that in view of the facts that brought about the Respondent's conviction, this was a standard case for the offence in question. There were no aggravating features, the road on which the Respondent was driving was a 70mph zone and his driving was reported as between 65-90 mph. It was correct that the Respondent had refused to provide the required specimen of breath on three occasions and this was again standard for an offence of this type. The criminal law is designed to prevent a driver from benefitting from refusing to provide a specimen of breath in those circumstances. There was no collision with other vehicles, no failure by the Respondent to stop when required by the Police officer to do so. The Respondent was of good character with no previous convictions related to his driving or generally. The

Respondent entered a guilty plea at the first opportunity and self-reported to the SRA promptly.

14.29 Mr Treverton-Jones KC referred to the Magistrates Court sentencing guidelines by which the Respondent's criminal case had been determined. Mr Treverton-Jones KC submitted that the Respondent's offending contained none of the aggravating features (with the possible exception of some unacceptable driving) listed and several of the mitigating factors that reduced the seriousness and sentence applied to the Respondent.

14.30 It was against this backdrop that Mr Treverton-Jones KC invited the Tribunal to consider whether a breach of Principle 5 applied in this case. It was clear, he submitted, from the numerous examples of similar cases that an allegation of breach of Principle 5 did not automatically follow a conviction of driving with excess alcohol or failing to provide a specimen of breath, some cases included it and others did not.

14.31 In a similar case, Olujimni – 11442-2015, the Tribunal dismissed an allegation of lack of integrity in connection with a conviction for failing to provide a specimen and in the case of Cook – 12182-2021, the Respondent admitted lack of integrity where she had been convicted of failing to provide a specimen. The following are relevant distinguishing features from the Respondent's case:

i. Ms Cook was a criminal solicitor who was aware of the sentencing guidelines and knew the consequences of failing to provide a specimen.

ii. Ms Cook had a previous conviction for driving while under the influence of excess alcohol.

iii. Ms Cook was sentenced to a community order (200 hours of unpaid work) and was disqualified from driving for 36 months.

14.32 Mr Treverton-Jones KC submitted that there was no room for a finding of lack of integrity contrary to Principle 5 in the Respondent's case because:

i) There are no aggravating features over and above the simple refusal to provide a specimen.

ii) The Respondent has no convictions for previous driving offences.

iii) The Applicant's case that the bare offence equates to a breach of Principle 5 stands years of settled internal SRA sanctions and Tribunal cases on their head.

iv) The refusal to provide a specimen of breath was due to the Respondent's desire to speak to a solicitor.

v) The Respondent's impressive character references spoke clearly and persuasively to his general adherence to the ethical code of his profession.

14.33 Mr Treverton-Jones KC submitted that there is an unmistakable impression in this prosecution that the Applicant was aggressively seeking to "*throw the book*" at the Respondent because it has chosen to send this case to the Tribunal, notwithstanding that

this was plainly a case without any aggravating features, and the referral to the Tribunal was simply the result of the Applicant's own defective approach to in-house sanctioning. Allegations of lack of integrity in drink driving cases are properly restricted to cases with significant aggravating features and in this case Mr Treverton-Jones KC submitted that there were none.

14.34 The purpose of criminal punishments is to mark societal disapproval of offending and to deter such conduct. Mr Treverton-Jones KC submitted that many respectable people are found guilty of this type of offence and the penalties are severe. They include mandatory driving disqualification and a financial impact arising from increased insurance premiums because of the conviction, along with CPS and Court costs. The criminal process thereby enables an offender to repay their debt to society. It was made clear in Bolton v. Law Society [1994] 1 W.L.R that

> *"…there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again.*"

14.35 Mr Treverton-Jones KC referenced the evolving position of the Applicant in dealing with solicitors convicted of offences of this type following its acquisition of new fining powers. in 2022 the Applicant's powers to fine solicitors in traditional law firms increased from £2,500 to £25,000. In January 2024 it became apparent that the level of fines for drink/driving offences imposed by the Applicant had suddenly increased exponentially without there having been any real warning to or consultation with the profession. Several examples were cited of the Applicant suddenly increasing the fines handed down using its internal sanction regime in January 2024 with fines of £10,105.44 and £13,836 respectively being imposed in similar cases arising from drink driving convictions.

14.36 Following concerns raised by the profession in the legal press and elsewhere to this change in approach by the Applicant it reconsidered its approach and issued a consultation paper in June 2024 entitled "Financial Penalties: further developing our framework". The consultation paper draws no distinction between driving with excess alcohol, and failure to provide a specimen.

14.37 Mr Treverton-Jones KC referenced the following passage: -

> *"Having carefully considered the range of circumstances under which a solicitor may be convicted of this offence, we consider it is no longer appropriate to impose a financial penalty for drink driving. This is because cases in which a warning or rebuke were not appropriate were those that involved repeated criminal behaviour, or serious aggravating factors in addition to the commission of the offence. We consider that this type of conduct raises serious concerns*

about integrity and public trust in the profession which we consider are matters best dealt with by the SDT."

14.38 Mr Treverton-Jones KC submitted that it follows from the above that the Applicant's current position is that:

- a conviction for failing to provide a sample does not ipso facto involve a lack of integrity by the solicitor (as a rebuke would be an inappropriate standard sanction where a solicitor has behaved with a lack of integrity). There must be repeated criminal behaviour or serious aggravating factors, neither of which is present in the Respondent's case; and

- It is not necessary to impose a financial penalty for drink/driving offences where there are no aggravating features.

14.39 It was submitted that the current position adopted by the Applicant represented a return to the pre-2023 practice, and a return to common sense. In the light of it, the current prosecution is unsustainable, as the matter should have been dealt with in-house by the Applicant.

14.40 Mr Treverton-Jones KC submitted that the Respondent had had a year of unnecessary stress and legal expense because of this misconceived approach by the Applicant and this was a relevant consideration when sanction was determined.

The Tribunal's Findings

14.41 The Applicant was required to prove the allegations on the balance of probabilities. Allegation 1.1 contained breaches of Principle 1, 2 and 5 of the SRA Principles 2019. This allegation was supported by a certified copy of the certificate of conviction (relating to the offence contained within Allegation 1.1) and the Tribunal noted that Rule 32 (1) of the Solicitors (Disciplinary Proceedings) Rules 2019 applied in relation to this evidence, serving as conclusive proof of the findings of fact upon which that conviction was based.

14.42 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made in respect of Principle 1, failing to act in a way that upheld the constitutional principle of the rule of law, and the proper administration of justice and Principle 2, failing to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. The Tribunal found that Principles 1 and 2 were breached by virtue of the Respondent's conviction as detailed within Allegation 1.1.

14.43 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."

14.44 The Applicant's case had been put on the basis that the Respondent had refused to cooperate with and had obstructed the Police during and shortly after his offending. There was particular focus on the Respondent repeated refusals to provide a specimen of breath and his comments that were recorded by the Police during the "*MGDD*"[1] procedure. Furthermore, the Respondent's communications with the Applicant were said to have demonstrated a lack of insight in that he did not completely accept the police officers observations regarding the circumstances of the offence.

14.45 The Tribunal noted that it was not unusual for an offender to disagree with some aspects of the case against them and this did not necessarily require a basis of plea or signify any lack of insight as a result. The Respondent had entered a guilty plea at the first opportunity and acted with complete transparency with his regulator throughout. The criminal case was dealt with as a standard conviction and sentence for an offence of that nature and the Tribunal did not consider that Principle 5 of the SRA Principles 2019 was engaged. The Tribunal had careful regard for *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366* as neither courts nor professional tribunals must set unrealistically high standards; the duty of integrity does not require professional people to be paragons of virtue.

14.46 The Tribunal found Allegation 1.1 proved in part on the balance of probabilities. The Tribunal found that that the Respondent breached Principle 1, in that he failed to act in a way that upheld the constitutional principle of the rule of law, and the proper administration of justice and Principle 2 in that he failed to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. The Tribunal found that there was no breach of Principle 5 which required the Respondent to act with integrity.

Previous Disciplinary Matters

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

Mitigation

16. Mr Treverton-Jones KC submitted that the Respondent was until this incident, of impeccable personal and professional reputation. He has been on the Roll since 2010 and promptly self-reported to the SRA when charged with the offence set out at Allegations 1.1.

17. The Respondent entered a guilty plea at the Magistrates Court at the first opportunity in the criminal proceedings and acted with complete transparency with his regulator throughout.

18. The Respondent had shown genuine insight, making sensible admissions to breaches of Principle 1 and 2 of the SRA Principles 2019 in that he failed to act in a way that upheld

[1] The Manual of Guidance on Drink and Drugs forms detail questions asked of detained persons by Police Officers where offences including driving with excess alcohol or failing to provide a specimen of breath are suspected.

the constitutional principle of the rule of law and the proper administration of justice and he accepted that he had failed to act in a way that upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

19. The Respondent regretted the events on 9 May 2023, he had apologised and had accepted full responsibility for them.

20. Character references submitted in support of the Respondent spoke to his hardworking qualities, professional excellence and devotion to his role as a solicitor.

Sanction

21. 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. The Tribunal noted the key objective of maintaining public confidence in 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.

22. In assessing the Respondent's culpability, the Tribunal found that the Respondent was highly culpable for the events of 9 May 2023, as the Respondent had admitted. The Respondent's actions were the result of a significant error of judgment. He had been directly in control of his conduct on the evening prior to his arrest, during his engagement with the Police after being stopped in his vehicle and continuing after he had been conveyed to the Police station. In addition, the Respondent was an experienced solicitor who should have known better. However, the Respondent has shown deep remorse, apologised for his actions on 9 May 2023 and promptly accepted the full responsibility for his actions. The Respondent was transparent and open with his regulator throughout and entered a guilty plea at the first opportunity in the criminal proceedings.

23. The Tribunal then considered the issue of harm. The Tribunal found that by virtue of the Respondent's conviction described above the Respondent had impacted on the reputation of the profession. However, the Respondent had shown genuine insight by making open and frank disclosures of the events of 9 May 2023 and his subsequent conviction. The Respondent had also fully cooperated with the Applicant and made prompt and appropriate admissions.

24. The Tribunal noted that the Respondent's misconduct had not been calculated or repeated, nor had it continued over a period of time, nor were any other serious aggravating factors listed in the Sanctions Guidance present. Nevertheless, the Respondent's misconduct involved the commission of a criminal offence and his misconduct was deliberate involving a significant error of judgment, which resulted in a criminal penalty.

25. The Tribunal did not consider that the Respondent remains a risk to the public but recognised that the reputation of the profession has to be safeguarded by imposing an appropriate and proportionate sanction to reflect the Respondent's misconduct.

26. The Tribunal had not made a finding of a lack of integrity and was mindful of the guidance set down in the case of *Bolton* to which it had been referred in that its sanctions were "*…not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again."*

27. Having assessed the conduct as moderately serious the Tribunal concluded that the appropriate and proportionate sanction was to order the Respondent, Mr James Rafferty, to pay a level 2 fine amounting to £2,500.00.

28. The Tribunal considered, but rejected, the lesser sanctions within its sentencing powers such as no order, a reprimand, or restrictions because the Tribunal considered that such lesser sanctions would not have the appropriate effect on public confidence in the legal profession and would not adequately reflect the Respondent's misconduct.

29. The Tribunal further considered, but rejected, the more serious sanction of suspension. Whilst the Tribunal recognised that misconduct involving criminal convictions can require a very serious sanction, the Respondent's misconduct in the present case, resulted from a one-off error of judgment, for which the Respondent has demonstrated a real insight and remorse. As the Respondent no longer posed a risk to the public, the Tribunal considered that suspension would not serve any purpose and, thus, would not have been appropriate.

Costs

Respondent's Application

30. Mr Treverton-Jones KC stated that in the unusual circumstances of this case he applied for costs on behalf of the Respondent and for clarity confirmed that he opposed the Applicant's costs application.

31. Mr Treverton-Jones KC referred to an offer made on behalf of the Respondent to the Applicant to pay a fine of £10,000.00. He said that the Applicant did not accept this offer because 'it [had been] bound up in its entirely flawed and extraordinarily inconsistent approach to calculating fines, which it had since disavowed.' The Tribunal also, by virtue of its decision, implicitly rejected the Applicant's inconsistent approach to fine calculation. In its overall approach the Mr Treverton-Jones KC said that Applicant went well beyond mere public interest regulation and in those circumstances, there was a good reason why the Respondent should be awarded his costs.

32. Mr Treverton-Jones KC referred to the case of Tsang [2024] EWHC 1150 (KB) (Admin).

> "*…my understanding of the state of the law is that there is a substantial restriction on the award of costs against the SRA but the Tribunal's power was not as narrowly constrained as the SRA now contends it was. The principle that costs follow the event is displaced in cases of this kind and, instead, when an allegation is dismissed the starting point is that there should be no order as to costs. For costs to be awarded against the SRA there must be a good reason*

justifying the departure from that starting point. In considering whether there is such a good reason the fact that the proceedings were brought in exercise of the SRA's regulatory function is to be seen as a crucial factor and regard is to be had to the risk that the making of adverse costs orders will have a chilling effect on the exercise of the regulatory jurisdiction. However, those factors are not conclusive. Good reasons are not confined to those cases where the proceedings have been improperly brought or so badly conducted as to have amounted to "a shambles from start to finish." However, those examples are to be seen as indicating the kind of matters which can amount to a good reason and for other matters to amount to a good reason they must be of a comparable gravity."

"I am, therefore, satisfied that both the fact that misconduct proceedings have been brought on a fundamentally flawed basis and the fact that there have been failings in the conduct of the proceedings, including inordinate delay, are capable in an appropriate case of being good reasons for the making of a costs order against the SRA"

33. In this case the fact that the Applicant has succeeded in part was not decisive. Mr Treverton-Jones KC referred to the case of Ring (11922-2019) in which the Tribunal made a costs order against the SRA notwithstanding that it had succeeded in its case. In this case the Respondent admitted Principles 1 and 2, contested an alleged breach of Principle 5 and offered in open correspondence to pay a fine of £10,000.00 which far exceeds the fine imposed by the Tribunal. Why then in those circumstances should the Respondent not be awarded his costs where the Applicant has relied on their flawed guidance and maintained a slavish reliance upon it throughout.

34. Mr Treverton-Jones KC applied for costs in the amount £10,953.00.

35. In relation to the Applicant's application for costs Mr Treverton-Jones KC recognised that the Tribunal had complete discretion as to the issue of costs but stated that the internal investigation costs of £6,000.00 claimed by the Applicant were notional as the case was prepared and presented by in-house lawyers and therefore these were not costs that the Respondent should have to bear. The case could and should have been settled on a consensual basis long ago.

Applicant's Application

36. Mr Miah applied for costs in the sum of £6,081.00 and he confirmed that the Respondent's application for costs was opposed.

37. Mr Miah submitted in relation to the points raised by Mr Treverton-Jones KC concerning the case Tsang, that the Tribunal should have regard for the Supreme Court case of Flynn-Pharma in which the continuing importance of the principles set out in the case of Baxendale-Walker were emphasised. It remained therefore, in Mr Miah submission, correct that the regulator be protected from adverse costs orders to allow for the effective regulation of the profession.

38. Mr Miah submitted that as of November 2023 the Respondent did not accept the observations of the Police Officer and this was included within the decision makers rationale for referring him to the Tribunal. The Respondent had submitted Answers to

the allegations that did not properly address the issues and required ventilation before the Tribunal. The Applicant had acted with transparency and its reasons for referral.

39. The Applicant's case was properly brought and had to be tested with regards to at least Principle 5 which remained contested and had to be decided by the Tribunal. The reasons for the referral to the Tribunal were clear and rationale and the case had been certified by the Tribunal as having a case to answer at the outset.

40. An unsuccessful prosecution does not give rise to an adverse cost order unless there is a good reason to do so. In this case there is no good reason to depart from that position. There had been no delay as in the case of Tsang, indeed the slight delay to the progression of the proceedings had been at the request of the Respondent. The case had been properly brought and was not a shambles from start to finish.

41. Mr Miah therefore opposed the Respondent's application for costs.

Tribunal Decision on Costs

42. Having carefully reviewed and considered the parties cost schedules and respective submissions on costs the Tribunal concluded that it was appropriate that there be No Order as to costs.

43. The Tribunal therefore refused the Applicant's application for costs, although the Applicant had succeeded in respect of the admitted elements of its case the Tribunal had regard for the persuasive observations by Mr Treverton-Jones KC in that the Applicant had at least in part referred the case on the basis of its misapprehension that its £25,000.00 internal fining limit was insufficient and the case required the Tribunal to determine sanction, it was not appropriate to award the Applicant costs in the circumstances presented.

44. The Tribunal refused the Respondent's application for costs. The case was properly brought and successful in part. Therefore, there was no good reason to depart from the settled position regarding adverse costs against regulators in the circumstances.

Statement of Full Order

45. The Tribunal ORDERED that the Respondent, JAMES RAFFERTY, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to His Majesty the King.

46. The Tribunal further Ordered that there be No Order as to costs.

Dated this 16th day of January 2025
On behalf of the Tribunal

A E Banks

A E Banks
Chair