

Case Ref: RGC-000075834

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No:

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

NASAR HUSSAIN

Respondent

**STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS (DISCIPLINARY
PROCEEDINGS RULES) 2019**

I, Gurbani Kaur am a Solicitor employed by the Solicitors Regulation Authority Limited of The Cube, 199 Wharfside Street, Birmingham, B1 1RN. I make this Statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("SRA").

The allegations

1. The allegations against the Respondent, Nasar Hussain made by the SRA are that, while in practice as a Solicitor at Regal Solicitors (NW) Limited ("the Firm"):
 - 1.1 Between July 2020 and April 2021, the Respondent when representing himself in a personal injury claim, failed to disclose information in respect of his medical history when he knew and/or ought to have known that this was relevant to (a) the expert report prepared for the case (b) the issue being

litigated. He thereby breached any or all of Principles 1, 2, 4 and 5 of the SRA Principles ("the Principles") and Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors").

The facts and matters relied upon in support of this allegation are set out in paragraphs 6 to 34 below.

Appendices and Documents

2. I attach to this Statement the following appendices:

Appendix 1: Relevant Rules and Regulations

3. I attach to this statement a bundle of documents, marked ["GK1"] to which I refer in this statement. Unless otherwise stated, the page references ("GK1 p []") in this statement relate to documents contained in that bundle.

4. The bundle is divided into the following sections:

Section A: Notices and Representations

Section B: Self-report to the SRA dated 21 April 2022

Section C: Correspondence between the SRA and the Respondent

Section D: Claim Form, Defence, Particulars of Claim, Part 36 Offer, Statement of Nasar Hussain, Bundle for Statement of Nasar Hussain, Part 35 Questions, Part 35 Report, Email to Nasar Hussain 26 March 2021

Section E: Transcript of Judgment, Order of 14 April 2021, Transcript of Hearing, Documents relating to appeal

Section F: Relevant Standards and Regulations

Section G: Relevant Law (cases)

Section H: Decision making framework

Professional Details

5. The Respondent, who was born on [REDACTED] is a solicitor having been admitted to the Roll in 15 July 2002. Since August 2009 he has been the sole practitioner and director of Regal Solicitors (NW) Limited. He is the COLP, COFA, MLRO and MLCO of the Firm which practises in commercial/corporate and personal injury work. He currently holds a practicing certificate free from conditions.

The facts and matters relied upon in support of the allegations

Background

6. The conduct in this matter came to the attention of the SRA on 21 April 2022, when the Respondent made a self-report that the trial Judge hearing his claim against Gabrielle Liliana Ingham had made a finding of fundamental dishonesty against him.
7. The alleged conduct occurred between approximately 5 January 2020 and 9 April 2021.
8. The matter concerns the Respondent making a personal injury claim, and failing to disclose information in respect of his previous injury to the Court and third party. A consequence of this conduct was that the trial Judge dismissed the claim and found that the Respondent was fundamentally dishonest.

Allegation 1.1 – When representing himself in a personal injury claim, failed to disclose information in respect of his medical history when he knew and/or ought to have known that this was relevant to (a) the expert report prepared for the case (b) the issue being litigated.

9. The Respondent was involved in a road traffic accident on the 1 June 2019 when a third party collided with his vehicle. Following the accident, the respondent instructed Regal Solicitors (NW) Limited (the Firm) to act for him and his daughter in a claim to include damages for personal injuries. The Firm issued proceedings

against the third party in the County Court Money Claims Centre. The Respondent signed the claim form and particulars of claim, the claim form was verified with a statement of truth signed by the Respondent as a solicitor. **[GK1 p85]** His opponent admitted liability save for causation and quantum. In support of his claim, the Respondent obtained and relied upon a medical report of Dr Sarah Tanvir dated 7 January 2020 and her addendum report dated 26 August 2020. **[GK1 p103 - 114]** However, prior to this accident, the Respondent had already suffered a pre-existing injury sustained in a fall down some concrete steps on or around 12 December 2018. The medical report of Dr Tanvir and the Respondent's statement made no reference to this pre-existing injury or that the Respondent was suffering pain to his left shoulder as at the date of this accident because of it.

10. On 9 April 2021 at the trial, the Respondent's claim was dismissed as the trial judge found that the Respondent was fundamentally dishonest, and he was ordered to pay his opponent's costs summarily assessed in the sum of £9,000. **[GK1 p136 - 137]** The claim made on behalf of the Respondent's daughter as the second named claimant was also dismissed and she was ordered to pay the defendant's costs.
11. The Respondent appealed the decision on 19 January 2022 and 12 April 2022. Permission to appeal was refused both times. **[GK1 p239 - 244]** The Respondent appealed to the Court of Appeal. The Court of Appeal declined to list the appeal, as it did not have jurisdiction to consider the matter.
12. At the time the Respondent made his personal injury claim, he had over 19 years of experience as a solicitor. He was the sole practitioner and director of the Firm and had previously dealt with personal injury matters. He ought to have known the importance of providing true and accurate information in relation to previous injuries, as well as correcting Dr Tanvir when she prepared the report.

The SRA relies upon paragraphs 6 to 12 above. Additionally, the SRA relies upon the following facts and matters.

Breach of Principles:

Principle 4 (dishonesty)

13. The Applicant relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos [2017] UKSC 67*, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

14. When representing himself in his personal injury claim, for over a period of 15 months, the Respondent knew or believed the following matters:

- 14.1 Prior to his accident on 1 June 2019, he was already experiencing pain to his left shoulder following a pre-existing injury he sustained in a fall down some concrete steps on or around 12 December 2018 (the steps fall).
- 14.2 His pre-existing injuries from the steps fall was sufficient to prompt the medical clinicians treating him to request an x-ray of his left shoulder.
- 14.3 He did not disclose the relevant pre-existing injuries to his medical expert Dr Tanvir during his examination on 5 January 2020 for the purposes of his medical report regarding his accident on 1 June 2019.

- 14.3.1 At page 35 of the court transcript he explained that he did not volunteer details of the steps fall in to Dr Tanvir and she did not ask for details. **[GK1 p173 - 174]**
- 14.3.2 Dr Tanvir had noted on her report "*There is no significant previous medical history relevant to the index accident.*" **[GK1 p105]**
- 14.4 He did not correct Dr Tanvir when reviewing his medical report dated 7 January 2020 for it to include information about his pre-existing injuries.
- 14.5 He should have included details of his pre-existing injuries in the section 'Medical History' of the medical report.
 - 14.5.1 Paragraphs 8 to 14 of the judgment details the previous injury the Respondent had suffered from the steps fall in December 2018. **[GK1 p133 - 134]**
- 14.6 He prepared and signed a witness statement dated 29 October 2020 and did not include details of his pre-existing injury and stated: "*The injuries suffered are unequivocal and confirmed by the medical expert and are wholly attributable to the index accident for which the defendant was at fault.*" **[GK1 p82 – 85]**
- 14.7 His injuries suffered to his left shoulder were not wholly attributable to the road traffic accident on 1 June 2019.
 - 14.7.1 When he was asked in cross-examination whether the pain to his left shoulder was a combination of the fall and the road traffic accident, he replied 'Yes'. **[GK1 p170]**

- 14.8 He verified his witness statement with a statement of truth signed in the following terms, *"I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."* [GK1 p85]
- 14.9 He was required to provide full disclosure of all pre-existing injuries to the court and his opponent. However, he submitted to the court and his opponent a medical report and witness statement that was inaccurate and did not include information about his relevant pre-existing injuries.
- 14.10 If he provided details of his pre-existing injuries to Dr Tanvir, she may have found that the injuries claimed by reason of this accident (if any) were an exacerbation of a pre-existing injury and this would have reduced any award of damages.
15. As an experienced solicitor and having conducted personal injury claims previously, he knew when he was signing the statement of truth that the court and his opponent will attach weight to the fact that his witness statement had a statement of truth attached to it. He believed therefore that he was untruthfully signing a statement of truth and that it would mislead those who read it and rely upon it.
16. On 9 April 2021 at the trial, the Respondent's claim was dismissed as the trial judge found that the Respondent was fundamentally dishonest applying the test in *Ivey* set out above and by virtue of Rule 32 (2) Solicitors (Disciplinary Proceedings) Rules 2019 the findings of fact upon which that judgment was based are admissible as proof but not conclusive proof of dishonesty. At paragraphs 5 to 7 of the transcript of the judgement, the trial judge sets out the evidence presented by the Respondent. The trial judge remarked that: *"In all of the areas in which he says he has suffered physical symptoms, Mr Hussain has presented accounts which are conflicting and, in my judgment, incoherent, and I*

have reached the conclusion that I cannot accept his evidence as being accurate.” [GK1 p133]

17. At paragraph 13 of the judgement, the trial judge said that the differences between the accounts that the Respondent had given to Dr Tanvir and the evidence he had given in Court were so significant that they could not be put down to poor memory. At paragraph 14 of the judgement, the trial judge further said of the Respondent: *“He sought to paint a picture for this Court that he had suffered injuries to his upper back, his neck and his left shoulder when, as I find, he knew jolly well that that was not the case...By the standards of ordinary, decent men, that seems to me that that is dishonest. ...I have to reach the conclusion, based on the authorities, that it was a fundamental dishonesty.” [GK1 p134]*

18. This Respondent attempted to mislead his opponent and court to obtain a monetary settlement for pre-existing injuries not solely attributable to the road traffic accident in which he was bringing a claim for injury. In those circumstances, Respondent was dishonest by the standards of ordinary decent people.

Principle 5 SRA Principles (integrity)

19. By failing to disclose information in respect of his medical history when he knew and/or ought to have known that this was relevant to the expert report prepared for the case and the issue being litigated, the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. In *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366*, it was said that integrity connotes adherence to the ethical standards of one’s own profession. A solicitor acting with integrity would not allow the court and third party to be misled and would not present untrue facts to try and obtain a higher monetary award for damages.

20. The Respondent had seen the medical report provided to him by the expert. He failed to correct the expert and went on to submit the medical report together with his witness statement which he verified by a statement of truth. He knew these

documents were inaccurate and misleading. This demonstrated a lack of integrity. The Respondent therefore breached Principle 5 of the SRA Principles 2019.

Principle 2 SRA Principles (maintaining trust)

21. The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services.

22. Public confidence in solicitors and in the provision of legal services is likely to be undermined by the Respondent submitting a misleading medical report to the court and third party. The public expects solicitors to be honest in their dealings with others. An accurate medical report was required by the court and the defendant in connection with the Respondent's claim for damages for personal injury. By knowingly allowing a medical report to be submitted, the contents of which the Respondent knew were not true, he sought to mislead the court and the his opponent. The public expects solicitors to be honest in their dealings with others. In acting in this manner, the Respondent's conduct served to undermine the trust the public places in him and the profession.

23. Furthermore, Members of the public would expect that an experienced solicitor, would be aware of ensuring to disclose such important information. The Respondent is the sole practitioner and director of the Firm and holds the important roles of MLRO, AMLCO, COLP and COFA. His experience and seniority meant he should have exercised better judgment. By failing to disclose information in respect of his medical history when he knew and/or ought to have known that this was relevant to the expert report prepared for the case and the issue being litigated, the Respondent therefore breached Principle 2 of the SRA Principles.

Principle 1 SRA Principles – (rule of law, and proper administration of justice)

24. Those we regulate are expected to act in a manner which upholds the constitutional principle of the rule of law, and the proper administration of justice. The SRA's topic guide to the application of Principle 1 provides that a solicitor is likely to breach the obligation to uphold the proper administration of justice if a solicitor allows the court to be misled. For example, if a solicitor conducting civil proceedings files a

misleading document and does not inform the court of the true picture at the earliest opportunity.

25. The Lord Chief Justice said in *Brett v SRA* [2014] EWHC 2974 (Admin) that

"...misleading the court is regarded by the court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit. It is not simply a breach of a rule of a game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings. Such conduct will normally attract an exemplary and deterrent sentence. That is in part because our system for the administration of justice relies so heavily upon the integrity of the profession and the full discharge of the profession's duties and in part because the privilege of conducting litigation or appearing in court is granted on terms that the rules are observed not merely in their letter but in their spirit. Indeed, the reputation of the system of the administration of justice in England and Wales and the standing of the profession depends particularly upon the discharge of the duties owed to the court."

26. In his judgment, the trial judge states

26.1 *"What is disturbing is that the claimant was apparently asked about whether he had previous medical history and Dr Tanvir recorded, "There is no significant previous medical history relevant to the index accident" Of course, at the time the claimant was suffering from a continued course of pain in the left shoulder, which was the first injury that he noted when he spoke to Dr Tanvir. Dr Tanvir's report that there was no significant previous medical history relevant to the index accident is therefore factually incorrect. With some claimants, this claimant's answer that the doctor asked him for help with previous medical history might have persuaded the Court but this is a claimant who is a solicitor, who undertakes a small amount of personal injury practice, and who told me when he gave his evidence that he fully understood why it was important for the Court to have a proper account of any previous relevant pathology.... That, I have reached the conclusion, colours my view about why the claimant's account is inconsistent...the number and quality of the differences between the account which Mr Hussain gave to Dr Tanvir and that which he gave to*

me in his evidence today is so significant that I cannot put it down simply to poor memory.” [GK1 p133 - 134]

27. The evidence demonstrates that the Respondent attempted to mislead the Court and others by making a claim for personal injury allegedly sustained in the road traffic accident. However, his shoulder injury had occurred some 6 months earlier when he had fallen down the stairs in his basement. The Respondent failed to disclose this information to his medical expert who examined him and provided a report to the Court about his injuries. The Respondent omitted to correct Dr Tanvir when she missed the earlier hospital admission (for his steps fall) when she produced a second report for the Court.
28. On 17 March 2020, the defendant’s solicitors issued a request for further and better information to Dr Tanvir under Part 35 of the Civil Procedure Rules in respect of her medical report and addendum. Dr Tanvir at question 7 accepted that she had overlooked the pre-existing injuries that the Respondent had. Dr Tanvir goes onto to explain at paragraph 8 that *“based on entry dated 27/09/2019 in my opinion, the left shoulder injury was an exacerbation of a pre-existing condition which should have returned to pre-incident state within the prognosis provided in my main report”*. [GK1 p128]
29. The Respondent would have known that his earlier accident was the true cause of his shoulder injury not only from his own knowledge but also by reference to Dr Tanvir’s Part 35 response. However, he attempted to mislead the Court and his opponent to secure a higher award of damages for personal injury. This included making an offer to his opponent’s solicitors under Part 36 of the Civil Procedure Rules on 27 October 2020 of £2,300 in full and final settlement of his claim. [GK1 p81]
30. The Respondent, as a solicitor, who has previously dealt with personal injury matters, would have known the importance of giving accurate and true information to the Court. However, he misled his opponent and the Court by omitting to provide details of his pre-existing injury. The Respondent therefore breached Principle 1 of the SRA Principles.

Paragraph 1.4 of the Code for Solicitors - You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others

31. A solicitor should be scrupulous in ensuring the accuracy of the detail they set out in documents particularly in a medical report and a witness statement containing a statement of truth. The courts and the judicial system relies on the accuracy of statements provided by solicitors as part of proceedings. By omitting to provide details of his pre-existing injury and stating his injuries were wholly attributable to the road traffic accident on 1 June 2019, the Respondent knew or ought to have known the medical report and his witness statement was misleading. Thus, the Respondent has also breached paragraph 1.4 of the Code for Solicitors

Recklessness

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

33. The facts and matters set out in paragraphs 6 to 34 above demonstrate that the Respondent was reckless as to whether the information he provided to the medical expert and within his witness statement which he filed with the court fully and accurately reflected his pre-existing injury. The potential consequence and risk of not fully and accurately reflecting the pre-existing injury to the medical expert is that the defendant and the court would have been misled to believe that the Respondent's injury was solely attributable to the road traffic accident on 1 June 2019, when it was in fact an exacerbation injury in the left shoulder which got worse as a result of the road traffic accident. It was unreasonable for the Respondent to run the risk of the Court being fully apprised of the true position or misled in relation to his injuries.

The SRA's investigation

34. The SRA has taken the following steps to investigate the allegations which it makes against the Respondent:

- 34.1 The SRA served a Notice recommending referral to the Solicitors Disciplinary Tribunal dated 15 May 2024 **[GK1 p41 - 45]**
- 34.2 The Respondent provided his representations to the Notice on 2 June 2024. The Respondent states the experts report omitted the previous shoulder injury, but this was an oversight and not intended to mislead. He states the trial Judge made no finding of exaggeration of symptoms. He says he was a credible witness and his symptoms were in fact genuine. He further states the Judge did not make a finding that he misled the court. Rather the Judge said there were inconsistencies. His efforts to rectify the errors in the medical report during the trial demonstrate he acted with honesty and integrity. Rather, his claim was genuine but there was a lack of care in the preparation of his case. He states that if he had he applied his attention to it, the inconsistencies in his claim should have been corrected before the trial and that the expert accepted she did not notice the prior shoulder injury as part of her review of his records. **[GK1 p17 – 29]**
- 34.3 On 18 June 2024 an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Tribunal **[GK1 p53 - 56]**
- 34.4 On 8 July 2024 the SRA wrote to the Respondent in relation to his referral to the SDT and next steps **[GK1 p57 – 68]**
- 34.5 On 16 July 2024 the Respondent wrote to the SRA requesting several references to be included in the bundle to the SDT for consideration. **[GK1 p30 – 39]**

I believe that the facts and matters stated in this statement are true.

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Sensitivity: General

Dated this day of 20 September 2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No:

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY

Applicant

and

NASAR HUSSAIN

Respondent

**APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2) SOLICITORS
(DISCIPLINARY PROCEEDINGS RULES) 2019**

Relevant Rules and Regulations

The SRA Principles

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| Principle 1 | You act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice. |
| Principle 2 | You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. |
| Principle 4 | You act with honesty |
| Principle 5 | You act with integrity |

SRA Code of Conduct for Solicitors, RELs and RFLs

- 1.4 You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client).