

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11836-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

BABATUNDE ADEGBOYEGA TAIWO

Respondent

Before:

Ms T. Cullen (in the chair)

Mr S. Tinkler

Dr S. Bown

Date of Hearing: 10 December 2018

Appearances

Ms Nimi Bruce, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared.

JUDGMENT

Allegations

1. The allegations against the Respondent, Babatunde Adegboyega Taiwo, made by the SRA as amended with the permission of the Tribunal were that:-
 - 1.1 Whilst travelling on Virgin East Coast services between London Kings Cross and Peterborough on 26 January 2016, he presented a travel card marked "Dependant" to a ticket (revenue) inspector, which had been mistakenly issued in his name by Transport for London (TfL) and altered by him. In doing so, he attempted to mislead the ticket inspector that his travel card for the journey was valid thereby breaching any or all of Principles 2 and 6 of the SRA Principles 2011.
 - 1.2 Whilst travelling on Virgin East Coast services between London Kings Cross and Peterborough on 27 January 2016, he presented a travel card issue by TfL marked "Staff" to a ticket (revenue) inspector, which could only be used for leisure journeys, when the purpose of his journey was commuting from work. In doing so, he attempted to mislead the ticket inspector that his travel card for the journey was valid thereby breaching any or all of Principles 2 and 6 of the SRA Principles 2011.
 - 1.3 Whilst travelling on Virgin East Coast services between London Kings Cross and Peterborough on 27 January 2016, a revenue (ticket) inspector (sic) confiscated a season ticket from the Respondent in respect of which he had caused or allowed the date to be altered from 16 June 2015 to 16 June 2016. In doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011.
2. Dishonesty was alleged with respect to the allegations at paragraphs 1.1 and 1.2 but dishonesty was not an essential ingredient to prove those allegations.

Documents

3. The Tribunal reviewed all the documents, including:

Applicant

- Rule 5 Statement dated 13 June 2018 with exhibit LT1
- Applicant's Statement of costs as at date of final hearing on 10 December 2018
- Applicant's Statement of costs as at date of issue on 13 June 2018

Respondent

- Statement in response to the Applicant's Rule 5 Statement
- Email from the Respondent to the Applicant dated 25 November 2018
- Respondent's Statement of Means dated 31 October 2018 with attachments

Preliminary Issues

4. The composition of the Division of the Tribunal which heard the application had been altered with the consent of the parties by substitution of the solicitor member originally listed as a possible conflict of interest had been identified

5. The Tribunal mentioned that the Applicant had received an email from the Respondent dated 25 November 2018 in which amongst other things he indicated that he wished to absent himself from the court room for certain parts of the hearing. The Respondent was present at the commencement of the hearing but not while Ms Bruce presented the Applicant's case. He was present for the remainder of the proceedings.
6. For the Applicant, Ms Bruce asked permission of the Tribunal to make an amendment to the wording of allegation 1.3 which she submitted was ambiguous because the wording could be taken to mean that the actions complained of were those of the ticket inspector rather than of the Respondent. Ms Bruce had provided a written version of the proposed amended wording to the Respondent and he had no objection to the proposed change. The Tribunal gave its permission for allegation 1.3 to be amended in the terms sought.

Factual Background

7. The Respondent was born in 1966 and was admitted to the Roll in March 2001. The Respondent last held a Practising Certificate for the practice year 2001 to 2002 and his name remained on the Roll. The Applicant's records showed that the Respondent had not practised as a solicitor since 20 September 2002.
8. The Respondent was employed as an Area Manager with Transport for London (TfL) since 29 March 1993. The Respondent was based at Elephant and Castle station in London and commuted from Peterborough to London King's Cross. As the Respondent had been employed with TfL before 1 April 1996, he was entitled to a Privilege Ticket Authority Card (PTAC) for himself and his dependants. The PTAC allowed the Respondent to obtain a 75% discount on equivalent adult or child rate 'pay as you go' fares on various transport in London and National Rail services.
9. The Respondent was also entitled to apply for a discounted season ticket to commute to and from work. The conditions for use for the season ticket loan were that the season ticket must be purchased within two months of receiving the loan, otherwise, the failure to do so would be regarded as gross misconduct.
10. The Respondent's dependants were also entitled to similar discounted travel, except season tickets for commuting to and from work. Dependant travel cards were not transferable and could only be used by the person whose name appeared on the card with the correct accompanying photo card.
11. The conditions of use of the PTAC included, amongst other things, following the numbering of the document:
 - “5. PTACs can only be used by the person whose name and photo appears on it.
 6. Any improper use of your PTAC, or PTACs issued to your partner and/or dependant(s), or any misconduct whilst travelling may result in your travel benefits being withdrawn. Disciplinary action may be taken and those involved may be prosecuted.

.....

- 8. Staff PTACs holders with Priv All Rail can apply for a season ticket to travel to and from work.

.....

- 10. PTAC holders must carry their PTAC and associated Oyster Card or Oyster photo card at all times when travelling.
- 11. PTAC holders are subject to all rules, regulations and Conditions of Carriage applied by service operations.
- 12. Priv rate travel is subject to exclusions and restrictions. Visit the TfL Staff Travel pages for full details.”

- 12. The Respondent was also entitled to a “Staff Travel Card”, which allowed him a number of free leisure journeys on Network Rail. The travel card was sent to the Respondent’s home address together with the conditions of use.

- 13. The conditions of use included:

“Staff Travel cards must only be used for **Leisure** travel purposes. They must not be used for residential (travel from home to work or an educational establishment), duty, business or trading purposes.

.....

To make a free leisure journey the boxes printed on the card are used as follows: Before passing through the station platform barriers the day and month of travel must be entered neatly in **Ink** (using a good quality ballpoint pen) in the first box (divided into sections marked as “DAY” and “MTH”) on the card...”

.....

Each dated box allows unlimited free travel on that day and up to midnight on the following day. Additionally the card may be used from 22h00 on the preceding day if making an overnight journey.

Alterations to dates previously entered are not permitted under any circumstances and dates must not be overwritten to make them clearer. Dates must not be erased and re-entered. Pencil entries are not allowed.

If you make an error when entering a date, that allocation of free travel is forfeited. The error must be crossed through neatly with an “X”, and the correct date entered in the next box.

Regardless of the reason for doing so, alteration, overwriting and erasure of dates already entered on the card is considered to be a breach of the conditions of use for which the penalty is a **minimum 12 month withdrawal** of all travel

facilities from the holder. If this is the prime cardholder the penalty will also be applied to all holders within the family.

If you attempt to make a free journey without dating a box, Revenue Protection Staff are instructed to cancel the first available box on the card and ask you to date the next one.

If you attempt to make a free journey using an incorrectly dated box on your card, Revenue Protection Staff are instructed to cancel the box in question and ask you to date the next one.

If you attempt to make a free journey using a card with no unused boxes available this will be reported as a travel irregularity for which the penalty is **permanent withdrawal** of all travel facilities.

Staff Travel Cards are not transferable and must only be used by the person named on the card. Allowing a third party to use your card or using it to purchase privilege rate tickets for others is an act of dishonesty for which the penalty is **permanent withdrawal** of all travel facilities.”

14. An example of a correctly completed Staff Travel Card was provided with instructions on how to complete the card. This included the following:

“7. Alterations to the date entered are not permitted under any circumstances (this includes erasing and re-entering a date) and dates must not be overwritten. This is clearly stated on the Staff Travel Card. If you make a mistake, that allocation of free travel is forfeited. The incorrect entry must be crossed through with an “X” (as in the example provided) and the correct date entered in the next available box. Failure to abide by these rules is considered to be fraudulent use and may result in permanent withdrawal of this travel facility...”

15. On 28 January 2016, the Respondent reported the following in an email to his Performance Manager at TfL:

“I travelled on East coast (heading to Leeds) on 26.01.16. The ticket inspector noticed that my PTAC and Box Card had different information. The Box card had my full name on it and below it was “Dependant” which clearly did not match with the info on my PTAC. This led to further investigations by the inspector. He took the card away for close to 20 minutes and when he returned, he made all sorts of allegations, eventually my Box card was withdrawn, albeit I have used the 4 boxes.

I used the card for the very first time around October last year, then in November, once in January and lastly when it was withdrawn on 26.01.16. I did not notice the discrepancy. I checked my documents at home and I found another Box Card bearing my name and showing “staff” which matched up with my PTAC.

On 27.01.16, I saw same inspector on the train, I showed him the box card “staff” with my PTAC. He took the wallet containing the box card and PTAC

with other tickets inside off me for close to 30 minutes. I was a bit agitated with the length of time he took, so I went to the guards (sic) office on the train. He said he was going to withdraw the pass because of the incident the previous day when I had similar box card with "dependant" and my full name and now I have one with my full name and "staff" written below it. He said he suspected alterations which I denied, especially since he took my wallet away for a long time, similar to the previous day. I wasn't sure of his intentions.

I was frustrated he refused to listen to me, we engaged in a heated debate, he made further allegations of fraudulent travel and queried why and how I came about the box cards. Eventually the card was withdrawn, not before he called the police – the police was not really interested since he could not identify any crime. In the meantime, he said the matter will be referred to the Fraud team who will get in touch with my employers.

Both card (sic) were dated April 2015 – June 2016 I believe (I am no longer in possession of both cards). There is no problem with the PTAC itself, the number on the oyster and PTAC matched.

Are you able to explain how it came about I have 2 Box Cards, both from Travel Services, one with "dependant" and my full name and the other with "Staff" and my full name. I believe this would have happened around March of last year."

16. TfL carried out an investigation and on 5 September 2016, they reported to the Applicant that the Respondent had been found guilty of gross misconduct and dismissed.

Allegations 1.1 and 1.2

17. As at 26 January 2016, the Respondent had been issued with the following travel cards:
 - A Dependant Travel card for 1 April 2015 to 30 June 2016.
 - A Staff Travel Card for 1 April 2015 to 30 June 2016.
 - A Season ticket with an expiry date which had been altered to 16 June 2016.
18. On 26 January 2016, the Respondent travelled on the 16:09 train from London Kings Cross to Leeds where the first stop was Peterborough. The Respondent presented a "Dependant" travel card to a ticket inspector, which was confiscated, as it appeared to have been altered.
19. On 27 January 2016, the Respondent travelled on the 17:03 train from London Kings Cross to Leeds, where the first stop was Peterborough. The Respondent presented a "Staff" travel card to a ticket inspector. Whilst removing this card from its wallet, the ticket inspector noticed that the Respondent had in his possession, a London to Peterborough season ticket in which the expiry date had been altered from 16 June 2015 to 16 June 2016. The ticket inspector confiscated both tickets.

20. On 28 January 2016, the Respondent purchased a season ticket in the sum of £1,408.80. The Respondent had originally applied for a season ticket loan in an application form dated 14 April 2015. The Respondent completed the form confirming that: he required a season ticket from Peterborough to Kings Cross; the loan amount applied for was £2,000; and the ticket would commence on 1 June 2015. The Respondent checked the box on the application form to confirm that he accepted the terms and conditions, which included:

“In consideration of Transport for London (TfL) advancing the loan applied for, I confirm that I understand and agree the following conditions:

... ..

Failure to use the loan to purchase an annual travel to work season ticket will be regarded as **gross misconduct**, the penalty for which could be dismissal without notice and a requirement for the immediate repayment of the outstanding loan.

I must present a copy of my ticket to my Line Manager within 2 months of commencement of the ticket.”

21. On 18 March 2016, TfL carried out a fact-finding meeting into the alleged misuse of Privilege Travel facilities and alleged irregularities with a season ticket application, and loan. The Respondent was present at this meeting. The fact-finding meeting established that the Respondent had travelled using the travel card marked “Dependant” on 7 October 2015, 28 November 2015, 22 January 2016 and 26 January 2016.
22. The minutes of the meeting recorded that the Respondent confirmed:
- 22.1 He was travelling on the 16:06 train to Leeds on 26 January 2016 and had not completed the last box of his Priv card.
- 22.2 He asked the inspector if he could use a pencil to complete the card, as he did not have a pen. The inspector “gave the go-ahead” and he inserted the date in the last box.
- 22.3 The inspector alleged previous dates on the card had been altered and the Respondent explained that he had possibly made an error on the card.
- 22.4 The Respondent had been at work on 26 January 2016 and had been travelling after work to Leeds to see his son, who was at Manchester University.
- 22.5 He did not purchase his season ticket at the time he made his Application for a season ticket loan, as he had stayed in London from April 2015 to February 2016 due to personal family issues and had travelled home to Peterborough at weekends.
- 22.6 He had travelled on 7 October 2015, 28 November 2015, 22 January 2016 and 26 January 2016 using the “Dependant” travel card. The journeys on 7 October 2015 and 22 January 2016 were to Leeds.

- 22.7 He had made a mistake when completing “box number 2” on the travel card; he did not recall whether the line on the ticket had been rubbed out and had not intended to defraud anybody.
- 22.8 He had not noticed that the travel card was marked “Dependant” until the inspector brought it to his attention.
- 22.9 He had a “Staff” travel pass and a “Dependant” travel pass both of which, bore his name.
- 22.10 He had applied for a season ticket loan but did not purchase a season ticket until 28 January 2016. He did not want to purchase a season ticket earlier due to his family circumstances and did not cancel the loan, as he had other issues at the time, so it had not been on his mind.
- 22.11 He was travelling to Leeds on 27 January 2016 using his “Staff” travel card when it was confiscated by the same inspector who had confiscated the “Dependant” travel card the day before. The inspector also confiscated his season ticket.
- 22.12 He did not alter his season ticket and had no knowledge of this. It was possible that one of the inspectors had done so. He did not present the season ticket for travel and would have kept the old season ticket in the wallet, which the inspector took.
- 22.13 He would not alter the season ticket because it would not work in the barriers and tickets were inspected several times on his route.
- 22.14 He was familiar with the PTAC conditions of use and the card could be used for leisure, not commuting.
23. The Respondent was informed at the end of the fact-finding meeting that he was suspended with effect from 18 March 2016 and the reasons for his suspension were set out in a letter dated 18 March 2016.
24. The Respondent provided amendments to the minutes of the fact-finding meeting on 22 March 2018, which TfL accepted.
25. A second fact-finding meeting was held on 5 April 2016. A report provided by TfL Fraud and Security was presented to the Respondent at this meeting. The report contained details of the Respondent’s staff Oyster card transactions from 9 January 2016 to 11 March 2016. It was alleged that the Respondent might have travelled between London Kings Cross and Peterborough without a valid ticket during dates predating his season ticket i.e. 28 January 2016.
26. The Respondent explained that he had been living with family and friends at Caledonian Road in North London but declined to provide details of the exact address. When questioned about 26 January 2016, the Respondent confirmed that he could not recall exactly where he had travelled from but thought that it was possibly Peterborough.

27. The Respondent also confirmed that he had used his “priv” card on 27 January 2016 because he had been planning to travel to Leeds/Manchester later that day. When questioned further about this journey, the Respondent confirmed that he completed the box for this journey on his travel card on 27 January 2016 after his encounter with the ticket inspector. The Respondent explained that the ticket inspector had spotted that his staff number did not correspond with the number on the card, so he went to his home in Peterborough to check whether this was correct.
28. The Respondent also explained that his season ticket loan was not enough to cover the cost of the ticket, which was in excess of £3,000. The Respondent confirmed that he had bought a ticket up to 17 June 2016, as he did not like being in debt and the remainder of the loan for the season ticket was in his bank account. The Respondent explained that he bought a season ticket on 28 January 2016, as he was moving back home to Peterborough.
29. The Respondent considered that in his view, he had travelled with valid tickets on 26 and 27 January 2017 and that it was a genuine error.
30. In his amendments to the second fact-finding meeting minutes, the Respondent stated that the report from TfL Fraud and Security did not provide any direct evidence of travelling between Peterborough and Kings Cross during the period, only that he had used his staff pass at Kings Cross underground station. The Respondent confirmed that whilst travelling to Leeds/Manchester on the evening of 26 January 2016, he had stopped off in Peterborough to check his document folder, which was at his home and he found another ticket.
31. A Fraud Investigator from TfL confirmed in a witness statement dated 12 April 2016 that the “Dependant” Staff Travel Card should have been printed in the name of the Respondent’s son and that due to a staff error, the Respondent’s name had been printed on the card instead. The TfL Fraud Investigator also confirmed that as the “Dependant” card appeared to have been altered, it was seized by the Revenue Protection and Fraud Officer on 26 January 2016.
32. The TfL Fraud Investigator confirmed that during a ticket check on 27 January 2016, the Respondent produced a “Staff” travel card and that whilst removing the card from its wallet, the officer discovered a London to Peterborough season ticket showing the expiry date altered from 16 June 2015 to 16 June 2016.
33. On 3 May 2016, TfL invited the Respondent to attend a disciplinary interview for gross misconduct on 10 May 2016. Some of the issues, which the independent disciplinary panel were asked to consider included, amongst other things:
 - 33.1 The possibility that the Respondent had travelled from Peterborough to London Kings Cross on the morning of 26 January 2016 without a valid ticket, as he did not have a valid season ticket, and had not completed the box on the travel card until he was approached by the inspector during the journey to Leeds in the afternoon.
 - 33.2 The Respondent was potentially in breach of the terms and conditions of use if he was relying on a PTAC for that journey.

- 33.3 The Respondent had travelled from Peterborough on 27 January 2016 on a journey to work and that between 11 January 2016 and 25 January 2016, he may not have been in possession of a valid ticket for some, or all, of the journeys between Peterborough and Kings Cross.
- 33.4 The Respondent was in possession of a season ticket showing an expiry date of 16 June 2015, which appeared to have been altered to 16 June 2016.
34. The Respondent attended a disciplinary interview on 10 May 2016. The Respondent explained, amongst other things, that:
- 34.1 He would travel to Manchester via Leeds to see his son at University rather than travel from Euston, as this was how he normally travelled. He did not realise the travel card was marked "Dependant" when he used it.
- 34.2 He believed the "Staff" and "Dependant" cards were sent around April 2015 and did not know why he had been issued with two cards. He queried this with Travel Services after it was brought to his attention on 26 January 2016.
- 34.3 The altered season ticket was not found in his possession and the expired ticket for 2015 had always been in his wallet. He did not alter the season ticket and did not present it for travel at any time. There were opportunities for other people to do that but he was not making any specific allegation.
- 34.4 The Report provided by TfL only showed that the Respondent tapped in at Kings Cross Underground Station, not Kings Cross over-ground and did not show that he continued to travel from Peterborough to London Kings Cross. The Report was speculative.
- 34.5 He did not travel from Peterborough to Kings Cross for close to eight months. If he had in his possession a ticket that was not operational because it had been altered, the ticket would never at any time operate the gate.
- 34.6 Some of the information in the TfL Fraud Investigator's witness statement was factually incorrect and inclusion of the statement could not be justified.
- 34.7 The Respondent admitted that he had exercised poor judgement in some areas, which was deeply regrettable.
35. A further disciplinary interview took place on 13 June 2016, to clarify issues that had been raised at the disciplinary interview on 10 May 2016. The Respondent was provided with statements from the ticket inspectors. It was put to the Respondent during this interview that the ticket inspector had noticed that the dates in boxes 3 and 4 appeared to have been written in pencil and that boxes 2 and 3 appeared to have been altered on the "Dependant" travel card. The Respondent explained that he had made an error in completing box 2 and did not believe that box 3 had been altered.

36. When questioned about the alteration of the date on the season ticket, the Respondent suggested that the ticket inspector, his colleague or anybody in the guard room could have made the alteration, as the ticket was not in his possession when the alteration was discovered.
37. The Respondent confirmed that as far as he was concerned, Virgin Trains East Coast were not pursuing any action against him and that he would not provide a copy of the letter that he had received to the TfL panel, as it was a privileged discussion made on a without prejudice basis.
38. The Respondent was notified in a letter dated 13 July 2016 that he had been found guilty of misconduct and he was dismissed.
39. TfL did not find it credible that the Respondent would have used the pass marked "Dependant" in error as the pass was clearly labelled as such. TfL also considered that the Respondent should have checked the cards at the time of issue and report any discrepancies at the time of receipt, particularly as one card was for his son's use and he knew that he was not entitled to use that card. TfL also considered that it was unacceptable that the Respondent did not report that he had been given this pass in error when he received it or when he first used it.
40. TfL considered that it was reasonable to expect the Respondent to purchase an annual season ticket within two months of receiving the loan and if not purchased, return the money.
41. TfL also found that the Respondent had used his "Staff" pass for work on 27 January 2016, even though this was against the rules of use.
42. TfL did not accept that revenue inspectors would have altered the Respondent's season ticket. TfL found on the balance of probabilities that the Respondent had altered the ticket, or was aware that it had been altered.
43. TfL found that it was unlikely that the Respondent would have been travelling to Manchester via Leeds to visit his son at university, as the journey from Euston to Manchester would be direct and have a shorter journey time. TfL accepted that they could not categorically say that the Respondent had been travelling between London and Peterborough for work purposes throughout January 2016 but given the chronology and the Respondent's evasiveness about the address in London where he said he had stayed, they found it more likely than not that he was travelling from London to Peterborough for work purposes.
44. TfL found that the Respondent's explanations of events were inconsistent with those of the Revenue Protection Officers and that he had fundamentally breached the implied terms of trust and confidence in his employment contract. The Respondent was summarily dismissed with immediate effect.
45. The Respondent appealed the decision and asked for leniency and reinstatement. The Respondent attended a disciplinary appeal meeting interview on 28 July 2016. During the appeal, the Respondent explained that he was an employee manager with

several employees reporting to him and that he also approved other employees' travel facilities.

46. The Respondent's appeal was unsuccessful and he was informed on 19 August 2016 that the decision to summarily dismiss him would be upheld.
47. The Applicant sent a letter to the Respondent on 5 July 2017 requesting his explanation to various allegations. The Respondent replied in a letter dated 7 July 2017.
48. In his reply, the Respondent confirmed that he was not contesting the allegations raised in the Applicant's letter. The Respondent also stated that he had not been employed as a solicitor at any time during his 24 years' service at TfL and whilst not wishing to trivialise the allegations, prior to this, his conduct had been exemplary. The Respondent further stated that he had taken responsibility for his unfortunate decision and had lost a lot in consequence. On 10 July 2017, the Respondent confirmed that he admitted the allegations raised in the Applicant's letter dated 5 July 2017.
49. On 15 January 2018, an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

50. There were no witnesses.

Findings of Fact and Law

51. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to 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.

(The submissions below reflect those in the Rule 5 Statement and those made orally.)

52. **Allegation 1.1 - Whilst travelling on Virgin East Coast services between London Kings Cross and Peterborough on 26 January 2016, he presented a travel card marked "Dependant" to a ticket (revenue) inspector, which had been mistakenly issued in his name by Transport for London (TfL) and altered by him. In doing so, he attempted to mislead the ticket inspector that his travel card for the journey was valid thereby breaching any or all of Principles 2 and 6 of the SRA Principles 2011.**

Allegation 1.2 - Whilst travelling on Virgin East Coast services between London Kings Cross and Peterborough on 27 January 2016, he presented a travel card issue by TfL marked "Staff" to a ticket (revenue) inspector, which could only be used for leisure journeys, when the purpose of his journey was commuting from work. In doing so, he attempted to mislead the ticket inspector that his travel card for the journey was valid thereby breaching any or all of Principles 2 and 6 of the SRA Principles 2011.

Allegation 2 - Dishonesty was alleged with respect to the allegations at paragraphs 1.1 and 1.2 but dishonesty was not an essential ingredient to prove those allegations.

52.1 SRA Principles 2011 cited in allegations 1.1 and 1.2:

“Principle 2: You must ...act with integrity

Principle 6: You must... behave in a way that maintains the trust the public places in you and in the provision of legal services;”

- 52.2 For the Applicant, Ms Bruce relied on the facts set out in the background to this judgment in respect of all the allegations. She submitted that the allegations covered a discrete time period. In respect of allegation 1.1, the Respondent travelled from London Kings Cross to Peterborough on 26 January 2016 using a travel card marked “Dependant”, which he presented to a ticket inspector, as a valid form of travel. The travel card bore the word “DEPENDANT” in large font. It had been issued in April 2015 and was first used in October of that year. The second and third columns appeared to have been altered, the third column showed the number “26”. It was the Respondent’s evidence that he filled the card in with the ticket inspector on that date. The terms and conditions relating to the card were very clear; the Respondent should not use it for his personal use if it was issued for a dependant. The Dependant ticket had been issued to the Respondent in error. The Respondent was an employee of TfL and as such, knew that he was not entitled to a “Dependant” travel card, as TfL had also issued him with a “Staff” travel card. The Respondent did not bring this error to the attention of his employers or Travel Services until after the travel card had been confiscated by the ticket inspector. The Respondent had in fact first used the card on 7 October 2015, some three months before it was confiscated.
- 52.3 In respect of allegation 1.2, Ms Bruce submitted that on 27 January 2016, the next day, the same inspector who was already on notice found the Respondent with a travel card marked “STAFF”. That card had been completed with the number “27”. The Staff card had been issued correctly but could only be used for leisure purposes; the Respondent was not entitled to use it for commuting to and from work which was clear from the conditions of use. An interest free loan was provided to staff for the purpose of commuting. It was also clear from the conditions of use and instructions that prior to making any journey using the Staff Travel Card, the cardholder would need to complete the journey information on the card in ink; alterations to dates previously entered were not permitted under any circumstances; and any mistakes in completing the card would lead to the free journey being forfeited.
- 52.4 In respect of allegation 1.1, it was submitted that although the Respondent was not employed as a solicitor at TfL, he was still required to act with integrity and to behave in a way that maintained the trust the public placed in him. TfL’s own Code of Conduct required the Respondent, as an employee, to behave with a high standard of integrity in business and commercial relationships, and not do anything whilst on or off duty which could damage its reputation. A solicitor acting with integrity would have brought this error to the attention of their employers and Travel Services much earlier and would not have used a travel card to which they were not entitled or alter dates on the travel card thereby attempting to mislead a ticket inspector that the travel

card was valid for the journey. The Respondent was an experienced employee at TfL and knew that he was not permitted to alter the travel card, even to correct any errors, as this was clear from the terms and conditions provided with the card. In using a travel card to which he was not entitled, altering dates on the travel card and presenting the travel card to a ticket inspector as a valid form of travel, the Respondent has failed to act with integrity and breached Principle 2 of the SRA Principles 2011. It was further submitted that the trust that the public places in solicitors and in the provision of legal services depends upon the reputation of the solicitors' profession as one in which every member may be trusted to the ends of the earth. All solicitors, whether practising or non-practising, are required to discharge their professional duties with integrity, probity and trustworthiness. The Respondent in using a travel card, to which he was not entitled and presenting that card to a ticket inspector as a valid form of travel, had undermined that reputation and breached Principle 6 of the SRA Principles 2011.

- 52.5 In respect of allegation 1.2, it was submitted that the Respondent also travelled from London Kings Cross to Peterborough on 27 January 2016 using a travel card marked "Staff", which could only be used for leisure journeys. The Respondent had travelled from work when he used the card and was not entitled to use the card for this journey under the terms and conditions of use. Ms Bruce submitted that the Respondent accepted that he knew the terms and conditions governing his staff travel card and that it could not be used for commuting. As a solicitor he should know more than anyone that a privilege should not be abused in that way. A solicitor acting with integrity would not have used a leisure travel card for a work journey and would not have presented a "Staff" travel card to the ticket inspector as a valid ticket. A solicitor acting with integrity would have ensured that they had the correct ticket for the journey, which they were about to make. In presenting the "Staff" travel card to the ticket inspector as a valid form of travel, the Respondent attempted to mislead the ticket inspector. In doing so, the Respondent failed to act with integrity and breached Principle 2 of the SRA Principles 2011. It was also submitted that the Respondent was required to discharge his professional duties with integrity, probity and trustworthiness. The Respondent in using his travel card for a journey, which was not permitted under the terms and conditions of use and presenting that card to a ticket inspector as a valid form of travel, undermined his own reputation and that of the solicitors' profession in breach of Principle 6 of the SRA Principles 2011.

Allegation 2 - Dishonesty in respect of allegations 1.1 and 1.2

- 52.6 It was submitted that the Respondent's actions were dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67. The Respondent acted dishonestly according to the standards of ordinary decent people. The particulars of dishonesty and details of the Respondent's actual state of mind were set out in the Rule 5 Statement as follows in addition to the submissions in respect of failure to act with integrity set out above. The travel card which the Respondent used on 26 January 2016 was clearly marked "Dependant" and it was inconceivable that the Respondent would not have seen this on the card when he first used it on 7 October 2015 or when he used it on 26 January 2016. The Respondent had also used the same card on two earlier occasions on 28 November 2015 and 22 January 2016. The Respondent had been employed with TfL as an Area Manager

since 29 March 1993 and was entitled to a “Staff” travel card. It is inconceivable that the Respondent would not have been aware of the terms and conditions of his travel card and he must have known that he was not entitled to use this card for commuting to work particularly, as he had previously bought season tickets for commuting to work. Even if the Respondent was not fully aware of the terms and conditions, he would have been aware each time he used the cards that he must not alter or overwrite dates as it was stated on both cards that “Dates must not be altered or overwritten”. The Respondent admitted the allegations in the Applicant’s letter of 5 July 2017, which included the allegation that he acted dishonestly.

- 52.7 Ms Bruce submitted additionally that when the Respondent reported to TfL on 28 January 2016 what had happened he gave his own version, dissembling (in the light of his now admitting all the allegations) because he asked for an explanation as to how he had two cards one with Dependant and his full name and another with Staff and his full name. Ms Bruce submitted that this was the beginning of a pattern of denial that continued through the subsequent disciplinary proceedings. TfL had reported the Respondent to the Applicant. Ms Bruce submitted that TfL’s findings had no bearing on the Tribunal’s decision but the underlying facts were relevant. She referred the Tribunal to the statement of TfL’s Fraud Investigator which set out TfL’s view of what had happened. The first incident occurred on 26 January 2016 and the Respondent went on to commit further misconduct the following day 27 January 2016. The next day 28 January 2016, the Respondent finally purchased a season ticket after his “Staff” and “Dependant” travel cards were confiscated. This was not “a moment of madness”. Ms Bruce submitted in respect of what the Respondent said at the fact finding meeting with TfL on 18 March 2016, that it was not credible that he had been travelling after work to see his son in Manchester via Leeds. He seemed to accept that because there were direct trains from Euston to Manchester. Ms Bruce submitted that the Respondent grew the narrative in interview saying that he had not noticed the travel card was marked “Dependant” (which was shown in large letters) until it was brought to his attention. He went so far as to say that one of the inspectors might have altered his season ticket. At the disciplinary interview on 13 June 2016, he denied altering the season ticket and again suggested that a member of the train staff had done it. At the March 2016 meeting, the Respondent confirmed that he was familiar with the PTAC conditions of use and that the card could be used for leisure and not commuting. At the second fact finding meeting on 5 April 2016, the Respondent continued the narrative from the earlier meeting concerning the Manchester/Leeds travel. He said that on 26 and 27 January 2016 he had made a genuine error. At the 5 April 2016 meeting, the Respondent said it was for Fraud and Security to prove that he was committing fraud rather than for him to prove his innocence. He was also evasive about where he lived in London. At the 13 June 2016 meeting, when asked about a letter from the train company he cited legal privilege and that the letter had been written without prejudice; he was quite quick to fall back on his legal training which Ms Bruce submitted he had used to evade admitting what he had done until very late.

Determination of the Tribunal in respect of allegations 1.1, 1.2 and 2

- 52.8 The Tribunal had regard to the evidence and the submissions for the Applicant and the admissions of the Respondent which included dishonesty. In determining the allegation of dishonesty the Tribunal applied the test in the case of Ivey:

“The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. 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...”

- 52.9 The Respondent was an experienced member of TfL’s staff and well aware of the terms and conditions governing the documents which he used to travel on 26 and 27 January 2016 and to which he was not entitled. By the standards of ordinary decent people what he had done was dishonest. The Respondent had also failed to act with integrity (Principle 2) and what he had done would certainly have failed to maintain the trust the public places in the Respondent and in the provision of legal service (Principle 6). The Tribunal therefore found allegations 1.1, 1.2 and 2 proved on the evidence to the required standard; indeed they were admitted.
53. **Allegation 1.3 - Whilst travelling on Virgin East Coast services between London Kings Cross and Peterborough on 27 January 2016, a revenue (ticket) inspector (sic) confiscated a season ticket from the Respondent in respect of which he had caused or allowed the date to be altered from 16 June 2015 to 16 June 2016. In doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011.**
- 53.1 The SRA Principles cited in respect of allegation 1.3 were the same as those relating to allegations 1.1 and 1.2. There was no allegation of dishonesty in respect of this allegation.
- 53.2 It was submitted that a ticket inspector confiscated a season ticket from the Respondent whilst he was travelling between London Kings Cross and Peterborough on 27 January 2016. The expiry date on the ticket had been altered from 16 June 2015 to 16 June 2016. Whilst the Respondent did not present this ticket to the inspector as a valid form of travel, he denied that he had altered the ticket and instead sought to blame the ticket inspector, his colleague or anybody in the guard room. In response his response to the Applicant’s letter, the Respondent confirmed that he was not contesting the allegations, which included an allegation that he had altered the date on his season ticket. The Respondent also confirmed in his email of 10 July 2018 that he admitted the allegations.
- 53.3 Ms Bruce drew the attention of the Tribunal to the copy of the season ticket in question which she submitted had been altered by the year being changed from 2015 to 2016. This was the ticket which had been confiscated. It came to light when he handed over his ticket to the inspector and underneath the one he was seeking to use was this ticket. It was a reasonable inference that the Respondent had caused or allowed the amendment to be made. Whilst the Respondent’s line manager had

authorised the loan on 20 April 2015, the Respondent did not purchase a season ticket within two months of receiving the loan, as the season ticket was purchased on 28 January 2016. This was contrary to the conditions of use. The late application for it by the Respondent was not part of the allegations; it was referred to as background. The Instructions for Use of a staff travel card included that alterations to the date entered were not permitted under any circumstances. Overwriting in the case of a mistake was not permitted.

- 53.4 It was submitted that a solicitor acting with integrity and behaving in the way that maintains the trust the public places in the solicitor would not alter a season ticket, or have in their possession, a season ticket which had been altered. In having in his possession, a season ticket in which the date had been altered, the Respondent has breached Principles 2 and 6 of the SRA Principles 2011.
- 53.5 The Tribunal had regard to the evidence, the submissions for the Applicant and the admissions of the Respondent. The Respondent had been found in possession of a season ticket which had clearly been altered in an attempt to extend its life by a year. All the evidence pointed to the alteration having been made by the Respondent and he now admitted doing so. The Tribunal found that by his actions the Respondent had failed to act with integrity (Principle 2) and had failed to maintain the trust the public placed in him and the legal profession (Principle 6). The Tribunal therefore allegation 1.3 proved on the evidence to the required standard indeed it was admitted.

Previous Disciplinary Matters

54. None.

Mitigation

55. The Respondent apologised for his behaviour in his previous employment which necessitated his appearance before the Tribunal. He took responsibility for his poor decision and judgment and could only appeal to the Tribunal to clothe itself in compassion, kindness, humanity, and gentleness and patience and bear with him and forgive him. He asked the Tribunal to please temper justice with mercy as it made its decision which would affect the rest of his career and life. In three days' time it would be exactly 28 years since he had been called to the Bar in a different jurisdiction; it was one of his proudest achievements and it cost so much money but it was all worth it. He came to the UK as an economic migrant and got a job with TfL and he decided to follow it as a career and he worked his way up to the top as a business manager and in 2016 it all went wrong. He continued in his employment. When this incident happened he had never employed as a solicitor at any time; he was just a business manager with TfL. He studied during that time to pass his qualified lawyers' transfer tests and was proud that he undertook the CPE just to become a solicitor in the UK and finally in 2001 he realised that dream. He hoped and prayed that one day he would be able to practise. He also pursued his studies for a degree in employment law where he passed with commendation. He had looked forward to retiring at about the age of 50. Unfortunately that was when he lost his job. Little did he know that he would be silly enough to compromise his family, his employment and his career and consequently lose his job and his dignity. Even after that awful loss he was going to pursue his PhD as he saw himself as an academic person and wanted to become a

lecturer. The Respondent appealed to the Tribunal to exercise discretion in his case and be lenient in its sanction. He was not a solicitor in practice at the material time. The Respondent felt that but for the fact that his previous employer was as he saw it determined to put a final "nail to his coffin" and make him destitute he did not see any reason why he should be at the Tribunal albeit his former employer said it was in the public interest to disclose the matter to the Applicant. The Respondent submitted that if the Tribunal struck him off the Roll it would be the very end of everything. Even if the Tribunal decided to strike him off he asked to be given the opportunity to come back into the profession. He had reflected and learned the law from what had happened to him and gave an assurance that this would never happen again. He admitted his complicity right at the beginning and co-operated with the Applicant in its investigation. The Respondent submitted that as the Tribunal could see he did not want to waste any of its time. His absence from the court room for part of the proceedings was not because he was arrogant; it was for his mental well-being. He had been undergoing this matter for the last two years and each time he thought it was over it started again. There was nothing more he could say than to put himself at the Tribunal's mercy and ask it to give him one more opportunity to rectify poor behaviour. He could not explain why he did what he did in 2016; he had reflected and could not get any common sense out of it. He had lost everything because of the silly decision he made in 2016 and he prayed he did not lose the only thing that kept him going which was the fact that he was a solicitor. He appealed to the Tribunal to relieve him of the burden of this matter as Christmas approached.

Sanction

56. The Tribunal had regard to its Guidance Note on Sanctions (December 2016) and to the mitigation offered by the Respondent. It assessed the seriousness of the misconduct. As to culpability, the Respondent's motive was not known but appeared to be personal financial gain. His actions were planned and occurred on more than one occasion. He was trusted by his employer and abused that trust. The Respondent had direct control of and responsibility for the circumstances giving rise to the misconduct. The Respondent had no practical experience as a solicitor but he had worked for his employer for a considerable number of years and risen to a senior position. The harm caused by the Respondent's misconduct to the reputation of the profession because he was known to be a solicitor. He had departed from the complete integrity, probity and trustworthiness expected of a solicitor to a considerable extent. There were aggravating factors; he had been found dishonest. His actions constituted a criminal offence albeit he was not charged. He repeated his misconduct and concealed his wrongdoing, the Respondent had tried to shift the blame for alterations to his travel documents onto the staff on the train. His misconduct was such that he ought reasonably to have known he was in material breach of his obligations to protect the public and the reputation of the legal profession. As to mitigating factors, the Respondent had displayed some insight realising he had brought himself to the Tribunal by his own actions. He had not made open and frank admissions at an early stage although he made admission to the Applicant in his communication of 7 July 2018 that he was not contesting the allegations. As to the appropriate sanction, the Tribunal considered that the Respondent's misconduct was too serious for no order, a reprimand or a fine. The Guidance Note made clear:

“The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).”

57. The Respondent had asked for leniency but he had not advanced a case for exceptional circumstances and the Tribunal could find none. Nor had the Respondent established that there were any compelling mitigating personal circumstances which would justify imposing a lesser sanction than strike off.


Costs

58. Ms Bruce applied for costs in the amount of £8,465 including costs at the date of issue of £4,052. She submitted that the Applicant had not merely received a set of documents from the Respondent's former employer setting out the case; further enquiries had to be made for example seeking original documents in the case. The 10 hours claimed for the Supervision and Investigation department of the Applicant was attributable to the fact that when the allegation was received it had to be investigated. That department obtained documents and prepared a memorandum as the basis for referral onto the Legal and Enforcement Team. Ms Bruce submitted that the time taken to do that was not unreasonable. As to the amount claimed for preparing and attending the hearing, having regard to the fact that the start of the hearing had to be re-timed to allow for substitution of the solicitor member, which was not in any way attributable to the Respondent (or to the Tribunal), Ms Bruce reduced the claim for her attendance from one day to half a day but submitted that the time claimed for preparation was reasonable. The Tribunal considered that the amount claimed up to the date of issue for work done by the Applicant was excessive, particularly the time spent on reviewing documents at eight and a half hours and drafting the Rule 5 Statement at 14 hours when the schedule showed that the 10 hours work had already been done by the Supervision and Investigation department. The Tribunal considered that there had been some duplication of work. The Tribunal reduced the amount claimed for costs at the date of issue from £4,052 to £2,000. The Tribunal did not consider the work undertaken after that by Capsticks had been complex and that if it had been done in house it would have cost considerably less and reduced that part of the claim from £3,450 to £2,000. The Tribunal therefore assessed costs in total at £4,400. The Respondent submitted that he had sent the Tribunal his statement of means. When he was employed he was on a package of close to more than £100,000. Now he survived on a pension. The Applicant had applied for costs the amount of which would be an additional burden on the Respondent and his family and he just did not know how he would be able to cope with that. The Tribunal considered the Respondent's financial position noting that he owned a property. In the circumstances the Tribunal did not consider that a reduction to the costs award should be made.

Statement of Full Order

59. The Tribunal Ordered that the Respondent, BABATUNDE ADEGBOYEGA TAIWO, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,400.00.

Dated this 18th day of January 2019
On behalf of the Tribunal


T. Cullen
Chair

Judgment filed
with the Law Society
on 18 JAN 2019