The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 12 December 2018. The appeal was heard by Lord Justice Davis and Mr Justice Popplewell on 24 and 25 July 2019 and Judgment handed down on 13 September 2019. The Respondent's appeal was dismissed. Clegg v Solicitors Regulation Authority [2019] EWHC 2408 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11707-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD THOMAS CLEGG Respondent

Before:

Mr L. N. Gilford (in the chair)
Miss H. Dobson
Mrs L. Barnett

Date of Hearing: 27-29 November 2018

Appearances

Andrew Bullock, barrister employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Justin Meiland, counsel of Hailsham Chambers, 4 Paper Buildings, Temple, London EC4Y 7EX for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that:

1.1 On 12 May 2015, by entering a defence in civil proceedings brought against his firm by Professor JW (relating to non-payment of the latter's fees in clinical negligence proceedings wherein the Respondent acted for Mrs LW), stating that Mrs LW should be the correct defendant, without informing her of the civil proceedings or his comments therein, he breached or failed to achieve all or any of:

1.1.1 Principle 4 of the SRA Principles 2011 ("the Principles);

1.1.2 Principle 6 of the Principles;

1.1.3 Outcome 1.1 of the SRA Code of Conduct 2011 ("the 2011 Code");

1.1.4 Outcome 3.4 of the 2011 Code; and

1.1.5 Outcome 1.16 of the 2011 Code.

1.2 Between February 2015 and March 2016, by misleading his client Mrs LW by failing to provide her with full and accurate information regarding Professor JW's claim he breached or failed to achieve all or any of:

1.2.1 Principle 2 of the Principles;

1.2.2 Principle 3 of the Principles;

1.2.3 Principle 4 of the Principles;

1.2.4 Principle 6 of the Principles; and

1.2.5 Outcome 1.1 of the 2011 Code.

2. Whilst dishonesty was alleged against the Respondent with respect to allegation 1.2 proof of dishonesty was not an essential ingredient for proof of that allegation.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 18 August 2017
- Rule 5 Statement and Exhibit EP1 dated 18 August 2017
- Respondent's Answer and Exhibit to the Rule 5 Statement dated 22 September 2017
- Applicant's Reply to the Respondent's Answer dated 10 October 2017
- Respondent's Supplementary Answer dated 13 October 2017
- Respondent's Supplementary Bundle
- Applicant's Statement of Costs dated 21 November 2018

Preliminary Matters

Respondent's Application to Adduce Additional Evidence

4. The Respondent applied to adduce additional evidence that had been filed at the Tribunal and served on the Applicant. The documents related to the proceedings upon which the Applicant's case against the Respondent was based. The Applicant, notwithstanding the lateness of service, did not object to the documents being adduced in evidence. The Tribunal considered that it was just for those documents to be admitted into evidence and thus granted the application.

Factual Background

5. The Respondent was born in 1974 and was admitted to the Roll of Solicitors in September 2005. He remained upon the Roll of Solicitors and has a practising certificate for the period 2016-2017 free from conditions. At all times since 21 May 2012 he was the sole director of GMS Law Limited ("the Firm"), having previously been employed at the Firm.

6. The Firm was instructed by Mrs LW under a Conditional Fee Agreement ("CFA") dated 19 May 2011. Ms PH was the solicitor with conduct of Mrs LW's case ("the Litigation"). The Respondent dealt with the costs and all subsequent issues following settlement of the Litigation.

7. On 16 January 2013, the Firm instructed Professor JW to provide an expert report on Mrs LW's behalf. On 16 April 2014, Ms PH emailed Professor JW providing dates for the trial window. The email stated: "[t]he trial is estimated to be 7 days. Although you will not be required for all 7 days. I estimate 3 days. I, therefore, must ensure that you are available during this time in order to attend. I would, therefore, be grateful if you could provide me with your dates of availability during the Trial Window".

8. Professor JW confirmed by an email of the same date that he was available for the trial window. In that email he stated:

> "Please do note my conditions and terms for medico-legal work and in particular my cancellation fees. Should my cancellation fees be unacceptable to your firm please let me know within the next two weeks."

9. The Terms and Conditions stated: "All cancellations must be received in writing. If more than 4 weeks notice of cancellation is given, there is no cancellation fee. If 2-4 weeks notice of cancellation is given, then half my daily rate is charged. If less than 2 weeks cancellation notice is given, then I charge my full daily rate of £1,500 per day."

10. On 23 April 2014, Ms PH wrote to Professor JW confirming that she had informed the Court that 12 – 20 January 2015 were mutually convenient dates for the parties, and that she would let the Professor know once she had heard further. She also stated: "I appreciate your terms and conditions and cancellation fee in this regard". On

24 April Professor JW confirmed to Ms PH that he would enter the Trial dates in his diary. This reply was acknowledged by Ms PH on 28 April 2014.

11. In August 2014, shortly after a meeting of the parties' experts, Mrs LW's substantive claim was settled. Professor JW was not informed that the Litigation had settled, or that he was no longer required to attend the Trial until 9 January 2015, when he contacted the Firm. This was within 2 weeks of the proposed Trial date. On 13 January 2015, Professor JW sent the Firm an invoice in the sum of £10,500 for the days set aside in his diary in accordance with his terms and conditions. The Firm did not pay this invoice, and on 13 February 2015 Professor JW sent a Letter Before Claim to the Firm stating that he would make a County Court claim if he did not receive payment in full within 28 days. The Firm did not pay, and Professor JW issued proceedings against the Firm.

12. The matter came before DDJ Wood at the Central London County Court at Central London on 28 January 2016. DDJ Wood awarded judgment in favour of Professor JW in the sum of £9,422 damages and £428.60 costs ("the Judgment"). On 9 February 2016 the Firm sent two cheques to Professor JW pursuant to the Judgment.

13. On 19 February 2016 Professor JW sent a report to the SRA. Mrs LW also sent a report dated 20 August 2016 to the SRA.

Witnesses

14. The following witnesses provided statements and gave oral evidence:

- Mrs LW – former client of the Firm
- Richard Clegg – the Respondent
- Gordon Dean – Respondent's Character witness

15. The written and oral evidence of the witnesses 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, made notes of the oral evidence, and referred to the transcript of the hearing. 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

16. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the written and oral evidence before it together with the submissions of both parties.

17. **Allegation 1.1 - On 12 May 2015, by entering a defence in civil proceedings brought against his firm by Professor JW (relating to non-payment of the latter's fees in clinical negligence proceedings wherein the Respondent acted for Mrs LW), stating that Mrs LW should be the correct defendant, without**

informing her of the civil proceedings or his comments therein, he breached or failed to achieve all or any of: Principles 4 and 6 of the Principles and Outcomes 1.1, 3.4 and 1.16 of the 2011 Code.

Applicant's Case

17.1 After the substantive element of the Litigation was settled in August 2014, the Respondent's Firm remained instructed to deal with the costs of the Litigation. The Firm received costs in full by 12 February 2016. Thus Mrs LW remained a client of the Firm in respect of the Litigation until at least until that date. Moreover, in his letter of 3 February 2016 the Respondent thanked Mrs LW for her instructions in respect of an appeal, therefore suggesting she remained a client after February 2016.

17.2 The Respondent defended the claim issued by Professor JW in a Defence dated 12 May 2015 ("the Defence"). At paragraph 2 of the Defence the Respondent stated:

> "The Defendant avers that the correct Defendant should be [Mrs LW] - being the Claimant in the underlying Personal Injury action and as such being the person, and the only person, capable of being liable for Disbursements in respect of the Personal Injury Claim in which she was Claimant under the indemnity principle".

17.3 The Respondent filed and served a second defence on 7 September 2015 ("the Second Defence"). At paragraph 3 of the Second Defence the Respondent stated:

> "it is a matter of Law that under the Indemnity Principle the client must remain responsible for Disbursements, to include Expert Fees".

17.4 The Respondent had not notified Mrs LW that Professor JW had commenced proceedings against the Firm for his unpaid fees, nor that he had defended the proceedings by stating that she in fact was the person against whom the proceedings should have been lodged. It was not until 2 February 2016 that the Respondent first notified Mrs LW of the claim by Professor JW.

17.5 The Firm appealed against the Judgment on 17 February 2016. Permission to appeal was granted in respect of some of the Firm's grounds on 6 October 2016. On 29 June 2017 His Honour Judge Mitchell granted the Appeal in respect of "the Indemnity Principle" but dismissed all other grounds.

17.6 The Respondent should have informed Mrs LW that Professor JW had bought proceedings against the Firm for payment of his costs and that he intended to defend the proceedings on the basis that she was the correct defendant. He should also have informed her that she potentially had a claim against his Firm for negligence in respect of their failure to notify Professor JW in good time that he was no longer needed for the trial.

17.7 The Respondent should also have stopped acting for Mrs LW at that stage as he could no longer do so because there existed an own interest conflict or a significant risk of a conflict arising in the claim bought by Professor JW. The Respondent's interest was to protect himself and his Firm and not the interests of his client Mrs LW. It was in

his interests and that of his Firm for Professor JW to pursue Mrs LW rather than his Firm.

17.8 The Respondent failed to treat his client fairly by failing to inform Mrs LW of Professor LW's claim and the Firm's Defence thereof, naming her as the correct defendant in the proceedings. He sought to protect his and his Firm's position to the detriment of Mrs LW in circumstances where she was unaware of the proceedings bought by Professor JW. He continued to act for Mrs LW in connected Litigation where there was an own interest conflict or a significant risk of one in the proceedings brought by Professor JW. The Respondent could no longer act in Mrs LW's best interests following the decision to defend the proceedings on the basis that Mrs LW was the correct defendant.

17.9 Public trust in the Respondent would be diminished in circumstances where he failed to inform his client of relevant matters, failed to treat his client fairly and continued to act where an own interest conflicted existed or there was a significant risk of such a conflict.

The Respondent's Case

17.10 The Respondent admitted breaching Principles 4 and 6, and failing to achieve Outcomes 1.1 and 1.16 as alleged. The Respondent denied failing to achieve Outcome 3.4. In his Answer and during his oral evidence, the Respondent accepted that he ought to have informed Mrs LW that she might have a potential claim against the Firm by virtue of the Firm's failure to stand down Professor JW in sufficient time to avoid any cancellation charges.

17.11 The Respondent also accepted, both in his Answer and during his oral evidence that there was a conflict which arose from the Firm's advancing the Defence that the liability for the disbursement lay with Mrs LW whilst the Firm continued to act for Mrs LW in the recovery of the Litigation costs. This acceptance was advanced with the benefit of hindsight; he had no appreciation at the time that there was a conflict of interests. The Respondent submitted that the conflict was theoretical rather than real. He did not intend, when submitting the Defence, to make Mrs LW the judgment debtor. Nor did he intend for her to have to pay out any monies as regards the claim. The Indemnity Principle defence, namely that it was the client and not the Firm that was liable for any disbursements, was a technical one and was perfectly properly pleaded. The main defence to the action was that it was not accepted that there was a contract entitling Professor LW to claim for the full 7 days he had set aside in his diary. Further, it could not be right that Professor LW was able to claim more for a higher number of days for not attending the Trial, than the number of days he would have been able to claim if he had. The Respondent considered that Professor JW's claim was unreasonable, wrong and bordering on dishonest. He had deployed the Indemnity Principle defence as a way of placing litigation pressure on Professor JW; he had not intended to use it against Mrs LW.

17.12 Mr Meiland submitted that whilst it was accepted that there was a conflict it was not so significant that the Firm were mandated to cease acting for Mrs LW. It was necessary for the Respondent to advise Mrs LW of the conflict and to take her instructions. The Tribunal was referred to the Respondent's witness statement in

which he explained that to cease acting for the client would, in fact, have been to her detriment given the stage of the costs negotiations and the Investment Approval. The instruction of new solicitors at that stage in the proceedings would have incurred additional and unnecessary costs.

The Tribunal's Findings

17.13 Principle 4 required the Respondent to act in the best interests of his client. Principle 6 required the Respondent to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Outcome 1.1 required that the Respondent treat his client fairly. Outcome 1.16 required him to inform his client if he discovered any act or omission which could give rise to a claim against him by his client. Outcome 3.4 prohibited the Respondent from acting where there was an own interest conflict, or a significant risk of an own interest conflict.

17.14 The Tribunal found that it was not in Mrs LW's best interests to be named by the Firm who represented her as the correct Defendant in proceedings brought against the Firm. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 4 as alleged. His admission to that breach was properly made. In failing to tell Mrs LW that he had named her in the Defence in defence of an action against the Firm, the Respondent had not treated his client fairly. Accordingly the Tribunal found beyond reasonable doubt that the Respondent had failed to achieve Outcome 1.1. The Respondent's admission in that regard was properly made. The Tribunal considered that in failing to inform Mrs LW that she potentially had a claim against the Firm due to the Firm's failure to notify Professor LW of the cancellation in good time so as not to incur any cancellation fee, the Respondent had failed to inform his client of an act or omission which could give rise to a claim against the Firm by Mrs LW. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had failed to achieve Outcome 1.16. The Respondent's admission in that regard was properly made. By virtue of the above findings, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 of the Principles. Members of the public would expect a solicitor to inform their clients of omissions made which then caused the client to incur additional liabilities for which the Firm could not be held liable but the client could. Still less would members of the public expect a solicitor, having named his client in defence of the Firm, to fail to inform them of that fact. Such conduct, it was found beyond reasonable doubt, did not maintain the trust the public placed in the Respondent and in the provision of legal services. The Tribunal considered that the Respondent's admission to a breach of Principle 6 was properly made.

17.15 The Tribunal accepted, (and the Applicant conceded), that there was nothing inherently improper in the Respondent defending the claim in the way that he did, namely by identifying Mrs LW as the correct Defendant to the proceedings. The Tribunal determined that by naming Mrs LW as the correct Defendant to the pleadings in the Defence, the Respondent had created an actual conflict between the Firm and Mrs LW. The conflict was not theoretical as suggested. Such a conflict could not be remedied by "reassuring" Mrs LW that she would not ultimately have to pay Professor JW's cancellation fee. The 2011 Code was clear – "you do not act" where there is, or where there is a significant risk, of an own interest conflict. The fact that the Respondent did not intend for Mrs LW to pay any of the fees incurred as

a result of the Firm's failure to notify the Professor that the trial was no longer going ahead, did not remedy the conflict. Nor was it remedied by the fact that the defence advanced was, in the Respondent's mind, 'technical' in nature. In defending proceedings brought against the Firm, the Respondent had named his client as the correct Defendant. He had exposed her to the risk of litigation in order to protect the Firm. The actual conflict he had created was glaringly obvious. He had continued to act for Mrs LW in the settlement of the Litigation costs. The Respondent had placed himself in the position where he acted for Mrs LW in one set of proceedings whilst simultaneously arguing that she was the correct Defendant in another. He had caused a situation where it was plain that he could no longer continue to act for Mrs LW and he ought, in accordance with his obligation, to have ceased acting for her. It was clear beyond reasonable doubt that the Respondent had failed to achieve Outcome 3.4. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt.

18. **Allegation 1.2 - Between February 2015 and March 2016, by misleading his client Mrs LW by failing to provide her with full and accurate information regarding Professor JW's claim he breached or failed to achieve all or any of: Principles 2, 3, 4 and 6 and Outcome 1.1 of the 2011 Code.**

Applicant's Case

18.1 In a letter to Mrs LW dated 2 February 2016, the Respondent first advised Mrs LW that proceedings had been brought by Professor JW in respect of his unpaid expert's fees. In his letter the Respondent explained that he wanted to "bring a recent development to your attention - as it is in relation to the amount you need to pay one of the Experts by way of Disbursements". Mr Bullock submitted that the Respondent was fully aware that Professor JW's claim was not a "recent development", having been aware of the Professor's claim since receiving his Letter of Claim in February 2015. Furthermore it had been over nine months since Professor JW had issued proceedings against the Firm for recovery of his outstanding fees. It was not therefore correct to inform Mrs LW that this was a "recent development".

18.2 In the letter of 2 February 2016 the Respondent stated: "I have defended the claim on your behalf". This was not correct, as the Respondent was fully aware that Mrs LW was not a party to the proceedings, and that he had defended the claim on behalf of his Firm. Notwithstanding his comments in both the Defence and the Second Defence as to who he thought the correct defendant should be, the Respondent was fully aware that Professor JW had only issued proceedings against his Firm, and that he was defending those proceedings on behalf of his Firm.

18.3 In his telephone conversation with Mrs LW on 3 February 2016, and his letter of that date, the Respondent again failed to advise Mrs LW of the true position regarding Professor JW's claim, nor did he draw her attention to the Judge's comments in the Judgment explaining why Judgment was made in favour of Professor JW. Mr Bullock submitted that understanding the basis on which the cancellation fee was payable was fundamental to Mrs LW. The Respondent failed to provide her with this information, on the contrary he consciously withheld those reasons, and withheld the reasons that DDJ Wood found that the cancellation fee was payable.

18.4 In his letter to Mrs LW of 3 February 2016, the Respondent thanked Mrs LW "for confirming your instructions to Appeal the Court's Decision". The Respondent did not need Mrs LW's permission to appeal Judgment when she was not party to the original proceedings. Ostensibly asking Mrs LW for her instructions in respect of the appeal gave her the impression that she was the defendant in the proceedings, and that he was acting on her behalf in respect of the same, when the Respondent was fully aware that this was not the case.

18.5 In particular he failed to advise Mrs LW that Professor JW had brought, and succeeded in, his claim because the Firm failed to notify him that the Litigation had been settled in August 2014 and the trial would not therefore be taking place, notwithstanding the comments of Deputy District Judge Wood ("DDJ Wood"):

> "there can be no real doubt but that there was ..... a contract in place between the parties"
>
> "It strikes me as extraordinary that the case settled in August 2014, hot on the heels of the experts' discussion, and yet [Professor JW] was not told. That might have been discourteous; it is not for me to comment ... It simply entitles, in my judgment, [Professor JW] to claim the cancellation fees in accordance with his contract"

18.6 He also failed to inform Mrs LW that that DDJ Wood had stated that Professor JW was entitled to his fees for all seven days of the trial window because he "was obliged to keep all seven days free during the relevant window" or that the Judge has stated: "in my judgment, therefore, if [Professor JW] was not informed either directly or indirectly, formally or informally, that he was not required, with sufficient notice, he is entitled to claim his cancellation".

18.7 During his telephone conversation with Mrs LW on 3 February 2016 the Respondent also informed her that "basically you will need to win the Appeal to get anything close to your … net compensation". Furthermore on 25 February 2016 the Respondent advised Mrs LW that he had "previously provided [her] with interim payments totalling … the 70% minimum of [the net compensation]. Therefore there is nothing further due to you unless the Appeal is successful in which case something more will be due, however, I cannot say how much at this stage".

18.8 This was repeated in his letter to Mrs LW dated 10 March 2016 when the Respondent stated that "you only ever were entitled to receive 70% of [your compensation] …This is what you have received ... Having said all of the above, there is still the possibility of you receiving further funds - but if, and only if, the Appeal against the Expert Fee of [Professor JW] is successful".

18.9 Mr Bullock submitted that even if the Respondent had successfully appealed the Judgment and recovered the sum of £9,422 paid to Professor JW it appears unlikely that this would have been reimbursed to Mrs LW, as suggested in his letters of 25 February and 10 March 2016 as there was an existing shortfall of costs due to the Firm. In his letter of 26 July 2016 the Respondent emphasised that Mrs LW "would expect to receive 70% of your compensation once the shortfall of costs had been taken

into account". As there was still a shortfall in respect of the costs, Mrs LW would not have received any further money even if the Appeal had been successful.

18.10 Suggesting to Mrs LW that if the Appeal was successful she may be able to recover more of her damages was misleading, especially when he was alleging that she should be the correct defendant in those proceedings and therefore could have been liable to pay a further sum of £9,422 to Professor JW in settlement of the Judgment debt. In paragraph 12 her witness statement dated 4 July 2016 Mrs LW confirmed that:

> "[the Respondent] failed to give me full details of [Professor JW's claim] or full details as to the nature of the contractual dispute ..... Had I been give full details of the unnecessary and unavoidable expense I would have written to [the Respondent] to query my liability for paying the cancellation fees and also to query the alleged basis of an appeal purportedly based on a defence of my interests"

18.11 Mr Bullock submitted that the appropriate test for integrity was that contained in the Judgment of Wingate and Evans v SRA [2018] EWCA Civ 366, namely that integrity connoted adherence to the ethical standards of one's own profession. The test was an objective one. A solicitor of integrity would not provide misleading information to his client to suggest that she was a party to civil proceedings, or that he was acting on her behalf in respect of the same, when he knew this was not true. By failing to ensure that his client fully understood the true position regarding Professor JW's claim, the Respondent was not and could not be acting in his client's best interests.

18.12 Furthermore, a solicitor of integrity would not mislead his client by deliberately withholding relevant information from her, especially where that information related to a failure of his Firm, nor would he provide misleading information to his client in respect of civil proceedings together with less than full and frank advice about regarding an appeal against the Judgment against him. Deliberately failing to provide such full and frank information would not be acting in his client's best interests, nor would it be treating his client fairly.

18.13 The public places its trust in a solicitor to always act with integrity towards his clients, to always act in his clients best interests and to provide a proper standard of service to his clients. Failure to do so would necessarily diminish the trust the public places in him and in the provision of legal services.

18.14 The trust the public places in a solicitor is undermined in circumstances where he has misled his client into believing that she is a party to litigation when in fact she never was, and where he failed to protect her interests.

18.15 By failing to inform Mrs LW of the Judge's comments, in particular those confirming Professor JW's entitlement to claim his costs directly resulted from the Firm's failure to notify Professor JW that he was not required to attend the trial in the Litigation, the Respondent preferred his interests to those of his client, and therefore allowed his independence to be compromised.

Dishonesty

18.16 Mr Bullock submitted that the appropriate test for dishonesty was that formulated by Lord Hughes in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67:

> "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."

18.17 It was conceded that if the Tribunal did not find that the Respondent's conduct lacked integrity, it was not open to the Tribunal, on the facts of this case, to find that the Respondent's conduct had been dishonest. Mr Bullock submitted that when considering dishonesty, the Tribunal ought to consider the Respondent's state of mind and his knowledge particularly in February and March 2016 when he was corresponding with Mrs LW:

- The Respondent knew that Professor JW was suing the Firm as a result of its failure to cancel his provisional booking in accordance with his terms and conditions. He knew, therefore, that the liability had been incurred due to the fault of the Firm and it was not simply that Professor JW was "arrogant, unscrupulous and his entire claim borders on being dishonest."

- The Respondent knew that the failure to notify Professor JW of the cancellation had been the subject of adverse judicial comment, namely that DDJ Wood found it "extraordinary" that the case settled in August 2014, but that Professor JW was not informed.

- The Respondent knew that the claim was against the Firm and that it was the Firm, and not Professor JW that was seeking to make Mrs LW liable for the cancellation fee in those proceedings.

18.18 It was further submitted that the Respondent:

- Made a deliberate and conscious decision to withhold information relating to Professor JW's claim from Mrs LW over a period in excess of nine months;

- Specifically informed Mrs LW that the claim by Professor JW was a "recent development" when he had been aware of it for over nine months;

- Made a conscious and deliberate decision to inform Mrs LW that he was defending the claim by Professor JW on her behalf, when he knew that Professor had issued the claim against his Firm and not Mrs LW;

- Made a further and conscious decision to withhold any criticism that was made of the Firm by DDJ Wood from Mrs LW;

- Informed Mrs LW that Professor JW's claim was an attempt to recover more fees than he would have been entitled to had the trial gone ahead, when he was aware that Professor JW's claim arose out of the Firm's failure to inform him, with sufficient notice, that he was no longer required to attend the trial or keep the trial window free.

- Suggested to Mrs LW that if the Appeal was successful she may be able to recover more of her damages when he knew this was not true, especially when he was alleging that she should be the correct defendant in those proceedings and therefore could have been liable to pay a further sum of £9,422 to Professor JW in settlement of the Judgment debt.

The Respondent's Case

18.19 Mr Meiland agreed that the appropriate test for dishonesty was that formulated in Ivey. He also agreed that Wingate was the authority containing the matters for consideration when determining whether conduct demonstrated a want of integrity. Whilst it was agreed that lack of integrity was an objective test, the state of mind of the solicitor ought to be considered when considering whether his conduct was lacking in integrity as per Morris J in Newell-Austin v SRA [2017] EWHC 411 (Admin). Solicitors were not expected to be "paragons of virtue" and the Tribunal should not set "unrealistically high standards" as per Rupert Jackson LJ in Wingate.

18.20 Mr Meiland submitted that should the Tribunal find that the Respondent had not breached Principle 2, it was not open to the Tribunal to find any other breaches as the other Principle and Outcome breaches alleged were dependent upon a finding of lack of integrity. This was clear from the drafting of the Rule 5. At the beginning of the section particularising the alleged breaches, Principle 2 had been defined whereas none of the other Principle or outcome breaches had been so defined. Further, when suggesting how it was that the Respondent had breached Principle 4 and Outcome 1.1, the Applicant had linked those breaches to Principle 2. The Rule 5 Statement referred to a solicitor of integrity not providing misleading information and thereby not acting in his client's best interests, and a solicitor of integrity not failing to provide full and frank information and thereby not treating his client fairly.

18.21 Mr Meiland argued that if the Tribunal was against him as regards the construction of allegation 1.2, the Respondent admitted that he had breached Principles 4 and 6 and failed to achieve Outcome 1.1 on the basis that the correspondence he sent to Mrs LW could have been clearer. If she had been misled, this had been entirely inadvertent.

18.22 The Respondent accepted that he ought to have informed Mrs LW that he was challenging the Professor's cancellation fees, and that as the client she was technically liable for any fees ordered. His failure to do so was not so as to intentionally mislead her, as he did not need her consent to defend the claim. Further, under the conditions of her CFA Mrs LW was, as a matter of law, responsible for the disbursements arising out of her claim whether or not they had been reasonably incurred. The Respondent

explained that it had not occurred to him to inform Mrs LW about the Defence advanced. He accepted, with hindsight that he ought to have spoken to Mrs LW.

18.23 The Respondent explained that the "recent development" referred to in his letter of 2 February 2016 was not the Professor's claim, but the Judgment of DDJ Wood, which was delivered on 28 January 2016. It was clear from the letter that he was referring to the outcome of proceedings. Mrs LW was aware from her own experience that Judgments were delivered at the end of proceedings. The Respondent did not inform Mrs LW, nor did he mean her to understand, that the claim was the "recent development".

18.24 In his oral evidence the Respondent clarified that when he stated that he was defending the claim on Mrs LW's behalf, this was correct. He was defending her liability for the cancellation fees. Under the CFA, Mrs LW was liable for any disbursements. The cancellation fee was a disbursement. In defending the claim, the Respondent was defending the amount due from Mrs LW for that disbursement. He accepted that the letter could have detailed more precisely how he was defending Mrs LW. He had no intention of making her the Judgment debtor in the proceedings, nor did he intend to give her the impression that she was the named Defendant in those proceedings.

18.25 As regards requesting instructions for an appeal, the Respondent explained that he did not need Mrs LW's instructions; he intended to appeal in any event. When asking for her instructions he was actually seeking her opinion, and support for PH. The Respondent denied that by telling Mrs LW that she would get more compensation if the appeal was successful, she would think that she had a financial interest in the appeal other than any payment he would make at his discretion. He had told her that she was not due any further monies and thought that it was thus obvious that any further payment would be at his discretion.

18.26 Mr Meiland submitted that the Applicant had failed to make out a case of lack of integrity in relation to the "recent development" referred to in the letter of 2 February 2016. The letter clearly referred to the Court's decision of 28 January 2016. Further, Mrs LW would be aware from her own experience that a Judgment did not occur 'overnight'. Her own litigation had taken 4 years to conclude and she knew the steps required prior to a matter going to trial. Having heard that there had been a Judgment, she could not think that the "recent development" was the Professor's claim. In her witness statement, Mrs LW accepted that when the Respondent informed her of the proceedings in February, she was also informed that the proceedings had been ongoing for about a year. In her oral evidence she stated that she had not been informed of the Court's decision and that the appeal and claim were future events. Mr Meiland submitted that her evidence in this regard was unreliable. It ran contrary to the contemporaneous documents, the Respondent's version of events and her own witness statement. Such inconsistencies rendered her evidence unreliable. The Respondent's evidence on this point had been clear. When referring to the "recent development" he was referring to the Judgment. This was evident not only in his oral evidence but in the contemporaneous correspondence.

18.27 It was submitted by the Applicant that the statement "I defended this claim on your behalf" was the opposite of the truth. Mr Meiland advanced that it was important that the Tribunal considered the Respondent's state of mind when assessing whether, in making this statement, the Respondent's conduct lacked integrity. It was accepted that the words used did not clearly articulate the Respondent's position, namely that whilst she was liable for the payment of the disbursement under the Indemnity Principle, he was defending her liability to pay the disbursement. It was of note that the Respondent did not tell Mrs LW that she was a party to the proceedings. Nor did he suggest that Mrs LW was liable to pay the adverse costs order. That was paid from the Firm's office account as it was the Firm's liability. The fact that there was always going to be a shortfall between the costs recovered and Mrs LW's personal liability also fed into the Respondent's thinking at the time. Mr Meiland submitted that the same points related to the Respondent's seeking Mrs LW's instructions for the appeal. At no time was the Respondent seeking to make Mrs LW believe that she was the Defendant in the proceedings.

18.28 The Respondent discussed with Mrs LW that the Professor's claim had succeeded as he had not been notified of the cancellation of the hearing. Mr Meiland submitted that Mrs LW's evidence to the contrary was not reliable. The surrounding evidence showed that it was likely to have been discussed; the entire context of the 2 and 3 February 2016 discussions was the cancellation fee. Whilst it was fully accepted by the Respondent that the correspondence was not clear, a lack of clarity did not of itself demonstrate a lack of integrity.

18.29 The Respondent's references to Mrs LW receiving more money if the appeal was successful was not misleading. The Tribunal had heard the Respondent's evidence on that point. He was clear that in the event the fee was reduced/not payable, he would have given Mrs LW more money. In his evidence the Respondent explained that he would look at the damages recovered and the costs charged. Notwithstanding the shortfall, he would still have given Mrs LW more money had he succeeded in defending Professor JW's claim. The Applicant submitted that it "appears unlikely" that the Respondent would have given Mrs LW more money. Mr Meiland argued that this was not the test. The Applicant was required to prove its case beyond reasonable doubt. That something 'appeared unlikely' did not satisfy this standard.

Dishonesty

18.30 In response to the points re dishonesty:

- The Respondent did not know that liability had been incurred due to the fault of the Firm. His evidence was that he did not consider that PH had made a mistake. He reviewed the file and did not believe that there was any contract in place. During his telephone conversation with Mrs LW on 3 February 2016, he had explained the position in full, including why the claim was successful. Further, it could not be right that the Professor was entitled to claim more for not attending the Trial than he could claim had he attended the Trial.

- There was no evidence to substantiate the Applicant's contention that the Respondent was aware of the adverse comment of DDJ Wood. It was accepted by the Applicant that the Respondent was not in possession of the transcript of the

hearing until 7 June 2016. This was after he had corresponded with Mrs LW. Further, any evidence as to what was contained in Counsel's note of the hearing was speculative – that note was not in evidence, and the Respondent was unable to recall the content of the note or when he received it. Thus, there was no evidence upon which the Applicant could rely to show that the Respondent was aware of any adverse comment made by DDJ Woods.

- The Respondent had not sought to make Mrs LW the Judgment debtor, nor did he intend to make her believe that she was the Defendant in the proceedings. Mr Meiland repeated his submissions above as regards the Respondent's intentions. The Respondent had paid the adverse costs order from his office account as this was the Firm's liability. The cancellation fee had been paid from costs recovered that were still held in the client account as the cancellation fee was a disbursement. The suggestion that the Respondent was attempting to make Mrs LW the Judgment debtor ran contrary to and was inconsistent with the objective facts in this case.

18.31 As to the further submissions on dishonesty:

- The Respondent did not make a conscious and deliberate decision to withhold information relating to the Professor's claim. As detailed above, the Respondent did not consider that he needed to inform Mrs LW of the claim, as she was liable for the disbursements in any event. Given the shortfall on costs claimed, the success or otherwise of the Professor's claim would have no financial impact on Mrs LW, save in the event that the Respondent exercised his discretion and made a further payment to Mrs LW.

- As to the "recent development", Mr Meiland repeated the submissions made above.

- The Respondent's statement that he was defending the claim on her behalf was true as he was defending her liability to pay the disbursement.

- As detailed, there was no evidence that the Respondent was aware of any adverse criticism made by DDJ Woods at the time that he was corresponding with Mrs LW in February and March 2016.

- The Respondent did not try to hide the fact that the Professor was claiming fees on the basis that he had not received notification of cancellation within sufficient time to avoid charges. This had been explained by the Respondent to Mrs LW in their 3 February 2016 telephone call.

- His suggestion that Mrs LW might receive more damages if the appeal was successful was genuine. He intended that Mrs LW would receive some of the benefit of any reduction in Professor JW's claim.

18.32 Mr Meiland submitted that Mrs LW was an unreliable witness. She disputed matters where factually there could be no dispute. Her recollection was poor and her oral evidence was contrary to the facts. Where there was a factual dispute between the Respondent and Mrs LW, that dispute should be construed in the Respondent's

favour. His evidence had been consistent. He had made admissions where they ought properly to have been made. The Applicant accepted that the Respondent's Defence to the Professor's proceedings had been pleaded in good faith with the Respondent genuinely believing that his defence was correct in law. His success on appeal was based on the Indemnity Principle defence he had run. It was clear from the Respondent's actions and his approach that he had no intention to treat Mrs LW, or for Professor JW to treat Mrs LW, as the Judgment debtor. It was not for the Tribunal to determine whether the Respondent's approach, as regards the Indemnity Principle or that PH had not made a mistake was correct. The Tribunal must consider whether his beliefs were genuinely held. The Respondent's evidence showed that his beliefs were genuinely held and demonstrated why they were held.

The Tribunal's Findings

18.33 The Tribunal accepted that the appropriate tests for dishonesty and integrity were those in Ivey and Wingate. The Tribunal did not accept that allegation 1.2 was written in such a way that where there was no finding of a breach of Principle 2, it was estopped from making findings on the other breaches alleged. The allegation was clear. The Tribunal found that in alleging that the Respondent had breached or failed to achieve "all or any" of the Principles and Outcomes particularised, it was alleged that the Respondent had breached all or any of those matters. Accordingly, it was open to the Tribunal to find all or any of those matters proved.

18.34 The Tribunal examined the contemporaneous documents in detail. It noted that in the letter of 2 February 2016 the Respondent stated:

> "I wanted to bring a recent development to your attention – as it is in relation to the amount you need to pay one of the Experts by way of Disbursements.
>
> …
>
> I defended this claim on your behalf on the basis that [Professor JW] was never actually confirmed to attend the Trial – but on a worst case scenario that he should be paid the two days that he would have attended trial. Unfortunately, and to be clear, I think the Court was completely wrong, the Court said that [Professor JW] was entitled to the entire seven day Trial window that he had set aside in his diary.
>
> …
>
> I am asking for your instructions because [Professor JW] was am Expert we instructed on your behalf in relation to your claim and as you are aware you are responsible for paying all Disbursements for the Clinical Negligence Claim. My advice to you is to Appeal the Decision of the Court – and further I am prepared to take this forward on the same No-Win-No-Fee Agreement that I have with you in relation to the Clinical Negligence Claim itself"

18.35 The Tribunal noted that the Respondent failed, in that letter, to inform Mrs LW that (i) the claim was against the Firm and (ii) the claim was made on the basis that the Firm having required the Professor to set aside time in his diary, and in the knowledge

of his terms and conditions, had failed to notify him of the cancellation of Trial within sufficient time so as to avoid any cancellation fee. The Tribunal did not find that the reference to the "recent development" was in and of itself misleading, however taken together with the other assertions made in the letter, it was apt to mislead as it contributed to the overall impression gained by Mrs LW. The Tribunal accepted Mrs LW's evidence that when reading "I defended the claim on your behalf", she believed that she was the Defendant in the proceedings, and did not understand that it was the Firm that the was the named Defendant in those proceedings. The Tribunal determined that the impression gained by her was the impression that anyone reading that statement would gain. The misleading impression that she was the Defendant in the proceedings was further strengthened by the Respondent's request for her instructions. No client would expect to be asked for instructions on an appeal that was not being made on their behalf, and nor would a solicitor ask a client for "instructions" in that circumstance. It was clear that the appeal was not on behalf of Mrs LW – she was not a party to the proceedings. The misleading impression was further compounded by the Respondent, having advised Mrs LW to proceed with the appeal, stating that it would be funded by a No Win No Fee agreement. The Tribunal did not accept the Respondent's evidence that what he was trying to explain was that Mrs LW would not be responsible for costs when he referred to the No Win No Fee agreement. Nor did it accept that when asking for her "instructions", the Respondent meant that he wanted her input and support for PH. The Tribunal found that the Respondent's explanation in his oral evidence of lawyers often falling into conventions of language was not credible. The Tribunal found that when reading the letter as a whole it was misleading. It accepted the evidence of Mrs LW that she was indeed misled. Further, not only was the letter misleading as regards the statements made, it was also misleading in terms of its omissions. Nowhere in the letter did the Respondent make the basis of the Professor's claim clear. Nor did he explain the full basis on which he defended the claim. In particular, he failed to notify Mrs LW of the Indemnity Principle defence he had advanced. He did not explain why the DDJ had found that the Professor was entitled to claim for the full 7 days.

18.36 In the telephone attendance note of 3 February 2016, the Respondent noted that he went through the result of the claim by the Professor. In his oral evidence, the Respondent stated that when going through the result of the claim, he explained:

- PH had asked the Professor to note the dates of the trial window in his diary. The Professor had not been instructed to attend the trial.

- In the event that he was required to attend, he was told that he would not be needed for more than 3 days.

- PH had explained that he was not cancelled as he was never instructed to attend, and that he was not informed of the settlement as he was not instructed to attend.

- He had claimed £10,000 for doing nothing.

- The possible outcome of the appeal was that the Court may find that he ought only to have claimed for 3 days and not 7.

18.37 The Tribunal did not accept the Respondent's oral evidence as to the matters he discussed with Mrs LW when "going through the result of the claim by Professor [JW]". The Tribunal found it surprising that the Respondent's note was detailed in every other respect, including in matters that were of no significance to the case, but that these important details were not noted. The Tribunal found the evidence of Mrs LW, namely that the Respondent did not explain to her the basis of the Professor's claim or the reasons the DDJ found in the Professor's favour, to be straight forward and credible. Her oral evidence in this regard was supported by the letter before claim written by her to the Firm on 20 June 2016, in which she summarised the findings of the Court and stated that in having failed to notify Professor JW, the Firm had either made a negligent omission or it was simply a mistake. She also made clear that the Firm had failed to tell her that it was the Firm's failure to notify the Professor that had led to the cancellation fees being incurred.

18.38 The Respondent also noted in the attendance notes that he suggested to Mrs LW that "rather than Appeal the full 7 days allowance we should make the point that when giving the Trial date and asking him to place these in his diary, [PH] said to him that he would probably be required for three days". The note also recorded that the Respondent advised Mrs LW that she would need to win the appeal to get anything close to her [mistaken] net compensation figure. The Tribunal found that these statements compounded the misleading impression already formed by Mrs LW as a result of the letter of 2 February 2016.

18.39 In his letter of 3 February 2016, the Respondent stated: "Thank you for confirming your instructions to Appeal the Court's decision that one of your Experts should be paid a 7 day Trial Cancellation Fee … I shall therefore take the Appeal forward ...". Again, it was found that such statements reinforced the misleading impression gained by Mrs LW as a result of the previous letter and telephone call. The Tribunal determined that the fact that the Respondent did not expressly assert that Mrs LW was a party to the proceedings was of no assistance to him in circumstances where everything else said would give Mrs LW the distinct impression that she was a party to the proceedings. Given the very clear statements made in the correspondence, the Tribunal found the submission that Mrs LW ought to have deduced, based on her own experience, that the claim had been ongoing for some time before she was informed of it unattractive. The Respondent had led Mrs LW to believe that she was a party to the proceedings.

18.40 The Tribunal determined that by 17 February 2016, the Respondent fully understood the salient reasons for DDJ Wood's findings. The skeleton argument and grounds for appeal of that date stated (inter alia):

> "in the absence of a single Contract document, it is common ground that the Court had to decide whether there was a Contract, and if so its terms, on the basis of correspondence. The Judge found that a bargain had been struck and that the Appellant had required the Respondent to set aside seven days within his diary. The Judge, therefore, found that the Respondent was entitled to be paid for the entire seven day period. It is this Judgment – that the Respondent as an Expert Witness should be paid for all the days of the entire Trial merely because he had to set aside those days from his diary – that is the subject of this Appeal."

> …….
>
> The Judge found that by acknowledging receipt of the Expert's Terms, the Appellant was acknowledging these Terms. Further the Judge found that the Appellant accepted that the Respondent has an obligation to keep his diary free for the entirely of the Trial. The Judge found that in acknowledging receipt of the Cancellation Terms and 'appreciating' them a bargain was struck. The Judge then went on to find that by acknowledging that the Respondent was obliged to keep seven days free, on that basis he could claim a seven days Cancellation Fee.

18.41 When describing how DDJ Wood erred in law it was stated:

> "… in order to allow a seven day cancellation fee the Judge would have to have found that the Solicitor when asking the Expert to keep the seven day Trial window free in his diary intended to pay the Expert for the full seven day Trial period, irrespective of the number of days that the Expert actually attended the Trial …
>
> …
>
> … the Claimant could not point to any explicit agreement in writing (or otherwise) [to show that he was entitled to be paid for every single day of the Trial irrespective of the number of days he actually attended the Trial to give evidence]. At most, the Claimant pointed towards the fact that he had provided his terms of business in relation to Cancellation, that these had been acknowledged – 'appreciated' without being specifically rejected. However the terms themselves did not explicitly state that where an Expert was instructed to attend Trial then he would be paid for more days than the Trial itself and further that if the Trial was cancelled on short notice then he would be paid a cancellation fee for every day of the Trial (or potentially even every day of a Trial Window).
>
> …
>
> The finding by the Judge that the Expert had set aside time in his diary to attend Court was insufficient to lead to the further finding that he was without more entitled to payment for the entire 7 day Trial listing."

18.42 Thereafter, the Respondent wrote to Mrs LW on 25 February 2016. He did not, at that stage, knowing what he had already said and written to her on 2 and 3 February 2016, seek to clarify the basis upon which the claim had been bought, notwithstanding his clear appreciation of the reasons for DDJ Wood's findings. He did, however, assert that there was nothing further due to Mrs LW "unless the Appeal is successful in which case something more will be due". This statement was apt to and continued to, mislead Mrs LW as regards the Professor's claim.

18.43 In his letter of 10 March 2016 he stated "there is still the possibility of you receiving further funds – but if, and only if, the Appeal … is successful. … I would, therefore, suggest that you work on the basis that you may not receive any further compensation

– you will only receive further compensation if the Appeal is successful." The Respondent did not clarify that "any further compensation" would be in his absolute discretion. He gave the impression, and Mrs LW gained the impression, that the additional compensation was part of the damages settlement to which she was entitled save for the payment of the fees. Again, the Tribunal found that taken with all of the other statements made by the Respondent, these statements were misleading.

18.44 The Tribunal found that the correspondence with Mrs LW had been misleading in two ways; (i) the Respondent had failed to provide Mrs LW with full and accurate information as to Professor JW's claim or the findings of DDJ Wood; and (ii) the information he did provide misled Mrs LW into believing that she was a party to the proceedings. The Tribunal noted that the Respondent had omitted to provide any information that could lead to Mrs LW forming the impression that the Firm was in any way to blame for incurring the disbursement.

18.45 The Tribunal found beyond reasonable doubt that in failing to provide Mrs LW with full and frank information as regards Professor JW's claim, the Respondent had failed to act in his client's best interests in breach of Principle 4 of the Principles, and had not treated her fairly such that he had failed to achieve Outcome 1.1. He had also allowed his independence to be compromised by placing the interests of the Firm above the interests of his client. He ought properly to have informed Mrs LW that the claim was against the Firm, as opposed to attempting to seek her support by providing misleading information and failing to provide her with full information. Such conduct, it was found beyond reasonable doubt, breached Principle 3 of the Principles.

18.46 The Respondent ought to have been much more careful and frank about the information that he did and did not provide. In misleading Mrs LW in the way that he did, the Tribunal found beyond reasonable doubt that the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Members of the public would not expect a solicitor to fail to provide full information to a client about a matter so as to obtain her support for an appeal. Nor would members of the public expect a solicitor to provide misleading information for the same reasons. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6 of the Principles.

18.47 When considering whether the Respondent had failed to act with integrity (and honesty), the Tribunal considered the testimonial and evidence provided by Mr Dean. Mr Dean had known the Respondent for some time. The Respondent currently worked for Mr Dean as a consultant. He explained that the Respondent had run a successful firm for a long time. In the time that he had been working for him, Mr Dean found the Respondent to provide thoughtful and intelligent advice. He had read the allegations the Respondent faced. Allegations of the Respondent acting dishonesty and without integrity, or that he had deliberately misled his client were not consistent with the conduct of the man that he knew. The Respondent operated honestly and with the same integrity that Mr Dean operated with.

18.48 The Tribunal found that a solicitor acting with integrity, knowing what the Respondent knew at the time, would have informed his client of the basis of the claim, namely that in the knowledge of the Professor's terms and conditions, the Firm

had failed to inform him that he was no longer required for the trial in sufficient time so as to avoid the cancellation fees. Further, a solicitor acting with integrity would have made it clear to the client that she was not a party to the litigation and that the claim was being defended in part on the basis that the correct Defendant to the litigation was the client and not the Firm. Nor would a solicitor acting with integrity provide misleading information such that the client would believe that she was a party to the litigation. Instead the Respondent sought to garner the support of his client for his position by providing her with misleading information, and failing to outline the circumstances and background to the Professor's claim in full. He was not scrupulous in giving Mrs LW an accurate picture. The Respondent's conduct was demonstrable of a failure to abide by the ethical standards of the profession. Accordingly the Tribunal found that the Respondent had failed to act with integrity in breach of Principle 2 of the Principles.

18.49 Pursuant to the test in Ivey, the Tribunal considered the Respondent's state of mind at the time of his conduct. The Tribunal found beyond reasonable doubt that the Respondent had deliberately and consciously withheld the full details of the claim from Mrs LW. He had purposefully given her the misleading impression that she was the Defendant in the proceedings by stating that he was defending the claim on her behalf, seeking her instructions for an appeal and suggesting that the appeal could be funded by a No Win No Fee agreement, in circumstances where he knew that it was the Firm that was the Defendant. He had also deliberately and consciously failed to inform her of the basis of the Professor's claim and the reasons that DDJ Wood found in the Professor's favour. He had also purposefully failed to inform her that part of the Firm's defence was that Mrs LW was liable for the cancellation fee. The Tribunal accepted that when referring to recent developments, the Respondent was referring to the Judgment of DDJ Wood, and that he might well in his discretion have provided Mrs LW with further monies in the event of a successful appeal.

18.50 The Tribunal then considered whether ordinary decent people would consider the Respondent to have acted dishonestly. The Tribunal found beyond reasonable doubt that ordinary and decent members of the public would find that by deliberately withholding information from Mrs LW, and in providing her with misleading information in relation to the Professor's claim and the Firm's appeal, the Respondent's conduct was dishonest. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt, including that the Respondent's conduct had been dishonest.

Previous Disciplinary Matters

19. No previous matters at the Tribunal.

Mitigation

20. Mr Meiland acknowledged that where dishonesty had been found the almost invariable sanction was for a solicitor to be struck off the Roll of Solicitors. If that dishonesty was at the lowest end, there was scope, where exceptional circumstances were found, that the case could be considered to fall into the small residual category where a striking the solicitor from the Roll was not the appropriate or proportionate sanction. The allegations against the Respondent related to a single client and was a

single episode in an otherwise unblemished career. There was no financial detriment caused to the client, although there was confusion caused. The Respondent, in his oral evidence, had demonstrated insight – he accepted that he should have advised the client as regards the conflict and the potential for a negligence action against the Firm. He also admitted that his advice was misleading.

21. The Tribunal, when considering sanction, would take into account the interests of the public. Mr Meiland submitted that the Tribunal should also consider the interests of the public in preventing the Respondent from practising and thereby depriving the public of his services. The Tribunal was referred to the evidence of Mr Dean as regards the valuable service provided by the Respondent to his clients.

22. Mr Meiland submitted that in all the circumstances, the Tribunal might consider that a suspension was the appropriate and proportionate sanction.

Sanction

23. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition). The Tribunal's overriding objective, when considering sanction, was the need to protect the public and maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

24. The Tribunal did not find that the Respondent had been motivated by financial gain, and accepted that he may well have made an additional payment to Mrs LW had he been successful in the litigation. His motivation for his misconduct may have been to protect the reputation of the Firm and PH. His actions were planned; he deliberately omitted information in his correspondence with Mrs LW that might have led to her to believe that the disbursement had been incurred as a result of the Firm failing to notify Professor JW of the cancellation. He consciously omitted relevant information and positively asserted misinformation. He had total control and responsibility for the circumstances giving rise to the conduct. All correspondence and conversation with Mrs LW on the matter was with the Respondent. He was an experienced solicitor who was the sole Director and shareholder of the Firm.

25. The Respondent's conduct had caused harm to the reputation of the profession. He had misled his client, and had issued a defence in which he named his client as the correct Defendant without informing her, and whilst he continued to represent her in other proceedings. The dishonesty findings also caused harm to the reputation of the profession, as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

26. The Tribunal found that the Respondent's misconduct was aggravated by his proven dishonesty. It was deliberate, repeated and had continued over a period of time. The Respondent had reinforced the misleading impression caused both orally and in

correspondence. The Respondent's conduct was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. In mitigation, the Respondent had shown some insight, but his insight was limited. Notwithstanding his admission that there was a conflict of which he ought to have advised his client, he maintained that he was not under a duty to cease acting for her as a result of that conflict.

27. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

28. Mr Meiland submitted that this was a matter where exceptional circumstances might apply as this was a single client matter and a single episode in a previously unblemished career. The Tribunal had regard to the decision in Solicitors Regulation Authority v James, Solicitors Regulation Authority v Naylor and Solicitors Regulation Authority v MacGregor [2018] EWHC 3058 (Admin). That decision made it clear that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation of exceptional circumstances was the nature and extent of the dishonesty. Further, the exceptional circumstances must relate in some way to the dishonesty. The Tribunal did not find that there were any exceptional circumstances relating to the Respondent's dishonesty such that it would be disproportionate to strike him from the Roll. His genuine belief that Professor JW had acted unreasonably, and the DDJ Wood had erred in law in finding in the Professor's favour were not such that they could be deemed exceptional. The Tribunal determined that the only appropriate and proportionate sanction, in order to protect the public, and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll.

Costs

29. The parties agreed costs in the sum of £12,000.00. The Tribunal considered that the amount agreed was reasonable and proportionate. The Tribunal considered the schedule of costs submitted by the Applicant and determined that the agreed costs were appropriate and proportionate. Accordingly the Tribunal ordered that the Respondent pay the costs of and incidental to the application and enquiry in the agreed sum.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, RICHARD THOMAS CLEGG, 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 £12,000.00.

Dated this 12th day of December 2018
On behalf of the Tribunal

L. N. Gilford
Chairman