The Tribunal's Order is subject to appeal to the High Court (Administrative Court) by the Applicant, the Solicitors Regulation Authority. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11657-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

SOVANI RAMONA JAMES — Respondent

Before:

Miss T. Cullen (in the chair)
Mr J. Evans
Mr M. R. Hallam

Date of Hearing: 27 - 28 November 2017

Appearances

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

Paul Bennett, Solicitor Advocate, Aaron & Partners LLP, Lakeside House, Oxon Business Park, Shrewsbury SY3 5HJ, for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 On various dates between 5 August 2013 and 30 May 2014 she made statements to a client concerning litigation which she was retained to conduct upon behalf of that client which were untrue and misleading and which she knew to be untrue and misleading and thereby:

1.1.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("the Principles"); [1] and/or

1.1.2 Failed to act in the best interests of each client in breach of Principle 4 of the Principles; [2] and/or

1.1.3 Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles; [3] and/or

1.1.4 Failed to achieve Outcome 1.16 of the SRA Code of Conduct 2011 ("the Code"). [4]

1.2 On various dates between 9 September 2013 and 6 January 2015 she made statements to her employer concerning that same litigation which were untrue and misleading and which she knew to be untrue and misleading and thereby she:

1.2.1 Failed to act with integrity in breach of Principle 2 of the Principles; and/or

1.2.2 Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles.

1.3 She created a letter to NHSLA on 11 November 2014 which she backdated to 25 September 2014 and thereby:

1.3.1 Failed to act with integrity in breach of Principle 2 of the Principles; and/or

1.3.2 Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles.

1.4 She created a letter to B and S University Hospitals on 11 November 2014 which she backdated to 25 September 2014 and thereby:

1.4.1 Failed to act with integrity in breach of Principle 2 of the Principles; and/or

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[1] Principle 2 is mandatory and requires solicitors to act with integrity.
[2] Principle 4 is mandatory and requires solicitors to act in the best interests of each client.
[3] Principle 6 is mandatory and requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services.
[4] Outcome 1.16 is mandatory and requires a solicitor to achieve the Outcome by informing current clients if they discover any act or omission which could give rise to a claim by them against the solicitor.

1.4.2 Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles.

1.5 She created a letter to Professor MW on 11 November 2014 and backdated it to 25 September 2014 and thereby:

1.5.1 Failed to act with integrity in breach of Principle 2 of the Principles; and/or

1.5.2 Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles.

1.6 She created a letter to [G] [5] on 12 November 2014 and backdated it to 25 September 2014, and thereby:

1.6.1 Failed to act with integrity in breach of Principle 2 of the Principles; and/or

1.6.2 Failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6 of the Principles.

2. Whilst dishonesty is alleged with respect to the allegations at paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6, proof of dishonesty is not an essential ingredient for proof of any of the allegations.

Documents

3. The Tribunal reviewed the following documents submitted during the course of these proceedings by the Applicant and the Respondent:

- Three 'Hearing Bundles', including amongst other documents: all pleadings; exhibits; G's case file; letters from the Solicitors Regulation Authority ("SRA") to the Respondent; responses written by Aaron & Partners on behalf of the Respondent; witnesses statements and supporting documents; the Applicant's costs schedules; and details of the Respondent's means.

- Authorities handed up by the parties during the course of the hearing.

Factual Background

4. The Respondent was born in February 1983. She was admitted as a Solicitor in England and Wales on 1 July 2010. The Respondent's name remains on the Roll of Solicitors and she holds a current Practising Certificate subject to conditions.

5. The Respondent was employed as a solicitor at McMillan Williams ("the Firm") from 1 July 2010 until 12 February 2015. Her letter of resignation was dated 5 November 2014 and she was required by the Firm to serve a notice period. On 23 February 2015 the Respondent joined The Roland Partnership in Chester as a solicitor where she remains in practice.

[5] In this Judgment the client's name is replaced by the letter G to protect their identity.

6. On 13 February 2015, G raised concerns with the Respondent's former supervisor, Shurouk Al-Sabbagh (a partner and Head of the Injury Department) about the progress of her claim. It was agreed by the Applicant and the Respondent that G was a vulnerable client. G's client matter file ("the File") was subsequently reviewed by several partners at the Firm. On 2 April 2015, the Firm's Compliance Officer for Legal Practice ("the COLP"), Dionne Allen, prepared and sent a report to the SRA raising concerns regarding the Respondent's conduct.

7. The SRA reviewed the File. Parties in the case had stated that whilst the Respondent had conduct of the file they had not received any correspondence or had any contact with the Firm for some time. The SRA requested the Firm to produce metadata on the creation, modification, and printing of four letters on the File.

8. <u>G's Matter</u>

8.1 In 2011 the Firm was instructed by G, the claimant in a clinical negligence matter concerning treatment she received from B and S University Hospitals NHS Trust ("the Trust"). On 17 April 2012 the Firm issued High Court proceedings on G's behalf against the Trust. The Respondent inherited the claim from another fee earner in May 2012 and retained conduct until she left the Firm on 12 February 2015. The Respondent's supervisor until April 2014 was Ms Al-Sabbagh. The Respondent was transferred from the Firm's Herne Hill office to its Carshalton office at which point partner Lauren Phillips became her supervisor.

8.2 G's proceedings were served in August 2012. The Particulars of Claim, Schedule of Loss, and medical report on condition and prognosis (together "the Pleadings") were due to be served by 29 July 2013 under a Consent Order dated 10 July 2013 ("the Consent Order"). The Respondent did not serve the Pleadings by 29 July 2013.

8.3 The Trust's representatives did not apply to strike out the claim in default of service; they simply closed the file. On 31 March 2015, the Firm successfully applied to the Court on G's behalf for relief from sanction (so that G's claim against the Trust could continue) on terms that the Firm paid the costs of the application of £5,756.73. Witness statements from Ms Al-Sabbagh, Ms Phillips, and HC (a partner in the Firm's Clinical Negligence Department who took over conduct of the file after the Respondent left) commenting on the Respondent's conduct of the claim were filed in support of the application.

8.4 The File showed that, between 5 August 2013 and 6 January 2015, the Respondent made the following statements to G, and Ms Al-Sabbagh, Ms Phillips, and Nicola Mooney (partner and Head of the Clinical Negligence Department) ("NM") to suggest that the claim was being progressed when it was not:

8.4.1 The Respondent's attendance note of a telephone conversation with G on 5 August 2013 stated: 'I will send a Judgment Order for the Defendant to agree now'. The Respondent did not advise G that the Consent Order requiring service of the Pleadings by 29 July 2013 had not been complied with.

8.4.2 The Respondent's typed note of a case review meeting with Ms Al-Sabbagh on 9 September 2013 stated: 'Current outstanding tasks: 1. Judgment with NHSLA'. The Judgment was not with the NHSLA by that date. There was no reference to the Consent Order which had not been complied with. The Trust's representatives subsequently confirmed that the NHSLA had received no communication from the Firm between 17 July 2013 and 20 February 2015.

8.4.3 The Respondent's attendance note of a telephone conversation with G on 3 October 2013 recorded the advice that the Respondent gave to CG:

> '… I advised that we have stayed the matter as preferred by myself and defendant to allow us the time to gather our evidence on the basis that she needed time to recover from her operation and that I will be writing to experts to arrange for them to assess her in the new year. I advised that we have secured the admission all that needs to be investigated is the value of the claim (sic).'

Contrary to what the Respondent told G, the claim had not been stayed pending the quantification of the claim, and no agreement had been reached with the NHSLA. There was no mention of the breach of the Consent Order.

8.4.4 The Respondent's typed note of a case review meeting with Ms Al-Sabbagh on 2 December 2013 (bearing the latter's handwritten annotations made during the meeting) recorded that the Respondent had advised Ms Al-Sabbagh that the Particulars of Claim and the expert report on condition and prognosis were due for service by 31 December 2013. No agreement had been reached with the NHSLA to extend the time for service of the Particulars of Claim and supporting documents to that date.

8.4.5 The Respondent's typed note of a case review meeting with Ms Al-Sabbagh in January 2014 stated the need to chase for signed statements and that the Schedule of Loss was due for service by the end of March 2014. There was no evidence that statements were awaited. No agreement had been reached with the NHSLA to extend the time for service of the Schedule of Loss to that date.

8.4.6 On 27 February 2014 G emailed the Respondent requesting an update. The Respondent replied by email on 14 March 2014, advising G that she had not yet had a chance to look through the medical records, but that she would be in contact the following week 'once I've had a chance to look at everything'. There was a handwritten telephone attendance note dated 27 May 2014 on the File stating that G had updated the Respondent on her ongoing medical problems. There was no mention in that note of non-compliance with the Consent Order or the next procedural steps.

8.4.7 The Respondent's attendance note of a telephone conversation with G on 30 May 2014 recorded the advice she gave to G, including that she had agreed that they had to serve the Schedule of Loss 'by the end of October'. No such agreement to extend time for service of the Schedule of Loss had been reached with the NHSLA.

8.4.8 NM reviewed the lead correspondence file in her capacity as relationship manager between the Firm and the After-The-Event insurance provider. By email on 12 November 2014 timed at 15:21, NM asked the Respondent to tell her the current position, as the correspondence mentioned that the Schedule of Loss was due by October 2014. By email timed at 15:39, the Respondent informed NM that she would be speaking with the client imminently to go over her witness statement and get an update, and that she would obtain updated expert evidence on G's condition and prognosis. The Respondent added: 'We have agreed that we need to serve SOL by 30 Jan'. [6] No agreement had been reached with the NHSLA that the time for service of the Schedule of Loss was extended to that date.

8.4.9 Ms Phillips recorded in her handwritten note of the handover supervision meeting with the Respondent on 6 January 2015 that Judgment had been entered and the Schedule of Loss was due at the end of February. Ms Phillips advised the Respondent on the next steps to be taken on that understanding. Contrary to what the Respondent told Ms Phillips, Judgment had not been entered and no agreement had been reached to serve the Schedule of Loss by the end of February.

8.5 On 12 February 2015 the Respondent telephoned G to inform her that she was leaving the Firm that day. She promised G that she would call back later that day to discuss what was happening. The Respondent did not make that call. G contacted Ms Al-Sabbagh by email on 13 February to inform her that she had been expecting contact and to request an update. Ms Al-Sabbagh instructed Ms Phillips to conduct an initial review of the File. Ms Phillips noted that there was no evidence on file of Judgment having been entered in G's favour or that a Schedule of Loss had been served. She recorded that it was difficult to determine the current position. Ms Al-Sabbagh passed the File to partner HC for a more detailed review, and the latter produced a full note on 17 February 2015. It became apparent that no action had been taken on the File for some time, that there had been a breach of the Consent Order requiring service of the Pleadings by 29 July 2013, and that both the client and the Firm had been misled by the Respondent as to the status of the claim. As outlined at paragraph 8.3 above, prompt steps were taken by the Firm on G's behalf to obtain relief from sanction and Judgment for damages to be assessed. No harm was ultimately caused to G in terms of prejudice to the outcome of her claim. There was however unnecessary delay and consequential stress and uncertainty.

8.6 There were four copy letters bearing the Respondent's reference 'SOJ' on the File, created according to the computer metadata in Word format on 11 and 12 November 2014 and dated on the face of each letter '25 September 2014'. The metadata stated the author of the letters to be 'Sovani James'.

8.7 The details of the letters were as follows:

8.7.1 To the NHSLA dated 25 September 2014, requesting an extension of time for service of the Schedule of Loss from the end of October 2014 until

[6] Schedule of Loss.

30 January 2014 (sic), created at 14:33 and modified and last printed at 14:46 on 11 November 2014;

8.7.2 To the Trust dated 25 September 2014, requesting updated medical records, created at 16:23 and last printed at 15:16 on 11 November 2014, and last modified at 09:21 on 12 November 2014;

8.7.3 To Professor MW dated 25 September 2014, instructing him to consider medical records and, if he so wished, to re-examine G to advise on condition and prognosis, created at 14:32 and last modified and printed at 15:12 on 11 November 2014;

8.7.4 To G dated 25 September 2014, stating that the Respondent 'will be in touch shortly once I have heard from Prof [MW] with an appointment to reassess you', created at 09:32 and last modified and printed at 09:56 on 12 November 2014.

9. On 18 July 2016 the SRA wrote to the Respondent requesting an explanation for her conduct in relation to allegations 1.1 and 1.2.

10. The Respondent's explanation was provided by her legal representatives, Aaron & Partners, by letter dated 30 August 2016. The Respondent admitted the facts underlying allegations 1.1 and 1.2 and dishonesty in respect of those facts and apologised for her misconduct. She advanced detailed mitigation summarised briefly here as follows: the negative culture of the Firm; loss of confidence in her abilities arising from that culture; significant stress and anxiety arising out of her personal circumstances which affected her ability at work; and mental health problems. Statements in support were provided by former employees of the Firm and a reference from her current employer. An expert's report from Consultant Psychiatrist Dr John Frazer dated 1 December 2016 was sent to the SRA on 22 December 2016.

11. Following receipt from the Firm of the metadata relating to the correspondence detailed at paragraph 8.7 above, the SRA wrote to the Respondent on 27 March 2017 requesting an explanation for her conduct in relation to allegations 1.3 - 1.6.

12. Aaron & Partners responded by letter dated 10 April 2017 in which they made the following points summarised briefly here: the Respondent could not specifically remember the events from that period; she had no recollection of creating the letters and modifying or backdating them; the Respondent was suffering from a mental health condition at the relevant time, and therefore denied that she could have formulated an intention to be dishonest; the veracity of the metadata was unclear and the scenario put forward by the SRA did not seem credible; by 5 November 2014, she had handed in her notice and there was no benefit in backdating the letters to 25 September 2014; the same date was used for multiple unconnected letters which seemed odd; the Respondent had no recollection or knowledge as to whether the originals of each of the letters were sent to the recipients given her limited recollection due to the passage of time and her underlying illness at the material time.

13. It was also relevant to note two items of correspondence emanating from the Firm's management team:

13.1 An email from Dionne Allen to the Respondent dated 6 July 2012, which stated, amongst other things, as follows:

> '**Re: Individual Billing Target 2012/13 - £193,176.25**
> **Individual Time Recording Target 2012/13 - 1515 Hours**
>
> As you are aware, in this financial year the Firm will be courting outside investors and moving towards an LLP[7] and an ABS[8].
>
> The targets which the Firm projects become particularly important, as external investors will initially look at time recording, billing and work in progress for the purposes of Earnings Before Interest Taxes Depreciation and Amortisation.
>
> …
>
> Billing 2012/2013
>
> The projected billing for the year 2012/13 is in the region of £12,000,000 to £12,500,000. This continues the Firm's minimum 20% per annum growth strategy…
>
> Efforts of Staff
>
> … we are dependent upon you to reach the minimum targets set.
>
> Time Recording
>
> With regard to time recording, your time recording for the year 2011/12 was 1365 hours and 24 minutes, your target was 1440 hours, and you were 75 hours under target.
>
> Your target for the year 2012/13 is 1515 hours.
>
> As, for some reason, a deficit occurred in your time recording in the financial year 2011/12, I have added this deficit to the target for the year 2012/13 so that over a 24 month period your average monthly time recording will come out at 123 hours. This gives you a further year to make up the previous year's deficit. It is particularly important, therefore, that you ensure that your average time recording per month is 126 hours, so that over this and the next financial year, your time recording can return to normal.'

13.2 A letter from Colum Smith, the Firm's Managing Partner, to the Respondent dated 11 April 2013, as follows:

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[7] Limited Liability Partnership
[8] Alternative Business Structure

'Dear Sovani

Re: Time Recording

The time recording figures for March 2013 show fundamental problems with regard to your time recording.

The firm expects individuals irrespective of what other roles may be assigned to them to complete the assigned number of chargeable hours.

If the assigned number of chargeable hours are met, then every fee earner in the firm will be profitable. If the assigned number of hours are not met we will not be profitable, the linkage is clear, in that those individuals who do less time recording are far less likely to reach the required financial targets of the firm.

Whilst it is possible to do less time recording than the target and still reach the financial target, it is extremely rare to do so.

If you are not producing the required number of chargeable units, you are not doing the minimum work required by the firm.

As deficits roll forward and do not reset to zero, your target will simply increase year on year, until such point as that target becomes unmanageable.

The way to resolve that issue is to increase the number of chargeable hours that you do each month. Some fee earners produce up to 200 chargeable hours a month.

Other fee earners who have tasks assigned to them which result in them spending a vast amount of time doing other tasks, still manage to produce the required chargeable hours.

It is simply a question of priorities.

As long as you prioritise the chargeable hours, it is possible to hit the target. This may involve working evenings, weekends, Bank Holidays, or simply doing a longer day. It is entirely down to the efficiency of the fee earner, unless there is a lack of work.

We are not aware of a lack of work in relation to your time recording, but despite this your time recording is 1252 hours against a target of 1389 hours and you are therefore deficient by 137 hours.

Please therefore by return of email let me know your plans on how you are going to resolve that deficit before the deadline of 30th April 2013, which is only 19 days away. I am assuming that you will be working each and every weekend and long hours during the week to ensure that the required target is reached.

As you are aware from the 30th April 2013 onwards we are likely to be subject to due diligence which will focus on billing and time recording. If your time recording is deficient it will be necessary for us to ask for a formal explanation as to why in a formal meeting. This will then need to go on your staff file and may be made available as part of the due diligence process.

Bearing in mind some fee earners who have other jobs to do in the firm, which are substantial in terms of time are still managing to hit their minimum target, there is clearly some oddity occurring with regard to your goodself or alternatively your time recording would be on target.

I look forward to hearing from you today with regard to your plan.

Yours sincerely
Colum J Smith
Managing Partner
McMillan Williams'

14. On 12 October 2016 an SRA Authorised Officer referred the Respondent's conduct to this Tribunal. The proceedings were received by the Tribunal from the SRA on 31 May 2017.

Witnesses

15. Applicant's Witnesses

The Tribunal heard oral evidence from the two witnesses named below. A brief summary of the material points from their testimony follows.

15.1 Dionne Allen

- Ms Allen provided a written statement dated 6 November 2017, the contents of which she confirmed to be true. At all material times she was (and still is) employed at the Firm's Coulsdon office where she is a solicitor and the COLP. Ms Allen completed, and then submitted the report form to the SRA on 2 April 2015.

- A generic pass word known to all staff members was used to log on to PCs. Staff logged on to their individual cloud profiles using their unique usernames and passwords. Word documents were created in cloud profiles. The generic password approach was changed following the introduction of a new IT system. At the material time it would have been possible for the fee earner to pre-save their individual log on credentials on their PC, thereby enabling another staff member to log on to that fee earner's cloud profile from the same PC. It was not standard for the system to time out after a period of inactivity, thus ending the current cloud session. The system configuration was secure.

- Ms Allen had been the Firm's Director of Regulation, People and Standards since 2015, which included responsibility for staff welfare. She established the HR Department on joining the Firm, so had always been responsible for its HR function. Ms Allen had not noticed that the Respondent's hair was falling out, that she was

putting on weight or that she was tearful in the office, but she was based at a different office from the Respondent. The Respondent's supervisors did not bring any concerns about the Respondent being tearful in the office to Ms Allen's attention.

- The witness did not agree with the Respondent that the atmosphere of the Firm changed during 2012/13. The Firm was seeking to secure external investment and the focus, particularly for the management team, was on preparing for investment. Ms Allen did not accept that the financial pressures put on solicitors were 'significant'. There was focus on fee earners meeting their targets. Ms Allen was asked by Mr Bennett to consider the letter from Mr Smith set out at paragraph 13.2 above. He suggested that the letter was symptomatic of the pressures to which solicitors were being exposed in April 2013: the letter was highly individualised holding specific solicitors to account. Ms Allen's recollection was that every fee earner received the letter setting out where they sat in relation to their financial targets. She did not agree that the requirement for the Respondent to inform Mr Smith of her plans for resolving her time recording deficit with the assumption that she would be working at weekends and long hours during the week was 'highly oppressive management' as suggested by Mr Bennett. She did agree that there was pressure on solicitors to explain any deficit in time recording and billing. She did not accept that her own email dated 6 July 2012 set out at paragraph 13.1 above placed significant pressure on fee earners to deliver time recording and billing increases. Mr Bennett put it to Ms Allan that the proposed minimum 20% per annum growth strategy could only be achieved by aggressive pressure on individual solicitors. Ms Allen's response was that there was focus, but not aggressive pressure, on individuals.

- Ms Allen agreed with Mr Bennett that she could not be certain which of the two staff sign-in sheets for 12 November 2014 (each signed by the Respondent) applied to that date.

- The reference in the Respondent's 2013/14 appraisal document to an issue regarding 'a lack of attention and failure to action advice from [Head of Department]' concerned a mistake by the Respondent in 2013 which was reported to Ms Allen as the Chief Operating Officer (as she was at that time). Ms Allen recalled being involved in a meeting about the issue attended by the Respondent and Ms Al-Sabbagh. Ms Allen did not recall any suggestion to the Respondent that she should consider her position in relation to a career in clinical negligence or that the Respondent was distressed during the meeting.

15.2 Shurouk Al-Sabbagh

- Ms Al-Sabbagh had provided a statement to the High Court in relation to G's application for relief from sanction. The Respondent had required her attendance for the purposes of cross-examination.

- Ms Al-Sabbagh is the Firm's Deputy Head of Legal Services with responsibility for the Injury and Civil Departments. At the material time Ms Al-Sabbagh was Head of the Injury Department. Until April 2014 she was the Respondent's supervisor.

- Ms Al-Sabbagh did not recall noticing that the Respondent was suffering from hair loss or that she had gained weight or appeared depressed. She described the Respondent's approach to her casework as being 'generally pretty good'. She progressed cases well and had a high standard of work. Ms Al-Sabbagh recalled an incident when a particular file had not been progressed. She gave the Respondent instructions to deal with a time-critical issue relating to the limitation period which the Respondent did not follow and which came to light when Ms Al-Sabbagh next looked at the file. This raised a concern that had to be referred to the COLP. Ms Al-Sabbagh had never told, (or even thought it of), the Respondent that a career in clinical negligence might not be for her. Ms Al-Sabbagh would 'very likely' have said to the Respondent that this was a pressured job and that if she found the pressure to be too much she had to think about ways of coping.

15.3 The Tribunal read three additional witness statements with the agreement of both parties, including the statement of Ashley Wright, IT consultant and provider of IT services to the Firm, which was directly relevant to allegations 1.3-1.6 and 2. The statement was dated 19 October 2017 and included exhibit "AW1" comprising the metadata for the letters detailed at paragraph 8.7 above.

16. Respondent's Witnesses

16.1 The Respondent

- The Respondent's witness statement dated 6 November 2017 was signed by her, and its contents were true to the best of her knowledge and belief. The material points from her written and oral testimony are summarised below.

- The Respondent was transferred to the Firm's Herne Hill office at the end of 2011, where she worked under the supervision of Ms Al-Sabbagh. The Respondent had her own case load and also assisted Ms Al-Sabbagh with the latter's cases.

- At the end of 2012 the Firm was growing in size with an increased amount of administrative work. A new policy on file supervision and auditing was introduced involving the audit of files each month with supervisors. The Firm was also seeking external investment. Fee earners had to work long hours to keep on top of caseloads to ensure that they met their targets and dealt with additional administrative tasks. The Respondent said in her written statement that she was 'badly affected by the sudden focus on financial return on employees and increasing expectations on the fee earners within the Department. It was a significant pressure with which I struggled. I was finding it difficult to manage the work load and meet the demands of the Department'.

- In mid-2013 Ms Al-Sabbagh identified the Respondent's failure to heed her advice on a file, which the Respondent said was due to the increasing workload. The concern was raised by Ms Al-Sabbagh with Dionne Allen. The Respondent said in her witness statement that she met with Ms Allen who suggested that the Respondent should consider whether clinical negligence was the right career for her. The Respondent felt 'shocked and upset and thought that I was being asked to consider resigning. I became fearful and worried for my position at the Firm.'

- The Firm's culture changed from being supportive to being focused on billing before client service and employee welfare. The Respondent said that: 'Given the aggressive implementation of the billing targets I felt threatened and inadequate as a solicitor.' The supervision and file review process was 'a fault finding exercise for which there would be little empathy if you made a mistake'. She described feeling intimidated by Ms Al-Sabbagh and having lost confidence and becoming unwell. Her written evidence was that: 'On reflexion (sic) I realise that the environment at the Firm was toxic and the pressures there had a detrimental impact on my health'.

- In her statement the Respondent described Colum Smith as known to be 'confrontational and threatening in his behaviour towards others'. His behaviour was said to have led to a culture of fear amongst the junior solicitors. The Respondent told Lauren Phillips that: 'I had been terrified to report my mistake on [G's] file I had conduct of (sic)'. In oral evidence the Respondent said that she was 'fearful of management and the repercussions, the consequences of owning up to what I did wrong. I was anxious and fearful of what would happen to me and of the people there'.

- The Respondent did not remember receiving either the email from Dionne Allen dated 6 July 2012 or the letter from Colum Smith dated 11 April 2013. In July 2012 the Respondent considered that she was doing quite well at work; she felt healthy and confident and that she was good at what she was doing and was valued. She did not believe that she felt unhappy or depressed then.

- In her written evidence the Respondent said that there came a point when she found her job difficult as a result of the anxiety and stress from which she was suffering:

> 'Even everyday tasks were difficult to complete at this stage and almost daily I would be in tears due to the pressures I was under. I did confide in others about how I felt, and others felt the same…The stress I was under was obvious towards the end of my time with the Firm. I was clearly distressed and cried regularly. My hair started to fall out and I put on weight.'

- In oral evidence the Respondent described herself as being unwell in October/November 2014. She now believes that she was very depressed. She was crying a lot at work and struggling at home with personal issues. She was fearful every day of going into work and was 'very much unhappy'. She felt as if she had 'a massive dark cloud over her head'. She had 'very, very unpleasant memories of 2013 to 2014 which were too painful to try and remember'.

- The Respondent started work in the Clinical Negligence Department at The Roland Partnership on 23 February 2015. She is 'very happy in my role', where she feels supported and adequately supervised. She had regained her self-confidence and self-worth. She is 'no longer anxious, stressed or mentally unwell'.

- The Respondent described certain personal circumstances which she considered to be relevant as part of the whole picture; it was not necessary to go into detail for the purposes of this Judgment. The Respondent explained that: 'The impact of the terror I felt at work and the distress at home combined affected my mental health'.

- With regard to allegations 1.3 to 1.6 inclusive and the associated allegation of dishonesty, the Respondent's evidence taken from her witness statement was that she:

> 'had no recollection in (sic) creating the documents which were allegedly backdated. It has been a number of years since the documents referred to were created, I have tried to move on and forget my time at the Firm given it holds such bad memories for me and, as already confirmed, I was suffering from mental health issues at the time which affected my ability to cope in my job role. I suspect my memory is affected but I simply do not recall falsifying documents so cannot admit it.'

The Respondent expanded this evidence in examination-in-chief by saying that she was 'rather surprised' by the allegation that she had created and backdated documents. She did not remember having done so and the allegation had come quite late in the proceedings.

- Regarding her admission of dishonesty in respect of allegations 1.1 and 1.2, the Respondent said that:

> '… my mental health at the time affected my ability to make appropriate decisions, but I knew I was misleading others as I could not cope and was too stressed to admit my errors given the increase in stress this would cause, the devastating affects (sic) on me due to my illness, and my fear of the Firm and supervisors. It rendered me unable to cope in my job role.'

- Under cross-examination the Respondent agreed with Mr Bullock that her reference 'SOJ' appeared in the reference line of each letter. If a person was logged in to the Firm's system and created a document, the first three letters of the reference would be that person's initials. The Respondent agreed with Mr Bullock that she had not suggested the name of anyone who might have created the letters and she could not think of anyone who might have had a reason to do so. In order to create the letters somebody had to use her username and password to log on.

- The Respondent did not know where she was on 11 and 12 November 2014. She knew from the sign-in sheets and the oral evidence that she had signed in to the office on 11 November 2014, and that she had an email exchange with partner NM on 12 November 2014 but she did not remember the emails. She accepted that she must have been in the office on both days. She would have been expected to be in by her start time of 09:00 hours.

- Mr Bullock invited the Respondent to accept that the letters were created by her in view of their features, even though she did not specifically remember creating them. The Respondent agreed that the evidence suggested that she created the letters but repeated that she could not remember doing so. Mr Bullock asked the Respondent whether, apart from the admissions that she had made, she considered herself to be an honest solicitor, to which she answered 'yes'. Mr Bullock put it to the Respondent that an honest solicitor did not put backdated letters on client matter files. The Respondent replied that it would be dishonest to backdate letters without good reason or explanation.

- In answer to the Tribunal the Respondent confirmed that while at the Firm she worked as an Assistant Solicitor on mainly clinical negligence cases. She believed that she probably had less than 20 cases at the time. The Respondent's letter of resignation was dated 5 November 2014 and she worked her notice until February 2015, but she believed that she may have been let go a couple of weeks early.

- The Tribunal invited the Respondent to describe the working environment at the Firm for the purpose of providing background. The Respondent said that the Firm was focused on time recording and billing targets, and every month the Firm published a league table showing individual standings. A lot of pressure was put on people who were behind target to put in the hours to meet their target. It was a high-pressure working environment. The Respondent believed that whilst other junior solicitors were only required to assist a partner or a senior solicitor the Respondent had her own caseload. The department was large and split across different offices, so she saw only people who worked in her office and her supervising partner every day. For some time the Respondent enjoyed working at the Firm but did not realise up until the point at which she left how much she disliked working there towards the end. She learned a lot but being in that commercially-focused environment was not right for her and did not make her perform at her best.

- The Respondent was asked by the Tribunal about the management of the Firm. She described Colum Smith as 'quite an aggressive litigator'. At times he put a lot of pressure on people and was 'quite aggressive' with his staff in getting them to perform. 'He could be quite nasty at times on a personal level.' The Respondent said that she was 'terrified' of him. She worked for him for a while when she was training and was grateful not to have to work with him again. She had quite a good relationship with Ms Phillips. The Respondent described Ms Al-Sabbagh as 'quite fair at times' and 'quite an aggressive litigator'. The Respondent was 'very intimidated' by her. She recalled meetings when Ms Al-Sabbagh said things that the Respondent considered to be belittling. She came out of those meetings feeling that she was not very good at her job. Over time that took its toll on her and she ended up believing that she was 'absolutely no good' at her job.

16.2 The Tribunal read the medical report from Dr John B. Frazer, Consultant in General & Forensic Psychiatry and Honorary Senior Lecturer to the University of Leeds, dated 1 December 2016 following examination of the Respondent on 18 October 2016. Dr Frazer had access to the Respondent's general practitioner's records. The Applicant did not require Dr Frazer to attend to give evidence. Mr Bennett invited the Tribunal to pay particular attention to the following points:

- Dr Frazer noted that he and the Respondent achieved a considerable degree of rapport during interview.

- Dr Frazer recorded the physical symptoms reported by the Respondent, namely loss of hair and looking quite ill. Hair loss was described as 'a well-recognised complication in some individuals who are suffering from stress-related conditions. This is independently confirmed by the accounts of the witnesses and would support [the Respondent's] contention on the balance of probability that she was suffering from stress-related problems at the time'.

- Dr Frazer recorded that: 'On the basis of her account to me, she would have had symptoms consistent with a Depressive Adjustment Disorder not at the level of a Depressive Disorder at the material time. This would have impaired her concentration and her ability to meet the demands put upon her by the stressful environment that she found herself in whilst working for the firm between end 2012 and her leaving'.

- Since the improvement in the Respondent's work environment, her performance and confidence had improved and she was no longer suffering from active symptoms of Mental Disorder.

- The Respondent did not at the time of examination display any symptoms or signs of a recognised mental health condition. Dr Frazer reported that at the time of what he described as the 'alleged negligence' she did display signs which would be consistent with a diagnosis of mild depression and anxiety.

- Dr Frazer concluded that it was likely that the personal pressures at home and at work led the Respondent to mislead her former employer. 'She told me that she was living in a culture of fear and due to her increased anxiety, could not face telling them at the time.'

Findings of Fact and Law

17. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

18. **Allegation 1.1 – On various dates between 5 August 2013 and 30 May 2014 she made statements to a client concerning litigation which she was retained to conduct upon behalf of that client which were untrue and misleading and which she knew to be untrue and misleading as particularised at points 1.1.1-1.1.4 above. Dishonesty is alleged.**

18.1 The Respondent admitted allegation 1.1. Further, she admitted that she had failed to act with integrity in breach of Principle 2, failed to act in the best interests of each client in breach of Principle 4, failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6, and that she failed to achieve Outcome 1.16 which required her to inform client G if she discovered any act or omission which could give rise to a claim by G against her. The Respondent also admitted allegation 2, namely that she had acted dishonestly in respect of this allegation.

18.2 The Tribunal accepted Mr Bullock's submissions. The Tribunal carefully read the March 2015 letter from G to Ms Al-Sabbagh setting out in detail in her own words the impact of the events that took place.

18.3 The Tribunal found allegation 1.1, including the allegation of dishonesty at allegation 2, proved beyond reasonable doubt based on the Respondent's admission and the documents and oral evidence.

19. **Allegation 1.2 – On various dates between 9 September 2013 and 6 January 2015 she made statements to her employer concerning that same litigation which were untrue and misleading and which she knew to be untrue and misleading as particularised at points 1.2.1-1.2.2 above. Dishonesty is alleged.**

19.1 The Respondent admitted allegation 1.2. Further, she admitted that she had failed to act with integrity in breach of Principle 2, and failed to behave in a way that maintains the trust the public places in her and in the provision of legal services in breach of Principle 6. The Respondent also admitted allegation 2, namely that she had acted dishonestly in respect of this allegation.

19.2 The Tribunal found allegation 1.2, including the allegation of dishonesty at allegation 2, proved beyond reasonable doubt based on the Respondent's admission and the documents and oral evidence.

20. **Allegation 1.3 – Created a letter to NHSLA on 11 November 2014 which she backdated to 25 September 2014 as particularised at points 1.3.1-1.3.2 above.**

Allegation 1.4 – Created a letter to B and S University Hospitals on 11 November 2014 which she backdated to 25 September 2014 as particularised at points 1.4.1-1.4.2 above.

Allegation 1.5 - Created a letter to Professor MW on 11 November 2014 and backdated it to 25 September 2014 as particularised at points 1.5.1-1.5.2 above.

Allegation 1.6 - Created a letter to [G] on 12 November 2014 and backdated it to 25 September 2014 as particularised at points 1.6.1-1.6.2 above.

Allegation 2 – Dishonesty is alleged with respect to allegations 1.3 to 1.6 inclusive.

20.1 The Respondent denied allegations 1.3, 1.4, 1.5, and 1.6 and allegation 2 which alleged dishonesty in respect of these allegations.

21. Summary of the Applicant's Submissions

21.1 No positive case had been advanced by the Respondent, either as to the author of the letters or as to how they came into existence. The Applicant was being put to proof beyond reasonable doubt by the Respondent. In respect of the allegation of dishonesty, the Respondent said that, since she had no recollection of backdating the documents, even if the factual circumstances alleged were proved, the misconduct could not have the mental element required for dishonesty, applying the Twinsectra test. Counter-Notices had been served in respect of the Applicant's Civil Evidence Act Notices regarding the metadata and letters. The Applicant was therefore required to prove the authenticity of those documents.

21.2 The Applicant had not sought to cross-examine Dr Frazer; his report was accepted as an authentic document and the Applicant did not challenge what he said. Dr Frazer provided a diagnosis on the basis of the Respondent's own account to him, 9 months after the events which she was describing. The report was not a contemporaneous

document and was not supported by contemporaneous medical evidence. The Tribunal should take these factors into account when deciding what weight to give to the report.

21.3 Dr Frazer said that there would have been impairment in concentration and some difficulty in meeting demands. He did not say that the Respondent was compelled to take this course of action because of illness or that the extent of her illness was such that she would not have perceived that what she was doing was dishonest. Dr Frazer appeared to be suggesting a relatively mild condition which was not at the level of a Depressive Disorder.

21.4 The date of 12 November 2014 was significant: that afternoon NM reviewed G's file.

21.5 The Respondent was the author of the letters as evidenced by a number of sources: (1) the metadata (2) Ashley Wright's witness statement; the Respondent did not require the Applicant to tender Mr Wright for cross-examination and what he said in his statement was therefore accepted by the Respondent (3) Dionne Allen's evidence regarding the log on system and passwords, the process for creating Word documents in the cloud, reference generation, that the Respondent in common with all fee earners had her own desk-based PC, the signing in records confirming the Respondent's presence in the office between 09:00 and 17:45 on 11 November 2014 and from 09:00 onwards on 12 November 2014 (4) the Respondent must have been in the office at 15:39 hours on 12 November 2014 when she signed off an email to NM apologising for its brevity because she was on the phone with 'expert and Counsel at the mo' (5) the time records cross-referenced with the metadata showed that three out of the four letters were created when the Respondent was in the office on 11 November and the fourth was created within half- an-hour of her coming into the office on 12 November and well before the telephone conversation on which she was engaged at 15:39.

21.6 The Tribunal could be satisfied beyond reasonable doubt that the Respondent was the author of the letters even if she could not now recall creating them. In order for the letters not to have been created by the Respondent someone else at the Firm would have had to log on to the system as the Respondent. That was not a plausible explanation. No one except the Respondent knew on 11 and 12 November 2014 that there was a problem with the File. As far as her supervisor was concerned, Judgment had been entered and agreement reached regarding late service of the Schedule of Loss. It was obvious that the Respondent had an interest in concealing her mistakes. It was not obvious what anyone else would gain from taking the necessary steps to create the documents. If there had been a malicious motive, one would have expected the point to have been raised much sooner. There was a problem if the act could be done only by physically sitting at the Respondent's computer as described by Ms Allen and Mr Wright. These were not documents that someone could have created by briefly going into the Respondent's office while she was away from her desk.

21.7 The presence of the letters on the File would inevitably give any reader the impression that they had been created on 25 September 2014 and sent on or immediately after that date.

21.8 The client matter file is a crucial document in a solicitor's office because it provides a definitive record of the work undertaken on that matter by the fee earner. The accuracy of its contents may be relied upon internally by those responsible for supervision, and externally by the client, other legal professionals instructed by the client, and professional regulators. Consequently, no solicitor of integrity would allow a backdated document to appear on such a file because of its potential to mislead. The public would trust that a document produced by a solicitor in the course of their practice was strictly accurate in all particulars, including its date. Any deviation by a solicitor from this standard of conduct would inevitably diminish the trust the public places in both them and in the provision of legal services.

21.9 The Supreme Court decision in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67 had been decided since these proceedings were issued. The test for dishonesty in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 was now in doubt for all forms of proceedings, including this jurisdiction, as a result of the decision in Ivey. Lord Hughes JSC, who gave the Leading Judgment, stated as follows at paragraph [74]:

> '[74] … 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 fact 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 same standards, dishonest.'

21.10 The Respondent was dishonest, not only under the test in Ivey, but also under Twinsectra.[9] Her actions in creating the letters and putting them on the File were deliberate. Thought had gone into the preparation. Creation of a backdated letter of this nature called for an honest explanation. It required the Respondent to come forward to say that she backdated the letters because, for example, she thought she had written letters on that date and had lost them. Since the Respondent could not explain how the letters came into being, much less why they were created, the proper course if the Tribunal found that the Respondent created the letters was for the Tribunal also to find that she created them dishonestly.

21.11 It was a bad point for the Respondent to say that she could not recall creating the documents and therefore could not have done so dishonestly. Her state of mind was to be judged at the point when the act was committed, not when the case was tried.

[9] The combined Twinsectra test provides that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards she was acting dishonestly, as pleaded at [31] of the Rule 5 Statement.

21.12 The Tribunal invited Mr Bullock to address it on the impact of the decision in Ivey on the Tribunal's deliberations. Mr Bullock replied that the Respondent knew she was backdating documents and that the backdating was necessarily apt to mislead the reader into thinking the documents had been created earlier than was the case. The Respondent had not provided any explanation for her conduct. The Tribunal therefore had to approach the facts on the basis that she could not have had a belief that this was a proper thing to do. Solicitors did not backdate letters. If no explanation was forthcoming the Tribunal was entitled to approach matters on the basis that there was no innocent explanation for the creation of the documents. The actual state of the Respondent's knowledge at the relevant time must be that she was creating a misleading document and there was no evidence that she believed that this was a proper thing to do.

22. Summary of the Respondent's Submissions

22.1 With the agreement of Mr Bullock, the Tribunal permitted Mr Bennett to make opening submissions on behalf of his client to, as he described it, put the evidence in context. The Respondent had no recollection of backdating documents and could not have the mental element required for dishonesty when applying the Twinsectra test, recognising that last month Ivey was decided by the Supreme Court.

22.2 Contrary to Mr Bullock's submission, the Tribunal was invited to place considerable weight on Dr Frazer's report in respect of which no Counter-Notice had been served by the Applicant. It contained 'a very coherent summation' of the mental pressures and their physical and mental effects at the time. There was a difference between somebody who said they were feeling stressed in the workplace and somebody putting on weight and losing their hair, and unable to concentrate in a highly-cognitive function such as high-end clinical negligence work. The Respondent's caseload was small because it was intense. The loss of concentration and cognitive function were material features.

22.3 By 11 November 2014 the Respondent had resigned from the Firm. The reason she was leaving, although she was trying to put on a brave face, was the pressure that she felt in the workplace, the problems that she felt existed between her and her supervisors, and, effectively, that the relationship between her and her supervisors was 'fraught'. Fear prevented the making of admissions to the Firm while she was still an employee. That fear was referenced in Ms Allen's report to the SRA. The moment the Respondent was questioned having left the Firm, she was no longer terrified and was candid with her former employer about the errors that she had made and her serious misconduct. She accepted that she had misled the Firm and her client. She could not admit allegations 1.3 to 1.6 because she could not recollect creating and backdating the letters. The mental element for dishonesty and Principle 2, the test from Ivey, was indicative when a fact-finding Tribunal had to put itself in the mind of the Respondent, as set out at paragraph 21.9 above.

22.4 It was for the Tribunal as the fact-finding body to decide what the Respondent subjectively thought i.e. put itself in her mind as at 11/12 November 2014 to determine whether she or some person unknown created the documents. If the former, the Tribunal must decide whether the reason why she could not remember doing so related to the mental health issues identified by Dr Frazer, which was her case. The

Tribunal had heard from the Applicant's witnesses that the IT system contained some insecurity. It was for the Tribunal to decide whether that insecurity was the cause of these matters.

22.5 After his client's evidence, Mr Bennett made additional closing submissions. The Respondent reacted to the SRA's inquiry with 'absolute candour'. She admitted allegations 1.1 and 1.2 and the dishonesty attached at the outset. Until these events the Respondent was highly thought of, as recorded by the evidence. This was relevant to the decision that she had made to say that she could not remember and that she could not admit something that she could not remember, an approach consistent with someone who was being honest. The easier option, given the metadata, was to say that she could remember and was guilty of dishonesty.

22.6 The Firm's computer system was somewhat insecure, and the Respondent put it no more strongly than that in view of the way that the evidence had unfolded, which made it possible, and no more than that, that someone else could have had access. The Applicant had to prove its case beyond all reasonable doubt. The Tribunal had heard evidence from the Respondent and would assess whether she could not remember because she was ill or for some other reason. She could not put a positive case as to someone else having created the documents because that would be inappropriate if she did not have any recollection of how those documents were created.

22.7 The Tribunal had heard evidence from Ms Allen and had seen her email and the letter from Colum Smith. Very extensive pressure was being put on an individual fee earner. It could be said that if the fee earner had not been vulnerable the pressure would not have had the same impact. The Tribunal had heard from the Respondent that the impact of the management on her was significant. The Respondent was a vulnerable individual; that vulnerability ought to form part of the Tribunal's fact-finding determination in respect of the disputed allegations. The complex and lengthy letter from Mr Smith required a response that same day which was of itself excessive pressure. Ms Allen's evidence was that from 2012 onwards the Firm was focused on financial performance and external investment. The impact on the Respondent, given her illness, was that she was particularly vulnerable to the stresses and strains that the Firm's focus brought forward.

22.8 This was a very simple case: did the Respondent or did she not create the documents? Was she unable to remember creating the documents because she was too unwell? There existed reasonable doubt in a case where there was no unequivocal evidence about the IT system which was not totally secure.

23. <u>The Tribunal's Findings</u>

23.1 The fact that the Respondent had not advanced a positive case did not weigh against her. The burden of proof was on the Applicant not the Respondent, and the latter was entitled to put the former to proof. This legal framework did not prevent the Tribunal from drawing appropriate inferences as part of its fact-finding exercise.

23.2 The Tribunal had to decide beyond reasonable doubt whether the Respondent created and backdated four letters found on the File. There was no dispute between the parties as to whether the letters were created on 11 and 12 November 2014, or whether they

were backdated to 25 September 2014. It was not disputed that they were on the File. The date of creation of the letters fell within the period of 17 months from 5 August 2013 to 6 January 2015 when G's matter went off course. The Respondent had admitted dishonestly misleading G and her employers during that period. There was therefore some logic to concluding that she must have created and backdated the letters as part of the same pattern of behaviour, which even she identified when giving her evidence. The Tribunal also noted that partner NM was in contact with the Respondent by email on the afternoon of 12 November as part of a file review for insurance purposes. The Respondent had a good reason to ensure that the File was up-to-date at that time. However the Tribunal's task was to test all the relevant evidence forensically without making assumptions informed by the Respondent's admissions.

23.3 There was no reason to doubt the authenticity of the metadata produced by Mr Wright. Even if the IT system was insecure to some extent, the metadata was a matter of fact. It said what it said. There may be reasons why what it said should not be taken at face value, but that was a different matter from saying that the metadata was inauthentic or wrong. Mr Wright was not required by the Respondent to submit himself to cross-examination. He would have been the most appropriate witness to whom to put questions regarding any alleged insecurity in the IT system or doubts regarding the metadata. The Respondent did not avail herself of that opportunity, as was her right. The Tribunal therefore found as a fact that the metadata was authentic in terms of what it said.

23.4 On the face of it the Respondent's PC was used to produce the letters on both days. It was, perhaps, theoretically possible that a person unknown had used another PC to log on to the Respondent's cloud profile by inputting her unique username and password. This seemed to the Tribunal to be unlikely. In any event, the suggestion made by Mr Bennett during cross-examination of Ms Allen was that access to the Respondent's cloud profile could have been gained by a person unknown by means of the Respondent having set her PC to save her unique log on details. There was no evidence from the Respondent that she had actually given her log on details to anyone else. The Tribunal therefore found as a starting point that the letters were created by means of access to the Respondent's PC, either by her or by persons unknown.

23.5 Use of the generic password would have enabled someone else to log on to the Respondent's PC, but they would necessarily have had to do so when she was not at her desk. The evidence that the Respondent was in the office at the material times on both 11 and 12 November was, the Tribunal found, conclusive. There was no dispute that she signed in at 09:00 and out at 17:45 on 11 November. She signed in on both of the 12 November sheets. It was not suggested on her behalf that those sheets were incorrectly dated, but merely that Ms Allen could not be certain which of the two sheets related to 12 November. On that basis the Respondent arrived either at 09:00 or 09:05. The 5 minutes discrepancy was immaterial as the metadata showed that work on the letters began at 09:21. It was certain that the Respondent's unique username and password were required to take whoever created the letters into the Respondent's cloud profile. There was no evidence from the Respondent that as a matter of practice she saved her cloud profile log on details on her PC by changing the standard setting. The inference therefore was that she did not do so. The letters were created during normal office hours, involving significant risk of discovery and serious consequences

for a person unknown accessing the Respondent's PC in her absence from her desk, even assuming that her log on details had been saved by her which the Tribunal had found not to be the case. A person unknown would also have had to be privy to detailed knowledge of the case to enable them to create quite detailed letters which included background information concerning the specific aspects which required action because they remained outstanding. The letters could not be described as random in content. A person using the Respondent's PC to access her cloud profile in her absence would have to be confident in advance of their actions in sitting at her desk that she had saved her log on details, in case the system had been set to time out after a period of inactivity. The Tribunal asked itself why anyone who worked with the Respondent would put her career and their own in jeopardy in this context. The Respondent was highly-regarded by those who were close to her, at least. Bearing in mind the pressures of the Firm in terms of time recording and billing targets, why would someone take time away from their own work on two occasions on different days to create and backdate detailed letters on the Respondent's PC in her cloud profile relating to her client matter file in order to make it look as if actions had been taken by the Respondent six weeks earlier when in reality they had not been taken at all? The actions were effectively protective in nature; they were intended to make it look as if the Respondent was making progress with the claim. It did not make any sense for a colleague to have taken such a risk in that context. It would have been necessary for them to know that the Respondent had been covering up the lack of progress with her employers and the client. The evidence was conclusive that the only person with that information was the Respondent.

23.6 The Tribunal was cognisant of the possibility, and on the Respondent's own case it was put no higher than that, of insecurity in the IT system. It was not suggested by the Respondent that the IT system was so defective that it could create letters on a specific date and of its own accord backdate them to an earlier date. The Respondent's case was that either she created the letters and backdated them, albeit that she could not remember doing so from some point after 12 November 2014 onwards due to mental health issues, or that someone else had done so for some reason. The Tribunal asked itself why the Respondent would have created and backdated the letters. What purpose did it serve for her to do so? The answer was simple: the Respondent avoided the inevitable confrontation with her supervisors for not having done what she had committed to do on G's file. There was an incident in 2013 when Ms Al-Sabbagh's instructions had not been followed by the Respondent, which resulted in a report by Ms Al-Sabbagh to Ms Allen as either the COLP or the COO. A formal meeting had taken place. The Respondent's evidence was that she was distressed at the meeting and her career as a clinical negligence litigator, whether at the Firm or otherwise, was put in doubt by either Ms Allen or Ms Al-Sabbagh (which of the two was unclear from the evidence). Ms Allen and Ms Al-Sabbagh disputed the Respondent's version of events but that was immaterial for the purpose of the current exercise. The incident had made a significant impact on the Respondent, according to her evidence. It was unsurprising that she perceived a benefit to herself in making it look as if she had done what she had committed to do on this occasion, particularly as she already knew that for 15 months she had been misleading her client and her supervisors as to the extent of the steps that she had actually taken. Further, Ms Phillips, her current supervisor, was to review the case on 12 November (although it was not clear whether the Respondent knew about the review in advance). The Respondent resigned on 5 November, a week before the

events under consideration. Her notice period was lengthy, between 4 and 5 months based on the Respondent's evidence and the date of her departure. The Respondent's distress in 2013 appeared to the Tribunal to relate primarily to the possible loss of her career as a clinical negligence litigator and what management thought about her capabilities. As a result of her resignation the original source of her terror, of losing her job at that particular firm, had been removed because she was leaving of her own volition to start a new life. However, the reality, not then known by her supervisors, was that by then the Respondent was also in a significant dilemma in respect of G's file. She had already created a false trail for 15 months. Perhaps the Respondent was concerned that discovery would lead to her new employers being alerted by the Firm and her job offer withdrawn. Perhaps she was merely trying to put off the discovery of what had been going on for as long as possible, until after she had moved on. Perhaps she was scared that the SRA would be informed, which ultimately was what happened even before the backdating of the letters was discovered.

23.7 The Tribunal was left in no doubt that the Firm was a challenging place to work. The Firm was seeking external investment, it had to make itself attractive to investors, which meant that time recording and the bills produced as a result of the fee earners' efforts, extrapolated from that time recording, would be under scrutiny. The Firm was also seeking Lexcel accreditation which required processes and procedures to be put in place, increasing the level of administrative burden on all in addition to other targets. The email from Dionne Allen and letter from Colum Smith provided a glimpse of what working life was like; pressures suffered by management were passed down to the fee earning team who must have felt that they were carrying the weight of the world on their junior shoulders. Creating competition amongst fee earners by the monthly publication of league tables, presumably in the misplaced hope that this would increase performance, struck particular disquiet with the Tribunal. It was crass to tell junior solicitors that they had to make up hours by working weekends, long evenings, Bank Holidays, and so on and requiring them to confirm that they intended to do so that day. This was a notable example of bad, ineffective, and inappropriate management. The level of micromanagement at the Firm was obvious merely from the fact that staff were expected to sign in at the start of the day and out at the end of the day. This demonstrated lack of trust in employees. The Tribunal's assessment of Ms Allen and Ms Al-Sabbagh was that neither would be particularly empathetic when faced with a problem from a vulnerable fee earner which might in some small way damage the Firm's inexorable progress towards achieving its goals. The Tribunal found these witnesses to be somewhat defensive when giving evidence. Neither was particularly credible when asked whether they had noticed any physical symptoms giving clues to the Respondent's state of mind. Both were quick to say that they had not noticed anything, without being prepared to concede as even a possibility that there might have been evidence which they had failed to spot. Alarm bells should have been ringing in 2013 when Ms Al-Sabbagh's instructions were not followed and when the Respondent was on her account starting to show symptoms of stress. The supervision notes in G's matter show a pattern of the same tasks being repeatedly carried forward as a result of extensions said by the Respondent to have been granted. Ms Al-Sabbagh and Ms Phillips lacked curiosity in terms of getting to the bottom of what was going on. No doubt both were too busy and under pressure and did not want to be troubled. The Tribunal preferred the Respondent's evidence that she was distressed and tearful in the office and that she

had some issue with her hair. The Tribunal was not in a position to make any findings in respect of weight loss or gain as the evidence was inconsistent.

23.8 The Tribunal was naturally troubled by the Respondent's complete lack of any recall regarding how the letters may have come to be created and backdated. Dr Frazer's medical report was based entirely on what he had been told by the Respondent. There were no contemporaneous records from, say, the Respondent's General Practitioner. There was no independent evidence that the Respondent had sought any practical assistance for pressures at work which caused her to feel terror, to cry when at work, to lose her hair, to lose or gain weight, and to feel dread on her way into the office. Dr Frazer diagnosed a Depressive Adjustment Disorder, not at the level of a Depressive Disorder, which would have impaired the Respondent's concentration and her ability to meet demands. He suggested that the Respondent had mild depression and anxiety at the time. These terms were insufficient to explain the Respondent's total lack of recall. It was also clear from the report that Dr Frazer did not know about the allegation that the Respondent had created and backdated letters. The Respondent could not on her own case have told Dr Frazer about those allegations because she said she did not recall committing the acts complained about. The SRA did not write to her about the letters until March 2017, five months after Dr Frazer's examination and three months after his report had been prepared. The report had not been updated to express an opinion on the additional allegations. There was no medical evidence dealing specifically with the Respondent's lack of recall or the further allegations. It was stretching the after-the-event diagnosis too far to find that the Respondent's lack of recall was caused by the mental health conditions on which Dr Frazer had been able to report or that if she dishonestly created and backdated the letters before putting them on the File it was because she was unwell. It was a big leap from mild depression and anxiety impairing concentration and ability to meet demands to not remembering anything at all about one's actions on a file when one was being accused of serious misconduct.

23.9 The Tribunal accepted the Respondent's evidence, supported as it was by the Tribunal's own interpretation of the email from Dionne Allen dated 6 July 2012, the evidence from Ms Allen and Ms Al-Sabbagh, and the letter from Colum Smith dated 11 April 2013, that the Firm was a challenging place to work, particularly for a vulnerable individual. The Tribunal had therefore concluded beyond reasonable doubt that the combination of the pressures of the working environment and the Respondent's experience in 2013 of the consequences of not following instructions had led her to create and backdate the letters which were put on the File in order to cover her lack of activity on the case and her misleading of her client and employers regarding the state of the claim over the previous 15 months. Her actions were informed by her experience of getting into trouble with management in 2013 and she sought at all costs to avoid a similar situation before she reached the light at the end of the tunnel in the form of her new job. The Tribunal concluded that fear of supervisors and management, these 'aggressive litigators' as described by the Respondent, was so traumatising that the Respondent was knowingly prepared to break the rules in order to avoid having to confront them face-to-face with the truth regarding her actions. She had lost confidence in her abilities. What had happened in 2013 was evidence to her that management thought she was no good at her job. Her chosen career was, to her mind at least, in doubt. Her personal life was difficult and insecure. Her actions were aimed at buying time until the date came for her to leave. Further evidence that she

was putting off the evil hour came from the fact that the Respondent did not contact her client G to tell her that she was leaving the Firm until her final day in the office and promised G a call back which she then failed to make. The house of cards quickly collapsed thereafter.

23.10 In conclusion, whilst the Tribunal had some very limited misgivings regarding the evidence presented by the Applicant in respect of the security of the IT system, those misgivings were not sufficiently material when looked at in the context of the evidence as a whole as to displace the Tribunal's conclusion beyond reasonable doubt that the Respondent created four letters on 11 and 12 November 2014 and backdated them to 25 September 2014 before placing them on G's file. The Respondent agreed that the evidence pointed towards her having created the letters, albeit that it fell short of her having been found at her PC in the act of so doing. In reality there was no reason why anyone would have paid particular attention to the Respondent sitting at her PC working in Word documents in the cloud. The Tribunal therefore found allegations 1.3 to 1.6 proved beyond reasonable doubt, including that the Respondent was in breach of Principles 2 and 6 in respect of each of those allegations. The Respondent failed to act with integrity in creating and backdating letters on the client matter file and failed to behave in a way that maintains the trust the public places in her and in the provision of legal services. The Tribunal did not find that the Respondent's mental health on 11 and 12 November 2014 played a part in her decision to create and backdate the letters for the reasons explained above. The issues identified by Dr Frazer were relatively mild and no treatment was sought. He had not been given an opportunity to comment for the purpose of these proceedings on the causal link between this specific misconduct, the Respondent's mental health, and her lack of recall. The overriding cause of her misconduct was the pressure that the Respondent felt at the Firm based on her experience of getting things wrong in 2013 and her fear that she would be found out and would lose her career.

23.11 In the absence of an invitation from either advocate to adopt a different course, the Tribunal adopted the test for dishonesty set out at paragraph 74 of Ivey and at paragraph 21.9 above.

23.12 This fact-finding Tribunal must ascertain subjectively the actual state of the Respondent's knowledge or belief as to the facts at the time of the creation and backdating of the letters on 11 and 12 November 2014. The Tribunal had concluded that, at that time, the Respondent knew that she was creating documents on those dates which she then backdated to 25 September 2014. Her actions were dishonest because they were intended to mislead anyone who read the File into believing that in September she had taken steps which she had not in fact taken to progress the claim. To test its conclusion, the Tribunal asked itself what would have happened if the Respondent had been caught red-handed by Ms Phillips on 12 November in the act of backdating the date on, say, the letter to G to 25 September 2014. If she had been asked then what she was doing, what would her answer have been? Putting itself in her shoes, the Tribunal believed that the Respondent's feelings would have been of discomfort, embarrassment, and shame when answering the question. The only possible honest answer would have been: 'I'm backdating letters to cover up that what I have said to my client and my supervisors about the progress on the file was misleading and I have not made as much progress as I have said that I have'. Her oral evidence was that an honest solicitor did not create and backdate documents.

Applying the objective standards of ordinary decent people to the facts, they would say that the creation of letters by this solicitor on one date followed by the backdating of the same letters to an earlier date before placing them on the File was dishonest, because the intention behind those actions was to mislead a reader of the File.

23.13 The Tribunal therefore found that the Respondent's actions in creating and backdating the four letters were dishonest. Allegations 1.3 to 1.6 as particularised above and allegation 2 were found proved beyond reasonable doubt.

Previous Disciplinary Matters

24. None.

Mitigation

25. Mr Bennett submitted that exceptional circumstances existed in this case, such that the ultimate sanction of striking the Respondent's name from the Roll should not be implemented. He relied upon the following cases: Burrowes v The Law Society [2002] EWHC 2900 (Admin); Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin); SDT decision in Case Number 10638-2010 Solicitors Regulation Authority v Block decided on 11 May 2011; SDT decision in Case Number 11169-2013 Solicitors Regulation Authority v Ali decided on 4 December 2013 and; SDT decision in Case Number 11222-2014 Solicitors Regulation Authority v Zysblat decided on 20 March 2015. Mr Bullock referred to The Queen On The Application Of Solicitors Regulation Authority v Imran [2015] EWHC 2572 (Admin).

26. In Sharma at [13], Mr Justice Coulson stated as follows:

> 'It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury (sic). That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will [be] a disproportionate sentence in all the circumstances, see Salisbury (sic). (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or other a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others.'

27. Mr Bennett referred the Tribunal to the SDT decisions listed above as examples of the application of exceptional circumstances. For the purposes of this Judgment it was not necessary to list or recite the contents of those paragraphs. Mr Bennett emphasised the underlying principle to be drawn from both the High Court and SDT cases, namely that it was the expert Tribunal that must decide after consideration of all the facts whether the circumstances were exceptional. The Tribunal reminded Mr Bennett that it was not bound by decisions of other Divisions which Mr Bennett accepted.

28. Mr Bennett invited the Tribunal to give considerable weight to the decision in Burrowes. In that case the misconduct was isolated and out of character for a solicitor who was 51 with a 'hitherto unblemished record, and of impeccable reputation within the profession':

> 'At the time he was suffering from depression. His act was of no benefit financially, or otherwise, to him, and could only have caused any loss to the clients, at whose insistence it was that he did what he did.'

29. This Respondent was suffering from depression and was subject to pressure due to the Firm's high-level obsession with time recording and billing. The Tribunal could find exceptional circumstances based on those facts, following Burrowes.

30. This was non-financial dishonesty. The Respondent's evidence was that she was terrified whilst working at the Firm and she was not cross-examined on that point. Use of the word 'terrified' indicated to the Tribunal that this was not normal workplace pressure. She hid her error over a number of months and the nature of the pressure and terror was a factor in that. This was an isolated case. It was in effect continuing dishonesty over a period of months once the misconduct had occurred. Once the terror had gone when the Respondent had left the Firm's employment, she made a full and frank admission and accepted her error over the telephone within days to Ms Phillips and the admission was recorded in Ms Allen's report to the SRA. There was no benefit to the Respondent from the dishonesty. She was struggling on the evidence of Dr Frazer and on her own evidence with a mental health condition. Dr Frazer was clear with regard to the mental health condition and its likely impact on the Respondent. Client G was adversely impacted by the dishonesty. The Respondent did not seek to shy away from that fact. In her witness statement the Respondent apologised to G. She stated that she was ashamed and deeply regretted misleading a client. She hoped that, if told these facts, G would accept her apology and understand her efforts to conceal her errors were due to the circumstances. This demonstrated great insight and should be taken into account when the Tribunal considered the adverse impact on others. If G knew the full facts she might view the case differently. The claim was with multiple solicitors before it reached the Respondent and it was passed to multiple solicitors after she had left the Firm. Mr Bennett invited Ms Allen, who remained in court, to pass the apology and the full facts to G if she thought it appropriate to do so.

31. The Tribunal was invited to consider the character references from the Firm's former employees and her current employer, as follows:

- Carol Horchuk: 'There was an immense amount of pressure on junior solicitors'; 'We were constantly told we would lose our jobs and that the failure was our fault'; 'Also around 2012/2013 the firm looked to become an ABS and as such preparations were made for investor scrutiny. This was another extremely difficult time as there was more focus than ever on time recording and billing targets'; 'Support was minimal'; 'Working in an environment where fear is the overriding factor, it was extremely difficult to ask for help'. Mr Bennett suggested that this was not a normal law firm working environment. 'Fear' was an unusual word to use and could be said to be exceptional.

- Chantelle Patel: 'We also had unusually high billing and time recording targets. As juniors, we were regularly told that we were losing the firm money and we should be grateful to have our jobs'; 'The monthly file review was a daunting and intimidating process. The senior solicitors who carried out the monthly file reviews for us also struggled to find the time to supervise. They had high time recording and billing targets themselves and understandably found the file reviews a hindrance. At the time, we all felt there was a real lack of support for juniors and we felt we would be blamed for any mistake'; 'In late 2013, I noticed that Sovani had lost a huge amount of weight and her hair had become very thin. I told her she looked really ill. She broke down in tears and said her hair had been falling out in clumps at home. She didn't know what to do. Shortly after, she had her hair cut very short and we researched together what vitamins and supplements she could take to help her hair grow back. She was devastated'; 'We all struggled at Macmillan Williams. It is a cut-throat firm for any junior starting their career but Sovani lacked the support and strength most of us had through our families and she suffered huge stresses in her personal life many do not experience'. Mr Bennett said that the medical report recorded that the Respondent moved to the North West to be close to some distant family. There were circumstances in relation to her personal life that made living in London difficult. The Respondent did not say that this was all the Firm's fault or that other junior solicitors in this situation would be able to rely on exceptional circumstances. The Tribunal had the opportunity here to consider whether those pressures with this vulnerable young lady combined to make the circumstances exceptional.

- Abbie Roberts: 'Furthermore, often the cases that formed the new caseload were existing files from people who had left the firm (there is an extremely high turnover of staff across all departments) with no formal handover and so there was a vast amount of work to get to grips with in a short space of time. In Sovani's case, hers was particularly stressful and onerous as she was given many litigated cases with imminent and consecutive deadlines throughout 2012 and 2013. This was also a time when formal file reviews/supervisions were not in place. While the majority of senior fee earners were entirely approachable and happy to help, a lack of formal setup made accessing support difficult'; 'It was around this time I started to become really worried about Sovani. We did not work in the same office but spoke on a daily basis and I knew that she was finding the pressures of her caseload and the firm in general very difficult to cope with. I then saw her at an event and she had lost big clumps of her hair and had lost a lot of weight. I was quite shocked by this as when speaking to her, she was still able to be supportive towards me on the phone and I had not understood how bad things were for her. I remember telling her that she was having a worrying physical reaction to the stress of the situation and she should go and see her GP'; 'However the environment in which we had to work was oppressive and at times unbearable'. Mr Bennett submitted that this reinforced the extremity of the physical symptoms and the distance between the Respondent and those who should have been supervising her.

- Nina Roland, the Respondent's current employer: 'I am familiar with all of Sovani's files, given my supervisory duties and her relatively low caseload. I have not found any issues which would give me any cause for concern. I consider her to be highly competent'. Mr Bennett confirmed that the SRA had been in contact with Ms Roland in relation to practising certificates. The SRA was satisfied that she was supervising the Respondent. The reference had been requested in relation to discussions with the

Applicant concerning these proceedings when the Respondent had invited the SRA to take the view that the pressures were exceptional.

32. There had been a period of time with her current employer during which the Respondent had demonstrated that, within the right working environment, away from the pressure of the Firm and a mental health condition, and away from being paralysed by fear and terrified, she had demonstrated time and again that she is a good young solicitor and a credit to the profession. The fact that she got it catastrophically wrong in one case and tried to hide that has had devastating consequences and she knows the risks she runs.

33. The Respondent consented to the SRA's request to impose conditions on her practising certificate pending this hearing. In her witness statement the Respondent accepted that her actions were serious and that she understood the need to demonstrate that the unique pressures and illness she suffered from whilst at the Firm were at the root cause of her misconduct. She hoped to be given the opportunity to demonstrate that she could be entrusted to continue with her career despite her previous illness and error of judgement in relation to the matters that brought her before the Tribunal. This statement evidenced great insight.

34. The Tribunal should have at the forefront of its mind: (1) Is the Respondent ill? (2) Is the Respondent likely to reoffend? The Respondent is a different person now without mental illness and fear. The Tribunal was invited to consider the Respondent's own words that, on reflection, she realised that the environment at the Firm was "toxic" and the pressures there had a detrimental impact on her health. This was further evidence of insight and of her need to ensure that she remains well in future.

35. Mr Bennett stressed that the mitigating factors to which he had referred did not seek to excuse the Respondent's misconduct. However, the factors put the misconduct into focus and explained why the public would not be surprised if this case was deemed to show exceptional circumstances. The factors described were not present in every case which came before the Tribunal. The Respondent had learned from what had happened and had rebuilt her life as far as it was possible pending the outcome of this hearing. Her level of insight was such that she ought to be considered for the application of exceptional circumstances to enable her to continue rebuilding her life and benefit from the rehabilitation process.

36. The Tribunal gave Mr Bullock the opportunity to respond to Mr Bennett's submissions on 'exceptional circumstances'. He reminded the Tribunal that the Respondent had, over a 17 month period, told lies to her employer and to her vulnerable client on nine separate occasions. She had created and backdated four documents which had been put on the File to give the impression that progress had been made when in fact it had not. In substance the mitigation advanced was that she was a junior lawyer under pressure from billing targets. The majority of junior lawyers were under pressure to meet billing targets. It was said that she was stressed. Stress was an occupational hazard within the legal profession. She was suffering from some degree of anxiety and depression in consequence. It was sad that junior lawyers were under pressure and became stressed but it was not, in Mr Bullock's submission, exceptional.

37. Mr Bullock relied on the decision in Bolton v Law Society [1994] 1 WLR 512, CA per Sir Thomas Bingham at [518]-[519] which he read to the Tribunal. He recognised the familiarity of the words but they bore repetition. The Tribunal's focus must be firmly on the extent of the harm to the Respondent's personal reputation and the reputation of the solicitors' profession as a whole by her actions in engaging in a course of dishonest conduct over 17 months. The Tribunal was not engaged in a punitive exercise. Its concern was in maintaining trust in the profession. The trust that the public would place in the Respondent and in the profession as a whole would be fundamentally undermined by what she had done, notwithstanding her personal mitigation.

38. Mr Bullock referred the Tribunal to Coulson J's, possibly *obiter*, comments at paragraph 12 of Sharma where he said:

> 'Speaking for myself I am not persuaded that it is appropriate in these sorts of cases to embark upon a long trawl through the decisions of the Tribunal, particularly given that so many of them are so obviously fact-sensitive, to try and identify some that may be similar to the case under review.'

39. Previous decisions of the Tribunal were not binding on this Division. Consistency of approach was ensured by reference to the Tribunal's Guidance Note on Sanctions. The Tribunal's starting point ought to be to bring its own judgement to the specific facts of this case rather than by reference to other Tribunal decisions. Burrowes, a decision of the Administrative Court, was on penalty on the specific facts of that case.

40. The nature of the dishonesty itself was misleading an employer and a client towards both of whom the Respondent owed a particular duty of trust and confidence. The letter from G dated 10 March 2015 was relevant as to the impact of the Respondent's actions on her. The dishonesty took place over 17 months and was repeated rather than being momentary. There was no financial benefit to the Respondent. The corollary of what was being said about the pressurised working environment was that the obvious motive for misleading the employer was for the Respondent to protect her own position within the Firm. The adverse effect on G was that she was left for 17 months in the belief that her claim was progressing when it was not.

41. The decision in Imran provided a "gloss" on Sharma. Dove J stated at [21] that:

> 'it is also in my view important to observe, adopting the approach provided by the Court of Appeal that interference is only justified where a decision made was clearly inappropriate, that when dealing with an expert and experienced tribunal - who deal with a large volume of cases unfortunately involving dishonest solicitors - they will be in the best position to judge where a case falls within that small residuary category where striking-off is not the appropriate sanction. Thus, the exceptional-circumstances case needs to be understood in the context of the expertise and experience of the tribunal which is being considered, alongside the test derived from Salsbury that it is only where the tribunal has reached a decision which is clearly inappropriate that this court should in cases of sanction intervene.'

The inquiry is fact-specific based on the Tribunal's expertise.

42. Dove J continued at [24]:

> 'Clearly, at the heart of any assessment of exceptional circumstances, and the factor which is bound to carry the most significant weight on that assessment, is an understanding of the degree of culpability and the extent of the dishonesty which occurred. That is not only because it is of interest in and of itself in relation to sanction but also because it will have a very important bearing upon the assessment of the impact on the reputation of the profession which Sir Thomas Bingham MR (as he then was) in Bolton identified as being the bedrock of the tribunal's jurisdiction. I therefore accept Mr Williams's submission as to the importance of the tribunal investigating and finding the degree of culpability or dishonesty in each individual case.'

43. The factors that the Tribunal should weigh in the balance were: (1) on culpability, that the Respondent acted on her own without encouragement from others, and was solely responsible for the dishonesty; (2) the dishonesty was repeated and significant and occurred over a period of time; (3) the mitigating factors which should be taken into account in respect of culpability were the medical evidence subject to the weight to be given to the same and that the Respondent was a relatively junior solicitor. On the latter, at the start of the relevant period she was 3 years and at the end 5 years post qualification experience. Lack of experience was therefore a matter of limited mitigation given that the Respondent was not entirely fresh to the profession.

44. Paragraph 29 of Imran gave guidance as to the general approach to be adopted by the Tribunal when assessing exceptional circumstances:

> 'But in my view it is not possible when assessing exceptional circumstances simply to pick off the individual features of the case. It is necessary, as the tribunal did, to record and stand back from all of those many factors, putting first and foremost in the assessment of whether or not there are exceptional circumstances the particular conclusions that had been reached about the act of dishonesty itself. The fact that many solicitors may be able to produce testimonials and may immediately confess the dishonest behaviour is certainly relevant to the determination of whether or not it is an exceptional case, but it is not a factor that is likely to attract very substantial weight. A far greater weight would be the extent of the dishonesty and the impact of that dishonesty both on the character of the particular solicitor concerned but, most importantly, on the wide reputation of the profession and how it impinges on the public's perception of the profession as a whole.'

45. The Tribunal's focus needed to be on what the Respondent did rather than on her subsequent behaviour. The Respondent made an admission in relation to misleading her employer and G, but at the point when she was already being investigated by her former employer. The Respondent maintained her denial in respect of allegations 1.3 to 1.6, the backdating of documents, throughout.

46. The Tribunal had the opportunity to see and hear from Ms Allen and Ms Al-Sabbagh whilst they gave their evidence and were cross-examined. The Tribunal would have formed an impression of them as individuals. Mr Bullock invited the Tribunal to take into account its impression of them in deciding what the working culture of the Firm

was like. With regard to the suggestion that the culture was toxic, Mr Bullock's impression of the Respondent's evidence-in-chief was that initially the Firm was not a bad place to work, but that she was under a lot of stress in the final year when the financial pressures in the run-up to the external investment and ABS came into play. She only realised how bad it was once she had left. The focus had to be on the impact of what the Respondent did on her personal reputation and the reputation of the profession. With that focus, the Tribunal could come to the conclusion that the working culture was a matter of personal mitigation attracting lesser weight.

Sanction

47. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) (December 2016). A total of six allegations had been found proved with dishonesty in respect of each. The Respondent had admitted two allegations, including breaches of Principles 2, 4, 6 and Outcome 1.16. Breaches of Principles 2 and 6 had been found proved in relation to allegations 1.3 to 1.6.

48. The starting point for the Tribunal was to assess the seriousness of the misconduct in order to decide which sanction to impose, recognising that findings of dishonesty would almost invariably lead to striking off, save in exceptional circumstances (see Sharma).

49. In the submissions there were contrasting views about the amount of weight to be given to Dr Frazer's report. The Tribunal had to reach a decision on that point. The medical report was prepared after the event and based primarily on the Respondent's account with support from her character references. A psychiatrist of Dr Frazer's experience and expertise was eminently capable of identifying whether or not a historian was reliable and credible in their account. Dr Frazer found, in his expert opinion, that the Respondent was a 'reliable historian'. There would be individuals who attended medical examinations in these circumstances who did not tell the truth. Dr Frazer did not consider that the Respondent fell in to that category. In the absence of any evidence to the contrary, the Tribunal had to rely upon this experienced expert to distinguish the reliable historians from the unreliable. The Tribunal therefore gave his report greater than average weight when deciding how to proceed in respect of sanction.

50. Looking first at culpability. The motivation for the Respondent's misconduct was fear of the consequences from the Firm's management of the discovery of her wrongdoing. There was no direct financial motive save for preservation of the Respondent's current (allegations 1.1 and 1.2) and future (allegations 1.3 to 1.6) employment prospects. The Respondent was in effect acting to protect her position. The need to do so continued throughout. The misconduct arose from actions which were spontaneous to begin with and later planned on an *ad hoc* basis in respect of the continuation of the misleading of her employers and G. On 5 August 2013 the Respondent recorded that she had informed G on the telephone that she would send a Judgment Order for the defendant in G's proceedings to agree. She did not then inform G that the Consent Order requiring service of the pleadings by 29 July 2013 had not been complied with. This was the starting point from which the subsequent actions flowed, one lie to her client. The misconduct, and therefore the culpability, continued from 5 August 2013 through 11-12 November 2014 and until January 2015,

approximately 17 months. There was very little, if any, planning involved in the initial misleading statement in August 2013. Having committed the first deception, subsequent deceptions were consequential. The only person who could stop the deception was the Respondent. Her efforts to mislead continued to be successful, probably due to lack of curiosity and attention on the part of her supervisors, which was surprising due to the level of micromanagement at the Firm. The Respondent was in a position of trust *viz a viz* her client and her employer, a duty of trust which she breached. The Respondent had direct control of and responsibility for the circumstances giving rise to the misconduct. At the beginning of the sequence of events the Respondent had been qualified for approximately 3 years and close to 5 years by the end. She was a junior solicitor within the Firm and had worked there, initially as a paralegal in conveyancing and then as a trainee solicitor, since 2007. She had moved from office to office and the Firm had grown considerably during her time there. However, the Respondent was not completely lacking in experience of the Firm and its culture as evidenced by her comments about Mr Smith while she was a trainee. The harm caused by her misconduct was considerable. It was not necessary for the Tribunal to go into detail for the purposes of this Judgment, save to say that the client was obviously vulnerable, being the claimant in a clinical negligence claim which she believed to be proceeding smoothly in reliance on what she was told by the Respondent. The impact on the Firm could not be ignored, in the sense that the Respondent's colleagues had to take over the File, prepare an application for relief from sanction, instruct Counsel to attend the hearing where, fortunately, a successful outcome was obtained. Taken at face value the public would be concerned, perhaps shocked, by the Respondent's actions. If cognisant of the full details, the public might take a different view. However, there was inevitable damage to the reputations of the Respondent, the Firm, and the wider profession, and in particular to public confidence in being able to trust solicitors to the 'ends of the earth'. The damage was twofold: (1) a member of the public, the vulnerable client, was deceived by a member of the profession; (2) distrust in the mind of the public would then spread to the profession more generally. The Respondent was fortunate in that her misconduct did not become amplified. The Firm was able to make a successful application for relief from sanction so that the potential injustice was remedied. This did not detract from the fact that the client was made subject to enormous stress and consequential delay as a result of the Respondent's misconduct.

51. The misconduct was aggravated by the findings of dishonesty. Whilst the misconduct continued over a period of time, and the lies regarding progress on the claim were repeated by the Respondent, the Tribunal did not consider the misconduct to be calculated. The backdating of letters created by the Respondent was, of course, deliberate. Again, however, the Tribunal did not consider that the misconduct was calculated. One lie led to another with inevitability rather than calculation. This was one incident which migrated. That migration meant that the Respondent had repeated opportunities to make the situation better by telling the truth and facing the consequences. Instead she continued the lies and made matters worse. This was not a true 'moment of madness' case. The Respondent took advantage of her client who was a vulnerable person in this scenario and who trusted the Respondent to progress her claim to a successful outcome bearing in mind that liability had already been admitted. The Respondent concealed her wrongdoing repeatedly until the point at which the Firm contacted her after she had moved on. The Tribunal was in no doubt that the Respondent knew that her conduct was in material breach of her obligations

to protect the public and the reputation of the legal profession. For example, the Respondent knew because she said so that an honest solicitor would not backdate letters. The extent of the impact on those affected by the misconduct, and in particular client G, was significant. The Respondent recognised as much by her apology to her client in her witness statement, repeated by Mr Bennett on her behalf in open court.

52. In terms of mitigation, this was not a case where the misconduct resulted from deception by a third party. The Respondent had herself taken no steps to make good any loss arising; this would have been an option open to the Respondent had she owned up to her misconduct while she was still employed at the Firm. It could not be said that the Respondent voluntarily notified the SRA, or indeed the Firm, of the facts and circumstances underlying the misconduct. When contacted by the Firm she accepted responsibility, but not before. The Respondent's career was completely unblemished until these events. The Tribunal found that the Respondent did show genuine insight on the basis of the facts found proved and her evidence. She had shown remorse to the client and had agreed to the imposition of conditions on her practising certificate. The Respondent struck the Tribunal as a much older and wiser person as a result of these events. She described herself as feeling ashamed and her evidence was, on the whole, reflective and measured.

53. Within any workplace all employees should feel that when they are up against a problem they can draw on the support of their line managers in particular, and management generally. The Tribunal determined that level of support was not available to the Respondent. It had gleaned from the evidence that the culture was not supportive of its solicitor employees. The Tribunal did not gather from the Firm's witnesses that they were attentive or interested in caring for the people under their charge. What the Respondent did was bound to come out at some point, which demonstrated how poorly thought-through her actions really were. For example, the client could at any time have contacted Ms Al-Sabbagh to ask her to review the File. The File could have been handed to another fee earner during the Respondent's absence on holiday and the truth discovered then. Throughout the period of the misconduct, the Respondent was a hostage to fortune. This must have added considerably to her overall anxiety and stress.

54. The culture of the Firm was plain to see from the email from Ms Allen dated 6 July 2012 (see paragraph 13.1 above) and, in particular, the letter from the Managing Partner Colum Smith dated 11 April 2013 (see paragraph 13.2 above). The Tribunal had expected to hear oral evidence from Ms Allen about the methodology behind the email and letter in view of the fact that she was Director of Regulation, People and Standards and the Firm's COLP. She did not explain what procedures the Firm had in place to counteract what the Respondent said about the culture. For example, she could have explained that focus was on time recording and billing targets but that support was available to ensure that junior fee earners were cushioned by their seniors from some of the pressures. That support could be as simple as regular meetings of teams of fee earners with their supervisors to chat through the distribution of work, files that were going off course and files where for some reason time could not be fully recorded, perhaps when taken over from another fee earner. The Tribunal took the view that the publication of league tables showing who amongst the staff was doing the best was not supportive. What the Tribunal was

looking for was evidence of the mechanisms that the Firm had in place to ensure that fee earners did not sink under the weight of pressure.

55. It was easy to look at the Respondent's situation with the benefit of hindsight and ask oneself why she did not leave the Firm in late 2012 when the pressures began to tell upon her. The Tribunal had concluded that the Respondent was becoming unwell at this point, for a combination of reasons. Her personal circumstances were challenging in addition to the pressures that she was increasingly feeling at the Firm. The combination of events may well have made it very difficult for her to see her way clearly to the other side. There was evidence for this by the fact that she was described by herself and her close colleagues as crying on a daily basis. This suggested an individual in the midst of significant emotional turmoil. In similar situations others might have the support of those at home even if the Firm itself was unsupportive. It might be possible to say that a mistake at work had been made and obtain guidance as to how to put matters right, even if the end result was disciplinary proceedings concluding in termination of employment. Knowing that friends and family were on your side was often the critical factor in a successful resolution to such situations. At the very least the Respondent might have felt able to accept advice to consult her Doctor. The fact that she did not do so suggested to the Tribunal that her world view was skewed. The Tribunal noted that the Respondent had still not informed her parents of the allegations against her, preferring to wait until the outcome of these proceedings. Inevitably this decision meant that those closest to her were unable to help her through a difficult time. Whilst it was clear that the Respondent did have friends and colleagues within the Firm who could give her support, the fact that they were scattered over different offices made for a long working day at times of need. The Tribunal was mindful that the people at the Firm to whom the Respondent might have turned were subject to the same pressures and quite likely to be struggling with their own stress.

56. The Respondent's evidence was that she is well supported in her current firm. Her caseload has reduced albeit that she is still practising in the specialist area of claimant clinical negligence. Such work is often demanding and pressurised. It was also fair to say that the Respondent is highly supervised for a solicitor of her level of experience, now over 7 years post-qualification.

57. These were serious matters. The dishonesty allegations alone justified strike off. The Respondent relied upon exceptional circumstances to persuade the Tribunal to impose a lesser sanction. The Tribunal was familiar with the case law in this area, in particular the cases of Bolton, Sharma and Imran to which reference had been made. For the avoidance of doubt, the Tribunal did not consider itself to be bound by the decisions of other SDT Divisions. As stated in Imran, it was necessary to record and stand back from all of the many factors of the case to put first and foremost in the assessment of whether or not there were exceptional circumstances the particular conclusions that had been reached about the acts of dishonesty themselves. The fact that the Respondent was able to produce references and confessed her dishonesty in relation to allegations 1.1 and 1.2 relatively promptly was relevant in deciding whether or not this was an exceptional case but did not attract very substantial weight. Of far greater weight was the extent of the dishonesty and its impact on the character of the Respondent but, most importantly, on the wider reputation of the profession and how it impinged on the public's perception of the profession as a whole.

58. The Tribunal paid close attention to Mr Bullock's objections to a finding of exceptional circumstances in this case. Much of what he said rang true with the Tribunal. It had, however, rejected his submission that minimal weight should be given to Dr Frazer's report. The Tribunal considered that the Respondent's mental health, and in particular the conditions of depression and anxiety, albeit mild in both cases, were a feature of the dishonest conduct and in particular the length of time for which it was perpetuated. It was however true that many solicitors at all levels are under pressures in respect of time recording and billing targets; many solicitors had extremely traumatic events going on outside the office. Solicitors are subject to the 'slings and arrows of outrageous fortune' in exactly the same way as the rest of the public. Most solicitors do not commit acts of dishonesty when under stress and the public could take comfort from that.

59. During the last 10 to 15 years, and in particular in the last 5 years or so, awareness and openness concerning mental health issues have developed. Management at law firms and elsewhere should be more alert to the warning signs, which included, amongst other things, decline in performance, physical symptoms of distress, and uncharacteristic behaviour such as a drop in reliability. Management should be able to respond appropriately, for example by providing access to external counselling services. We have all become much more aware of bullying and harassment in the workplace which can have a significant impact on employees, particularly those who might be described as being vulnerable.

60. The letter from Mr Smith to the Respondent was threatening and harassing in tone. The Tribunal believed that the intention behind the letter was to frighten the recipient into compliance, namely into working long hours in the evenings, at weekends, at holiday times, in short doing whatever was necessary to make up time recording deficits and therefore increase billing. This was inappropriate. The letter lacked finesse and empathy. Mr Smith assumed that the Respondent would work the extra hours to make up her time. He assumed that she had enough chargeable work to do to meet his demands. He showed no interest in whether the Respondent had external pressures that would make it impossible for her to satisfy her time recording target. He did not question the reasonableness of the target into which had been added time recording deficits from the previous year. He demanded a response from the Respondent that same day. This was hectoring of a junior employee and Mr Smith had to take the Respondent as he found her, namely as a vulnerable individual who was suffering from a mental health condition. It could be said that he did not know that she was unwell, but a lack of such knowledge pointed to a clear failure of effective management and shortcomings in the Firm's HR and supervision functions. It was incumbent upon the Respondent's managers, including Ms Allen, Ms Al-Sabbagh, and Ms Phillips to monitor her performance supportively and to ensure that her targets accurately reflected her capabilities, including the profile of her caseload. The Tribunal recognised the situation where one fee earner picked up cases that had been round the houses and tried to get them on track, potentially dealing with clients who were already losing confidence in the Firm and making it difficult to record chargeable time without being accused of over-charging due to duplication of effort. The Respondent described other junior solicitors as assisting partners whilst she had her own caseload. That evidence was not challenged. In those circumstances it was necessary for Ms Al-Sabbagh and Ms Phillips, in particular, to ensure that the Respondent was well-supported and felt valued and was not overloaded with work.

The Respondent via her Counsel was fair in stating that she was not laying all responsibility for her misconduct at the feet of the Firm. However, the Firm must take upon itself a significant proportion of blame. The Tribunal was left with the impression from her oral evidence that Ms Allen knew very little about the responsibilities of the HR function towards the staff. It seemed to the Tribunal that the function and the job title that went with it had been established solely to tick various boxes on accreditation schemes. The Respondent had produced character references from former employees of the Firm who said much the same as she did about the culture. Those individuals had left the Firm. They could have put their experiences behind them and they certainly had nothing to gain by supporting the Respondent in these proceedings. To that extent they were independent. They confirmed that the culture of the Firm was as described by the Respondent.

61. The root cause of the Respondent's misconduct, including the allegations of dishonesty, was the combination of the culture of the Firm in terms of pressures placed on junior solicitors and her mental ill-health arising from the pressures of work allied with difficult personal circumstances. It was necessary to look at these overriding features cumulatively. This Respondent had an egg-shell skull personality at the time of these events. The impact of letters such as that written by Mr Smith and the culture of the Firm was greater than it would have been on a fee earner without an 'egg-shell skull'. It was unusual for solicitors appearing before the Tribunal to use words such as "terrified" and "fear" in the context of the workplace. The use of those words gave an indication of the Respondent's vulnerability; small issues such as getting behind on a file had magnified to the extent that the consequences anticipated by the Respondent were dire and, in her own words, she felt as if she had a massive dark cloud hanging over her. The Respondent was vulnerable, isolated, dealing with difficult home circumstances, relatively young in terms of life experience, and in what she viewed as an environment that had become toxic to her. She had lost her confidence and felt that she was no good at a job that she had previously enjoyed. This was, in effect, a 'perfect storm' of circumstances.

62. Three years had now passed by. The Respondent had got her life back on track, she continued to work within the profession, albeit with conditions on her practising certificate, within a supportive environment. The Tribunal had not been made aware that there were any difficulties in relation to her current practice. Her employer had provided a reference and had clearly cooperated with the SRA with regard to the Respondent's employment and the conditions on her practising certificate. Mr Bennett said so and Mr Bullock did not contradict him. The Respondent had admitted the dishonesty in relation to allegations 1.1 and 1.2 at an early stage. The fact that there had been no difficulties in the last 3 years encouraged the Tribunal to the view that these events had been part of that perfect storm and that the circumstances were exceptional based on the facts of this case, which were unlikely to be repeated elsewhere.

63. The Tribunal was convinced that the Respondent had learned from her mistakes as evidenced by the fact that she had worked trouble-free for the last 3 years. Her partner attended the hearing with her, showing support. Of course what had happened would have an impact on her personal reputation as a solicitor once the matter was in the public domain. However, the level of insight shown and the changes that the Respondent had made reassured the Tribunal that a member of the public reading

about these events in this Judgment would conclude that the Respondent was well on her way to rehabilitation. Further, that same member of the public would realise that these events were fact-specific and likely to be extremely rare. The Respondent's misconduct did not in those circumstances have any lasting impact on the reputation of the wider profession and the public's perception of the profession as a whole. The circumstances were exceptional.

64. The appropriate and proportionate sanction on the facts of this particular case was a period of suspension, itself suspended for a period of time subject to compliance with the terms of the Restriction Order which the Tribunal intended to impose. The Tribunal did not consider that it was appropriate to impose immediate suspension on the Respondent. The public had, in effect, been exposed to her practice for the last 3 years and had come to no harm and neither had the reputation of the profession. The Respondent was working in the same area of law and, as far as the Tribunal was aware, had effectively made good what she had previously done wrong. The Tribunal considered that the appropriate period of suspension was for a period of 2 years to commence on 28 November 2017, that period of suspension to be suspended for 3 years from the same date subject to compliance with the terms of the Restriction Order imposing conditions on practice for 3 years starting from the same date. By imposing a Restriction Order the risk of harm to the public and the public's confidence in the reputation of the profession was proportionately constrained and the combination of that Order with the period of pending suspension provided adequate protection. On completion of the period under Restriction, the Restriction Order will be lifted and the pending suspension will cease to have effect. It should be noted, however, that it will still be open to the SRA to impose its own conditions on the Respondent's practising certificate as it has done to date and continuing after the expiry of 3 years. The Respondent should be in no doubt that the sanction imposed was not a soft option; it would require her to comply and run her practice in a way that was beyond reproach during the period of suspended suspension. It was a measure of the seriousness with which the Tribunal regarded the events of 2013 to 2015, whilst also recognising proportionately the passage of time since those events during which the Respondent had practised without problem. The Order also gave protection to future employers who would have to be made aware of its existence and the reasons for it by the Respondent should she decide to move on. Any lower level sanction would be inappropriate and would not adequately reflect the purpose of sanctions or the seriousness of the misconduct.

65. It should also be noted that any breach of the conditions imposed will be a disciplinary offence generally meriting a separate penalty. In order to vary the conditions during their currency, the Respondent will have to make an application to the Tribunal on notice to the Applicant who will in turn have the opportunity to oppose the application if so advised. The conditions were intended to ensure that the Respondent could not work as a solicitor other than under direct supervision in employment approved by the SRA, that any prospective employer must know of the existence of the conditions and the reasons for them, and to limit the Respondent's ability to set up in practice on her own or to have access to client money.

66. The full details of the Order are set out at paragraph 69 below.

Costs

67. The Applicant had adjusted the original Schedule of Costs dated 20 November 2017 downwards from £12,400.30 to allow for a reduction in the preparation time required, the fact that the hearing had taken one day less than anticipated, and some apportionment of expenses because Mr Bullock was appearing at the Tribunal later in the same week. Mr Bullock calculated the new figure at £9,880.65 but later reviewed his calculation and amended the Schedule further to reduce the claim to £9,511.65. Mr Bennett indicated that he did not wish to make any submissions on the proportionality of the costs claimed; this case had been prepared appropriately and proportionately. The Respondent had provided evidence of her means.

68. The Tribunal noted the submissions on costs. In the absence of any disagreement by Mr Bennett on behalf of the Respondent and on its own assessment, the Tribunal considered the costs claimed to be reasonable and ordered that the Respondent do pay the costs of and incidental to this application and inquiry summarily assessed and fixed by the Tribunal in the sum of £9,511.65.

69. **Statement of Full Order**

69.1 The Tribunal Ordered that the Respondent, SOVANI RAMONA JAMES, solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on 28 November 2017, that period of suspension to be suspended for 3 years from the same date **SUBJECT TO** compliance by the Respondent with the terms of the Restriction Order imposing conditions on practice set out at paragraph 69.2 below.

69.2 The Respondent shall be subject to conditions on practice imposed by the Tribunal for the period of 3 years to commence on 28 November 2017 as follows:

The Respondent may not:

1. Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

2. Practise other than under the direct supervision of a partner or member of her employers;

3. Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

4. Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

5. Hold client money;

6. Be a signatory on any client account;

7. Work as a solicitor other than in employment approved by the Solicitors Regulation Authority;

8. The Respondent must inform any prospective employer of the existence of these conditions and the reasons for them.

69.3 If the Respondent is found to have breached any of the conditions set out at paragraph 69.2 above during the period of 3 years under restriction, activation by the Tribunal of the period of suspension of 2 years may follow in addition to any sanction imposed for the breach of condition(s).

69.4 If the period of 3 years under restriction is successfully completed, the suspended suspension from practice of 2 years will cease to have effect.

69.5 There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 69.2 above.

69.6 The Respondent do pay the costs of and incidental to this application and enquiry summarily assessed and fixed by the Tribunal in the sum of £9,511.65.

Dated this 4th day of January 2018
On behalf of the Tribunal

J. Evans, Solicitor Member
On behalf of T. Cullen, Chair