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Case No: CO/658/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/11/2020

Before:

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
and
MR. JUSTICE SWIFT

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Between:

Ryan Beckwith	**Appellant**
- and –	
Solicitors Regulation Authority	**Respondent**

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Alisdair Williamson QC (instructed by Brett Wilson LLP) for the **Appellant**
Riel Karmy-Jones QC & Rupert Allen (instructed by Capsticks Solicitors) for the **Respondent**

Hearing date: 20 October 2020

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JUDGMENT

COVID-19 Protocol: This judgment was handed down remotely to be circulated to the parties' representatives by email, released on Bailii and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00 am on 27/11/2020. A copy of the judgment in final form as handed down can be made available after that time, on request by email to the administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk

DAME VICTORIA SHARP P. and MR JUSTICE SWIFT:

A. Introduction

1. On 30 January 2020 the Solicitors Disciplinary Tribunal ("the Tribunal") issued its judgment on complaints of misconduct brought by the Solicitors Regulatory Authority ("the SRA") against Ryan Beckwith ("the Appellant"). That judgment followed a 9-day hearing that had taken place in September and October 2019, which considered a complaint made to the SRA in 14 August 2017. The Tribunal referred to the complainant as "Person A". In this judgment we will do the same.

2. The Appellant was a partner in the firm of Freshfields Bruckhaus Deringer ("the Firm"), and had been the subject of two complaints, referred to in the Tribunal's judgment as "Allegation 1.1" and "Allegation 1.2". Allegation 1.1 concerned events that were said to have taken place on either 6 or 7 May 2016. The Tribunal dismissed that allegation.

3. Allegation 1.2 was in the following terms

> "1.2 On 2 July 2016, the Respondent initiated and/or engaged in sexual activity with Person A in circumstances which constituted a breach of one or more of Principle 2 and Principle 6 of the Principles 2011 because:
>
> > 1.2.1 the Respondent was in a position of seniority and/or authority over Person A in that he was a partner in the Firm, Person A's supervising partner and Person A's appraisal partner;
> >
> > 1.2.2 the Respondent knew or ought to have known from the Person A's reaction to the incident on 6 or 7 May 2016 [i.e. Allegation 1.1] that his conduct on that occasion had not been invited and was unwelcome;
> >
> > 1.2.3 the Respondent knew or ought to have known that Person A was heavily intoxicated to the extent that she was vulnerable and/or her judgement and decision-making ability was impaired.
> >
> > 1.2.4 the Respondent knew or ought to have known on 1 or 2 July 2016 that Person A had not invited him to her home;
> >
> > 1.2.5 the Respondent knew or ought to have known on 1 or 2 July 2016 that Person A had not allowed him into her home with a view to sexual activity taking place; and/or
> >
> > 1.2.6 in all the circumstances the Respondent knew or ought to have known that his conduct was an abuse of

his position of seniority or authority and/or inappropriate."

4. The reference to "Principle 2 and Principle 6 of the Principles 2011" is a reference to the list of principles set out in the SRA Handbook, as in force at the time of the events that were complained of ("the Handbook"). At that time, the Handbook set out 10 principles, as follows

   "SRA Principles

   These are mandatory Principles which apply to all.

   You must:

   1. uphold the rule of law and the proper administration of justice;

   2. act with integrity;

   3. not allow your independence to be compromised;

   4. act in the best interests of each client;

   5. provide a proper standard of service to your clients;

   6. behave in a way that maintains the trust the public places in you and in the provision of legal services;

   7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;

   8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;

   9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and

   10. protect client money and assets."

   We will refer to these as the 2011 Principles.

5. The Tribunal made detailed findings of fact on the circumstances that had given rise to Allegation 1.2: see paragraphs 25.166 to 25.176 of its judgment, which are set out in the Annex to this judgment.

6. In summary the Tribunal found that what it described as a "sexual encounter" had occurred between the Appellant and Person A during the evening of 1 – 2 July 2016. Earlier that evening the Appellant and Person A had been part of a group drinking in a pub near the Firm's London office. Person A was an associate solicitor at the Firm in its Restructuring and Insolvency Department, the same department the Appellant

worked in. In June 2016 Person A had resigned from her employment with the Firm following an offer of employment with another law firm. Her last day of work was 8 July 2016. The drinks on Friday 1 July 2016 were in anticipation of her departure.

7. The Tribunal next set out its specific findings on the component parts of Allegation 1.2: see paragraphs 25.177 to 25.191 of its judgment, also set out in full the Annex to this judgment. The Tribunal's findings on these matters can be summarised as follows. It accepted that the Appellant was in a position of seniority and/or authority over Person A. The Appellant had not disputed this. The Tribunal found that the Appellant knew that Person A was "heavily intoxicated and that her judgement and decision-making ability was impaired". The Tribunal had, earlier in its judgment (at paragraph 25.172.1) found that the Appellant's judgement was also "influenced by his own alcohol consumption that evening". Notwithstanding that Person A was "heavily intoxicated", the Tribunal rejected the contention that she was "vulnerable". The Tribunal found that the allegation at paragraph 1.2.4 of Allegation 1.2 had not been proved: i.e. it concluded that the Appellant had not entered Person A's home without being invited in. In respect of the next part of Allegation 1.2, the Tribunal found that the Appellant knew he had not been invited in with a view to sexual activity. The Tribunal rejected the allegation that the Appellant had acted in abuse of his position of seniority or authority. It found instead that by engaging in sexual activity with Person A he had acted "inappropriately".

8. Based on these findings the Tribunal went on to conclude that the Appellant's actions were a breach of Principle 2 of the 2011 Principles, the obligation to act with integrity, and also a breach of Principle 6 the requirement to behave in a way that maintains the trust the public places in solicitors and in the provision of legal services.

9. The Tribunal's reasoning on these matters was as follows

> "25.189 The Tribunal determined that the Respondent's conduct affected not only his personal reputation, but the reputation of the profession and thus was a matter that ought to bear the scrutiny of the regulator. In addition, the Tribunal found that whilst the subject matter and the particular circumstances of these proceedings was novel, the application of Principles 2 and 6 to a solicitor's private life was not. Accordingly, the Tribunal found that it was proper to assess whether or not the Respondent's conduct was in breach of the Principles as alleged.
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> 25.190 That the Respondent had failed to maintain the trust the public placed in him by conducting himself in the way that he did, was clear. Members of the public would not expect a solicitor to conduct himself in the way that the Respondent had. Such conduct, the Tribunal found, would attract the approbation of the public [sic]. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 6 as alleged.
>
> 25.191 When considering whether the Respondent's conduct lacked integrity, the Tribunal considered the oral and written testimonial evidence presented on his behalf. The

> Tribunal found that the Respondent's conduct had fallen below what was expected of him by members of the public and of the profession. The Respondent had accepted that his conduct had fallen below the standards expected by a partner at the Firm, by virtue of his acceptance of the final written warning. The Tribunal did not consider that the standards employed at the Firm were any higher than the standards of the profession in general. The Respondent had sought, in his evidence, to suggest that he considered that his standards had fallen below expectations on the basis that he was married. The Tribunal rejected that explanation. There was nothing in the final warning letter or any of the relevant investigatory documents that suggested that the Respondent's conduct had been assessed through the prism of his marriage. The fact of his marriage, whilst highly relevant to the Respondent personally, was irrelevant to the Firm's findings and irrelevant to the Tribunal's assessment of his conduct. For the avoidance of doubt, whilst it had been Firm's finding (and the Respondent seemingly accepted) that the Respondent's conduct had fallen below accepted standards, the Tribunal's finding was based on the evidence that it heard and not on the Firm's view of his conduct. That the Firm and the Tribunal were in accord in their assessment of the Respondent's conduct was, the Tribunal determined, indicative of the expected standard of conduct of the profession. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 2 as alleged."

10. Having set out those conclusions, the Tribunal decided that the appropriate sanction was a fine of £35,000, and that the Appellant should pay the SRA's costs of the proceedings in the amount of £200,000 (approximately 60% of the total costs claimed by the SRA which had been £343,957.08).

11. This appeal is brought under section 49 of the Solicitors Act 1974 ("the 1974 Act"). The Appellant does not seek to dispute the Tribunal's findings of fact, not the least because in large part, the conclusions reached by the Tribunal were consistent with the evidence he gave in the Tribunal proceedings. However, the Appellant contends that the Tribunal was wrong to conclude that his conduct amounted to a breach of Principle 2 or Principle 6. He also challenges the Tribunal's decision on costs.

12. For sake of completeness it should be noted that the proceedings against the Appellant which are the subject of this appeal concerned the application of the standards set out in the Handbook. The Handbook included both the 2011 Principles and the SRA Code of Conduct 2011. The proceedings against the Appellant were initiated by the SRA pursuant to provisions of the SRA Disciplinary Procedure Rules 2011. With effect from 25 November 2019 the Handbook was replaced by the SRA Standards and Regulations. The 2011 Disciplinary Procedure Rules have now been replaced by new rules, also made in 2019. Finally, the procedures before the Tribunal were conducted pursuant to the Solicitors (Disciplinary Proceedings) Rules 2007 (SI 2007/3588); the Tribunal now operates under new rules made in 2019 (SI 2019/1185).

B. Decision

13. There is no dispute as to the approach we should take when deciding this appeal. This appeal is by way of review, not rehearing. The question for us is whether the Tribunal's conclusion was "wrong". Findings of fact, and decisions on evaluation of facts are primarily questions for the Tribunal and are only to be revisited if the conclusion reached by the Tribunal rested on an error of principle or fell outside the bounds by what the Tribunal could properly and reasonably have decided. This general caution, which applies to all appeals is heightened in this case because the decision under appeal is a decision of a specialist tribunal: see generally *Solicitors Regulation Authority v Good* [2019] EWHC 817 (Admin) per Flaux LJ at §30, and *General Medical Council v Bawa-Garba* [2019] 1 WLR 1929 per the court at §§64 – 67.

(1) Professional Misconduct

14. The first two grounds of appeal are to the effect that the Tribunal erred in its approach to Allegation 1.2 by not first considering whether the allegation amounted to "professional misconduct" and by not then concluding that the Appellant's actions did not reach the standard of "professional misconduct". On the Appellant's submission the notion of professional misconduct provides both a threshold requirement to weed out complaints concerning matters that are insufficiently serious to be the subject of regulatory sanctions, and also provides a boundary to mark the limits of regulatory incursion into conduct that occurs outside work or otherwise in the course of professional life.

15. Although we agree that such limits to the scope of professional regulation by the SRA do exist, we do not consider it is appropriate to identify where those limits are by reference to a notion of "professional misconduct". The notion that the Tribunal should only deal with allegations which amount to "professional misconduct" has superficial attraction. But on closer consideration, this notion disintegrates. What is or is not professional misconduct depends on the rules of the scheme that applies to the profession in hand. Some schemes may describe prohibited conduct by reference to the phrase "professional misconduct" or other similar words – see, for example, the cases referred to below at paragraphs 19 – 22. In such cases, the relevant regulator or tribunal does have to decide whether the conduct alleged can be described as professional misconduct. But other schemes for regulation may not be formulated in this way; they may describe prohibited conduct in other ways. Where that is so, the only question for the relevant regulator or tribunal is whether or not such conduct has occurred, and if so, what penalty should be imposed. One might describe the product of that process as a finding of "professional misconduct", but that phrase will be no more than descriptive; it will not identify the relevant standard of behaviour which has caused the penalty to be imposed.

16. Put another way, whether or not a notion of "professional misconduct" has any part to play in any particular regulatory scheme will depend on the terms in which that scheme has been made. There is no universal principle.

17. So far as concerns this appeal, the scope of regulation by the SRA and the Tribunal must depend on the proper interpretation of the standards set out in the Handbook (i.e. the relevant rules made pursuant to section 31 of the 1974 Act), applied in accordance with the procedural rules made for that purpose. At the relevant time, the material parts of the Handbook for the purposes of the Appellant's case were the 2011 Principles and the 2011 Code of Conduct (which explains the application of the 2011 Principles); and the relevant procedural rules were the SRA Disciplinary Procedure Rules 2011. The standards in the Handbook were not (and are not now) formulated by reference to any defined notion of "professional misconduct", whether as a threshold requirement for disciplinary action before the Tribunal or otherwise. Whether misconduct alleged is sufficient to engage the jurisdiction of the Tribunal is addressed by Rule 10 of the Disciplinary Procedure Rules. Under that Rule the SRA is permitted to refer a matter to the Tribunal ("make an application to the Tribunal") only if it is satisfied, among other matters, that the allegation is sufficiently serious that the Tribunal is likely to make an order striking the solicitor from the role, suspending him from practise, or requiring him to pay a penalty greater than the maximum the SRA has the power to impose.

18. It is not for this court either to add to that approach or otherwise to reformulate the statutory scheme which has been made under the 1974 Act. There is no basis in law to interpose any additional requirement into the Handbook to the effect that before the Tribunal could act it had to be satisfied that the conduct which amounted to a breach of one or other of the 2011 Principles also amounted to professional misconduct. And even if that were not so, adding such a requirement would only serve to insert unnecessary uncertainty and complexity. In our view, it is essential that the statutory scheme of regulation made in exercise of the powers under the 1974 Act is construed on its own terms, and not by reference to concepts or formulae that are not part of that scheme.

19. The authorities relied on by the Appellant for the purposes of this submission do not assist his case. The Appellant's reliance on the judgment of the Divisional Court in *R (Remedy UK Limited) v General Medical Council* [2010] EWHC 1245 (Admin) misses the point because the matter in issue in that appeal was the scope of section 35C of the Medical Act 1983. That section expressly defines whether a doctor's fitness to practise is impaired by reference (among other matters) to whether there has been "misconduct" and "deficient professional performance". Thus, while the detailed consideration given by the court in that case to the notion of "misconduct" (see the conclusions stated by Elias LJ at §37 of his judgment) was directly relevant to any application of the regulations put in place under the Medical Act 1983, those matters cannot simply be read-across into a case concerning the SRA and the SRA Handbook. As we have said, each regulatory scheme, for solicitors, for doctors, for barristers, and so on, must be construed and applied on its own terms. Great care must always be taken when seeking to apply an authority under one scheme to an appeal under a different scheme. Regulation of the professions is established under a series of discrete statutory codes; principles developed in one scheme may say little that informs the approach required in a different scheme.

20. The next case the Appellant relies on, *Mohammed Lone v Secretary of State for Education* [2019] EWHC 531 (Admin) is to be explained in exactly the same way. That case concerned the exercise by the Secretary of State for Education of his power under section 141B of the Education Act 2002 to investigate allegations that a teacher "…

may be guilty of unacceptable professional conduct or conduct that may bring the teaching profession under disrepute". The statutory language drove the court in that case to determine the meaning of "unacceptable professional conduct" as being "misconduct of a serious nature falling significantly short of the standard of behaviour expected of a teacher" (per William Davis J at §27). In the premises, this case says nothing as to the approach to be taken by the Tribunal in proceedings based on the provisions of the Handbook.

21. The judgment in *Bar Standards Board v Howd* [2017] 4 WLR 54, although closer to home in that it concerns regulation of barristers, nevertheless falls to be treated in the same way. In that case Lang J proceeded on the basis that the Code of Conduct of the Bar (9th Edition) needed to be understood as including a requirement that allegations of misconduct needed to amount to "professional misconduct": see her judgment at §§49 – 53. We do not, for the purposes of this appeal need to form any view of whether or not that approach was correct. We only observe that it is notable that the relevant edition of the BSB Handbook only used the notion of "professional misconduct" to distinguish between conduct that could appropriately be addressed by imposition of an "administrative sanction" (defined elsewhere in the BSB Handbook), and conduct that needed to be the subject of proceedings before the Bar Disciplinary Tribunal. This seem to us to make it clear that while the Bar Disciplinary Tribunal's assessment of the seriousness of conduct it has found proved will always be essential to its decision on the appropriate penalty, that scheme had been formulated without need for any free-standing notion of "professional misconduct".

22. While the merits of the judgment in *Howd*, on its own terms, do not assist for the purposes of the present appeal, we do consider that the observation we have just made also holds good for the Handbook. The Handbook makes no use of the term "professional misconduct" either as a term of art or as a prescribed standard. Although it is readily apparent from Rule 10 of the 2011 Disciplinary Procedure Rules that some notion of professional misconduct is used to distinguish between those matters that can be addressed by the SRA and those which need to be referred to the Tribunal, it is equally clear that for the purposes of proceedings before the Tribunal itself, there is no free-standing requirement that the Tribunal must first decide whether the conduct alleged amounts to "professional misconduct" before going on to consider the application of any of the principles set out in the Handbook.

23. This conclusion is supported by the decision of the Divisional Court in *Solicitors Regulation Authority v Day* [2018] EWHC 2726 (Admin). The Appellant relies on the judgment in that case as supporting his submission that a discrete requirement that the conduct complained of had to amount to "professional misconduct". The circumstances in which the allegations in *Day's* case arose were complicated; they do not require explanation for the purposes of this judgment. The submission for the SRA in *Day* was that in dismissing complaints made variously under the Solicitors Code of Conduct 2007 and the Handbook, the Tribunal had, when it came to two of those allegations, incorrectly considered whether or not the conduct complained of amounted to professional misconduct. As to the first relevant allegation (under Principle 6 of the 2011 Principles), the court concluded that the Tribunal's use of the phrase "professional misconduct" had been no more than a proxy turn of phrase for whether or not the relevant principle had been breached (see the judgment of the court at §102). On the second relevant allegation (under Principle 5 of the 2011 Principles – the obligation to

"provide a proper standard of service to your clients") the court said as follows at §§153, 155, and 156 of the judgment

> "153. Mr Dutton submitted that the majority erred in their approach to Principle 5 and thereby erred in principle. He said (amplifying arguments that, as already noted, he had also raised in other contexts) that the majority had wrongly introduced considerations of professional misconduct instead of simply focusing on whether or not there had been a breach of Principle 5.
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> …
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> 155. Given the context of this case, and given the finding that there was no negligence, we found this debate to be somewhat arid – indeed, although argued below, it seemed, with all respect, to have become before us on appeal little more than a means adopted for seeking to generate a purported point of law with the aim of overcoming the conventional difficulties in challenging an evaluative judgment, based on the evidence, of a specialist tribunal.
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> 156. As we have had cause to ask rhetorically before in this judgment: what was this particular allegation doing before the Tribunal if it was not a matter of professional misconduct? In truth, if such an allegation under Principle 5 is to be pursued before a tribunal then it ordinarily needs to have some inherent seriousness and culpability. It no doubt can be accepted that negligence may be capable of constituting a failure to provide a proper standard of service to clients. But even so, questions of relative culpability and relative seriousness surely still come into the equation under this Principle if the matter is to be the subject of disciplinary proceedings before a tribunal. We do not, we emphasise, say that there is a set standard of seriousness or culpability for the purposes of assessing breaches of the core principles in tribunal proceedings. It is a question of fact and degree in each case. Whether the default in question is sufficiently serious and culpable thus will depend on the particular core principle in issue and on the evaluation of the circumstances of the particular case as applied to that principle. But an evaluation of seriousness remains a concomitant of such an allegation."

24. Thus, the judgment in *Day* lends no support for the Appellant's first two grounds of appeal in this case. Rather, as that judgment makes clear, the requirement on the Tribunal is to apply the substantive rules made under section 31 of the Solicitors Act 1974, as they exist from time to time. In the present case, the Tribunal made no error by not adding the gloss for which the Appellant contends, and not asking, as a free-standing question, whether what the Appellant had done amounted to professional misconduct.

25. However, the point of substance – whether the misconduct found by the Tribunal to have occurred engaged Principle 2 and/or Principle 6 both in qualitive terms (the nature

of the conduct proved) and in terms of the scope of application of those Principles (conduct occurring outside work) – remain live issues in this appeal which must be considered by reference to the parameters of those two Principles.

(2) Principle 2: "You must ... act with integrity".

26. Principle 2 is the requirement to act with integrity. Our conclusion is that the Tribunal fell into error when applying Principle 2 to the facts as found by it in respect of Allegation 1.2.

27. Allegation 1.2 (set out at paragraph 3 above) particularised six matters which the SRA contended (whether considered alone, collectively or in combination), established that the sexual encounter between the Appellant and Person A amounted to a breach by the Appellant of the requirement to act with integrity, and a failure by him to behave so as to maintain public trust in the solicitor's profession. However, the particulars alleged were not all of equal importance. For the purposes of the charge that the Appellant had acted in breach of Principle 2 the critical matter was the allegation at §1.2.6, that the Appellant's conduct amounted to an abuse of his position of seniority or authority. On that allegation the Tribunal concluded that while the Appellant realised that his actions were inappropriate there was no abuse of a position of seniority or authority.

28. For the purpose of considering the content of the requirement to act with integrity, we have been referred to most if not all of the recent cases in which that requirement has been considered. In some of the cases, the issue before the court was whether the requirement to act with integrity is synonymous with a requirement to act honestly. It is a notable feature of the 2011 Principles that there is no free-standing requirement to act "honestly"[1]. Be that as it may, the clear conclusion in the authorities is that while conduct that is dishonest will breach the requirement to act with integrity, the requirement to act with integrity extends beyond a requirement to act honestly.

29. As to how much further the requirement to act with integrity does extend, in the well-known passage in his judgment in *Solicitors Regulation Authority v Wingate* [2018] 1 WLR 3969, Rupert Jackson LJ summarised the state of the case law in this way.

> "95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in *Williams* and I disagree with the observations of Mostyn J in *Malins*.
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> 96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.
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> 97. In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their

[1] This is no longer the position under the new statement of principles made by the SRA which came in to force in November 2019. In those principles there is both a requirement to act with "honesty" (Principle 4) and a requirement to act with "integrity" (Principle 5).

own members. See the judgment of Sir Brian Leveson P in *Williams* at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

98. I agree with Davis LJ in *Chan* that it is not possible to formulate an all-purpose, comprehensive definition of integrity. On the other hand, it is a counsel of despair to say: 'Well you can always recognise it, but you can never describe it.'

99. The broad contours of what integrity means, at least in the context of professional conduct, are now becoming clearer. The observations of the Financial Services and Markets Tribunal in *Hoodless* have met with general approbation.

100. Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

101. The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:

(i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (*Emeana*);

(ii) Recklessly, but not dishonestly, allowing a court to be misled (*Brett*);

(iii) Subordinating the interests of the clients to the solicitors' own financial interests (*Chan*);

(iv) Making improper payments out of the client account (*Scott*);

(v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (*Newell-Austin*);

(vi) Making false representations on behalf of the client (*Williams*).

102. Obviously, neither courts nor professional tribunals must set unrealistically high standards, as was observed during argument. The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the

> manner in which that particular profession professes to serve the public. Having accepted that principle, it is not necessary for this court to reach a view on whether *Howd* was correctly decided.
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> 103. A jury in a criminal trial is drawn from the wider community and is well able to identify what constitutes dishonesty. A professional disciplinary tribunal has specialist knowledge of the profession to which the respondent belongs and of the ethical standards of that profession. Accordingly, such a body is well placed to identify want of integrity. The decisions of such a body must be respected, unless it has erred in law."

30. Three points of principle can be drawn from this summary. The first is that in the context of the regulation of a profession there is an association between the notion of having integrity and adherence to the ethical standards of the profession. This is consistent with the ordinary meaning of the word, namely adherence to moral and ethical principles. The second is that on matters touching on their professional standing there is an expectation that professionals may be held to a higher standard than those that would apply to those outside the profession. The third is that a regulatory obligation to act with integrity "does not require professional people to be paragons of virtue".

31. These principles must guide the search for the content of the requirement to act with integrity, so far as it extends beyond an obligation to act honestly. We also consider it to be elementary that they must be applied within the context of the relevant statutory framework – i.e. the framework provided by rules made in exercise of the power at section 31 of the 1974 Act. Section 31 contains a power to make rules "for regulating in respect of any matter the professional practice, conduct, fitness to practise and discipline of solicitors", and to the extent that there are applicable ethical standards they must be found in or derived from those rules. In this case, the relevant rules are those in the Handbook, and in particular the 2011 Principles and the 2011 Code of Conduct.

32. So far as concerns the first of the principles we have identified from the judgment in *Wingate* – adherence to the ethical standards of the profession – the Handbook does not contain any discrete statement of ethical standards, but describes the 2011 Principles themselves (including the obligation to act with integrity) as embodying "… the key ethical requirements on firms and individuals who are involved in the provision of legal services". Considered in isolation from the remainder of the Handbook, this runs the risk of circularity because there is no fully-formed legal notion of lack of integrity that could be applied in the same way as the received notion of dishonesty.

33. The standards that give substance to the obligation to act with integrity must themselves be drawn from some legitimate source – they must stem from legitimate construction of the rules made in exercise of the section 31 power. To the extent that the obligation to act with integrity includes a requirement not to act dishonestly, the judgment in *Wingate* is authority for the proposition that properly interpreted, the Handbook imports the well-known legal definition of what is dishonest. So far as the requirement to act with integrity extends further, we accept and agree with the point made in *Wingate* that the Tribunal is a body well-equipped to act in the manner of a professional jury to identify want of integrity. Yet when performing this task, the Tribunal cannot have *carte blanche* to decide what, for the purposes of the Handbook, the requirement to act

with integrity means. The requirement to act with integrity must comprise identifiable standards. There is no free-standing legal notion of integrity in the manner of the received standard of dishonesty; no off-the-shelf standard that can be readily known by the profession and predictably applied by the Tribunal[2]. In these circumstances, the standard of conduct required by the obligation to act with integrity must be drawn from and informed by appropriate construction of the contents of the Handbook, because that is the legally recognised source for regulation of the profession.

34. Looking to the Handbook (i.e., the rules made under the 1974 Act) in this way gives effect to the second and third *Wingate* principles we have referred to above – i.e. the need in some matters to hold members of a profession to a higher standard on some matters, while not falling into the trap of requiring members of that profession to be paragons of virtue in all matters. It does this because the contents of the Handbook, considered in the round, are the best guide to the occasions and contexts where members of the solicitors' profession ought to be held to a higher standard. Looking to the rules and the interpretation of those rules is also necessary to ensure the requirements of legal certainty are met. The Tribunal cannot and does not have liberty to act outside the rules made under section 31 of the 1974 Act. Those rules must be construed coherently; the standards that emerge must be sufficiently predictable. This approach to the meaning of the requirement to act with integrity facilitates a principled approach to the important point raised by the circumstances of this appeal: the extent to which it is legitimate for professional regulation to reach into personal lives of those who are regulated.

35. The material part of the Handbook is the 2011 Code of Conduct. The Code of Conduct is divided into various sections: "you and your client", "you and your business", "you and your regulator", and "you and others". Each section describes the standard of conduct required by reference to "outcomes" that are to be achieved, and "indicative behaviours" that are consistent with the standard of conduct that is required. The sections are thematic: taken together they seek to explain how the scheme of regulation under the 1974 Act will apply in various different contexts. It is notable that the "outcomes" are explained as showing the way in which the requirements of the 2011 Principles apply in the various different contexts; and the "indicative behaviours" as tending to show how the "outcomes" can be achieved and compliance with the 2011 Principles (including the requirement to act with integrity) can be secured. The ethical standards providing the content of the obligation to act with integrity are to be found in this material. The Tribunal's task when the complaint is that conduct which is not dishonest conduct, is a breach of the requirement to act with integrity, is to identify by reference to the contents of Handbook (in all likelihood, primarily, the contents of the 2011 Code of Conduct) whether and if so what ethical standards emerge that are relevant to the misconduct alleged. This exercise is best undertaken case by case. Any attempt to formulate a comprehensive list of what is prohibited and what is permitted detached from the circumstances of a specific case could only provide hostage to fortune.

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2 This is so, notwithstanding the material provisions of the Legal Services Act 2007. By section 28 of that Act, approved regulators such as the SRA are required to promote the "regulatory objectives". Those objectives include "promoting and maintaining adherence to the professional principles" (see section 1(1)(h) of the Act), and those principles include an obligation to "act with independence and integrity" (see section 1(3) of the Act). However, under the Act, "integrity" is not a defined term.

36. In this judgment, we limit our comments to the circumstances of the Appellant's case. Allegation 1.2 concerned his treatment of a work colleague outside working hours. We consider the relevant part of the 2011 Code of Conduct to be the part titled "You and Others", and in particular Chapter 11, "Relationships with Third Parties". We set out Chapter 11 in full in the Annex to this judgment. The material obligation arising from Chapter 11, which on the facts of this case informs the content of the requirement to act with integrity, is the obligation, whether acting in a professional or personal capacity, not to take unfair advantage of others. The Tribunal's finding that the Appellant had not acted in abuse of his position of seniority or authority puts the present case outside that requirement. What the Appellant did was, as the Tribunal concluded, inappropriate. But it was not conduct which on a proper reading of the 2011 Principles was capable of being characterised as showing a lack of integrity.

37. The Tribunal concluded that both the Appellant and Person A were "… influenced by … alcohol consumption". Put more directly both had had too much to drink, and this impaired the judgment of each of them. They had kissed downstairs in the pub. They had agreed to share a taxi. After they arrived at Person A's flat there was a "sexual encounter". There was no allegation that that "encounter" took place without consent. The Tribunal was therefore required to approach the matter on the basis that the sexual activity that occurred was consensual. The Appellant was senior to Person A. He was a partner in the Firm; she had recently resigned her position as an associate. Within the Firm the Appellant was in a position of authority over Person A. However, the Tribunal concluded that the events of that evening were not an abuse of that position of authority and seniority. The Tribunal's final reasoning in support of the conclusion that the Appellant had acted in breach of Principle 2, at paragraph 25.191 of the judgment, goes no further than that his conduct had "fallen below the standards expected of a partner at the Firm" and had "fallen below accepted standards".

38. Given the detailed findings the Tribunal had made as to the events of the evening, we consider the Tribunal was clearly right to conclude that no abuse of authority had occurred. However, the Tribunal then fell into error by categorising those events as it had assessed them, to be a breach of Principle 2. In the context of the course of conduct alleged in Allegation 1.2, the requirement to act with integrity obliged the Appellant not to act so as to take unfair advantage of Person A by reason of his professional status. On the findings made by the Tribunal, that had not happened. In the premises, the Tribunal's final statement that the Appellant had "fallen below accepted standards" is not coherent. Whatever "standards" the Tribunal was referring to as ones which identified what, in the circumstances of this case, the obligation to act with integrity required, were not ones properly derived from the Handbook.

39. There is one further matter to note. Our analysis is premised on the need to define the content of the obligation to act with integrity, which might otherwise be an obligation at large, by reference to the standards set out in the Handbook. Confining the obligation in this way preserves the legitimacy of the regulatory process by maintaining the necessary and direct connection between the obligation to act with integrity and rules made in exercise of the power at section 31 of the 1974 Act. Yet the approach we have taken in this case is not any form of permission to expand the scope of the obligation to act with integrity simply by making rules that extend ever further into personal life. Rules made in exercise of the power at section 31 of the 1974 Act (in the language of the Handbook, the "outcomes" and the "indicative behaviours") cannot extend beyond

what is necessary to regulate professional conduct and fitness to practise and maintain discipline within the profession.

(3) Principle 6: "You must ... behave in a way that maintains the trust the public places in you and in the provision of legal services"

40. The Tribunal's conclusion on Principle 6, at §25.190 of its judgment, rested on the same findings on matters of fact and assessment as the conclusion on Principle 2. At §25.190 of its judgment the Tribunal explained that the Appellant had acted in breach of Principle 6 because "members of the public would not expect a solicitor to conduct himself in the way the [Appellant] had". At §25.189 the Tribunal had said that the Appellant's conduct "affected not only his personal reputation but the reputation of the profession". We consider that the Tribunal's conclusion on the application of Principle 6 on the facts as it found them to be was also flawed, and cannot stand.

41. Principles 2 and 6 have a common characteristic. Of the ten 2011 Principles, eight are formulated by reference to conduct impinging on a solicitor's practise of the law. Most events that give rise to misconduct proceedings will comprise conduct that, in one way or another, contravenes one of these eight principles. Principles 2 and 6 are a little different. There will be many occasions where the obligation to act with integrity and the obligation to act so as to maintain public trust will be adjectival in the sense that misconduct that contravenes one or other of the remaining eight principles can also be characterised as showing a lack of integrity or conduct that adversely affects public trust.

42. However, both Principle 2 and Principle 6 also cover ground beyond that covered by the other eight principles. In the context of Principle 2 what that ground is, is identified by construing the contents of the Handbook – i.e. the body of rules made in exercise of the power at section 31 of the 1974 Act. See above at paragraphs 28 – 35. Approaching Principle 2 in this way keeps it within foreseeable boundaries by attaching the obligation to act with integrity to matters that touch upon professional practise as a solicitor.

43. We consider the same general approach must also apply when determining the scope of Principle 6. The content of Principle 6 must be closely informed by careful and realistic consideration of the standards set out in the 2011 Code of Conduct. Otherwise Principle 6 is apt to become unruly. There is a qualitative distinction between conduct that does or may tend to undermine public trust in the solicitor's profession and conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful. Whether that line between personal opprobrium on the one hand and harm to the standing of the person as a provider of legal services or harm to the profession *per se* on the other hand has been crossed, will be a matter of assessment for the Tribunal from case to case, but where that line lies must depend on a proper understanding of the standards contained in the Handbook.

44. The submission of the SRA in this appeal was that the standard to be derived from the Handbook relevant to the conduct alleged against the Appellant was that the public would have a "… legitimate concern and expectation that junior members [of the profession or of staff] should be treated with respect …" by other members of the

profession. We accept that submission; in our view it is a reasonable formulation having regard to the "outcomes" and "indicative behaviours" set out in Chapter 11 of the 2011 Code of Conduct. Seriously abusive conduct by one member of the profession against another, particularly by a more senior against a more junior member of the profession is clearly capable of damaging public trust in the provision of professional services by that more senior professional and even by the profession generally.

45. However, for the reasons we have set out already (paragraph 37 above), the facts as found and assessed by the Tribunal are not capable of supporting the conclusion that the Appellant acted in breach of Principle 6. What the Appellant did affected his own reputation; but there is a qualitative distinction between conduct of that order and conduct that affects either his own reputation as a provider of legal services or the reputation of his profession. The Tribunal asserted that the Appellant's behaviour crossed this line but provided no explanation. At paragraphs 25.189 – 25.190 the Tribunal stated that "Members of the public would not expect a solicitor to conduct himself in the way the [Appellant] had. Such conduct … would attract the [dis]approbation of the public". However, the Tribunal had already concluded that the Appellant's conduct did not amount to an abuse of his seniority or authority over Person A. On the application of Principle 6 to the facts of this case, that conclusion is a critical conclusion and, as we have already said, on the facts of this case it was a conclusion that was clearly correct. Conduct amounting to an abuse by a solicitor of his professional position is clearly capable of engaging Principle 6. But, as the Tribunal concluded, that was not this case.

(3) Article 8

46. The Appellant's final grounds of appeal against the Tribunal's conclusion that he had acted in breach of Principle 2 and Principle 6 are made by reference to ECHR article 8, specifically, the right to respect for private life guaranteed by article 8.

47. The points advanced may be summarised as follows. If regulatory rules such as Principle 2 and Principle 6 reach wide enough to apply to conduct outside work and outside the practise of a profession, then they may interfere with the article 8(1) right to respect for private life. Therefore, the existence (*per se*) of such rules must be justified to the standard required in article 8(2). In particular, rules that interfere with the right to respect for private life must meet the "in accordance with the law" requirement set out in article 8(2) as well as striking a fair balance between the individual right and legitimate public interests.

48. In its judgment in *James v United Kingdom* (1986) 8 EHRR 123, at §67, the European Court of Human Rights stated that

> "…a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which any given action may entail."

Thus, the requirement for legal certainty is important but is to be applied pragmatically. There is and could be no requirement that a set of rules of general application be formulated with absolute precision.

49. The Appellant's first submission is that if the requirements under Principle 2 to act with integrity, and Principle 6 to act so as to maintain public trust in the legal profession are so broad as to be applicable to all aspects of a person's private life then both Principles lack that minimum quality of legal certainty. The second submission, starting from the same premise, is that in any event, such rules represent an intrusion into private life that cannot at the level of principle, be justified by the public interest in the regulation of a profession. The Appellant further submits that the facts of this case are an example of a situation where the application of Principle 2 and Principle 6 has failed to strike the required balance between the right of respect to private life and the public interest in the proper regulation of the provision of professional services. It would follow (so the submission goes), that the Tribunal's conclusion in this case that the Appellant had acted in breach of Principle 2 and Principle 6 was itself a breach of the Appellant's article 8 right to respect for his private life.

50. We accept the starting point of these submissions, namely that the requirements to act with integrity and to act so as to maintain public trust in the provision of legal services, are requirements which will, on occasions require the SRA or the Tribunal to adjudicate on a professional person's private life. Common sense dictates that such cases must and will arise. The Appellant's submissions give rise to two related issues. The first is whether the requirements imposed by Principle 2 and Principle 6, respectively, meet the minimum standard of legal certainty; which is one part of the article 8(2) justification requirement. The second concerns the extent to which Principle 2 and Principle 6 may reach into private life and whether, at the level of principle that is consistent with the required fair balance between the public interest and private rights. These are significant matters. It is one thing to accept that any person who exercises a profession may need, for the purposes of the proper regulation of that profession in the public interest, to permit some scrutiny of his private affairs; to suggest that any or all aspects of that person's private life must be subject to regulatory scrutiny is something of an entirely different order.

51. The SRA's submissions drew attention to specific passages in the Handbook: the notes in the Handbook relating to Principle 2 and Principle 6 ("the Notes"), which are as follows

> "**Principle 2: You must act with integrity.**
>
> **2.6** Personal integrity is central to your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers and the public.
>
> …
>
> **Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services.**
>
> **2.11** Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional

> practice which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society."

and to part of the "Application Provisions" in Part 2 of the Handbook

> **"5: Application of the SRA Principles outside practice**
>
> 5.1 In relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 1, 2 and 6 apply to you if you are a solicitor, REL or RFL."

We have also been provided with a copy of the SRA Enforcement Strategy as in force at the time the decision was taken to take proceedings against the Appellant. However, we do not consider that any part of that document is material for the purposes of the issues now under consideration.

52. Neither the Notes nor the Application Provisions settles the scope and reach of Principle 2 and Principle 6, not least because those documents do not speak with a single voice: the note to Principle 2 is formulated only by reference to matters occurring in the course of professional life; while the note to Principle 6 is that it applies to "any behaviour … outside professional practice"; and paragraph 5 of the Application Provision states that both Principle 2 and Principle 6 apply to "activities which fall outside practice". More importantly, what is said in the Notes, and what the SRA says in its Application Provisions cannot trump the meaning of Principle 2 and Principle 6, properly construed.

53. For the reasons we have already set out, neither Principle 2 nor Principle 6 has unfettered application across all aspects of a solicitor's private life. So far as concerns the requirement of legal certainty, because the requirements of each Principle are to be determined by reference to the contents of the Handbook (considered as a whole, and in particular the matters set out in the 2011 Code of Conduct), there is no reasonable scope for argument that either Principle 2 or Principle 6 fails to meet the standard required for legal certainty, set out in the judgment in *James*.

54. There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook. In this way, the required fair balance is properly struck between the right to respect to private life and the public interest in the regulation of the solicitor's profession. Regulators will do well to recognise that it is all too easy to be dogmatic without knowing it; popular outcry is not proof that a particular set of events gives rise to any matter falling within a regulator's remit.

55. Given the conclusions set out above on whether the Appellant's conduct as found by the Tribunal was in breach of Principle 2 and Principle 6, there is no further specific article 8 issue that arises in this appeal.

(4) The appeal against the cost order.

56. The Appellant challenges the Tribunal's decision to order him to pay the SRA's cost of the proceedings. The SRA claimed costs in the amount of £343,957.00. The Tribunal ordered the Appellant to pay £200,000 in respect of those costs. This decision was made as a matter of summary assessment (even though under its Rules, the Tribunal had the power to require assessment by a Costs Judge). The Appellant's submission is that this award was entirely disproportionate given: (a) that the SRA's case on Allegation on 1.1 failed; (b) that the SRA's case on Allegation 1.2 succeeded only to the extent of a factual basis that was largely consistent with his own evidence set out in the witness statement he provided before the hearing commenced; and (c) that the costs claimed by the SRA at the end of the hearing were four times more than the SRA's estimate, at the outset of the proceedings, of what its own legal costs of the proceedings would be.

57. Since the Appellant's substantive appeal succeeds, the order for costs made by the Tribunal must be reversed. It is also right to point out that at the hearing before us, the parties made only minimal oral submissions on this part of the appeal. All that being so, we will not address this part of the appeal in detail.

58. Notwithstanding that our jurisdiction on this appeal goes no further than to consider whether the Tribunal's decision on costs reveals any error of principle we have considerable sympathy for the points the Appellant has raised. Regulators pursue disciplinary proceedings in the public interest; the costs they incur should reflect that responsibility. This is no more than one aspect of an imperative that applies to all regulators – they must exercise their regulatory powers proportionately. Since the SRA will not in the ordinary course, be required to pay costs when regulatory proceedings are successfully defended (see the judgment of the Court of Appeal in *Baxendale-Walker v Law Society* [2008] 1 WLR 426), it must conduct its cases with proper regard to the need to permit persons who face regulatory complaints to defend themselves without excessive cost. This is part of any regulator's responsibilities in the public interest.

59. The costs claimed by the SRA in respect of the proceedings before the Tribunal were alarming. The factual issues raised by Allegations 1.1 and 1.2 were not complex; the disputes of fact all arose within a short compass and were relatively straightforward. There is real force in the Appellant's submission that the SRA failed to prove Allegation 1.1 and, when it came to Allegation 1.2, succeeded only on a factual basis largely consistent with his own evidence. We can see no basis on which the amount claimed by the SRA could provide any guide at all to what it would have been reasonable and proportionate for the Appellant to pay, even if the SRA had succeeded on its case in its entirety. Taking matters in the round, the Tribunal's reasons for the costs order made (paragraphs 42 – 44 of the judgment) are not coherent.

60. As mentioned above, the ordinary position, in consequence of the public interest that regulators discharge, is that costs orders are not made against them in respect of

Tribunal hearings. The evidence placed before us was insufficient to persuade us to accede to submissions made on behalf of the Appellant, following the circulation of this judgment in draft, that exceptionally, this was a case where the SRA should pay the Appellant's costs of the proceedings before the Tribunal.

C. Disposal

61. For the reasons above the Appellant's appeal succeeds. The Tribunal's conclusion on Allegation 1.2 that he acted contrary to Principle 2 and Principle 6 will be reversed, and the Tribunal's order that the Appellant pay a fine of £35,000 must be quashed. The costs order made by the Tribunal in favour of the SRA must be set aside.

ANNEX

A. Tribunal judgment, paragraphs 25.166 to 25.176

The Tribunal's Findings

25.166 The Tribunal made the following findings of fact, which it determined were not in issue between the parties:

- Person A had been out with Witness C at lunchtime and had been consuming alcohol at that time.
- Person A and a number of others from the Firm, including Witness C, attended the pub after work and were outside drinking. Any drinks consumed outside were not paid for by Person A.
- The Respondent joined the group outside a short while later. He was not a part of the initial group that had attended.
- At some point in the evening, a smaller group went inside and continued to drink. That group was whittled down. Eventually, the only people left in the group were the Respondent, Person A, Witness C and Person O.
- The Respondent was purchasing drinks for the group, including wine, lager and a round of Jager-bombs.
- At some point both the Respondent and Person A were no longer with Witness C and Person O.
- Witness C sent an email to Person A with the subject "Where r u" at 23.21. Witness C and Person O left the pub, taking the Respondent's rucksack with them. The rucksack was taken by Witness C to the Firm's offices.
- Person A and the Respondent encountered each other when they were downstairs in the pub.
- When the Respondent and Person A returned to the bar area, Witness C and Person O were no longer there.
- Person A assisted the Respondent in looking for his rucksack, but they were unable to find it in the pub.
- At 00.04, Person A ordered a taxi home.
- Person A and the Respondent travelled in the same taxi.
- Person A and the Respondent both exited the taxi when it arrived at Person A's home address.
- The Respondent informed Person A that he needed to use the toilet.

- Person A agreed that the Respondent could use the toilet in her flat.
- There was a sexual encounter between Person A and the Respondent in Person A's bedroom.
- The Respondent left Person A's home in the early hours of the morning of 2 July 2016.
- At the time of the sexual encounter, the Respondent was a partner at the Firm and Person A was a solicitor in the Respondent's team.
- At the time of the sexual encounter, Person A had resigned and was due to leave the Firm on 8 July 2016.

25.167 The Tribunal considered the relevant disputed matters.

25.168 *Arm Touching*

25.168.1 The Tribunal did not accept the Respondent's account that Person A had touched the Respondent's arm in a flirtatious manner as described by him. The Tribunal did not accept Mr Williamson QC's submission that her response, when this was put to her by Person G, was "peculiar". The Tribunal noted that his had not been put to Person A by Mr Williamson QC during cross-examination.

25.168.2 The Tribunal was disinclined to accept the Respondent's description of his reaction to being touched in the manner he described. It was not credible that after being touched in this way, the Respondent's focus was solely on whether the touch had been observed by Witness C or Person O, so much so that he had no reaction whatsoever. Given that it was the Respondent's position that he found the touch to be pleasant, the Tribunal did not accept that thereafter he neither looked at Person A nor acknowledged that she had touched him in the way described. Accordingly, the Tribunal did not accept the assertion that Person A had touched the Respondent in the way he suggested.

25.169 *Kissing downstairs in the pub*

25.169.1 The Tribunal considered the evidence of the Respondent, Person A and Witness B. Witness B's evidence was clear. Person A had told her, shortly after 1 July 2016, that on encountering the Respondent downstairs in the pub, the Respondent had kissed her in what Witness B considered to be an intimate way. Person A described putting her hands on his chest and pulling her head away. The Respondent agreed that they had kissed intimately. On his account, this had lasted for some time, and they had gone into a room and continued to kiss, although he was unable to say which room. Person A denied that they had kissed at all, but recalled feeling angry with the Respondent but was unable to say why.

25.169.2 The Tribunal found Witness B to be an entirely credible witness. For the reasons detailed by Mr Williamson QC, the Tribunal did not accept that Witness B had confused this kiss for the one in Oxford as suggested by Person A. The Tribunal found that the Respondent and Person A had kissed whilst downstairs in the pub. The Tribunal could not be sure whether this was a fleeting and unwanted kiss as described by Witness B, or a mutually prolonged kiss as described by the Respondent.

25.170 *Sharing the taxi*

25.170.1 In her May 2017 interview with Person G, Person A recalled discussing sharing a cab with the Respondent. In her oral evidence, Person A denied that she had invited him, or wanted him to come into the taxi. She also stated that if there had been any conversation it would have been her saying that he should be dropped off first. She also recalled giving her phone to the Respondent for him to enter his address so that he could be dropped off. It was the Respondent's consistent case that they had agreed to share the taxi.

25.170.2 The Tribunal found that there had been an agreement to share the taxi. That this had been the case was clear from Person A's evidence, notwithstanding that she stated that she did not want or invite the Respondent into the taxi.

25.171 *Events in the taxi*

25.171.1 It was Person A's case that on entering the taxi, she fell asleep and woke up at her destination to find her shoes off and her jeans undone. It was the Respondent's case that they talked amiably during the journey, although he was unable to recall the specifics of their conversation.

25.171.2 The Tribunal found that neither Person A nor the Respondent had a complete recollection of what had occurred during the journey.

25.171.3 The Tribunal could not be sure when the Respondent informed Person A that he needed to use the toilet. On his case, he told her this whilst they were in the taxi. On Person A's case, she was not aware of this until the taxi had driven away with the Respondent having gotten out. The Tribunal found that Person A had agreed that the Respondent could come in to use the toilet.

25.172 *Level of intoxication*

25.172.1 Person A considered that she was more drunk than she had ever been. It was the Respondent's case that there were no signs that Person A was significantly intoxicated. The Tribunal accepted that Person A had been drinking at lunch time and had continued to drink throughout the evening. The Respondent was aware that she had been drinking, as he had purchased a number of drinks for her. The Respondent had been unable to say whether he had been purchasing wine by the glass or the bottle. It was clear that any wine purchased had been consumed by Person A and Witness C alone, as the Respondent and Person O were drinking lager. The evening of drinking was concluded by the group having a round of Jager-bombs. The Tribunal

determined that it would have been clear that Person A was intoxicated and that this had been plain to the Respondent. The Tribunal considered that the Respondent's judgement was also influenced by his own alcohol consumption that evening. Indeed, the Respondent had accepted that this was the case. The Tribunal did not, and could not, find that Person A had been "more drunk" than she had ever been before.

25.173 *Falling down and accessing Person A's property*

25.173.1 It was Person A's evidence that she fell over when exiting the taxi, at her gate, at the front door and on her way upstairs in the flat. She specifically recalled, when giving evidence, her hands being on the tarmac. It was the Respondent's evidence that Person A had not fallen over at any time.

25.173.2 Person A explained that her level of intoxication meant that she was unable to open her door and the Respondent opened the door for her. The Respondent stated that at no time did he have possession of Person A's keys and he did not open the door.

25.173.3 The Tribunal considered both Person A and the Respondent had provided what they considered to be an accurate recollection of events. The Tribunal could not be sure which version was correct, and thus made no findings as to whether Person A had fallen over as stated or at all. Nor did it make any findings as to who unlocked the doors to gain access to Person A's flat.

25.174 *Use of the bathroom*

25.174.1 Person A recalled gesturing to Witness B's bathroom and the Respondent going in and closing the door. She waited outside and thereafter had no recollection of going into her bedroom. The Respondent had no recollection of using the bathroom.

25.174.2 Witness B's evidence was that on the following morning she went into her bathroom and found the toilet seat was up. The Tribunal inferred that the Respondent had used Witness B's bathroom when he went into the flat.

25.175 State of undress

25.175.1 Person A and the Respondent gave contradictory accounts as to their state of undress. The Tribunal did not consider that it could make any findings as to what each of them were wearing at any stage during the time they were in Person A's bedroom.

25.176 *Consent*

25.176.1 The Applicant considered that consent was not an issue that needed to be determined. The Respondent considered that consent was a central issue and that without a determination as to consent, the Tribunal would be unable to consider whether the Respondent's conduct was in breach of the Principles as alleged.

25.176.2 The Tribunal found that it was for the Applicant to put its case on the basis that it deemed appropriate. The Tribunal would assess the evidence that it heard, and make a determination as to whether the Respondent's conduct was in breach of his duties. It was not for the Tribunal to consider matters that had not been alleged; to do so would be improper. Accordingly, the Tribunal did not find that a failure to raise consent as an issue in this matter meant that it was unable to consider whether the Respondent's conduct was in breach of the Principles as alleged.

B. Tribunal judgment, paragraphs 25.177 to 25.191

Findings as regards the particulars of Allegation 1.2

1.2.1 the Respondent was in a position of seniority and/or authority over Person A in that he was a partner in the Firm, Person A's supervising partner and Person A's appraisal partner.

25.177 This had been accepted by the Respondent, and was the position in fact. Accordingly the Tribunal found this factual particular proved.

1.2.2 the Respondent knew or ought to have known from Person A's reaction to the incident on 6 or 7 May 2016 that his conduct on that occasion had not been invited and was unwelcome.

25.178 Having dismissed allegation 1.1, the Tribunal dismissed this particular of allegation 1.2.

1.2.3 the Respondent knew or ought to have known that Person A was heavily intoxicated to the extent that she was vulnerable and/or her judgment and decision-making ability was impaired.

25.179 The Tribunal referred to its findings on levels of intoxication above. The Respondent had purchased a number of drinks for Person A during their time at the pub. He could not say whether he had purchased bottles of wine or glasses. If the Respondent's recollection was unclear, as to whether he had purchased bottles of wine rather than glasses, it was likely that Person A had drunk more than the estimated 6 glasses of wine. The Tribunal found that Person A had drunk a minimum of 6 glasses of wine and a Jager-bomb. The Respondent accepted that his judgement had been affected by the alcohol he had consumed. The Tribunal determined that the Respondent knew that Person A was heavily intoxicated and that her judgement and decision-making ability was impaired. The Tribunal did not consider that Person A was vulnerable. Her consumption of alcohol had not put her in a position where she needed special care, support or protection. On her own evidence, Person A was not unused to drinking alcohol or being intoxicated. Accordingly, the Tribunal found this particular proved, save that it did not find that Person A was vulnerable.

1.2.4 the Respondent knew or ought to have known on 1 or 2 July 2016 that Person A had not invited him to her home.

25.180 The Tribunal considered that it was clear from both the evidence of the Respondent and Person A, that Person A had allowed the Respondent into her home to use the bathroom. Whilst their evidence as to when this had occurred was at variance (inside the taxi according to the Respondent, and outside after the taxi had left according to Person A) they agreed that this was the reason that the Respondent had entered Person A's home. Person A had also told Witness B that she allowed the Respondent in as he said that he needed to use the bathroom. It was also Person A's case that given her state of intoxication, there was "some transfer of the keys" from her to the Respondent and that the Respondent had opened the door as she was unable to. At no point was it suggested either by Person A in her evidence, or by Ms Karmy-Jones QC in her submissions that the Respondent had forced his way into the property, or entered the property without Person A's consent. Accordingly, the Tribunal found this particular not proved and thus dismissed it.

1.2.5 the Respondent knew or ought to have known on 1 or 2 July 2016 that Person A had not allowed him into her home with a view to sexual activity taking place.

25.181 The Tribunal noted that it was not the Respondent's case that he and Person A had had any discussion, whether in the taxi or at any other point in the evening, about any sexual activity taking place later that night. This was notwithstanding his evidence about their having kissed passionately both downstairs in the pub and later, outside on the pavement. Further, he asserted that there was no kissing or other intimate activity that occurred during their time in the taxi. It was his case that he told Person A whilst in the taxi, that he needed to use the toilet. He confirmed that this was the case in his oral evidence and referred to the fact that he had consumed a number of pints of lager. The Tribunal had inferred that on entering her flat, the Respondent had indeed used Witness B's bathroom. There was no suggestion by the Respondent that he had used the bathroom at any other time.

25.182 The Tribunal found that the Respondent knew that he had been invited into Person A's home for the purpose of using her bathroom, and that his invitation into her home was for that purpose alone. Accordingly, the Tribunal found that the Respondent knew that he had not been allowed into Person A's home with a view to sexual activity taking place, and thus found this particular proved.

1.2.6 in all the circumstances the Respondent knew or ought to have known that his conduct was an abuse of his position of seniority or authority and/or inappropriate.

25.183 The Tribunal noted that during her cross-examination of the Respondent Ms Karmy-Jones QC specifically stated that it was not suggested that the Respondent had used his authority over Person A to convince or induce her to engage in sexual activity. Ms Karmy-Jones QC also specifically did not suggest that the Respondent had abused his authority or manipulated Person A by abusing his authority. It was also not Person A's evidence that she felt obliged to remain in the pub with the Respondent as he was her boss, or that she had continued to drink as he was buying drinks for her as her boss. Nor was it her evidence that the sexual activity that had taken place was by virtue of that fact that the Respondent was her boss. In those circumstances, the Tribunal considered that the allegation that the Respondent's conduct was an abuse of his position of seniority or authority was not sustainable.

25.184 The Tribunal had found that the Respondent knew that Person A's judgement and decision-making ability was impaired. He knew that she had been drinking a significant amount of alcohol. Indeed, he had purchased a significant amount of alcohol for her. He knew that he had only been invited into her home to use the bathroom, and that he was the one that had stated that he needed to use the bathroom. The Tribunal found that in all the circumstances, the Respondent knew that his conduct, in engaging in sexual activity with Person A, was inappropriate. The Tribunal thus found particular 1.2.6 proved to that limited extent.

25.185 The Tribunal then considered whether such conduct was in breach of the Principles as alleged.

25.186 The Tribunal noted the provisions of Paragraph 5.1 of the Application Provisions of the Principles which stated: "In relation to activities which fall outside practice, whether undertaken as a lawyer or in some other business or private capacity, Principles 1, 2 and 6 apply to you if you are a solicitor…"

25.187 The Tribunal considered that this showed that Principles 2 and 6 applied to regulated persons in a private capacity. That this was the position was clear. Those Principles were often alleged (and found proved) against solicitors who had, for example, committed criminal offences in their private lives. There was nothing in Paragraph 5.1 that limited the application of those Principles to criminal matters.

25.188 The Tribunal noted and agreed that the examples of conduct that would lack integrity in *Wingate* all referred to professional matters. The Tribunal did not consider that the list in *Wingate* was exhaustive. Nor did it consider that as *Wingate* did not mention matters that had occurred in a solicitor's private rather than professional life, private matters were excluded from regulatory intervention. The cases cited and relied upon had not considered, and had had no need to consider, regulatory scrutiny of private matters.

25.189 The Tribunal determined that the Respondent's conduct affected not only his personal reputation, but the reputation of the profession and thus was a matter that ought to bear the scrutiny of the regulator. In addition, the Tribunal found that whilst the subject matter and the particular circumstances of these proceedings was novel, the application of Principles 2 and 6 to a solicitor's private life was not. Accordingly, the Tribunal found that it was proper to assess whether or not the Respondent's conduct was in breach of the Principles as alleged.

25.190 That the Respondent had failed to maintain the trust the public placed in him by conducting himself in the way that he did, was clear. Members of the public would not expect a solicitor to conduct himself in the way that the Respondent had. Such conduct, the Tribunal found, would attract the approbation of the public. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 6 as alleged.

25.191 When considering whether the Respondent's conduct lacked integrity, the Tribunal considered the oral and written testimonial evidence presented on his behalf. The Tribunal found that the Respondent's conduct had fallen below what was expected of him by members of the public and of the profession. The Respondent had accepted that

his conduct had fallen below the standards expected of a partner at the Firm, by virtue of his acceptance of the final written warning. The Tribunal did not consider that the standards employed at the Firm were any higher than the standards of the profession in general. The Respondent had sought, in his evidence, to suggest that he considered that his standards had fallen below expectations on the basis that he was married. The Tribunal rejected that explanation. There was nothing in the final warning letter or any of the relevant investigatory documents that suggested that the Respondent's conduct had been assessed through the prism of his marriage. The fact of his marriage, whilst highly relevant to the Respondent personally, was irrelevant to the Firm's findings and irrelevant to the Tribunal's assessment of his conduct. For the avoidance of doubt, whilst it had been the Firm's finding (and the Respondent seemingly accepted) that the Respondent's conduct had fallen below accepted standards, the Tribunal's finding was based on the evidence that it heard and not on the Firm's view of his conduct. That the Firm and the Tribunal were in accord in their assessment of the Respondent's conduct was, the Tribunal determined, indicative of the expected standard of conduct of the profession. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 2 as alleged.

C. SRA 2011 Code of Conduct, Chapter 11

Chapter 11: Relations with third parties

This chapter is about ensuring you do not take unfair advantage of those you deal with and that you act in a manner which promotes the proper operation of the legal system.

This includes your conduct in relation to undertakings; there is no obligation to give or receive an undertaking on behalf of a client but, if you do, you must ensure that you achieve the outcomes listed in this chapter.

The conduct requirements in this area extend beyond professional and business matters. They apply in any circumstances in which you may use your professional title to advance your personal interests.

The outcomes in this chapter show how the Principles apply in the context of your relations with third parties.

Outcomes

You must achieve these outcomes:

O(11.1) you do not take unfair advantage of third parties in either your professional or personal capacity;

O(11.2) you perform all undertakings given by you within an agreed timescale or within a reasonable amount of time;

O(11.3) where you act for a seller of land, you inform all buyers immediately of the seller's intention to deal with more than one buyer;

O(11.4) you properly administer oaths, affirmations or declarations where you are authorised to do so.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles:

IB(11.1) providing sufficient time and information to enable the costs in any matter to be agreed;

IB(11.2) returning documents or money sent subject to an express condition if you are unable to comply with that condition;

IB(11.3) returning documents or money on demand if they are sent on condition that they are held to the sender's order;

IB(11.4) ensuring that you do not communicate with another party when you are aware that the other party has retained a lawyer in a matter, except:

(a) to request the name and address of the other party's lawyer; or

(b) the other party's lawyer consents to you communicating with the client; or

(c) where there are exceptional circumstances;

IB(11.5) maintaining an effective system which records when undertakings have been given and when they have been discharged;

IB(11.6) where an undertaking is given which is dependent upon the happening of a future event and it becomes apparent the future event will not occur, notifying the recipient of this.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:

IB(11.7) taking unfair advantage of an opposing party's lack of legal knowledge where they have not instructed a lawyer;

IB(11.8) demanding anything for yourself or on behalf of your client, that is not legally recoverable, such as when you are instructed to collect a simple debt, demanding from the debtor the cost of the letter of claim since it cannot be said at that stage that such a cost is legally recoverable;

IB(11.9) using your professional status or qualification to take unfair advantage of another person in order to advance your personal interests;

IB(11.10) taking unfair advantage of a public office held by you, or a member of your family, or a member of your firm or their family.