

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11887-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RYAN BECKWITH

Respondent

Before:

Ms N. Lucking (in the chair)

Mr G. Sydenham

Mrs C. Valentine

Date of Hearing: 30 September – 10 October 2019

Appearances

Riel Karmy-Jones QC, of Red Lion Chambers, 18 Red Lion Court, London EC4A 3EB and Rupert Allen, barrister of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH, instructed by Daniel Purcell, solicitor of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Alisdair Williamson QC, of 3 Raymond Buildings, Gray's Inn, London WC1R 5BH, instructed by Nick Brett, solicitor of Brett Wilson, Grant House, 56-60 St John Street, London EC1M 4HG for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that while in practice as a Partner at Freshfields Bruckhaus Deringer LLP (“the Firm”):
 - 1.1 On 6 or 7 May 2016, the Respondent kissed or attempted to kiss Person A in circumstances which constituted a breach of one or more of Principle 2 and Principle 6 of the SRA Principles 2011 (“the Principles”) because:
 - 1.1.1 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;
 - 1.1.2 both the Respondent and Person A were intoxicated;
 - 1.1.3 the incident took place at a celebratory event organised by the Firm for its Partners and employees;
 - 1.1.4 the Respondent knew or ought to have known that Person A had given no indication that such conduct was wanted; and/or
 - 1.1.5 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 was inappropriate.
 - 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 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;
 - 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.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:
- Rule 5 Statement and Exhibit DWRP1 dated 1 November 2018
 - Respondent's Answer to the Rule 5 Statement
 - Applicant's Skeleton Argument dated 23 September 2019
 - Respondent's Skeleton Argument dated 25 September 2019
 - Applicant's Schedule of Costs dated 20 September 2019 and amended on 10 October 2019
 - Respondent's Schedule of Costs dated 20 September 2019

Factual Background

3. The Respondent was admitted to the Roll of Solicitors in August 2004. At all material times he was a Partner at the Firm. He held a current unconditional Practising Certificate.
4. In March 2014, having qualified at the Firm, Person A became an Associate and joined the Respondent's team. Person A resigned from the Firm in June 2016 and left the Firm on 8 July 2016. On 14 August 2017, Person A submitted a complaint to the SRA in relation to the Respondent.

Witnesses

5. The following witnesses provided statements and gave oral evidence:
- Person A
 - Witness B
 - The Respondent
6. The following witnesses provided written statements but were not required to give oral evidence:
- Witness C
7. The following witnesses provided written and oral testimonials on behalf of the Respondent:
- Person P
 - Person Q

8. The following witness provided a written testimonial on behalf of the Respondent:
- Person R
9. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

10. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the written and oral evidence before it, together with the submissions of both parties.

Article 8

The Applicant's Submissions

11. It was accepted that the Respondent's Article 8 right to respect for his private and family life was engaged in relation to the subject matter of (at least) allegation 1 2. However, Article 8 was not unqualified, and a regulatory body could properly require its members to meet the standards of the profession in their private life (including in their sexual behaviour), as was the position in this case. Paragraph 5.1 of the Application Provisions of the Principles was explicit and clear on this point. It 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..."
12. Ms Karmy-Jones QC submitted that the Tribunal had to determine:
- whether any restriction of the Respondent's Article 8 rights was in accordance with the law;
 - whether any restriction had a legitimate aim; and
 - whether any restriction was necessary/proportionate to achieve that legitimate aim.
13. Ms Karmy-Jones QC submitted that the Principles provided a legal basis for any restriction on Article 8 rights; Principles 2 and 6 expressly applied to activities undertaken in a "private capacity" (and thus not as a lawyer). The risk of Principles 2 and 6 being applied to regulate inappropriate sexual conduct by solicitors was therefore sufficiently "accessible" and "foreseeable" for the purposes of Article 8(2). The fact that Principles 2 and 6 were (inevitably) drafted in wide and general terms and that they required interpretation by the Tribunal in the particular circumstances of each case did not mean that their application in this case was insufficiently certain. In the context of professional regulation in the public interest: "any attempt to provide absolute precision

would be undesirable given the context”: R (Pitt) v General Pharmaceutical Council [2017] EWHC 809 (Admin) at [47]. Thus a “general standard” such as not bringing the profession into disrepute (or, it was submitted, to act with integrity) was necessary “in order to retain the flexibility needed to protect the public reputation of a profession”: Pitt at [48].

14. Ms Karmy-Jones QC submitted that it had also been accepted that flexibility was acceptable (and indeed necessary) in the setting and application of professional standards because they typically required a measure of personal responsibility to be taken for conforming to the ethos of the profession: “A degree of self-regulation is expected, rather than an attitude of mechanical rule conformity.” This is the very essence of principles based (as opposed to rules-based) regulation of the profession.
15. The maintenance of the reputation of, and public confidence in, a profession was established as a legitimate aim. The relevant question therefore was whether the extent of any restriction on the Respondent’s Article 8 rights went beyond what was necessary and proportionate to achieve that legitimate aim. In order to answer that question it was submitted that the Tribunal was required to carry out a balancing exercise. This was a fact-sensitive enquiry. Relevant factors for consideration were:
 - the kiss that formed the subject of allegation 1.1 occurred in public when other solicitors in the Firm were present;
 - the matters which formed the subject of allegation 1.2, whilst taking place in Person A’s flat, related to the Respondent’s public conduct by which he brought about the situation leading to the incident;
 - there was a close connection between the allegations and the Respondent’s professional life:
 - the Respondent and Person A were both solicitors at the same firm and in the same team;
 - the Respondent was in a senior position (as partner) relative to Person A (as an associate);
 - the Respondent had management and supervisory responsibilities over Person A; and
 - the allegations related to the Respondent’s conduct at or following social events which were organised by or connected to the Firm and attended entirely or predominantly by partners or employees of the firm.
16. Ms Karmy-Jones QC submitted that the touchstone of regulatory intervention was whether the Respondent’s conduct and the circumstances in which it took place demonstrated a lack of integrity, or failed to maintain the trust the public placed in him or the profession. The Tribunal would need to be satisfied that the Respondent’s conduct was inappropriate for a solicitor in order to find that the allegations against him proven. However, there was a strong public interest in ensuring that people (including, but not limited to, those in junior positions) encountering solicitors in a professional

context should have confidence that they will not be subjected to inappropriate behaviour of the sort alleged against the Respondent in this case. In the circumstances the disciplinary proceedings brought in respect of the alleged conduct was not a disproportionate interference with the Respondent's Article 8 rights. Further, the Tribunal's wide discretion as to sanction in the event the allegations were found proved also ensured a proportionate outcome.

Respondent's Submissions

17. It was accepted that on entry to a profession, a person also submitted to the requirements of professional standards, however there was a balance to be struck. Article 8 rested upon a reasonable expectation of privacy in the conduct of aspects of one's life. A public body could only interfere with Article 8 rights when certain preconditions were met, including the requirement that the law allowing the interference must be formulated with sufficient precision to enable the person affected to foresee the circumstances in which the law would or might be applied (Malone v United Kingdom (1984) 7 EHRR 14).
18. The Guide to Article 8 published by the European Court of Human Rights stated:

“The lawfulness requirement refers not only to the existence of a legal basis in domestic law but also in the quality of the law, which should be clear, foreseeable as to its effects and accessible to the person concerned, who must be in a position to foresee the consequences of his or her acts.”

Mr Williamson QC submitted that the jurisprudence was clear - there was a requirement that a person be able to anticipate when their actions might bring them into conflict with their regulator.
19. The SRA accepted that this was the first case of its type. The case represented an unpredictable and unforeseeable extension of the SRA's ambit. Mr Williamson QC submitted that if Person A was consenting, how was it reasonably foreseeable for the profession that the SRA would accrue to itself the right to police sexual activity between lawyers? If it was arguable that behaviour such as promising promotions or preferment in exchange for sexual activity might engage the SRA's oversight, that still did not extend foreseeability to cases where there was no such feature. There was no guidance on the SRA website as to what behaviour might attract regulatory intervention. Absent criminal behaviour how could activity which might be described as common amongst the professions and the public be reasonably foreseeable as attracting regulatory intervention?
20. The absence of guidance by the SRA compounded what appeared to be a lack of discernible consistency in the decisions taken recently on referral by the SRA. While Article 8 involved a balance, and was a qualified right, interference with it still had to be necessary and proportionate. Absent features of a crime, or of improper inducements or pressure, it was not necessary for the maintenance of the reputation of the profession nor was it proportionate to regulate the consensual sex lives of lawyers.
21. Accordingly, there should be no interference with the Respondent's Article 8 rights.

The Tribunal's Findings

22. The Tribunal found that whilst the case was novel in that the allegations made by Person A (but not by the SRA) had not been the subject of criminal proceedings, the application of the Principles to conduct that fell outside a Respondent's professional life was routine. That Principles 1, 2 and 6 applied to private conduct was expressly stated in the Application Provisions of the Principles. The Tribunal regularly interfered with a Respondent's Article 8 rights when considering whether private conduct amounted to a breach of a Respondent's duties and obligations under the Principles. The Tribunal did not consider that private conduct needed to amount to criminal conduct before there could be any legitimate interference with Article 8 Rights. The Tribunal determined that in the circumstances of this case, such interference was both proportionate and necessary to maintain public trust in, and the reputation of, the profession.

Integrity

23. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

“Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession”.

24. **Allegation 1.1 - On 6 or 7 May 2016, the Respondent kissed or attempted to kiss Person A in circumstances which constituted a breach of one or more of Principle 2 and Principle 6 of the SRA Principles 2011 (“the Principles”) because:**
- 1.1.1 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;**
 - 1.1.2 both the Respondent and Person A were intoxicated;**
 - 1.1.3 the incident took place at a celebratory event organised by the Firm for its Partners and employees;**
 - 1.1.4 the Respondent knew or ought to have known that Person A had given no indication that such conduct was wanted; and/or**
 - 1.1.5 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 was inappropriate.**

Person A's Evidence

- 24.1 Person A explained that there was a real party atmosphere on the coach. People were in high spirits both due to the trip and due to an unexpected pay rise that the staff had

found out about that morning. They were drinking champagne on the coach and on arrival at the venue in the garden. She was sat next to the Respondent for lunch. There was unlimited wine with the meal. At the end of the meal the group returned to the garden where more alcohol was consumed. The Respondent was quite drunk and was staggering when he got onto the coach. The group continued drinking on the coach on the return journey to London. The atmosphere at that time was quite drunken and chaotic. The group went to a karaoke bar. Thereafter a smaller group (including the Respondent) went to a smaller bar. Due to the “odd” nature of the drinks being ordered, Person A went to the bar to order her own drink. The Respondent was at the bar, standing to her left. He put his arm around her. Person A explained that she was surprised. She turned to look at him, at which point he tried to kiss her – their lips touched. She moved her head and body away and said words to the effect of “don’t do that” or “why did you do that”. Person A then returned to the seating area. She did not say anything to the rest of the group as she was embarrassed. She had done nothing to give the Respondent cause to believe that such contact was wanted. When the Respondent returned to the group he sat down and fell asleep. Later that evening he had to be assisted from the bathroom. He was hardly able to walk when they left the bar. He was put into a black taxi where he was laying on the floor.

24.2 The following day, 6 May 2016, at 3.07pm the Respondent sent the following email:

“Hi guys - I am not sure who covered the bill in the karaoke place but just to say nobody should be paying for anything out of their own pocket so please just show me the receipts on Monday and I will sort. If you know of anyone else in the group who paid for any drinks, let me know. Not sure about you but I am ever so slightly dusty today”

24.3 At 4.23pm on the same day, Person A replied:

“Thanks Ryan. It wasn’t me - though thank you to the person who paid for my ten thousand jagerbombs.... Really great day - everybody loved it. Thanks again.”

24.4 Person A explained that the reply was her attempt at being jokey and sarcastic in order to brush the kiss off. She felt that this was the best way to deal with it. On reflection she found it odd. She was embarrassed and concerned. Her default reaction was not to raise it. She did not mention the kiss to anyone at work. The only person she told was Witness B, whom she told that weekend.

24.5 During cross-examination, Person A confirmed that the kiss had happened as described. She accepted that as she had not paid for the drinks, there was no need to reply to the Respondent’s email. Her reply was “odd to reflect on given the uninvited kiss”. She felt that the best way to deal with it was to “brush it off and be flippant”. Further, she had indeed told Witness B about it at the time. To the extent that Witness B referred to a kiss in the corridor, Witness B had confused this with the kiss at the bar.

Witness B’s Evidence

24.6 Witness B explained that Person A told her about the trip to Oxford and recounted that the meal was lovely. It was not until some time later that Person A explained that there

had been a strange moment at the bar when she thought the Respondent might kiss her. This had occurred when they were discussing whether there was any behaviour or indication, on the part of Person A, that had given the Respondent a false signal and that could have led to the July incident.

The Respondent's Evidence

- 24.7 The Respondent denied allegation 1.1. He agreed that the group had been drinking on the coach on the way to Le Manoir. The atmosphere was celebratory. Both he and Person A had been drinking in the coach. On arrival the group had pre-lunch drinks and canapes. Whilst it was technically correct to say that the drinks during lunch were unlimited, it was standard that wine would be provided with the meal and that there was no cut-off point after which no further wine would be provided. To do so would be sending the wrong message to the group who were being rewarded for their hard work on what had been a long and difficult project. The lunch was the Firm's way of thanking staff for the many sacrifices made by them during the project. He had a limited recollection of the meal – he did not recall who he sat next to or what he ate. He had no involvement with the seating plan. The event had taken place over 3 years ago and he had attended with people that he saw daily. After the meal there were further drinks in the garden before returning to the coach. He did not consider that he was very drunk. He was able to walk properly.
- 24.8 He did not recall the karaoke bar nor did he have a clear recollection of the second bar although he remembered that it had a small dancefloor. He was not assisted out of the bathroom nor was he placed in a taxi and then taken home whilst in the foot well of the taxi. The Respondent explained that the people left in the group were not aware of his address and thus would not have been able to provide his address to a taxi driver. The Respondent denied that he had at any time tried to kiss Person A on the lips. When considering the allegation, he had thought about what it could mean. He had a vague recollection of bending to kiss her on her head as he did with friends and family, but he pulled back and did not do so. Such an action was the equivalent for the Respondent as patting a person on the back to say "well done". He recalled Person D looking at him. Person D was wagging his finger and shaking his head. That may have been the reason that he had not kissed Person A on the head. When he spoke to Person D about it the following day, Person D informed the Respondent that he (the Respondent) and Person A had spent a lot of time together and had been inseparable. He also told the Respondent that he thought that Person A liked him, that the Respondent needed to be careful and that at one stage the Respondent and Person A may have been walking together hand in hand.
- 24.9 In cross-examination the Respondent explained that he considered that the decision to go to the karaoke bar was an extension of the day's events to the extent that there had been a decision to go to a venue in London as opposed to going to a venue in Oxford. He did not accept that he had purchased any drinks; there was no documentary evidence such as credit card or bank account statements showing that he had. He had no recollection of holding hands with Person A at any time. He did not consider that holding hands with a junior colleague was a significant event "as such". Whilst he had no recollection of that, he had no reason to think that Person D would lie. After the conversation with Person D, the Respondent took no further action. There was nothing consistent with Person A liking the Respondent that he could discern from her

behaviour, which he observed over the next few weeks. As he could not recall the incident, there was no reason to discuss the matter with her. The Respondent categorically denied fabricating the evidence so as to make it look as though Person A was to blame.

- 24.10 The Respondent was unable to recall specifically when he recollected that he considered kissing Person A on her head. He was not sure why he had decided not to do so and thought that it could have been as a result of Person D wagging his finger and shaking his head. The Respondent confirmed that he would kiss a trainee or the senior partner on the head in this way.
- 24.11 The Respondent accepted that he had been drunk, but denied being very drunk. He confirmed that his wife had said that he had passed out on the bed. The Respondent denied that he was so drunk that he had tried to kiss Person A. He found it extraordinary that if she had been trying to avoid him and being in his company that she would email him asking for holiday recommendations. Such an email was inconsistent with her evidence that something incredibly uncomfortable had happened and she was trying her best to carry on as normal and function as a colleague in the team. Such a communication did not relate to work and was thus not necessary.

The Applicant's Case

- 24.12 The conduct of the Respondent in attempting to kiss Person A was inappropriate. The Respondent was, and knew himself to be, senior to and in a position of authority over Person A, by reason of his role as a partner, and specifically because of his supervisory responsibility and role as Person A's appraisal partner. He was capable at the time of the incident of influencing Person A's career progression, and as such his behaviour was an abuse of his position of seniority or authority.
- 24.13 There was no doubt that significant amounts of alcohol had been consumed. The Respondent sought to put lapses in his memory of the events of the day down to the passing of time. He had no real recollection of the food he had eaten at lunch, the room in which he ate, or who he had sat next to. Such gaps in his recollection were unusual given the circumstances. It was clear that the Respondent was very drunk. In his evidence, the Respondent referred to his wife having stated that she returned home to find the Respondent passed out on the bed fully clothed. He omitted to say that the bedroom smelled of alcohol so she could tell it had been a very long day of drinking. In his interview during the Firm's investigation, the Respondent confirmed that the trip was "very drink fuelled". It was clear, it was submitted, that the Respondent had been very drunk. In addition to the matters detailed above, during the investigation he had not recalled being at the karaoke bar. He realised he had been there following sight of the email of 7 May that he had sent as regards reimbursing anyone who paid for drinks there. He had little recollection of the evening or who was present. The Respondent had, it was submitted, tried in his evidence to limit the extent of his intoxication.
- 24.14 The Respondent did not accept that he was the only partner present at the bar following the visit to the karaoke bar. This was despite the clear evidence of Person A and Witness C who both stated that the Respondent was the only partner present at the second bar.

- 24.15 It was the Respondent's evidence that he did not recall Person D wagging his finger and shaking his head as it was not significant. Ms Karmy-Jones QC submitted that any suggestion that Person D's actions were not significant was "absurd".
- 24.16 Ms Karmy-Jones QC submitted that the Respondent's witness statement provided a clear picture of what occurred at the karaoke bar despite his memory of events of that day being vague. The Tribunal should consider whether the Respondent either recalled more than he said or had concocted his account as regards Person D. There was no evidence from Person D. He had not been interviewed by the Firm and nor had been a witness for the Respondent.
- 24.17 It had been the Respondent's evidence that a kiss on the head from him was akin to a pat on the back. The Tribunal might consider that those two forms of physical contact were not remotely comparable. Further, the timing of the Respondent's recollection of this did not make any sense. Following the discussion with Person D he had considered their conduct, however he had no recollection of this until after the email he received from Person A in November. It had also been the Respondent's evidence that such contact would not have been inappropriate. If he believed that to be the case, he had given no adequate explanation as to why he pulled back. It was extraordinary that on the same night that the Respondent described going to kiss Person A on the head and deciding not to, Person A described the Respondent kissing her on the lips.
- 24.18 Ms Karmy-Jones QC noted that there were significant areas of dispute between the Respondent and Person A that had not been put to her by Mr Williamson QC during cross-examination, including that he had not been staggering on the way to the coach, he had not purchased a lot of drinks in the karaoke bar, Person D was not there, he was not asleep at the table in the bar, he was not carried out of the bar and he was not placed into a taxi.
- 24.19 Ms Karmy-Jones QC submitted that the conduct of the Respondent in attempting to kiss Person A was inappropriate. The Respondent was, and knew himself to be, senior to and in a position of authority over Person A, and by reason of his role as a partner, and specifically because of his supervisory responsibility and role as Person A's appraisal partner. He was capable at the time of the incident, of influencing Person A's career progression, and as such his behaviour was an abuse of his position of seniority or authority.

The Respondent's Case

- 24.20 Mr Williamson QC submitted that the evidence of Witness B was fatal to the credibility Person A's account. It was Person A's position that she had told Witness B about the kiss at the bar shortly after it occurred. That was Person A's evidence both in her witness statement and during her oral evidence. Witness B's evidence was quite clear. She did not discuss the kiss with Person A until after the July incident when they were trying to ascertain whether Person A had done anything that could have encouraged the Respondent.

24.21 In her statement Witness B explained:

“She told me that there had been quite a strange interaction in Oxford in May.... She told me that there had been a weird moment in the bar of the nightclub where she and Ryan had been talking and she thought he might have been about to kiss her but at the time she thought “that’s absurd, he is married and my appraisal partner and that’s not the kind of relationship that we have in any way”... [Person A] didn’t mention what happened with [the Respondent] in the bar when she first told me about the trip. We first talked about the trip the day after it happened. She told me that they had been to Oxford and that the food had been amazing. I remember that she said that it had been really fun but that she was really glad that she was moving on as it didn’t feel like the professional environment that she wanted to be in. I recall her saying at the time that [the Respondent] had paid her a lot of attention. I remember her saying that he was really friendly and supportive of what she was doing next.”

24.22 This was very different to the account that Person A gave as to when she told Witness B.

24.23 Witness B also referred to a kiss that took place at the Harrow on 1 July. She recounted that Person A told her that Person A met the Respondent in a corridor and he had kissed her. Witness B explained that from what Person A described “the kiss was intimate rather than how I would kiss a friend”. As to Person A’s reaction, Witness B explained that she either pushed him back or pushed her hands against his chest and looked at him. Person A denied that this had taken place. During the Firm’s investigation, Person A described the suggestion that she was kissing the Respondent passionately in a pub full of people to be “absurd”.

24.24 Person A’s explanation for the difference in accounts was that Witness B may have been confusing the kiss she described with the kiss that took place after the trip to Le Manoir. Whilst that was not intentional on Witness B’s part, they had had numerous conversations and it was relatively difficult to recall accurately what they had said to each other and when. Mr Williamson QC submitted that it could not possibly be the case that Witness B was “confused”. On Person A’s evidence the kiss following the trip to Le Manoir took place in the bar area and was fleeting. The kiss Witness B spoke of was an intimate kiss that took place in a corridor.

24.25 Even where Witness B did describe the ‘kiss’ following the trip to Le Manoir, it did not accord with Person A’s evidence. Witness B explained:

“She told me that there had been a weird moment in the bar of the nightclub where she and Ryan had been talking and she thought he might have been about to kiss her but at the time she thought “that’s absurd, he is married and my appraisal partner and that’s not the kind of relationship that we have in any way”.”

24.26 There was nothing in Witness B’s account about lips touching or a kiss actually taking place.

24.27 As detailed above, following the trip to Le Manoir, the Respondent sent the email regarding reimbursing anyone who had paid for drinks. Person A had not paid for any drinks. Notwithstanding that, she replied:

“Thanks Ryan. It wasn’t me - though thank you to the person who paid for my ten thousand jagerbombs.... Really great day - everybody loved it. Thanks again.”

24.28 Mr Williamson QC submitted that there was no need for Person A to reply to that email. It had been sent to a group of staff of which she was a part.

24.29 It was submitted that the Respondent’s evidence on this alleged incident had been entirely consistent whereas the evidence of Person A had been inconsistent and was at odds with the evidence of Witness B. Given the lack of any evidence, the allegation should be dismissed.

The Tribunal’s Findings

24.30 The Tribunal considered all of the evidence in detail. In her witness statement, Person A described that the Respondent leaned down to kiss her on the lips. His lips made contact with hers. At that point she realised what he was doing and moved back. She may have asked him why he did that as she walked away. Her reaction to him made it clear that such contact was not welcome.

24.31 In her complaint to the Firm of 3 May 2017, Person A explained that the Respondent “had tried to kiss me”. She did not mention that he had actually kissed her or that their lips had touched. In the complaint to the SRA of 14 August 2017, whilst Person A only particularised the 1 July 2016 matter, the Tribunal noted that there were, however, a number of documents attached by Person A to the complaint. Those documents did include the complaint as regards the kiss.

24.32 In her complaint to the Firm following the investigation, Person A did not mention the kiss following the trip to Le Manoir.

24.33 In the May 2017 interview during the Firm’s investigation, Person A described that the Respondent was standing at the bar. When she went up to the bar, the Respondent put his arms around her and tried to kiss her. She immediately moved away and sat somewhere else. The Respondent returned to sit with her. She said words to the effect of - “don’t – why are you doing that?”

24.34 In the July interview, Person A again described that the Respondent had tried to kiss her and that their lips had touched.

24.35 In her oral evidence Person A described that the drinks that had been ordered were not what she wanted so she went to the bar to order a drink. The Respondent was standing to her left. He put his arm around her. She was surprised as she did not have physical contact with people that she worked with. She looked at him at which point the Respondent tried to kiss her – their lips touched. She moved both her head and body back. At the time of doing so she had said words to the effect of - “why did you do that”, or “stop that” or “don’t do that”. She then went back to sit in the area of the bar

that had seating. She had felt immediately concerned and worried about their continuing working relationship. She hoped that no-one had seen. She did not want anyone to know as it was embarrassing.

- 24.36 The Tribunal noted the email exchange referred to above. As to her reply, Person A explained that with hindsight, she found her response odd. At the time she believed that the best way to deal with it was to brush it off. She had not discussed the kiss with any of her work colleagues and had hoped that the Respondent did not recall what had happened. She told Witness B what had happened that weekend.
- 24.37 The Respondent denied that there had been any kiss or attempted kiss as described by Person A. The only interaction at the bar that he recalled was when he leant to kiss her on the head but pulled back. Given his height, he did not consider that this was something Person A would have seen or noticed.
- 24.38 The accounts of Person A and the Respondent were in conflict. The Tribunal considered that Person A's account had fluctuated between the Respondent kissing her and the Respondent attempting to kiss her. The Tribunal had no reason to reject the evidence of Witness B. It had found Witness B to be a credible and helpful witness. The Tribunal accepted that Person A had not told Witness B about the kiss until after the events of 1 July, and had described it as "a weird moment" where she thought the Respondent "might have been about to kiss her".
- 24.39 The Tribunal considered the email communications that had taken place the following day. The Tribunal found, as was accepted by Person A, that there was no reason for her to reply to the Respondent's email regarding reimbursing anyone that had paid for drinks, as she had not paid for any.
- 24.40 The Tribunal further noted that Person A, in an email chain commencing on 12 May 2016, sought recommendations from the Respondent (and another colleague), in relation to an upcoming vacation. On 31 May 2016, Person A again emailed the Respondent (and another colleague) thanking them for their recommendations. Such contact, the Tribunal found, did not relate to work, and was not necessary. Nor did it sit with Person A's evidence that following the kiss, she had tried to avoid the Respondent save as to matters that were work related. The Tribunal did not find that these interactions meant that the kiss had not taken place. It considered that the encounter at the bar became more significant following the incident of 1 July.
- 24.41 The Tribunal found the Respondent's explanation as regards going to kiss Person A on the head and then deciding not to, was not credible. It did not accept that he considered that this was appropriate behaviour for colleagues or junior members of staff. Nor did it find that it was the equivalent to the Respondent patting someone on the back to say "well done".
- 24.42 The Tribunal considered that there were some parts of the evidence of both Person A and the Respondent that it could not accept. In the main, it had found them both to be credible and reliable witnesses, each providing what they considered to be accurate versions of the events.

- 24.43 The Tribunal considered that it could not prefer the evidence Person A over that of the Respondent or vice versa. The Tribunal could not be sure that the Respondent had kissed Person A as alleged. Accordingly, the Tribunal found allegation 1.1 not proved and that allegation was dismissed.
25. **Allegation 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 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;**
 - 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;**
 - 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.**

Person A's Evidence

- 25.1 Having resigned from the Firm Person A went to lunch with Witness C on 1 July 2016. She drank wine at lunch. It was a longer lunch than usual which was reflective of her reduced workload following her resignation. At approximately 5pm, most of the team with whom Person A worked went for drinks at a public house close to the office. They were initially drinking outside. Person A was drinking wine. Wine was being bought by the bottle. Her glass was being topped up so it was difficult to estimate how much wine she had consumed.
- 25.2 At about 7pm a smaller group went into the pub as it had started to rain. By that time most of the group had left. All the partners, other than the Respondent, had gone. Witness C was still there. When they went inside they were sat on stools near to the door. Person A thought that she had just been drinking wine. During the investigation it had been put to her that the Respondent had purchased Jager-bombs. Person A thought that this explained the lapses in her memory.

- 25.3 Person A considered that the number of drinks being purchased by the Respondent was excessive. The Respondent was buying her drinks even though she still had a full glass. She did not ask the Respondent to buy drinks for her. Person A considered that it was a nice atmosphere. She felt relaxed and pleased that she had resigned and her final date at the Firm had been fixed for 8 July. She described the Respondent's attendance inside the pub as unusual and a bit odd; all the other partners had gone. Witness C was Person A's friend, so her presence there was not unusual.
- 25.4 There was some conversation about Person A's resignation. She was a bit annoyed that the Respondent had not thanked her for her hard work. They spoke about light-hearted matters.
- 25.5 She was not eating during the evening and was feeling more and more drunk and impaired. They stayed inside the pub for quite some time, more than 3 hours. Her memory of the evening was significantly impaired and she did not remember much due to her intoxicated state. She was unable to walk well, and felt the effects of the alcohol when she stood up. She recalled that Witness C's boyfriend had come to the pub to collect Witness C.
- 25.6 She recalled going to the bathroom towards the end of the evening. She had her gym bag with her. She recalled seeing the Respondent and thought that she told him she was going home. She remembered that she had seen the Respondent downstairs and was quite annoyed with him but did not know why.
- 25.7 When she returned to the bar area she could not find Witness C. The Respondent was unable to find his bag. She could not remember how the Respondent reacted to that. They looked for his bag for a while. The following day Witness C told Person A that she had taken the Respondent's bag to the office. Person A had not seen the email from Witness C saying that she had taken the Respondent's bag to the office as she had not been checking her emails that evening.
- 25.8 After looking for the bag, Person A decided to leave. She walked with the Respondent from the pub to Fleet Street. She described her memories from this period as being very impaired as she had had so much to drink. She thought that she would have gone into auto-pilot to order her taxi home. She could not recall walking up the hill to get the taxi, nor did she recall talking to the Respondent.
- 25.9 She thought that it was odd that the Respondent was with her. It was her objective to get home. She recalled having her phone in her hand. When she got to the top of the road she ordered her taxi, although she did not specifically recall doing so.
- 25.10 She did not remember how long she waited for the taxi, but noted that her online receipt showed that the taxi was ordered at 00.04 on 2 July. The taxi collected her at 00.11 and dropped her off at 00.41.
- 25.11 The pub closed at 11pm. That was a source of confusion and concern for her as she did not know what happened between the pub closing and her ordering a taxi. When the car arrived, Person A got in. The Respondent also got in. She thought that was odd. She did not recall having any conversation with the Respondent but thought that if she did it would be to say that he should be dropped off first. She did not know where the

Respondent lived, but knew that it was not in the same vicinity as her. She had never shared a taxi with the Respondent before other than for work meetings. She recalled giving her phone to the Respondent for him to put his address in so that he would be dropped off first. She did not think that he had done so, she fell asleep.

- 25.12 Person A did not invite the Respondent to share the taxi, nor did she want him to. As to the journey, she was quite confident that she had sat in the back and fallen asleep. She woke up when they arrived. She noticed that her jeans were undone and her trainers were off. She was conscious that she was very drunk and just wanted to get into her flat. She was focussed on the fact that her jeans were undone; she was very embarrassed.
- 25.13 When she exited the car, she fell onto the road. She was very embarrassed. It was obvious how impaired she was. She felt very stupid looking back. The car drove away. The Respondent had not stayed in the taxi and was standing outside. She thought that she asked him why he had not stayed in the car. The Respondent asked if he could use her bathroom. Person A said that she took his request at face value. She fell again at the garden gate. She recalled trying to find her keys. She was unable to open the door so the Respondent did so for her. She thought that he had been watching her struggle to get the door open. She either gave him the keys, or he took the keys from her.
- 25.14 The Respondent gestured for Person A to go in first. She fell on the stairs on the way up to the flat. The Respondent was behind her. He told her to be careful. Person A's bedroom had an en-suite. Witness B's bathroom was not en-suite. The entrance to Witness B's bathroom was in the hallway and was accessed prior to the door to Person A's bedroom. When they got to the top of the stairs, Person A believed that she gestured towards Witness B's bathroom. The Respondent went into Witness B's bathroom and closed the door. She thought she recalled waiting for the Respondent as she did not want him to go into her bedroom.
- 25.15 Person A did not recall the Respondent coming out of the bathroom. The next thing she recalled was sitting on the side of her bed with the Respondent on the floor. She was wearing her shirt but did not have her jeans or underwear on. The Respondent was talking. She was trying to pull her shirt down. She told him that he should not be there. The Respondent replied "that's fair enough". She repeated that he should not be there, he was a partner and married.
- 25.16 The next thing Person A recalled was being under the covers. She was uncomfortable. There were no sheets on the bed as she had removed them in the morning. She woke up to the sound of the Respondent's voice talking about her body. She rolled onto her back. She was very sleepy. The Respondent got on top of her. She thought that he did not have his trousers on as she recalled him putting them back on later. The Respondent asked Person A whether she had a condom. She did not respond. She recalled seeing the dress that she was going to wear to Henley the following day hanging up. The Respondent was touching her body. She was not wearing any clothing. His head and hands were moving downwards. She tried to stop him but had had so much to drink that she was unable to push him off. He said something like he had always liked her.

- 25.17 Person A had an incomplete memory of how it all came to an end. She thought that she had fallen asleep. She did not know if anything else had happened whilst she was asleep. She did not know how far the physical contact had gone or whether intercourse had taken place. That was something that had been difficult to contemplate and deal with. Person A thought that they had both fallen asleep. She remembered the Respondent was looking at his phone. She recalled going to the bathroom at some point with severe stomach pains but could not recall whether the Respondent was there at that time.
- 25.18 The next thing she recalled was being woken by Witness B who came into her room at about 7am. Witness B was full of energy. She asked who had been there and she told her it was the Respondent. She was surprised. Person A explained that she felt very numb; she did not really know what had happened. Person A got ready to go to Henley. She went through the motions but was feeling emotionless. The day felt odd. She consumed some alcohol but not much. As the weekend progressed she had a growing sense of dread about returning to work on Monday.
- 25.19 She saw the Respondent in the office on Monday but did not speak to him. She spoke to Witness C. They talked about how drunk they had been. Person A explained that whilst she wanted to ask Witness C about the end of the evening, she also did not want to tell her what had happened with the Respondent.
- 25.20 On Tuesday, everyone else on the team was out at a client event. She had assumed that the Respondent had gone also. Shortly after they had all left, the Respondent came into her office. As soon as he came in Person A started to cry; she felt pressurised. The Respondent explained that he did not want things to be awkward. Person A told him that she had been too drunk and that he had bought her too many drinks. With hindsight Person A realised that she was blaming herself and regretted that she had not said anything to him at that time. She told him that it was her fault. The Respondent seemed normal, and not put out by what had happened. Person A explained that she was crying more and said that he had only come in to use her bathroom. At that point the Respondent left her office. She then took her bag and left the office to go and meet Witness B.
- 25.21 Person A found the remainder of the week difficult. She did not see the Respondent for the remainder of her time at the Firm. The only person that Person A told about what had happened was Witness B. She felt very alone and ashamed. As time progressed her feelings of self-blame and self-hatred increased.
- 25.22 There came a time when she spoke to Person E, who was a senior member of the team. Person A did not tell Person E much. Person E was horrified and quite surprised. Person A had an exit meeting with HR but did not mention what had happened.
- 25.23 After leaving the Firm, Person A sent an email to the Respondent on 17 November 2016 asking if he could let her have his personal email address. When he did not respond, she sent him a fuller email on 20 November 2016 which stated:

“After much thought I have decided to write to you about what happened in July. Whilst you may feel that there have been no consequences, it has had an awful impact on me.

You took advantage of me when I was too drunk to decide. You bought me too many drinks - more than most people could handle - and invited yourself into my flat because you wanted to 'use my bathroom'. It must have been obvious that I was too drunk. I could hardly walk - I couldn't open my front door and I remember falling at least twice. The fact that you still thought, in those circumstances, that it was ok to try and have sex with me is genuinely troubling. I am worried that you have done it before and/or will do it again.

I don't remember the detail of what happened, which in itself is very difficult for me. I do remember some things. Like waking up naked with you climbing on top of me. I don't remember how I really got there, but I do remember repeatedly referring to your wife. I was trying to remind you of her. Do you remember that?

You had tried to kiss me before, whilst we were in Oxford on the ... trip. It was another time when you got too drunk and acted completely inappropriately. I said no then, and nothing had changed since that time.

When you came into my office the following week, you referred to what had happened as 'awkward' and reminded me that we needed to talk about 'pipeline'. It is so ignorant to describe what happened as only "awkward".

I considered making a formal complaint against you, though after discussing it with close family and friends, ultimately decided against it for the sake of my own privacy. I worry that as a result of that decision I will one day hear a similar (or worse) story about you, and feel that I somehow could have helped prevent it. As a married partner, you should seriously reconsider how you behave towards young women, particularly those who work for you.

You stood in my office as if nothing had changed. You didn't apologise, and seeing how upset I was, you were clearly just relieved that I was too ashamed to tell anyone.

I want you to know that I am not embarrassed. I will never work with, for, or opposite you again, and if I am ever asked to do so, I will refuse and give the honest reason why. It doesn't matter who is asking or when it is. You are an opportunist and a cheat, and I won't compromise myself to keep your secret.

Treat people with more care in future. They are not always as strong as you think."

- 25.24 Looking back on that email Person A explained that she felt that she sounded quite alone and panicked. With hindsight, she would have made a formal complaint as opposed to sending the email. She neither expected nor wanted a reply to that email. On 22 November 2016, the Respondent sent a reply which stated:

"I received your email of Sunday night. I am upset that you are upset, I do not think email is the right way to discuss this further. Would it be helpful to meet in person to talk this through?"

- 25.25 Person A described feeling physically nauseous when she received this. She considered the suggestion that they meet to be entirely inappropriate and the opposite of what she wanted. She had considered reporting the matter to the police but did not feel ready to undergo the process that a report to the police would entail.
- 25.26 After a while, Person A decided to report the matter to the Firm. Following the Firm's investigation, Person A was concerned that the matter had not been taken seriously so wrote to the senior partner. In particular, Person A was concerned that the Respondent remained a training partner and mentor.
- 25.27 Person A still struggled with what had happened. She saw a therapist weekly and was on medication for low mood and anxiety.
- 25.28 During cross examination Person A agreed that it was possible that other partners who were present during the early part of the evening could have paid for drinks. Once they had left, it was the Respondent who paid for the drinks. Whilst it was not the SRA's case, Person A maintained the view that the Respondent had plied her with drinks. She agreed that she had told Person G, during the Firm's investigation, that she had been having a great time.
- 25.29 Mr Williamson QC pointed out that in May and August, during the investigation, Person A did not recall the Respondent buying Jager-bombs, however according to the statement of Witness B, Person A told her about the Jager-bombs at the time. Person A explained that she did not recall telling Witness B that.
- 25.30 Person A was asked about her alcohol consumption on that day and her statement that she did not believe she had ever consumed so much alcohol before in that space of time. He compared the amount Person A accepted she had probably consumed on that night with the amount that she had drunk on the trip to Le Manoir. Person A was unable to say how much she had drunk on that trip. She accepted that she was very drunk. Person A also accepted that she was able to drink large amounts whilst remaining fairly "compos mentis".
- 25.31 It was put to Person A that she was not more drunk than she had ever been before. The next day she went to Henley where she had been drinking. There were photographs of her holding alcoholic drinks. If she had been as drunk as she said, she would have felt shocking and would be unable to face drinking. Person A explained that she had been drinking at Henley as that was what was done.
- 25.32 It was put to Person A that during the Firm's investigative interviews of May and July 2017, Person A did not recall looking for the Respondent's rucksack, however she was able to recall that in her witness statement which was dated 13 June 2018. Person A was asked when her memory had returned. She explained that at the May interview, this was not a memory that came easily to her. Whilst she accepted that recollection could be affected by what one later heard, she believed that she did recall looking for the rucksack.
- 25.33 The email from Witness C asking Person A where she was, was sent at 23.21. The taxi was not ordered by Person A until 00.04. It was put that during that time, Person A was downstairs in the pub kissing the Respondent. Person A did not think that was the

case. Mr Williamson QC reminded Person A that Witness B's evidence was that Person A told her she met the Respondent and they were kissing. Person A denied that this was what she had told Witness B. She wondered whether Witness B had confused this with the kiss following the trip to Le Manoir.

25.34 As regards the numerous falls that had been variously described by Person A, it was put to Person A that she did not fall over at all. Person A stated that she had. She specifically recalled her hands being on the tarmac. Person A was referred to the photographs of her at Henley the following day. She displayed no marks, cuts or bruises from her numerous falls. Person A maintained that whilst she sustained no injuries, she had fallen as described.

25.35 Mr Williamson QC put it to Person A that the reality was as she had told the Respondent, when he went into her office on the Tuesday after the incident, namely that:

“I don't think you're a bad person, we fucked up, we really fucked up, you're my married boss. This is such a cliché”.

25.36 Person A had accepted during the Firm's investigation that she had probably said that. Person A explained in her evidence that at that time she was blaming herself. Those words were a reflection of that. Person A maintained that she was too drunk to know what was going on.

Witness B's Evidence

25.37 Witness B described that at the time of both incidents, she was living with Person A. She had not met the Respondent. She considered that the Respondent's relationship with Person A had been professional.

25.38 She had not heard when Person A returned on 2 July. She first realised that someone had been in the flat when she went into the bathroom and her toilet seat was up. She thought that was odd.

25.39 When Person A did not get up, Witness B went into Person A's room. The bed did not have any sheets on, which was unusual. They were not in the habit of entertaining colleagues at home. Further, they did not have night-time visitors, particularly once one of them had gone to bed. Person A was still asleep, which was also unusual, as she was an early riser. Witness B woke Person A up. She seemed groggy and confused. Witness B thought that Person A had simply overslept. Person A told her that she had been out the previous night and was the drunkest she had ever been. Witness B described being quite dismissive; she was aware of the time and the urgency, because of their plans for the day.

25.40 They stopped for lunch at a restaurant on the way to Henley. Whilst there, Person A started to talk about the night before. She said that she had been out for drinks. Person A explained that the Respondent, Witness C and Person O had been there. Person A said that she didn't think she had ever been that drunk before in her life and for the first time for her, she had “black out” of memories of the evening. Witness B asked her whether she was just feeling a bit shaken up that she had felt out of control and she said,

“well something else happened, [the Respondent] was in the flat last night”. Whilst Witness B thought that was weird, she was again dismissive. She described Person A seeming to be in shock; Witness B thought it was just a hangover. Person A seemed to be confused about events. She was uncommunicative. When they were at Henley, she could see that Person A was trying really hard to be cheerful, but she was struggling to focus.

- 25.41 They did not discuss matters in full until they returned to London. Person A did not recount the events in chronological order. She was speaking in a distressed manner. She described who had been present at the pub. She explained that she had about 6 – 7 glasses of wine, which Witness B considered to be a lot for Person A. She said something about going to the bathroom, meeting the Respondent in the corridor and the Respondent’s kissing her. The kiss sounded quite intimate. Person A did not know how to respond. Person A explained that she had put her hands against the Respondent’s chest and pulled her head away. She had been taken aback.
- 25.42 Towards the end of the evening they had Jager-bombs. Person A explained that she ordered a taxi. The Respondent suggested that they share one. She felt awkward about that but did not feel that she could refuse. As regards the journey, Person A could only remember waking up to find her shoes off and her jeans undone. Witness B considered that this was unusual behaviour for Person A. Person A was very distressed about that recollection.
- 25.43 On leaving the taxi Person A was on the floor. Witness B could not recall if she explained that she had fallen or was putting her shoes on. She was surprised to see that the Respondent had got out of the taxi. He asked to use the bathroom. Person A described that she had struggled with her keys and that the Respondent had to help her. Person A kept explaining that she was extremely drunk. There was a sense of a loss of control. She was in a state and was unable to get into her own home.
- 25.44 Witness B explained that there were no sheets on Person A’s bed, which indicated to her that Person A had no intention of inviting anyone back to her home. When Witness B went into her bathroom the following morning, her toilet seat was up, so she assumed that the Respondent had used her bathroom.
- 25.45 The next thing that Person A recalled was waking up without her jeans on. Witness B could not recall Person A specifying whether she was wearing any underwear at that time. Person A recalled being in bed and the Respondent being there. Whilst Witness B could not recall the specific details of what conversation Person A said they had, or whether Person A was dressed, she did recall that Person A recounted that she had a moment of clarity at which point she had asked the Respondent what he was doing and reminded him that he was married, and that he should not be there. The Respondent was trying to touch Person A intimately and had asked whether Person A or Witness B had a condom. Person A explained that she did not want to disturb Witness B and made it clear that she was not taking any contraception. Witness B considered that reminding the Respondent that he was married was the “English way of saying ‘no thank you’”. Person A had been unable to find a condom wrapper or a used condom. She could not be absolutely sure that they had not had intercourse.

- 25.46 The evening came to an end in the early hours of the morning with what seemed to be a lucid conversation about the Respondent being married and having bought a lot of alcohol.
- 25.47 Witness B described Person A as feeling a deep sense of regret, about “not being impolite about sharing the taxi, about not being clearer that she did not want it”. At that time, the most important thing was for her to be away from the Respondent. Had she been remaining at the Firm, things would have been more difficult. At the time the biggest concern was how Person A was going to be able to go to work and see the Respondent without breaking down. She was embarrassed about potentially crying in front of her colleagues.
- 25.48 The following week, Person A was a wreck. Witness B described having to “pack her off to work” each day. Person A expended so much energy at work trying to be normal that she needed serious care, attention and comfort every evening.
- 25.49 They had talked of making a complaint. There was a concern that the amount of alcohol she had consumed would discredit her. A young female complainant who had been out drinking and then made a complaint was rarely taken seriously and it could have been the end of her career. She had been drinking and had lapses in her memory. The doubts she had made her blame herself for being in a situation where she felt out of control.
- 25.50 During cross-examination, Witness B clarified that she did consider the amount of alcohol consumed by Person A was a lot given her stature and lack of food.
- 25.51 Whilst she was aware of the Firm’s investigation, she did not recall anything specific. Her role was really to support Person A both physically and mentally. She did not recall seeing any of the correspondence.
- 25.52 Witness B confirmed that Person A had been drinking at Henley and had had a glass of wine during the day and maybe two glasses of wine at dinner.

The Respondent’s Evidence

- 25.53 The Respondent described his educational and work history. Following his secondment to a client restructuring team, the Respondent began to receive personal referrals for work. This was noted by the partners at the Firm and he was offered partnership at the Firm. The atmosphere in the team was collegiate and friendly. There was a lot of client contact which made the team very sociable. There was not a culture of hard drinking within the team.
- 25.54 As a trainee partner, the Respondent was ultimately responsible for the trainees within the team. The primary responsibility was to help with co-ordinating the rotation of seats. Person E was counsel in the team. This meant that she was in a senior position but was not a partner. The Respondent had a good relationship with Person E and relied on her judgement, assistance and experience in these matters.

- 25.55 The Respondent did not work with Person A when she was a trainee in the team. He believed that he would have met her when she was a trainee in the team but had no specific recollection of their first meeting. Person E was the main person dealing with Person A's qualification into the team.
- 25.56 As an appraisal partner, the Respondent's role was largely administrative. He collected feedback from the team and attended meetings with other partners and HR to discuss the feedback. The appraisal was then conducted. The Respondent explained that only the head partner of the team could make decisions regarding promotion. Further, the Firm's policy was that he was unable to provide any member of staff with an external reference. Reference requests were dealt with centrally within the Firm. Those references simply confirmed the employment and nothing further. References did not contain any assessments or confirmation of the quality of an employee.
- 25.57 The decision not to promote Person A in April 2015 was not the Respondent's decision. When she questioned her lack of promotion the Respondent adjourned her appraisal so that he could obtain answers to some of the issues she had raised. The Respondent considered that Person A's criticisms of him as an appraisal partner were unjustified.
- 25.58 Person A had been working on Project S which was lengthy and difficult. It became evident that Person A was considering leaving the project. He discussed matters with her and stated that he would try to find her better quality work. In May 2015, the Respondent was able to allocate an interesting piece of work on Project S to Person A. That piece of work would ordinarily have gone to someone more senior.
- 25.59 On 1 July, the Respondent thought that he had gone to the gym before going to the pub. There was a reasonably large group of people there including some from other teams. As a partner, he was expected to pay for drinks for the junior associates and team members. As there were other partners there, he assumed that they had either opened a tab or paid for rounds when ordered. There was nothing unusual about the gathering. It was a very sunny day. The Respondent did not recall if it had started to rain but did recall a smaller group moving inside.
- 25.60 The Respondent had checked his bank statements in order to assist with the investigation. There were 6 transactions which he considered showed that he had been purchasing rounds of drinks. The only person that joined the group that was not with the Firm was Person O; he came during the latter part of the evening. The Respondent got on well with Person O, as someone who was not associated with the Firm, the Respondent considered that it was important that Person O felt included.
- 25.61 The Respondent had not planned to stay out, which he considered was why he had purchased rounds instead of setting up a tab. He had not noticed how much or how quickly or otherwise Person A had been drinking. There was nothing spectacular about the speed with which alcohol was being consumed by him or anyone else.
- 25.62 The Respondent had stayed at the pub when most others had left as he was enjoying the evening. He had initially attended as it was expected that partners attend social events with their junior colleagues. Partners were also expected to pay.

- 25.63 At a time when there were only 4 people left in the group, Person A deliberately stroked/tickled the inside of the Respondent's arm. The Respondent's immediate reaction was to check whether this had been observed by Witness C or Person O. He did not look at Person A as his focus was on the others in the group. He maintained a fixed stare ahead of him and continued with the conversation that was taking place. He was shocked and was not expecting to be touched in that way. He felt flattered. This happened at around 9pm. Person A appeared to be perfectly normal. She was her usual funny and bubbly self. The Respondent stated that he had not been sexually attracted to Person A prior to this.
- 25.64 He remained in the pub and the group continued to drink. The final round was a round of Jager-bombs. The Respondent was drinking pints of lager. He was fairly sure that Person A had been drinking wine. He could not recall whether he had purchased individual glasses or bottles of wine.
- 25.65 Towards the end of the evening, the Respondent went downstairs to use the bathroom. When he left the bathroom, Person A was standing outside leaning against the wall looking at her phone. He specifically recalled that Person A's phone was illuminating her face. The Respondent asked Person A what she was doing. She replied that she was waiting for him. At that point they began kissing passionately. They opened the door to either the toilets or a storeroom and continued to kiss. They were downstairs kissing for quite some time. He did not know what he was thinking. He had a beautiful wife and a great marriage.
- 25.66 When they went back upstairs, Witness C and Person O were no longer there. He was unable to find his rucksack. Person A helped him to look for the rucksack, but they could not find it. He was not particularly concerned as there was nothing of value in there. Person A had not staggered on her way up the stairs and seemed perfectly normal when they were looking for his bag.
- 25.67 They left the pub and were sitting outside on the kerb talking and kissing for around 10 – 15 minutes. They discussed and agreed to share a taxi home. Person A then ordered a taxi using the application on her phone. Whilst sharing a taxi was not the most efficient way for the Respondent to get home, they were both, at that time, living in areas that were in a westerly direction from the Firm.
- 25.68 They were enjoying each other's company. They continued to talk in the taxi on the way back to Person A's address. The Respondent considered that they would share the taxi and he would then go home. He did not recall Person A to be in the state of intoxication that she suggested. There was no sexual activity in the taxi.
- 25.69 The Respondent did not take her shoes off, nor did he undo her jeans when they were in the taxi. When they arrived at Person A's address the Respondent got out of the taxi as he needed to use the toilet. He had been drinking pints of lager all night. It was not a trick or a ploy to gain access to Person A's home; he genuinely needed to use the toilet.
- 25.70 At no point did Person A fall over. If she had done so that would have told the Respondent that she was too drunk and too vulnerable and "that would have been it". Nothing else would have happened between them if she was in that state. The

Respondent would simply have ensured that she arrived home safely. The Respondent did not assist Person A in opening her door. At no point did he touch her keys.

- 25.71 Person A did not fall on her way up the stairs in the flat. As they were going in she told the Respondent not to tell her flatmate who he was if they saw her. That struck him as odd. The Respondent was unable to recall using any bathroom at the flat. The next thing he recalled was being led by Person A into her bedroom. They were kissing and talking and touching. He could not recall what conversation they were having, but it was a jovial atmosphere following on from a fun evening.
- 25.72 At some point, the Respondent fell asleep. When he woke up he saw that his wife had been calling him. She called and her picture came up on the screen. Person A saw the phone and said “God, your wife!” This was around 4.30 – 5.00am. The Respondent decided to go home. He needed to let his wife know that he was ok. The Respondent and Person A had a brief conversation in which they agreed not to tell anyone about what had happened. They kissed on the lips and he left.
- 25.73 When he arrived home, or in the taxi on the way home, the Respondent told his wife that he had been for drinks at the home of an associate and had passed out there. He made it sound as if it were an impromptu gathering. His wife accepted his explanation.
- 25.74 After waking up at home, the Respondent described feeling devastated. He was disgusted with himself for cheating on his wife.
- 25.75 He did not see Person A when he went into work on Monday. On Tuesday he decided that he would speak to her. He considered how best to approach any conversation as he was concerned that the conversation might be difficult and he did not want it to be overheard.
- 25.76 When he went into her office, Person A looked upset but was not crying. She said “I don’t think you’re a bad person. We fucked up. This is such a cliché. You’re my married boss”. The Respondent said that he was happy to talk about it or not to talk about it. She said “What do you want me to say?” The Respondent explained that he was trying to give her the option to talk if she wanted to. She seemed to not want to talk. He did not just walk out of the office abruptly. What had happened was devastating for him and he assumed it was the same for Person A. She was leaving and it would not have been right for him to ignore her for her final week at work. The market in which they operated was small and they were likely to bump into each other in the future.
- 25.77 When he left the office, the Respondent called a good friend for advice. His friend advised that he tell his wife. The Respondent took that advice and told his wife that evening.
- 25.78 The Respondent, whilst invited to one of the leaving drinks functions for Person A, did not attend.
- 25.79 The Respondent did not have any further contact with Person A until he received the email from her asking for his personal email address. At that time the Respondent did not have a personal email address. He discussed matters with his wife and they decided

that he should create a personal address. Before doing so, he received the further email of 20 November 2016. The Respondent was angry and devastated at the content of that email. That was not what had happened and he was frightened that someone would write that. He had not bought too many drinks. He had not taken advantage of Person A, that was something that he would never do. The idea that he would take advantage of someone sexually was beyond anything he could contemplate.

- 25.80 The Respondent showed the email to his wife and then informed a senior partner in his team. He responded to the email a few days later. He was keen to ensure that he did not react to what was said in the email, but also to acknowledge that Person A was upset. The Respondent's wife confirmed that if he were to meet with Person A, she would be present but that it was better not to tell Person A that at that stage.
- 25.81 The Respondent was advised by a senior member of staff to obtain counselling and HR advice. Those advising were of the view that the Respondent had no duty to report matters officially to the Firm at that stage.
- 25.82 The Respondent's wife suggested that he speak to someone that knew both him and Person A well. He initially thought this was not a good idea. His wife spoke to Person E and the Respondent also later spoke to Person E. Person E explained that Person A's biggest concern was that she considered that the Respondent's wife did not know what had happened and that the Respondent had suffered no consequences as a result of his actions. The Respondent told Person E that she could inform Person A that his wife was fully aware as were some at the Firm. Those who did know would ensure that the Respondent and Person A would not be working on the same transaction at their respective firms.
- 25.83 Thereafter, the Respondent was informed of the official complaint made by Person A to the Firm. He did everything he could to assist in the investigation. The investigation culminated in the Respondent being given a final warning. The first time he saw that was on the day it was provided to him for signature. The document he was given was not one that he could debate. It was almost certain that if he refused to sign it that would cause his exit from the Firm. The final warning was on the basis that his conduct had fallen below the standards expected of a partner. Had it also included an assertion that he had abused his authority, he would not have signed it.
- 25.84 The Respondent considered that Person A was clearly very distressed and had suffered some form of trauma. He was very sad about that, but he was also angry at times about the things that had been said about him and others he cared about.
- 25.85 During cross-examination the Respondent explained that his role in providing feedback as the appraisal partner was from the joint opinion of a number of partners taking into account the feedback received from the team and clients. He was not responsible for promotion decisions and did not provide any references for members of the team. Not only did he not do so in any formal capacity but also did not do so informally.
- 25.86 He had worked closely with Person A when he was the lead on the S project and had sourced more interesting work for her on that project when she was considering leaving the project. The Respondent denied that he was irritated by Person A's resignation shortly after she received a promotion and bonus.

- 25.87 The Respondent confirmed that he arrived at the pub a little later than others and that he continued to purchase drinks for the group. He believed that he purchased 6 rounds of drinks (as evidenced by his bank statements). He did not suggest that he was so drunk that he was unaware of his actions. It was not clear to the Respondent that Person A was very drunk. He did not see that she was drunk and think that this was his last chance. There was no awkward conversation about her resignation and nor did she seem to be angry with him at any point.
- 25.88 The Respondent described Person A touching his left arm in detail. He explained that it was a deliberate act that felt flirtatious. When asked why he did not say anything to Person A at the time, the Respondent explained that had he done so, he would have “avoided 3 years of pain”. It was obvious to him that the touch was a flirtatious act. He now wished that he had said something at the time. The Respondent denied that the touch had not happened as he described.
- 25.89 As regards kissing downstairs, the Respondent could not remember the exact sequence as to who was downstairs first. Person A was standing opposite the men’s room with her phone illuminating her face. They both leaned into each other and began kissing. When asked whether the kiss was inappropriate from the regulatory perspective, the Respondent explained that he struggled with that question as he had cheated on his wife. He did not think it was inappropriate per se for a senior colleague to kiss a junior one, moreover, he had a letter from the SRA confirming that position.
- 25.90 Their kissing was urgent and passionate however the Respondent was unable to say which room they ended up in. The Respondent denied that Person A came away angry. When they went upstairs, she helped him look for his rucksack. The Respondent denied that at that time Person A was exceptionally drunk.
- 25.91 It was put to the Respondent that he suggested that he was concerned that Witness C observed Person A touching his arm in the pub, but that it was his case that he sat outside the pub, opposite the offices, on the kerb kissing Person A. Given the location, he could have been easily observed by anyone leaving the office late. The Respondent stated that he should have been worried but he was enjoying kissing Person A. The Respondent disagreed that even on his version of events, his behaviour was disgraceful.
- 25.92 The Respondent confirmed that there was a discussion about sharing a taxi. He reiterated that that was not the most efficient way for him to go home, given the location of the Firm, Person A’s address and his address.
- 25.93 The Respondent stated that there was no kissing in the taxi as it was a confined space. He did not remember what they spoke about in the taxi. Person A did not fall asleep. He did not recall her shoes being off or her jeans being undone.
- 25.94 The Respondent needed to use the toilet. He did not ask the taxi to wait as it was not his taxi. He made it clear to Person A whilst they were in the taxi that he needed to use the toilet. He did not wait to tell her this after he exited the taxi and it had left.

- 25.95 Person A did not fall over when she got out of the taxi, nor did she fall when she was walking from the pub to the taxi. It was put to the Respondent that his failure to recollect what happened in the taxi whilst having a complete recollection of the walk to and from the taxi was him being selective. The Respondent denied this.
- 25.96 As regards his own state of intoxication, the Respondent stated that he was drunk enough to cheat on his wife and share a taxi, but he was in control of his cognitive function.
- 25.97 The Respondent repeated that if Person A had been falling over, he would have made sure she got home safely and then left. He would not have gotten into her bed. He denied that she fell over at any point. He did not help her with her keys. He did not tell her to be careful after she fell walking up the stairs in her flat as she did not fall.
- 25.98 He did not recall using the toilet; he recalled Person A leading him to her room. He confirmed that the conversation about Witness B had taken place.
- 25.99 He did not accept that Person A was severely impaired. The amount that she had drunk over the time that she had been at the pub was not a significant amount so as to cause her to be impaired in the way she suggested.
- 25.100 When asked when he went into Person A's bedroom, the Respondent explained that they had been kissing earlier in the evening and she led him into her room. He did not blame Person A; it was a mutual mistake. She had instigated the contact. Nothing would have happened had she not touched his arm and then kissed. He did not suggest that she had taken advantage of him.
- 25.101 The Respondent denied removing Person A's jeans and underwear. He denied that Person A asked him why he was there and told him that she was not interested. He recalled that the conversation was jovial but could not remember what was said except that at some point she referred to someone being "dead to me". That was a stock phrase that she used which he found amusing. He denied that he had only mentioned this during his evidence as he had seen it on one of her email communications. He did not recall where he touched her. He denied that Person A was in and out of sleep. She was not completely naked, only her top half. He did not recall if he touched or commented on her breasts. He denied saying that he had always liked her. The Respondent accepted that had he touched her as she described without her consent it would be wrong.
- 25.102 He did not recall asking for a condom.
- 25.103 When asked what he did to make sure such contact was ok, the Respondent explained that Person A had touched his arm in the pub, had waited for him and proceeded to kiss outside the toilets. They had continued to kiss on the pavement outside. They had shared a cab and when inside the flat, Person A had led the Respondent to her bedroom.
- 25.104 The Respondent confirmed that at the end of the encounter they agreed not to say anything about what had happened. He did not recall who had said it, but that was what had been agreed.

- 25.105 The Respondent did not accept that he was very drunk but accepted that he had told Person G during the investigation that his ability to exercise proper judgement was impaired by his alcohol consumption. He did not accept that there was any distinction between the level of his drunkenness and that of Person A.
- 25.106 The Respondent considered that his authority over Person A was limited given that she had resigned. He agreed that he was senior to her but did not accept that he still had any authority over her in circumstances where she had resigned.
- 25.107 The Respondent did not agree that his conduct was unbecoming as a partner, but did accept it fell below the standards expected of a partner by the Firm.
- 25.108 The Respondent explained that he considered that the conversation with Person A in the office on Tuesday was going to be difficult as he was married and he had been intimate with someone outside of his marriage. He was asked why he assumed that Person A would be devastated given that the evening had ended with an agreement to keep things confidential and a friendly goodbye kiss. The Respondent explained that he assumed that Person A would be upset as she had been intimate with a married man.
- 25.109 He had had the conversation in her office as calling her into his office would have meant being on his territory and he wanted to avoid that. He did not tell Person A that she was not a bad person first.
- 25.110 It was put to the Respondent that in his interview with Person G he recalled that Person A had said “you kept buying me drinks” which he thought was odd given the convention in the Firm. He thought it a weird thing to say and he became worried that she had a very different view of what had happened. Ms Karmy-Jones QC put to the Respondent that his evidence that there was nothing said when he went into her office to cause him concern was incorrect. The Respondent explained that when she spoke about their mutual mistake, it balanced out her statement as regards him buying her drinks. When she spoke of him buying the drinks he thought that she blamed him, but when she spoke of their mutual mistake, he realised that she considered that they had both ‘messed up’. It was not the concern he was caused by the conversation with Person A that caused him to tell his wife what had happened.
- 25.111 The Respondent denied that his actions could have caused serious repercussions for him, his work and the Firm.
- 25.112 When he received the November email, the Respondent was concerned about the false allegations it contained. He denied that thereafter a damage limitation exercise was undertaken.
- 25.113 As regards the final written warning, the Respondent accepted that his standards had fallen below what was expected. He recognised that sexual contact could generate some fallout for the Firm. By cheating he had given rise to a risk that he could not work with Person A. That could cause problems for the Firm. The Respondent explained that his marriage was the prime factor. Had he not been married, he would not have accepted the final warning. The Respondent did not suggest that he was placed under any undue pressure to accept the warning. The findings of Person G were not agreed facts. The Respondent accepted that there was nothing in the final warning or Person

G's recommendation that referred to the Respondent's marriage as being the basis for the finding that his conduct had fallen below the standard.

25.114 The Respondent accepted that his conduct created a reputational risk to the Firm. Ms Karmy-Jones QC suggested that not only did the Respondent's conduct fall below the standards of the Firm, but below the standards expected by the profession, and thus his conduct was in breach of the Principles as alleged. The Respondent denied that he had breached the Principles and was unable to comment on the standards of any other firm.

25.115 The Respondent did not accept that Person A had no reason to pursue these matters unless they were true.

The Applicant's Case

25.116 Ms Karmy-Jones QC submitted that the conduct of the Respondent in engaging in sexual contact with Person A was inappropriate, as he knew or ought to have known:

- The Respondent was senior to and in a position of authority over Person A, notwithstanding that at the time of the incident Person A had handed in her notice to the firm;
- Person A's reaction to the incident on 6 or 7 May 2016 made clear that his conduct on that occasion had not been invited and was unwelcome
- Person A was clearly and visibly heavily intoxicated. The Respondent had seen her level of consumption throughout the evening and had been responsible for buying the drinks which she had consumed. Person A's level of intoxication was such that Person A fell on the way into her flat and had difficulty walking and that it had been necessary for the Respondent to help her into her flat.
- The Respondent had not been invited by Person A to Person A's flat and had been allowed in to the flat only on the basis that he needed to use the bathroom and not with a view to sexual activity.

25.117 It was not the Applicant's case that a professional relationship would always have the effect of prohibiting or precluding intimate personal relationships or sexual contact. Each case would depend on its own facts. Here, by seeking to initiate or engage in sexual contact in the circumstances as detailed by Person A, the Respondent acted in breach of Principles as alleged.

25.118 Ms Karmy-Jones QC submitted that there were some matters that were beyond dispute:

- The Respondent and Person A worked in the same team;
- He was in a senior position and was a Partner in the team;
- He had both management and supervisory responsibilities as regards Person A; and
- He was a Trainee Partner, Qualification Partner and the team leader on the S Project.

- 25.119 The Respondent had accepted that Person A had worked closely with him on the S Project, that he provided feedback on her work, that she was accountable to him and that he had some influence over the work which was allocated to her. Whilst the Respondent sought to limit the amount of influence he had as regards Person A's prospects, Person A had not been challenged on her perception of the degree of influence he had. The practical position of his seniority over Person A remained notwithstanding her resignation from the Firm. His suggestion that he had no influence was misconceived and disingenuous. It was an attempt by the Respondent to play down the hierarchy that existed in his team and in the Firm.
- 25.120 In his interview with the Firm, the Respondent explained that when he went into Person A's office on 5 July, "she looked shocked". He did not recall her crying but "said she had glassy eyes and looked very white". He was unclear at the time as to whether Person A wanted him in her room or not. The Respondent had suggested in his witness statement that there was nothing said that caused him any concern. This, it was submitted, was misleading in light of his earlier account.
- 25.121 Ms Karmy-Jones QC submitted that Person A's reaction to events was more than simple regret of an encounter with a married man. She had woken up and did not know whether or not she had had intercourse with the Respondent. She had to go through the indignity of trying to find a used condom. Person A had no conceivable motive to lie about the encounter, whereas the Respondent had every reason to be untruthful to protect his marriage and his career.
- 25.122 It had been the Respondent's evidence that towards the latter part of the evening, Person A had reached over and touched/stroked the inside of his arm. That evidence, it was submitted, was incredible. He stated that when this happened, he did not move, did not look at Person A, did not say anything but remained in the pub and continued drinking. The touching/stroking of the Respondent's arm had not been put to Person A during cross-examination. It was not enough to assume that had this been put, Person A would have denied that this had occurred. The Tribunal had been deprived of assessing her response to what, it was submitted, was the catalyst for events that took place later that evening. It was the Respondent's case that his primary concern was whether anyone else in the group had noticed. Ms Karmy-Jones QC submitted that this indicated a recognition that such contact was inappropriate. Further, if this was his primary concern, then it did not explain why he would, on his case, go on to kiss Person A downstairs in the pub, or to kiss her outside on the pavement opposite the Firm's offices.
- 25.123 The Respondent had described Person A waiting for him downstairs in the pub and thereafter their being engaged in a passionate kiss. His version was not credible and had not been put to Person A during cross-examination. Whilst the Respondent had been able to describe the kiss in detail, he had been unable to say where the kiss had actually occurred. In addition, the Respondent's case as regards sitting on the kerb outside the pub kissing had also not been put to Person A.
- 25.124 Witness B described a passionate kiss in the pub. Person A recalled seeing the Respondent downstairs and feeling anger, but was unable to recall why she was angry. Ms Karmy-Jones QC submitted that memory was a difficult thing, with matters that were once recalled later forgotten. Whilst there would be an attack by the Respondent

on any inconsistencies in the evidence, the Tribunal should consider whether those inconsistencies were relevant to the key points to be decided.

- 25.125 The majority of the evidence pointed to Person A being significantly impaired. She vividly recalled falling and stumbling up the stairs when she arrived home. The Respondent stated that had she been falling over, that would have indicated to him that Person A was too drunk and too vulnerable and that would have been it. Ms Karmy-Jones QC noted that the Respondent admitted that his judgement had been impaired, however he was not prepared to accept that Person A's judgement was impaired.
- 25.126 There was no inconsistency in Person A being significantly intoxicated and going to Henley the following day. It was a pre-planned special occasion. Witness B's evidence was that Person A was not herself that day.
- 25.127 It had been the Respondent's evidence that when he left Person A's home, they had kissed goodbye. This was the opposite to Person A's evidence and was inconsistent with the Respondent's explanation for the meeting with Person A at the Firm's offices on 5 July. The Respondent stated that he thought it was necessary to meet with Person A to clear the air. Ms Karmy-Jones QC questioned why such a meeting would be necessary if things had been left on friendly terms with a friendly parting kiss.
- 25.128 The Respondent relied on the conversation he had with Person A during that meeting where she stated that they had "fucked up". Person A explained that this was in response to the Respondent telling her that he did not think that she was a bad person. The meeting, it was submitted, was harrowing for Person A. It took place when they were alone in the office, with the Respondent standing over her.
- 25.129 The Respondent had been unable to recall any specifics of an act which, on his own case, had caused him significant distress. Ms Karmy-Jones QC questioned whether the Respondent was unable to recall or simply unwilling to say.
- 25.130 It was submitted that the circumstances of the Respondent's conduct were such as to breach Principles 2 and 6 as alleged. Given the matters to be considered, it was not necessary for the Tribunal to make any findings or consider the issue of consent. That Principles 2 and 6 applied was clear from Paragraph 5.1 of the Application Provisions of the Principles. Ms Karmy-Jones QC submitted that the regulation of the private conduct of solicitors was necessary as inappropriate behaviour outside of professional life might well still adversely affect the public's view of solicitors and the profession.
- 25.131 It was clear from the Firm's investigation, that it did not consider the Respondent's conduct as separate from his professional life. The Respondent had accepted a final written warning. During his evidence he had attempted to distinguish the warning he had accepted from the findings. The findings were that the Respondent had abused his position of power. The final written warning he accepted did not state this. However, the findings had been specifically referred to in the warning letter. Person G had conducted the investigation and delivered her findings to the Firm. Person H from the Firm reviewed those findings and determined that the Respondent's conduct had fallen well below the standards expected of a partner. That his conduct had fallen below the expected standard was accepted by the Respondent. Person H further found:

- The Respondent had bought many drinks for Person A.
- Person A was very drunk and had an incomplete memory of events.
- The Respondent had also been drinking and had an incomplete memory of events.
- The Respondent accompanied Person A home.
- Person A and the Respondent engaged in some form of sexual activity at Person A's home.
- As a partner, the Respondent was in a position of authority over Person A. Person A worked in the Respondent's team and he was her appraisal partner.

25.132 Person H concluded that the Respondent's conduct, as admitted by him, was an abuse of his position of power and responsibility. She recommended that the Respondent be given a final written warning. Ms Karmy-Jones QC submitted that the imposition by the Firm of a disciplinary sanction demonstrated the close connection between the Respondent's conduct and his professional life. There was no merit in the suggestion that the Firm's expectations were higher than that of the profession.

25.133 During cross-examination, it had been the Respondent's case that his acceptance of the final warning was on the basis that he had put the Firm at reputational risk as a result of his conduct as he was married, and that he would not have accepted the final warning had he not been married. Ms Karmy-Jones QC submitted that this was a contrivance. There was nothing in the final warning documentation that he received that suggested that the Firm considered that his misconduct was based on his infidelity.

25.134 As regards the application of the Principles to the Respondent's conduct, the leading case on the meaning of integrity was Wingate where it was said that integrity was "a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members". The examples where conduct lacked integrity given in that case involved conduct in the course of professional life. Ms Karmy-Jones QC submitted that the observation that "professional integrity is linked to the manner in which that particular profession professes to serve the public" did not mean that a solicitor's private behaviour could not lack integrity. The Respondent sought to rely on BSB v Howd [2017] 4WLR 54, however, the Court's express reservation as to the necessity to consider whether that matter was correctly decided was inconsistent with an interpretation that Principle 2 did not apply outside of a professional's professional life.

25.135 The duty to act with integrity for barristers required them to act "with honesty and integrity". As observed by Lang J, the duty to act with integrity for barristers was therefore 'coloured' by the term honesty. There was no such similar reference under Principle 2. In addition, Wingate made clear that honesty and integrity were different concepts. Thus, it was submitted, the approach taken in Howd of interpreting integrity by reference to honesty was directly contrary to the approach in Wingate. It was a matter for the Tribunal as to whether the Respondent's conduct, in these circumstances, was in breach of Principle 2.

25.136 Principle 6 was, as detailed in Wingate, “directed to preserving the reputation of, and public confidence in, the legal profession”. In Howd it was accepted that “inappropriate, and at times, offensive behaviour” was capable of diminishing public trust. The Applicant accepted that there was a difference between private conduct which affected the reputation of the solicitor alone, and private conduct which affected the reputation of the profession.

25.137 In Lone v Secretary of State for Education [2019] EWHC 531 (Admin) the Court dismissed a teacher’s appeal against a prohibition order which was imposed on him as a result of a series of unwanted and inappropriate communications with a junior female colleague. At [41], William Davis J observed:

“I do not accept that the misconduct did not engage the issue of public confidence. This type of sustained misconduct towards a junior colleague coupled with some effect on a pupil is a matter of public confidence. A vital element of teaching as a profession is the concept of working with colleagues as a team within the school or college. Public confidence in teachers requires that all members of the profession have respect for their fellow teachers. That is particularly so where the fellow teacher is a young woman. Part of the requirement of public confidence comes from the need to create a willingness amongst young graduates to take up the challenge of teaching. Such willingness is less likely if there is a perception that older colleagues may behave as Mr Lone did.”

25.138 The Applicant submitted that the Respondent’s conduct (as a partner in the Firm) towards Person A (as a young female junior associate in his team) engaged similar public confidence issues.

25.139 In all the circumstances, the Principles applied and the Respondent’s conduct was in breach of those Principles. The Tribunal should find allegation 1.2 proved.

The Respondent’s Case

25.140 Mr Williamson QC submitted that Person A’s evidence was unreliable and inconsistent. The evidence of Witness B was fatal to Person A’s account. Person A denied that there was any kiss that took place at the pub. The only way that Witness B could have been aware of a passionate kiss was if Person A had told her about it. Witness B’s oral and written evidence on that matter was clear. As detailed above, it was not possible that Witness B had mistaken the kiss at the pub for the kiss/attempted kiss following the trip to Le Manoir. Accordingly, Witness B’s evidence about a kiss having taken place at the pub supported the Respondent’s evidence.

25.141 The Respondent’s evidence in that regard was further supported by Witness C. In her witness statement, Witness C explained that she had left the Respondent and Person A for a short while. When she returned she was unable to find either of them. At 23.21, Witness C sent an email to Person A with the subject “Where r u”. The following day at 08.24, Witness C sent an email to the Respondent, which was copied to Person A stating: “[Person O] and I thought you had left yesterday so put your rucksack with reception ... sorry if you were just in loo for ages”. Person A ordered the taxi at 00.04. This left approximately 40 minutes that were not accounted for, save for looking for

the Respondent's rucksack. Person A's account did not explain what had occurred during that time. The Respondent's account of their kissing downstairs and outside and looking for the rucksack fitted with that timeline, and was the only credible explanation as to the events at the pub.

25.142 Mr Williamson QC submitted that the kissing that had taken place in the pub was significant as it was denied by Person A with such a suggestion deemed "absurd" by her. It was submitted that either Person A was being untruthful about kissing in the pub, or Witness B was being untruthful about having been told by Person A about them kissing. Mr Williamson QC submitted that the only other option was that Person A, having told Witness B about the kiss, had subsequently forgotten. Such an option did not bear scrutiny and left Person A's reliability fundamentally undermined.

25.143 Person A's response when asked by Person G about touching the Respondent's arm in what he considered to be a flirtatious manner was peculiar. She explained, as recorded by Person G, that she did not recall doing so, and that if the Respondent was suggesting that this was an invitation for sex, that was appalling and the Respondent should be ashamed of himself. It was not the Respondent's case that this was an invitation for sex, but it was a flirtatious gesture on the part of Person A. Mr Williamson QC observed that it was odd that Person A did not say that such a suggestion was outrageous instead saying that the Respondent needed to be more specific about what he meant by "flirting", and whilst she may have touched the Respondent's arm, she did not understand the mechanics by which she would have touched the inside of his arm.

25.144 It was clear that Person A's account of what had taken place at the pub had developed significantly. It was only when she made a statement in the proceedings that she mentioned that she had been drinking at lunchtime. She could not say for certain how much she had consumed or what size the glasses were. Her statement to the SRA was also the first time that Person A suggested that she may have drunk more than 6 glasses of wine. As regards her being more drunk than she had ever been before, had she consumed 6 glasses of wine, it would equate to less than one per hour, given that she arrived at the pub at around 5pm and ordered her taxi at 00.04. This ran contrary to her suggestion that there was an aggressive velocity at which drinks were being bought and consumed.

25.145 Person A had made no mention of consuming any Jager-bombs that evening until this was mentioned by the Respondent. In her interview with Person G on 3 July 2017 Person A stated that she had no recollection of discussing or drinking Jager-bombs, however, in her statement to the SRA, Person A refers to the Respondent buying a large number of drinks including wine and Jager-bombs. Mr Williamson QC submitted that these were inconsistent statements. This was also inconsistent with what she told Witness B who explained in her statement that Person A had informed her that "she could also remember there being Jager-bombs at the end of the evening". Witness B believed that this had occurred after the kiss, but she was not sure.

25.146 Mr Williamson QC submitted that either Person A was lying about the state of her recollection now in order to amplify her evidence about her lack of capacity or Witness B was lying about being told at the time about Jager-bombs. It was untenable that Person A had simply forgotten kissing her boss and voluntarily drinking Jager-bombs with him when she remembered this at an earlier stage.

- 25.147 Person A had told the Firm that she did not feel drunk until the end of the evening and was capable of normal conversation. It was clear that she was oriented in time and space. This undermined her proposition that she was significantly and dangerously impaired or that it would have been obvious to anyone that she was very drunk.
- 25.148 In the May interview, Person A made no mention of looking for the Respondent's rucksack. In the July interview when she was asked about this, she did not recall looking for the rucksack. However, by the time of her statement to the SRA, she did recall looking for the rucksack.
- 25.149 There were also inconsistencies in her account of how they came to share the taxi. It had been Person A's evidence that she had not invited the Respondent into the taxi and that she did not want him to come into the taxi. She had no recollection of any discussion about sharing a taxi and she found it "quite odd" that he had gotten into the taxi. In her 15 May 2017 interview with Person G, Person A thought that she did recall discussing sharing a taxi with the Respondent and that whilst it seemed odd to think of it then as the Respondent did not live near her, it did not feel odd at the time as she would frequently share taxis home with people after nights out.
- 25.150 The number of times she had fallen over had varied over time. This was a crucial part of Person A's evidence showing that the Respondent knew that she was incapable. In her oral evidence, Person A suggested that she had fallen over four times between exiting the taxi and arriving at her bedroom. In the account recorded by her therapist, there was no mention of Person A falling, except on the stairs inside her property. In her letter to the Firm of 8 August 2017, Person A described herself as being "too drunk to walk steadily". There was no mention at all of falling over. When asked about falling over by Person G, Person A explained that she fell on the pavement outside her gate, may have fallen again before her front door but that she was not sure about that, and fell on her way upstairs in the flat. There was no mention of her falling as soon as she exited the taxi. There was nothing in Witness B's statement about Person A explaining she had fallen over. The first that this was mentioned by Witness B was during her oral evidence. During her own evidence, Person A, for the first time, described a vivid recollection of falling outside the taxi with her hands on the tarmac.
- 25.151 Mr Williamson QC asked the Tribunal to consider whether, given her suggested state of intoxication, Person A could have fallen outside as many times as suggested, or at all, and sustained not a single injury. The photographs of the following day displayed no cuts, scrapes or bruises, and it had been Person A's evidence that she sustained no injury at all. It was a matter for the Tribunal to assess whether Person A could have fallen as many times as she suggested and sustained no injury whatsoever.
- 25.152 Person A had sought to "trash" the Respondent in every respect, including his conduct in her appraisals. Where there was any evidence that did not support her version, witnesses were either untruthful or confused. The Tribunal should consider Person A's evidence on a simple point – whether or not she knew that the Respondent and Person E were friends. In her interview of 15 May 2017, Person A stated that she had spoken to Person E about events but that it had not gone well and that she had not appreciated that Person E and the Respondent were actually quite friendly. However, it was clear from an earlier email chain that Person A was aware that the Respondent and Person E were friends when they were discussing a practical joke. In her 3 July 2017 interview, Person

A explained that she had not discussed her historic view of the Respondent with Person E as she knew that the Respondent and Person E were friends and so it would have been inappropriate to do so.

- 25.153 Person A believed that Person E was acting on the Respondent's behalf and that her perception that Person A got on well with the Respondent was wrong and untruthful. She also expressed a concern during the investigation as to whether Witness C would be completely transparent in relation to the true extent of the level of intoxication and the drinking culture generally.
- 25.154 Mr Williamson QC submitted that in order to be sure that there had been misconduct, the Tribunal would have to accept Person A's account as detailed in her statement; a statement that was written 2 years after the event. Her account in summary was that despite lacking in recollection, Person A did not consent, did not give the impression of consent and that she lacked the capacity to consent. To accept that conclusion, the Tribunal would have to account for the position held by Person A at the time, namely that what happened was a 'mutual mistake'.
- 25.155 The truth was reflected in her own words at the time "we really fucked up, you're my married boss, this is such a cliché." That was her position. There was no reasonable basis upon which the Tribunal could prefer her later, processed, account to her view at the time. That being so there was no basis upon which the Tribunal could be sure that a misconduct offence had occurred, as the Tribunal could not reasonably discount the proposition that she was initially telling the truth and had not 'misunderstood' in her earlier account.
- 25.156 Person A had given two conflicting versions of events. All of the independent evidence supported the former version over the latter. She had provided no assistance as to what it was that she misunderstood, what it was that required "processing", or why, (if she was more drunk than she had ever been) she was drinking alcohol and partying all day at Henley the very next day. Her accounts to Witness B and Person E, the length of time which Person A and the Respondent were alone together, the conflicting evidence as to the kiss in the pub, the conflicting evidence as to consuming Jager-bombs, and the conflicting evidence as to the conversation before the taxi, all supported her earlier account and left any reasonable Tribunal unable to be sure of her later account.
- 25.157 The explanation that she had a drunken, consensual encounter with her married boss, about which she was then mortified and so had created an account in which she was not to blame, was the only explanation which fit all of the facts.
- 25.158 If her account was unreliable, there was no evidence of conduct that amounted to serious professional misconduct. The evidence of Witness C was that she did not witness any inappropriate or unprofessional behaviour before she left. That must include the proposition that the Respondent was not getting Person A drunk, because to do so would have been unprofessional and inappropriate behaviour, as opposed to them all becoming drunk. It was consistent with Person A's earlier accounts - which were that although drunk, she was able to hold conversations. She did not claim that she was displaying signs of being drunk such as falling over or being incoherent whilst in the pub. As detailed above, the proposition that there was aggressive drinking at an

abnormal velocity was not borne out by the credit card receipts, the timing, or the evidence of Witness C.

- 25.159 That being the case, the fact that there was consensual sexual activity after a normal evening in the pub between two solicitors, was not a matter for regulatory intervention. Mr Williamson QC submitted that Person A was an unreliable witness whose various accounts left her credibility as a witness of truth undone. The Respondent was a man of integrity as had been attested to by his character witnesses and demonstrated by him during his evidence. Had Person A been falling over drunk, he would not have gone into her room and continued sexual activity with her. He betrayed his wife on that day and had suffered the consequences. The Tribunal should weigh his evidence and that of his witnesses against the numerous inconsistencies in Person A's account.
- 25.160 Mr Williamson QC submitted that integrity should be confined to integrity in professional dealings. As set out on the SRA website: "Personal integrity is central in your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers and the public." The definition of Principle 6 stated: "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". There was no mention of behaviour outside of professional practice when defining integrity.
- 25.161 The decision in Wingate put the matter beyond proper argument. Rupert Jackson LJ cited the decision in Williams v SRA [2017] EWHC 1478 (Admin): "Professional standards however, rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work". All of the examples cited in Wingate as demonstrating conduct lacking in integrity related to conduct in a professional setting. The Court concluded that "professional integrity is linked to the manner in which that particular profession professes to serve the public". This, it was submitted, accorded with the decision in Howd.
- 25.162 It was noteworthy that the new guidance issued by the Applicant on acting with integrity focussed solely on professional issues in both of the examples given as to when the Applicant would take action.
- 25.163 Integrity, it was accepted, was a wider concept than dishonesty and reflected the higher ethical standards that were expected from professionals in their work. Trusted advisers should be reliable in their dealings with the public and others. That did not mean, nor did it require, that they were held to those higher standards in all aspects of their private lives. They were not 'paragons of virtue'. Accordingly, it was submitted, Principle 2 was not engaged.
- 25.164 Mr Williamson QC submitted that public confidence in the profession could not be undermined by consensual sexual activity as in the circumstances of this case. The commission of a mutual mistake in drink did not amount to serious professional misconduct. Principle 6, in the way it was defined, again explicitly linked the conduct to the way that the profession served society. That circumscribed the range of enquiry of the professional regulator to matters that were linked to the way in which the profession served society. There is a reasonable expectation that a person's sex life was

private, especially when it was conducted off work premises. Accordingly, there had been no breach by the Respondent of Principle 6.

25.165 The Tribunal should dismiss allegation 1.2.

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 this 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.

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.

Previous Disciplinary Matters

26. None.

Mitigation

27. Mr Williamson QC submitted that in considering sanction, the Tribunal was under a duty to uphold the reputation of the profession and to protect the public. The Respondent had resigned from his position at the Firm following the Tribunal's announcement of its findings, and it was questionable as to whether he would work in the profession again.
28. It was inferred that the Respondent's evidence had, in the main, been accepted by the Tribunal. The Tribunal did not find that the Respondent had initiated sexual activity but had found that he had engaged in sexual activity in circumstances where to do so was inappropriate.
29. The nature of the case and the findings were uncharted territory. The Respondent had been crushed by the process and had suffered damage, as had Person A. Other than the matters found proved, the Respondent had been a shining example to the profession and had been dedicated to both the profession and the Firm. Mr Williamson QC referred to the references provided for the Respondent by Persons 1 and 2. It was submitted that in the particular circumstances of this matter, together with the Respondent's hitherto unblemished and exemplary record, the threshold for suspension had not been crossed. In the event that the Tribunal was not with him, Mr Williamson QC submitted that any suspension should take into account the time that the Respondent had not been working.

Sanction

30. The Tribunal had regard to the Guidance Note on Sanctions (6th Edition – December 2018). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

31. The Tribunal found that the Respondent's conduct was spontaneous. He was directly in control notwithstanding his level of intoxication. On his own account, whilst he was impaired by the amount of alcohol he had consumed, the Respondent was still "compos mentis" and he knew what he was doing. He was a respected partner in the Firm and had responsibility for his junior colleagues. As such, he owed his junior colleagues a duty of care.
32. His conduct, as detailed in the Tribunal's findings, had caused harm to the reputation of the profession. It had also caused significant harm to Person A. The Respondent accepted that Person A had suffered, and continued to suffer, as a result of their encounter. He had also caused harm to the reputation of the Firm. The Tribunal considered that the Respondent's conduct was aggravated as he ought to have known that his conduct was in breach of his obligation to protect the reputation of the profession.
33. In mitigation, this was a single episode of brief duration. The Respondent had admitted the vast majority of the facts. The majority of areas of factual dispute had not been found proved by the Tribunal. The Tribunal considered that the Respondent had displayed genuine insight. Given the nature and circumstances of the case, the Tribunal thought that it was appropriate that the Respondent test the applicability of the Principles to his admitted conduct. The Tribunal recognised that the Respondent had been advised that the matters ought not to be the subject of regulatory concern.
34. The Tribunal considered that the Respondent's misconduct was caused by a lapse in his judgement that was highly unlikely to be repeated. He had attended a number of courses that had been recommended by the Firm. The Tribunal did not find that the Respondent posed a future risk to the public. There had been no clients involved and there was no suggestion that the work of the Respondent was anything other than highly competent. Nor did it consider that the Respondent posed a future risk to the reputation of the profession. The Respondent's misconduct would not shake the public's perception of his ability to properly represent their concerns were he to be instructed.
35. This was a one-off incident where there was no suggestion that he had coerced or manipulated Person A. It was not the Applicant's case that the Respondent had deliberately plied Person A with drink with a view to getting her into such an intoxicated state that she would then engage in sexual activity. Nor was it the case that he had used his position of seniority and authority to engineer the sexual encounter. The Tribunal considered that the Respondent had engaged in inappropriate conduct in circumstances where his judgement had been affected by the amount of alcohol he had consumed.
36. The Tribunal considered that the Respondent's conduct was too serious for No Order or a Reprimand to be a sufficient or proportionate sanction. The Tribunal did not find that the circumstances of the case were such that a Restriction Order was necessary in order to protect the public. The insight displayed by the Respondent was not such as to call into question his continued ability to practise appropriately.
37. The Tribunal considered that in the circumstances and given the limited nature of its findings, the appropriate and proportionate sanction was a financial penalty. The Tribunal assessed the Respondent's conduct as very serious such that if fell within the

Tribunal's Indicative Fine Band Level 4. The Tribunal considered that a fine in the sum of £35,000 was appropriate and proportionate in all the circumstances.

Costs

38. Ms Karmy-Jones QC submitted that in succeeding on allegation 1.2, the Applicant had proved a substantial part of its case. The prosecution of the Respondent had been entirely justified. Allegation 1.1 did not add a significant amount of documentation to the case. All of the documents in the bundle would have been necessary even in circumstances where allegation 1.1 was not pursued. The fixed fees charged pre-dated a number of matters, including the lengthy preliminary application made by the Respondent. It was not accepted that the costs claimed in this matter by the Applicant were disproportionate. The costs claimed were similar in value to those claimed by the Respondent.
39. The Applicant had one main witness in this case. Her account could not be divided so as to exclude allegation 1.1 and thus, the Applicant should not suffer any adverse costs consequences in its failure to prove allegation 1.1. Even if allegation 1.1 had not been pursued, evidence of it would have been adduced and admissible as background to allegation 1.2.
40. The Respondent, to some extent, had, it was submitted, by his own conduct, brought the proceedings on himself. He had unnecessarily increased the costs by bringing not insignificant preliminary applications for abuse of process and dismissal, amongst other things. All of those matters required substantial and significant preparation. The Respondent had provided no evidence of his means. In all the circumstances, the Applicant should be awarded the full level of costs claimed.
41. Mr Williamson QC submitted that the Applicant's costs were excessive. It had failed to prove allegation 1.1, and had not succeeded on all of the particulars pleaded for allegation 1.2. If the Tribunal considered that a financial penalty was appropriate, it should reach a balance between the amount of any financial penalty and any costs order it imposed.
42. The Tribunal noted that whilst the matter had been listed for 10 days, it had concluded in 9 days (including 1 day where the parties were not required to attend) and a number of the days upon which the Tribunal had sat had not been full days. On the first day of the hearing, the proceedings were concluded before lunchtime. On day 2, proceedings were concluded before 3pm. On day 3 proceedings concluded shortly after 3pm. On day 4 proceedings concluded shortly after 1pm. On day 5 proceedings concluded at approximately 4.20pm. Accordingly, in the first 5 days of the hearing, the Tribunal had, in effect, only sat for 3½ days. On days 6 and 7, the hearings concluded shortly after and shortly before lunchtime respectively. On the final day of the case, the hearing lasted for approximately 2 hours. During the entire proceedings, there was only 1 day where the Tribunal heard evidence for a full day.
43. The Tribunal found that the issues in the case were not significantly complicated such as to justify the Applicant requiring junior counsel for the entirety of the case. This was even more so the position when Ms Karmy-Jones QC was supported by 2 experienced lawyers from Capsticks.

44. The Tribunal considered that it was appropriate to reduce the costs claimed to take account of the limited hearing time and to substantially reduce the fees claimed for junior counsel. The Tribunal considered that of the £343,957.08 claimed by the Applicant, the Respondent should pay costs in the sum of £200,000.00 which was appropriate and proportionate in all the circumstances.

Recording of the Hearing

45. Given the numerous mentions of persons whose identity the Tribunal had previously directed should remain anonymous, the Tribunal directed that the recording of the Substantive Hearing must not be released other than to the parties without the prior consent of the Tribunal.

Statement of Full Order

46. The Tribunal Ordered that the Respondent, RYAN BECKWITH, solicitor, do pay a fine of £35,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £200,000.00.

Dated this 30TH day of January 2020

On behalf of the Tribunal



N. Lucking
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

30 JAN 2020