

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10691-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ABRAHAM VERGHESE

Respondent

Before:

Mr D J Leverton (in the chair)

Mr R Hegarty

Lady Bonham Carter

Date of Hearing: 14th September 2011 and 7th February 2012

Appearances

Rupert Allen of Fountain Court Chambers, Temple, London EC4Y 9DH instructed by Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 Contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”), he acted without integrity and behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, by confirming under Oath during the course of proceedings in the Employment Tribunals heard at Leeds that the contents of a witness statement signed by and relied on by him were true and then subsequently admitting during the course of the same proceedings that they were untrue;
 - 1.2 Contrary to Rule 1.06 of the SCC, while attending his employers’ offices under the influence of alcohol, he was verbally aggressive during a telephone conversation with another solicitor.
2. Dishonesty was alleged in respect of allegation 1.1 above, although it was submitted that it was not necessary to prove dishonesty in order to prove the allegation itself.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Rule 5 Statement dated 6 January 2011 with exhibits;
- Witness statement of Alias Yousaf dated 7 March 2011 with exhibit;
- Certified Written Reasons Employment Tribunal’s Case No. 1807412/2009;
- First statement of Ms Nazia Shaukat in these proceedings dated 21 January 2011 with exhibit;
- Second statement of Ms Nazia Shaukat in these proceedings dated 4 August 2011;
- Statement of Mr Michael Alan Reeves in these proceedings dated 19 August 2011;
- Second witness statement of Mr Geoffrey Hudson, solicitor of Penningtons Solicitors LLP dated 9 September 2011 with exhibit consisting of earlier correspondence; between Mr Hudson and the Respondent and documentation sent to him by the Respondent;
- Judgment in the case of R v Hayward, Jones and Purvis [2001] EWCA Crim 168;
- Judgment in the case of R v Jones [2002] UKHL 5;
- Judgment in the case of Tate v The Disciplinary Committee of The Royal College of Veterinary Surgeons [2003] UKPC 34;
- Outline submissions of the Applicant for these proceedings prepared by Mr Rupert Allen of Counsel dated 9 September 2011;
- Email from Mr Geoffrey Hudson to the Tribunal’s office dated 9 September 2011;
- Applicant's bundle for the hearing on 7 February 2012 including:

E-mail exchanges between Penningtons solicitors and the Respondent and between Penningtons and the Tribunal office during the period October 2011 to January 2012 and various documents from the Respondent which are included in the Respondent's list below.

- Revised schedule of costs dated 4 January 2012.

Respondent:

- Email dated 8 September 2011 to the Tribunal office;
- Letter dated 5 September 2011 sent by email to the Tribunal office;
- Letter dated 13 September 2011 sent by email to the Tribunal office “Adjournment Application response to Mr Hudson’s statement”;
- Further undated letter sent to the Tribunal office and received on 13 September 2011;
- Respondent's reply to the Memorandum of the adjournment of the hearing on 14 September 2011;
- Respondent's Income and Expenditure Form dated 4 June 2011;
- Respondent’s ‘Report on Employment Judge Burton of the Employment Tribunal – Leeds’;
- Writ petition to the High Court of Kerala dated January 2012, sent to the Tribunal on 24 January 2012;
- Kerala High Court case status information system report dated 21 January 2012;
- Respondent's e-mailed ‘Application to adjourn and complaint against the panel dated 24 January 2012.

Preliminary Matter at the hearing on 14 September 2011

(For Preliminary Matter before the resumed hearing on 7 February 2012, see later in this judgment.)

4. The Respondent had applied by email dated 8 September 2011 with a letter dated 5 September for an adjournment of the substantive hearing. The Application was opposed by the Applicant. The Chairman considered the Application on the papers and refused it. Upon being notified by email of the decision the Respondent replied and renewed his Application to adjourn. The Application was again opposed by the Applicant.
5. The Tribunal had before it the Second Witness Statement of Mr Hudson dated 9 September 2011 with exhibit GRFH2. It also had regard to the bundle of earlier correspondence in the matter and Outline Submissions submitted on behalf of the Applicant dated 9 September 2011 along with the Respondent’s Response to Mr Hudson’s statement set out in a letter dated 13 September 2011 and a copy of the Respondent’s further undated letter received by the Tribunal on 13 September by email.
6. The Rule 5 statement contained two allegations against the Respondent which were effectively that he was drunk and abusive to another Solicitor during a telephone

conversation, and that in the course of subsequent proceedings before an Employment Tribunal he admitted whilst giving evidence that a Witness Statement previously signed by him, and relied upon by him, was in fact untrue. Dishonesty was alleged against the Respondent in respect of the allegation relating to his conduct before the Employment Tribunal. Despite many requests to the Respondent to state which allegations he accepted or denied, the Respondent had failed to make such a statement in answer to such requests. He did however, on a pre-listing form indicate that he denied the allegations.

7. The Applications to adjourn were made very much at the last minute. The Respondent had previously agreed in April 2011 to a trial date of 14 and 15 September with 16 September being reserved if required. Throughout this matter the Respondent had stated that he had instructed Mr Steven Walsh of Counsel to represent him but it was quite clear that Counsel was never properly instructed by the Respondent, and Mr Walsh had confirmed that he had no instructions nor had he been put in funds by the Respondent.
8. The basis of the Application for an adjournment was that the Respondent was unable to leave India to travel to England for the hearing. The lack of permission to travel appeared to relate to previous proceedings in India against the Respondent which dated back to May 2010 and which the Respondent had failed to resolve. No information was given by the Respondent as to when he might be able to leave India and travel to England. It was clear that the Respondent had failed to engage with these proceedings over a substantial period of time. The allegations against the Respondent were serious. The Respondent was a Solicitor and Officer of the Court. He had a duty to deal with matters properly and expeditiously and should be aware of the procedure he was involved in. He had had more than enough time to deal with these proceedings and to resolve the position in India.
9. The Tribunal had been referred to the cases of R v Jones [2002] UKHL 5, R v Hayward [2001] EWCA Crim 168 and Tait v The Disciplinary Committee of the Royal College of Veterinary Surgeons [2003] UKPC 34. The leading judgment of Lord Bingham in R v Jones made it clear that the Court and this Tribunal had a complete discretion to deal with cases in the absence of the Defendant or Respondent. Such discretion must, quite rightly, be exercised with the utmost caution, and careful consideration should be given to the effect of such proceeding, and the fairness to the Respondent, and to the Applicant, should be taken into account. The nature and circumstances of the Respondent's absence were relevant as was the fact that by his actions the Respondent had effectively waived his right to representation.
10. In exercising discretion the Tribunal bore in mind the particular circumstances of the case and for the reasons previously set out was satisfied that the criteria for proceeding in the absence of the Respondent had been made out and dismissed the Application for an adjournment.
11. Having refused the Respondent's application to adjourn the substantive hearing the Tribunal exercised its power under Rule 16 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 to hear and determine the application notwithstanding that the Respondent had failed to attend in person or was not represented at the hearing as

the Tribunal was satisfied that notice of the hearing had been served on the Respondent in accordance with the Rules.

12. The Tribunal then went on to consider the admissibility of the statement of Mr Michael Reeves in these proceedings dated 19 August 2011. On behalf of the Applicant it was confirmed that a Civil Evidence Act Notice had not been served on the Respondent in respect of this statement because it had been the intention to call Mr Reeves to give evidence on behalf of the Applicant in these proceedings. Mr Reeves had been prevented from attending because of the serious illness of his partner. Later in the proceedings it was confirmed that this information had been provided to the witness Mr Yousaf by telephone from the senior partner of Messrs Chambers Solicitors and otherwise confirmed by Mr Yousaf. Mr Allen informed the Tribunal that Mr Reeves' statement in the Employment Tribunal was exhibited to the Rule 5 Statement and it was only this second short statement of two pages including confirmation that his earlier statement was true which had not been subject to a Civil Evidence Act Notice. It had been served on or about 19 August. Mr Allen also submitted that as the Respondent was not present even if Mr Reeves had attended, his evidence would not have been open to challenge and he had signed a Statement of Truth in respect of it. The Tribunal having carefully considered the matter determined that it would admit Mr Reeves' statement into evidence and would give such consideration to it as the Tribunal thought fit in the circumstances.

Factual Background

13. The Respondent was born in 1949. He was admitted to the Roll in May 1994. In his statement to the Employment Tribunal he described his professional background as having been a member of the Bar for eleven years from 1982. In order to improve his financial situation he had then decided to become a solicitor. He recorded that he had set up as a sole practitioner in London in 1994 and developed a busy practice with some very large civil fraud Chancery High Court cases. After a visit to India in 1999 his statement set out that he had received treatment for alcoholism. He did not practice in 2000 to 2004 as he was living in India and was unemployed until 2007.
14. Between 1 September 2007 and 22 May 2009, the Respondent was employed as an assistant solicitor by Chambers Solicitors of Bradford.
15. On 22 May 2009, the Respondent's employment with Chambers Solicitors was terminated on the grounds of gross misconduct in that he had in the afternoon of that day attended his employers' offices while drunk and had proceeded to be abusive to Mr Mohammed Ayub, a partner of Chambers Solicitors and on the telephone to Ms Nazia Shukat, an assistant solicitor who was at that time employed by R Solicitors of Bradford.
16. The Respondent exercised his right of Appeal which was heard on 11 June 2009.
17. The Respondent's Appeal was unsuccessful and on 22 July 2009 the Respondent lodged a claim (ET 1) with the Employment Tribunals Service in Leeds.

18. On 22 February 2010, the Respondent's claim was withdrawn and thereupon dismissed. The Respondent was additionally ordered to pay a contribution towards Chambers Solicitors' costs in the sum of £7,750.00.
19. The Respondent's Practising Certificate had expired on 4 March 2010 and had not been renewed.
20. It was not disputed between the parties in the Employment Tribunal proceedings that on 22 May 2009 between about 12.45 and 3.00pm the Respondent and Mr Reeves had visited a local pub where the Respondent drank four pints of beer and ate some snacks before returning to the office when the telephone call to Ms Shaukat was alleged to have taken place.
21. At the Appeal hearing on 11 June 2009, the Respondent denied having telephoned Ms Shaukat on 22 May 2009.
22. In his ET 1, the Respondent again denied having telephoned Ms Shaukat on 22 May 2009. He stated:-

“While the Claimant was at his desk collecting his work Mr Ayub approached him and challenged him about who he had been speaking to on the telephone. The Claimant was baffled by the accusation, as he had not been speaking to anyone and therefore did not understand what telephone conversation Mr Ayub was referring to. The Claimant explained to Mr Ayub that he had not been speaking with anyone and asked Mr Ayub what he meant.”...

He also stated on the ET 1 that in respect of a letter of dismissal dated 2 June 2009 “each and every allegation made is untrue...” He also stated that during the appeal hearing at Chambers he “... refuted both allegations against him.”
23. In a letter written on the Respondent's behalf by M Solicitors to Chambers Solicitors on 18 November 2009, M stated “it does remain in dispute that our client had a telephone conversation with Nazia Shaukat of R Solicitors on the date and time shown in the BT itemised bill you have disclosed”.
24. In a witness statement prepared by the Respondent he:
 - (i) admitted having drunk four pints of beer between about 12.45 and 3.00pm;
 - (ii) denied having spoken to anyone on the telephone following his return to Chambers Solicitors' offices at about 3.00pm.
25. At the hearing before the Leeds Employment Tribunal which concluded on 22 February 2010, the Respondent was requested by Employment Judge Burton to confirm on oath whether the contents of his witness statement were true.
26. The Respondent confirmed on oath before Employment Judge Burton that the contents of his witness statement was, save for one minor correction which was not material to these proceedings, true.

27. The Respondent, who represented himself in the proceedings before the Employment Tribunal, cross-examined Ms Shaukat on the basis that there had been a telephone conversation with her on 22 May 2009 but that it had not been abusive.
28. When the Respondent was himself cross-examined by Counsel for Chambers Solicitors, he described having had a telephone conversation with Ms Shaukat which had lasted for three or four minutes.
29. During the course of the Respondent's cross-examination by Counsel for Chambers Solicitors, Employment Judge Burton reminded the Respondent of the oath he had taken to the effect that the contents of his witness statement were true and put it to the Respondent that they were not in fact true.
30. The Respondent then admitted to Employment Judge Burton on oath that the contents of his witness statement were not true and that when he had said they were true he had lied to the Tribunal.
31. The Respondent then requested to withdraw his claim on the basis that he had "effectively lied in the face of this Court" and thereby placed himself in a very difficult position.
32. The written reasons given by Employment Judge Burton on 19 March 2010 included the following:
 - "2. The Tribunal heard the Respondents evidence over the course of the first two days. The Claimant was then called to give evidence. With the agreement of the parties the witness statements had all been pre read by the Tribunal and, in the usual way, at the commencement of his evidence Mr Verghese confirmed that his witness statement was true, subject to one minor correction that he made.
 3. During the course of being cross-examined by Mr G [Chambers' Counsel], Mr Verghese had to accept that in relation to a key factual issue his witness statement was simply untrue. Mr Verghese is a Solicitor and the significance of having lied to the Tribunal was not lost on him. The issue of credibility was key to this case, the Respondent's version of events being diametrically opposed to the version of events put forward by the Claimant. If the Tribunal had been asked to determine the facts of the case we would have had to find that either the five witnesses called by the Respondents (who were also all Solicitors) were telling deliberate lies or that it was the Claimant's evidence that was untrue.
 4. Having accepted that he had told lies to the Tribunal, the Claimant was asked whether he wanted to take time to consider his position. He indicated that he wanted to withdraw his claims."...
33. On 22 April 2010 Chambers Solicitors complained to the Applicant about the Respondent's conduct.

34. On 22 June 2010, Gordons LLP on behalf of the Applicant wrote to the Respondent to request his response by 6 July 2010 to allegations about his behaviour on 22 May 2009 and in the Employment Tribunal.
35. The Respondent did not reply and on 7 July 2010 Gordons LLP wrote again to the Respondent requesting a reply by 15 July 2010.
36. The Respondent failed to respond by 15 July 2010 or at all and on 5 August 2010 the Applicant wrote to the Respondent to advise him that his conduct was to be referred for a formal decision. The Respondent was, in the normal way, invited to send the Applicant his comments on the case note enclosed with the letter. The Respondent did not provide any comments.
37. On 15 September 2010, an Adjudicator referred the Respondent's conduct to the Solicitors Disciplinary Tribunal.

Witnesses

Ms Nazia Shaukat

38. The witness confirmed the truth of her statement in these proceedings and of her two statements in the Employment Appeal proceedings. She also stated that the Respondent had not seemed confused at all during the Employment Tribunal proceedings.

Mr Alias Yousaf

39. The witness confirmed the truth of his statement in these proceedings and in the Employment Tribunal proceedings. In respect of a typewritten summary which he had prepared for West Yorkshire Police describing the Respondent's conduct during the Employment Tribunal he could not remember the exact date when it had been prepared. It might have been a couple of months after the Tribunal hearing. He had however made handwritten notes at the time, including of exchanges between himself and the Respondent and the witnesses and the Respondent which were the basis for the summary, along with his memory. The witness also confirmed that he was aware that the Respondent had issues regarding his consumption of alcohol before the alleged telephoned incident occurred, but there had been no earlier incidents relating to alcohol in the office. This witness also confirmed that the Respondent had not seemed confused during his conduct of the Employment Tribunal proceedings on his own behalf.

Findings of Fact and Law

40. **Allegation 1.1. Contrary to Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC"), he acted without integrity and behaved in a way that was likely to diminish the trust the public placed in him or the legal profession, by confirming under Oath during the course of proceedings in the Employment Tribunals heard at Leeds that the contents of a witness statement signed by and relied on by him were true and then subsequently admitting during the course of the same proceedings that they were untrue;**

- 40.1 On behalf of the Applicant Mr Allen submitted that there had never been any dispute that the Respondent went to the pub with a colleague Mr Reeves at lunchtime on 22 May 2009 and in his own statement in the Employment Tribunal proceedings the Respondent had admitted drinking four pints of beer over a few hours and it was Mr Reeves evidence in the Employment Tribunal that he had drunk considerably more. His statement included that the Respondent “drank several large whiskies...” In Mr Yousaf’s statement in the Employment Tribunal proceedings he had given an account of the Respondent’s behaviour on his return to the office including:

“On Friday 22 May 2009, it was late afternoon and I recall being sat at my desk when the Claimant returned with Michael Reeves – I thought it a bit odd as the Claimant appeared a little unsteady on his feet. A few minutes later I wandered into the Crown Court room as I could hear the Claimant speaking in a raised voice – on entering I saw that the Claimant was on the telephone at his desk, his tone of voice was nasty and aggressive.”

- 40.2 Mr Yousaf had described that during the telephone call the Respondent accused Ms Shaukat of conspiring against him on a particular criminal case. In Ms Shaukat’s first statement in these proceedings she had said that the Respondent had telephoned her and said that she had conspired with another barrister to have him sacked on the particular criminal case. Her statement included that the call had left her feeling very upset. Her employers R Solicitors had complained to the senior partner of Chambers in a letter that same day. Mr Allen submitted that Ms Shaukat’s evidence throughout had been consistent in respect of her recollection of the contents of the telephone call. He drew the Tribunal’s attention to the fact that initially in the Employment Tribunal proceedings the Respondent’s position was that no telephone call ever took place between himself and Ms Shaukat and pointed to the contents of form ET 1 and other supporting evidence, including the Respondent’s own handwritten note dated 24 May 2009 two days after the alleged telephone call in which he had stated in respect of Mr Ayub:

“He started to accuse me of speaking to someone. I was not - so I asked what he was talking about - started using foul language... don’t know what you are talking about”.

There was also the letter from the Respondent’s solicitors in the Employment Tribunal proceedings dated 18 November 2009 and while this was slightly hedged in respect of the telephone call referring to it as “on the date and time shown” there was no admission that the telephone call had taken place and the Respondent followed this through in his witness statement when he said:

“... I was completely confused by his [Mr Ayub] accusation given that I had not been speaking to anybody, indeed I had only just returned to the office after lunch, and I had no idea what telephone conversation he was referring to...”

... I explained to Mr Ayub that I had not been speaking with anybody and asked him what he was referring to...”

- 40.3 Mr Allen informed the Tribunal of the process in the Employment Tribunal. The witnesses for Chambers Solicitors were called first and the Respondent then cross-examined Ms Shaukat and Mr Yousaf on the basis that the telephone call did take place on 22 May 2009 but was not abusive. This was the first anyone had heard of that new line of defence. What had happened was set out in Mr Yousaf's account of the hearing set out in his notes prepared for the West Yorkshire Police (but not proceeded with) and the two witness statements of Ms Shaukat. Mr Reeves' witness statement in these proceedings made similar points about the inconsistent case which the Respondent put to Chambers' witnesses.
- 40.4 Mr Allen also referred the Tribunal to the Respondent having included in his witness statement in the Employment Tribunal that Mr Yousaf had driven him home from Chambers' offices after the incident took place. This was related to another aspect of the Respondent's evidence to the Employment Tribunal which had changed during the course of the proceedings. Both Mr Yousaf and Mr Reeves' evidence supported by Mr Yousaf's note for the police, set out that the Respondent had been dropped off by Mr Yousaf at his home. During the Employment Tribunal proceedings the Respondent had cross examined on the basis that Mr Yousaf had dropped him off at a doctor's surgery. Mr Reeves' statement in these proceedings included:

“When challenged by counsel for Chambers Solicitors about why he had not corrected his statement when given the opportunity to do so the respondent stated that he had not wanted to create a bad impression with the tribunal.....”

Mr Allen submitted that there was an inference to be drawn from the Respondent's conduct that he was aware when he swore his witness statement for the Employment Tribunal that it was untrue and when it became apparent that this was the case he did not seek to correct it because he did not wish to create a bad impression with the Employment Tribunal. He then accepted that it was untrue and that he had lied to the Tribunal. Mr Yousaf's notes of the proceedings detailed the following exchanges between the Judge and the Respondent:

“Burton	So when you said it was true, you lied?
Verghese	Yes...
Burton	So you lied on oath?
Verghese	Yes”

Mr Allen drew the Tribunal's attention to the fact that a little later in the note there was an exchange where the Judge pointed out to the Respondent the implications of continuing with his case in the light of the contradictions in his evidence and the possible findings which might be made against him. The exchanges which followed included:

“Verghese Well I am not prepared to lie to the Court...I do not want a finding to be made that I have lied to the Court”

and

- “Verghese: I do not wish to take this any further, I have made my position very clear, I’d rather it be dismissed than ask me to lie about something...”
- Burton: Nobody is asking you to lie.
- Verghese: I have lied effectively in the face of this Court and I have put myself in a very difficult situation...
- Burton: So you want to withdraw your Claim?
- Verghese: Yes.”

40.5 Mr Yousaf’s notes were not the only evidence. There were also the written reasons of the Tribunal. It was clear from its certified written reasons [quoted earlier in this judgment] that the Employment Tribunal thought that the Respondent’s evidence was untrue and the Respondent himself had accepted that his evidence was a lie as opposed to just a mistake or untrue.

40.6 Mr Allen submitted that this first allegation was the more serious and that it constituted dishonesty. The Respondent had confirmed on oath that his witness statement was true after he had contradicted it in two respects in cross examining witnesses. When being cross examined himself he admitted that his witness statement was untrue in his denial of the telephone call having been made and he reverted to maintaining that he had been dropped off at the doctor’s surgery rather than at home, which contradicted his own handwritten notes and his witness statement. In respect of the two limbs of the test of dishonesty set out in the case of Bryant v Law Society [2007] EWHC 3043 (Admin) and Twinsectra Ltd v Yardley and Others [2002] UKHL 12, Mr Allen submitted that the Respondent had been dishonest by the ordinary standards of reasonable and honest people. As to the second limb of the test as to whether the Respondent was aware that by the standards of reasonable and honest people he was acting dishonestly, even allowing for his career break he had been both a barrister and solicitor and was well aware of his professional obligations to be truthful in legal proceedings. In his statement for the Employment Tribunal he had said in respect of another matter:

“I was particularly concerned as I am under a professional obligation not to mislead the court...”

Elsewhere in the statement he had made another reference to the serious consequences if a Judge discovered that someone had lied in Court. This was in respect of the case about which he had alleged Ms Shaukat had conspired against him. He had said that if he was instructed to mislead the Court he would have to withdraw from the case. It could not therefore be said that he was ignorant of what was required. The telephone call and his denial of its existence were at the core of his unfair dismissal claim. It was not conceivable that he made a mistake about whether it had taken place. There was no basis of suggesting that there was any issue of memory regarding it. The Employment Tribunal took place within a year of the incident and had been ongoing from an earlier date. There were also the Respondent’s own handwritten notes dated two days after the incident took place. It was submitted that the Respondent had

knowingly put up a false case against Chambers. He had been dishonest in doing so and the Respondent had admitted in the Employment Tribunal proceedings that he had lied and his explanation was that he had not wished to create a bad impression with the Tribunal. It was submitted that on the evidence both limbs of the test for dishonesty were satisfied.

- 40.7 The Tribunal had carefully considered the evidence including the Rule 5 Statement and the various witness statements and had the advantage of hearing and seeing two witnesses give live evidence. The Tribunal also had regard to the Statement of Michael Reeves which made similar points to other witnesses on the inconsistent case put forward by the Respondent at the Employment Tribunal. Having regard to the evidence which the Tribunal had heard and seen in the documents it had no difficulty in coming to the conclusion that allegation 1.1 as set out in the Rule 5 Statement was made out. It was quite clear that this Respondent purposefully and intentionally made a false statement and was forced to admit it during his evidence to the Leeds Employment Tribunal. This Tribunal had seen clear evidence from a number of sources as to what had taken place during the Employment Tribunal proceedings and the admission the Respondent made that he had lied. It was a very serious matter for a solicitor and officer of the court to prepare a false statement and to lie. He had acted without integrity and in a way that was likely to diminish the trust the public placed in him or the legal profession. The Tribunal was satisfied that the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people. It was also clear from his admissions to the Employment Tribunal which were both recorded in its reasons and supported by witness evidence that he was aware that he was acting dishonestly.
- 40.8 The Tribunal found allegation 1.1 to have been proved with dishonesty to the standard set out in the cases of Bryant and Twinsectra.
41. **Allegation 1.2. Contrary to Rule 1.06 of the SCC, while attending his employers' offices under the influence of alcohol, he was verbally aggressive during a telephone conversation with another solicitor.**
- 41.1 It was submitted on behalf of the Applicant that this allegation was parasitic on the first and that the telephone conversation had taken place. It was submitted that the witnesses had given truthful evidence and that the Respondent had not initially acknowledged that the phone call had taken place because he recognised that if he did so it would generally lead to evidence of its abusive nature being brought. Ms Shaukat had described the telephone conversation in her witness statements and Mr Yousaf who was in the office at the time supported her evidence. He had heard half the conversation. There was evidence of the Respondent having drunk alcohol while out of the office before the call took place. Mr Yousaf's witness statement supported that he was under the influence of alcohol on his return and there was evidence both from the Respondent and on behalf of the Applicant that he had drunk a considerable amount at lunch time. It might be that he would say he was not seriously affected by that much alcohol but Mr Yousaf's evidence recorded that he was unsteady on his feet and made it clear that the telephone call took place under the influence of alcohol. There was also evidence from Mr Yousaf and Ms Shaukat that his conduct during the call was both unprofessional and abusive.

- 41.2 The Tribunal had heard cogent evidence that the telephone call in question had taken place. It found as a fact that the Respondent was aggressive during the telephone conversation having consumed at least four pints of beer before making the call. The Tribunal was satisfied as to the facts beyond reasonable doubt to the necessary standard of proof set out in Bryant and Twinsectra. The Respondent's behaviour during the telephone conversation was just as much to be deprecated as his conduct before the Employment Tribunal. It was likely to diminish the trust that the public placed in him and the profession. The Tribunal found this allegation to have been proven.

Previous Disciplinary Matters

42. None.

Decision of the Tribunal to Adjourn at the conclusion of the hearing on 14 September 2011

43. Having regard to the seriousness of the findings including a finding of dishonesty against the Respondent the Tribunal decided to adjourn the matter part heard to give the Respondent an opportunity to submit mitigation and to provide the Tribunal with evidence of his current financial means before the Tribunal determined sanction and costs. The Tribunal made the following directions:
- 43.1 The matter be adjourned part heard for a period of 28 days from the date of this hearing so that the Respondent might submit mitigation and evidence of his current financial means to the Tribunal before the issues of sanction and costs were determined.
- 43.2 At the expiry of the period of 28 days the matter should be set down for the substantive hearing to be resumed whether or not the Respondent had chosen to avail himself of the opportunity to make the submissions set out above.

Preliminary matter before the resumed hearing on 7 February 2012

- 44.1 On 24 January 2012 the Respondent sent an e-mail to the Tribunal entitled "Application to adjourn and complaint". By letter dated 24 January 2012 Penningtons confirmed on behalf of the Applicant that it did not object to the adjournment application. In the e-mailed letter the Respondent applied to adjourn the hearing scheduled for 7 February 2012 as he had not yet received permission to leave India. He said that he had exhausted all avenues available at the [local] Magistrates' Court and his advocate had lodged a petition at the High Court in Kerala, which he submitted for the Tribunal. The Respondent objected to this division of the Tribunal making any decisions in respect of him and/or further proceedings in the matter in his absence. He asked for a new panel to be convened. He also made detailed representations concerning the facts of the case.
- 44.2 The Chairman considered the Respondent's application for an adjournment and refused it. In subsequent correspondence between the Respondent and the Tribunal it became apparent that a reply sent by the Respondent to the memorandum of the adjournment of the hearing on 14 September 2011 and an income and expenditure

form which he had also submitted in October 2011 had not been brought to the attention of the Chairman. The Chairman was then asked to reconsider the Respondent's application for an adjournment and he did so. In his reply the Respondent gave an account of the history of the proceedings from his viewpoint and maintained his denial of the allegations which had been found proved against him. He maintained that the dates when he would be entitled to leave India were subject to a decision by the Commissioner of Police. It was not within his ability to resolve the matter. He stated that 'what I see in the Tribunal's view is an exercise of an unfair and misinformed application discretion...' He concluded his reply by providing information about his financial position.

- 44.3 The Chairman determined as follows, noting that in his application for an adjournment the Respondent had criticised the evidence of Mr Reeves and Counsel's comments to the Tribunal, which matters were not relevant to the forthcoming hearing on 7 February 2012. The Chairman continued "the Respondent failed to engage with these proceedings over a substantial period of time. In spite of many requests for the Respondent to state clearly which allegations he accepts or denies, and the basis of such denial, he failed to reply to such requests. Having regard to the evidence given to the Tribunal and to the admissions made by the Respondent to the Employment Tribunal, it is difficult to see in any event what possible defence the Respondent could have to the allegations. The request for a further adjournment is refused. The further statement of the Respondent sent on 10 October 2011 and information as to his current means will be considered by the Tribunal at the 7 February 2012 hearing."
- 44.4 The Tribunal noted the Respondent's view that he wished the matter to be dealt with by a new Tribunal. It did not consider that (following the test set out in the case of *Porter v McGill* [2002] 1 All ER 465) the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased. The Respondent was clearly disappointed by the Tribunal finding the allegations against him to be proved but it did not consider that his submissions satisfied the test in *Porter v Magill*. The Tribunal noted the Respondent's continued absence and his submissions in respect of that and decided that it would not be appropriate to adjourn and continued the hearing to its conclusion.

Mitigation

45. The Respondent in his reply to the memorandum of the adjournment of the hearing on 14 September included "... I never failed to engage in the proceedings, and throughout, it was I who was in touch with the applicant solicitor by telephone and at all times my position on the two allegations had not changed..." He gave an account of the history of the matter which he submitted kept him in India. He set out the attempts which he said he had made to resolve it. It was his position that he could not complete instructions to counsel without having a conference to finalise his instructions on the various documents including documents which were held in the UK. He submitted that he had facts to disprove the allegations against him and he was not prepared to detail his case without the advice of counsel and the benefit of a conference. He made other submissions which went to the facts of the case. As to his finances, the Respondent submitted details of various bank accounts and informed the Tribunal that he was on state pension benefits with no other known assets.

Sanction

46. The Tribunal had carefully considered the representations made by the Respondent since the hearing on 14 September 2011. It has made a finding of dishonesty against the Respondent which it considered to have been plain on the evidence and there were no exceptional circumstances. Accordingly the Tribunal considered that its only course was to strike the Respondent from the Roll of solicitors.

Costs

47. On behalf of the Applicant, Mr Allen advised the Tribunal that a revised costs schedule had been provided to the Respondent in the amount of £16,732.26 under cover of a letter dated 4 January 2012, explaining the principal differences between it and an earlier schedule served on 13 September 2011. The differences consisted mainly in a significantly reduced hearing time but also reflected the cost of obtaining a transcript for the earlier hearing. Overall costs had been reduced from something over £20,000. Mr Allen was instructed to apply for costs and asked that the Tribunal carry out a summary assessment. He noted that the Respondent was not a man of great means but nevertheless the Applicant did seek an enforceable order against him. The Tribunal considered the schedule of costs to be reasonable and assessed costs in the amount sought. Having considered the information provided by the Respondent in respect of his financial position the Tribunal ordered that costs should be awarded against him in the amount of £16,732.26.

Order of the Tribunal

48. The Tribunal Ordered that the Respondent, Abraham Verghese, solicitor be **STRUCK OFF** the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,732.26.

Dated this 9th day of March 2012
On behalf of the Tribunal

D J Leverton
Chairman