SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10865-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GAURI ADVANI Respondent

Before:

Mr D. Glass (in the chair)
Mr J. Astle
Mr S. Marquez

Date of Hearing: 3rd April 2012

Appearances

Mark Cunningham QC of Maitland Chambers, 7 Stone Buildings, Lincoln's Inn, London WC2A 3SZ instructed by Peter Steel, solicitor of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent appeared in person and was not represented but was assisted by Mr Arun Shori as a McKenzie friend.

JUDGMENT

Allegations

1. The allegations against the Respondent were that she acted in a manner unbefitting of a solicitor in that:

1.1 She was involved, during 2002, in brokering a transaction whereby Mr Romy Nayyar ("Mr Nayyar") and Mr Paramjit Singh Kang ("Mr Kang") made a payment of £400,000 as an intended bribe, so as to procure their appointment as a Global Sales Agent ("GSA") on the basis of that payment rather than on the merits of their application for such an appointment. The Respondent's brokering of the transaction involved introducing the GSA opportunity to Mr Nayyar and Mr Kang, actively seeking to persuade them to go ahead with it, assisting them in doing so and directing them as to what to do;

1.2 In brokering the transaction, the Respondent acted dishonestly; and

1.3 On or about 12 September 2002, she wrongly assured Mr Nayyar and Mr Kang that as she was a UK lawyer she was their guarantee in respect of the return of the £400,000 paid for the GSA appointment. This assurance intended to and did reassure Mr Nayyar and Mr Kang and was relied upon by them when they made the £400,000 payment.

Documents

2. The Tribunal reviewed all of the documents provided by the Applicant and the Respondent, which included:

Applicant:

- Application dated 21 October 2011;
- Rule 5 Statement and exhibit bundle "PS1" dated 21 October 2011;
- Supplementary Rule 7 Statement and exhibit bundle "PS2" dated 22 March 2012;
- Skeleton Argument dated 2 April 2012;
- Judgment of Mr Justice Hamblen dated 16 December 2009 in Romy Nayyar and others v Denton Wilde Sapte (1) and Gauri Advani (2) [2009] EWHC 3218(QB);
- Judgment of Sir Raymond Jack dated 16 March 2012 in Travellers Insurance Company Limited and another v Gauri Advani [2012] EWHC 623 (QB);
- Authorities;
- Schedule of Costs dated 29 March 2012.

Respondent:

- First Statement of the Respondent dated 20 October 2011;
- Second Statement of the Respondent dated 27 January 2012;
- Third Statement of the Respondent dated 30 March 2012;
- Statement of Mr Ashkok Yadav dated 30 March 2012;

- Witness Statements – various;
- Letter from the Indian Ministry of Home Affairs, Deputy Secretary dated 1 February 2012;
- Letter from the Office of the Commissioner of Police, New Delhi dated 20 March 2012.

Preliminary Matter

3. The Respondent confirmed that she would be representing herself as she could not afford representation and said that she had never appeared before the Tribunal before. She told the Tribunal that she had her partner with her, Mr Arun Shori and that she wanted him to assist her with her representation.

4. The Tribunal acknowledged this and that Mr Shori would in those circumstances be the Respondent's "McKenzie friend"; the Tribunal explained this to the Respondent and she confirmed that her wish was for Mr Shori to be her McKenzie friend.

5. The Tribunal noted this and confirmed that Mr Shori could assist the Respondent in his capacity as her McKenzie friend.

Factual Background

6. The Respondent was admitted as a solicitor on 3 August 1998, having previously qualified as an Indian advocate. The Respondent no longer held a practising certificate but remained on the Roll of Solicitors.

7. At the material times the Respondent was employed as a solicitor practising in the India Group of the Commercial Litigation Department of Denton Wilde Sapte ("DWS").

8. Mr Nayyar and Mr Kang were travel agents. They operated at the relevant times through companies called Holiday Mood Limited ("HML") and Moresand Limited ("ML"). HML and Mr Nayyar's former employers Holiday Express ("HE") had done some business with DWS and through this connection Mr Nayyar had met the Respondent. The Respondent's role at DWS involved marketing and development and the introduction of parties in the commercial field with a view to generating fees for DWS and increasing its profile and presence in India.

9. In the summer of 2002 the Respondent contacted Mr Nayyar to ask him whether he was interested in acquiring the Air India UK and Ireland GSA. There then followed a series of meetings between the Respondent and Mr Nayyar at which the GSA was discussed. The first meeting, in or about early July 2002, took place at the Marriott Hotel in Grosvenor Square in London. The Respondent told Mr Nayyar that the GSA appointment would be for four and a half years with renegotiation commencing after four years and that there would be costs in securing the GSA, including legal fees, a commission payment and travel costs.

10. There was a second meeting later in July 2002 at the Marriott Hotel. The Respondent provided Mr Nayyar with details of the anticipated cost of obtaining the GSA.

Payment was to be made in Rupees and a deposit was required. The deposit was the Rupee equivalent of £400,000. The balance was to be the Rupee equivalent of £2,000,000 which made the entire cost of the transaction £2,400,000. The Respondent said that the deposit of £400,000 would be a consultation fee and that her solicitor's fees of £250,000 were included in the balance of the total figure.

11. Mr Nayyar and the Respondent met for a third time in late July 2002 at the Marriott Hotel. At that point, Mr Nayyar confirmed that he was interested in pursuing the appointment as the GSA. The Respondent told Mr Nayyar that he would have to incorporate a new company in whose name the GSA would be vested. Mr Nayyar felt that he could not take on the project alone and he made contact with Mr Kang in early August 2002 to be his partner in the venture.

12. Mr Nayyar met the Respondent two further times in August 2002, the second meeting having taken place on or about 28 August 2002 at the Marriott Hotel. Amongst other things, the Respondent and Mr Nayyar discussed the payment structure for the GSA project. The Respondent said that she would be able to negotiate the price down to £2,000,000 as opposed to £2,400,000. The deposit would remain the same at £400,000 and the balance would be payable in two instalments, the first payable 30 days after the "appointment of GSA letter" had been issued and the second instalment payable 60 days thereafter. The Respondent told Mr Nayyar there was a deadline for putting forward a candidate and that she had been discussing the GSA with other companies which might be interested.

13. The Respondent had also approached a Mr Raj Kumar ("Mr Kumar"), Managing Director of another travel agency business called Acetrip Limited ("AL"). The Respondent had met Mr Kumar on three occasions in August 2002 to discuss the GSA opportunity.

14. The Respondent had told Mr Kumar that through her contacts in India she would be able to offer the opportunity of an Air India GSA being awarded to a UK travel agency. She explained that this would come at a cost and mentioned a figure of £1,700,000. She told Mr Kumar that there would be an upfront fee of 10% to 20% which would be paid in India. She provided Mr Kumar with Mr Ashkok Yadav's ("Mr Yadav") contact details. He was a former Tourism Minister for the State of Utter Pradesh. She suggested that he go to India to meet Mr Yadav and he should take the upfront payment with him so that it could be paid in India.

15. Mr Kumar went to India on 5 September 2002, accompanied by a Mr Anwer Saleem ("Mr Saleem") who had introduced him to the Respondent. They met with Mr Yadav and he asked for the upfront payment of the equivalent of £340,000 in Rupees. Mr Kumar said that he was willing to pay the money into an escrow account pending the appointment of his company as GSA. This was unacceptable to Mr Yadav and the transaction did not proceed.

16. Mr Nayyar's discussions with the Respondent continued. Together with Mr Kang, Mr Nayyar formed a new company, Maharaja Travel ("MT") as the vehicle for the GSA. The Respondent drafted an application letter for the GSA addressed to the Commercial Director of the (Indian) Ministry of Civil Aviation which she said had to be backdated to 8 August 2002 so that it fell within the tendering period.

17. On 12 September 2002 Mr Nayyar and Mr Kang met the Respondent at the Hilton Metropole Hotel in London. The Respondent told Mr Nayyar and Mr Kang that if the GSA appointment letter was not issued within 72 hours of the deposit being paid then the money would be returned. In response to questions about guarantees, the Respondent told Mr Nayyar and Mr Kang that as a UK lawyer, she was their guarantee. She also told them that the transaction was small compared to other DWS deals she had done and that it was a once in a lifetime opportunity. The Respondent revealed that her contact in India was a former Minister and a close acquaintance of the Aviation Minister. She called Mr Yadav on her mobile telephone during the meeting and Mr Nayyar spoke to him. Mr Nayyar and Mr Kang confirmed that they wanted to go ahead with the application for the GSA. The Respondent told them that as the transaction was quite time sensitive they would need to fly out to India to meet Mr Yadav.

18. The Respondent flew to India on 13 September 2002 and Mr Nayyar and Mr Kang travelled to India on 15 September 2002 and met the Respondent the following day at the Oberoi Hotel New Delhi. The three of them then went to meet with Mr Yadav at his residence.

19. At the meeting at Mr Yadav's house, the Respondent and Mr Yadav repeated that there would be a "three day guarantee" whereby if a letter of appointment for the GSA was not issued within three days of the deposit being paid, the deposit would be refunded. They stressed that the £400,000 deposit would have to be paid before any further action could be taken. As to payment of the balance, it was said that the balance could be paid in two instalments within two months of the receipt of the GSA letter of appointment.

20. On 20 September 2002, the Respondent contacted Mr Nayyar to ask how he and Mr Kang planned to pay the deposit and whether they had any funds they could release immediately as a gesture of good faith. Mr Nayyar told the Respondent that the maximum he could get from the bank was approximately 900,000 Rupees (£13,000). The Respondent told him that that was an adequate amount. An assistant of Mr Yadav's called "Daniel" came round to Mr Nayyar's hotel to collect the money. He accompanied Mr Nayyar and Mr Kang to the HSBC bank where Mr Kang withdrew 900,000 Rupees from an account he had set up. He gave that to Daniel without any receipt being sought or given.

21. Mr Nayyar and Mr Kang returned to the UK on 26 September 2002. Shortly thereafter the Respondent contacted Mr Nayyar to enquire about the payment of the balance of the deposit. She told Mr Nayyar that all the necessary checking and vetting had been performed and that they were now in a position to award MT the GSA. The Respondent informed Mr Nayyar that the balance of the deposit was to be paid to a company based in Hong Kong called Avacorp. The balance of the deposit was duly paid to the Avacorp account, £100,000 on 26 September 2002 and £270,259 on 2 October 2002. In total (including the earlier cash payment) Mr Nayyar and Mr Kang had paid £383,259.

22. The Respondent confirmed to Mr Nayyar and Mr Kang in about the first week of October 2002 that the deposit had been received and said that they should travel to

India for completion although the Respondent said that she would not be able to accompany them. Mr Nayyar and Mr Kang travelled again to India on 6 October 2002 and met Mr Yadav on 7 October 2002. Mr Yadav showed them a letter of appointment which stated that MT was the new GSA for Air India for the UK and Ireland. Mr Yadav told Mr Nayyar and Mr Kang that they were not allowed to take the letter away as it had to go through official channels first. The 15 November 2002 was mentioned as the likely date when the GSA contract would be issued.

23. Mr Nayyar and Mr Kang did not subsequently receive any letter of appointment. By January 2003 they were losing patience and decided to tell the Respondent to secure return of the monies. The Respondent met with Mr Nayyar and Mr Kang on two occasions in London in January 2003 to reassure them that the completion was close and persuaded them to wait a few more weeks. The Respondent sent Mr Nayyar a list of documents which would be required for the completion of the deal which they duly assembled.

24. On 20 March 2003 Mr Nayyar and Mr Kang returned to India for the third time with the requested documentation. They met the Respondent and handed the documents to her. The Respondent advised them to wait in India until the appointment (of the GSA) had been made public. They stayed for three weeks but no announcement was made and they eventually returned to the UK without a signed agreement.

25. Having decided they wanted no further part in the transaction, Mr Nayyar and Mr Kang communicated their displeasure to the Respondent who thereafter sent a series of communications to Mr Yadav designed to secure the return of the deposit monies. There was no constructive response to the letters or emails and no letter of appointment was ever provided. Sometime afterwards Mr Nayyar and Mr Kang arranged to meet a colleague of the Respondent's at DWS called Mr Daleep Kumar Singh ("Mr Singh"). They described the events as outlined and asked for his help. Mr Singh advised them to seek independent legal advice.

26. In due course Mr Nayyar and Mr Kang and their respective companies brought an action against the Respondent and her former employers DWS for damages for negligence and/or breach of contract and/or breach of fiduciary duty in relation to the payments made by Mr Nayyar and Mr Kang. The case was heard between 17 November and 1 December 2009 and resulted in a judgment ("the Hamblen Judgment") dated 16 December 2009. The claim failed by virtue of the defence of "ex turpi causa non oritur actio". The Judge found the payment to Mr Yadav was a "...bribe in civil law terms".

27. The Applicant wrote to the Respondent and sought her explanation of the matters raised by the Hamblen Judgment on 23 February 2010.

28. The Respondent replied on 14 April 2010 and denied that she had met with Mr Nayyar and Mr Kang between July and September 2002. The Respondent denied brokering the application for the GSA and accepted only that she had written some correspondence at Mr Nayyar's behest in May and June 2003 in an attempt to get Mr Yadav to contact her or Mr Nayyar. The Respondent denied having any part in the discussion which led to the payment of the deposit by Mr Nayyar and Mr Kang.

29. In relation to Mr Kumar, the Respondent denied doing any more than having mentioned to his business associate Mr Saleem that there was an opportunity for a UK travel agency to be awarded the GSA for Air India.

30. On 16 March 2012, Sir Raymond Jack, sitting as a High Court Judge delivered the judgment in Travellers' Insurance Company Limited ("Travellers") (1) and Denton Wilde Sapte (2) v Gauri Advani [2012] EWHC 623 (QB) ("the Jack Judgment"). As a result of the Hamblen Judgment, this action had been brought by Travellers and DWS.

31. Travellers had funded the Respondent's defence in the original action in the sum of £501,398 under the terms of an insurance policy. Travellers alleged that the Respondent had acted dishonestly in the dealings with Mr Nayyar, Mr Kang and Mr Yadav which were the subject of the original action. In consequence Travellers claimed that under the terms of the insurance policy, it was entitled to be reimbursed.

32. DWS claimed £87,075 in the Travellers action which represented the amount of its costs which it had been unable to recover from Mr Nayyar and Mr Kang, the claimants in the original action, on the basis that the Respondent had acted outside the course of her employment. The Judge found in favour of the Claimants.

33. In her response to the Applicant dated 14 April 2010, the Respondent denied any part in brokering the application for the GSA which had been sought by Mr Nayyar and Mr Kang. The Respondent denied having any part in the payment to Mr Yadav of the deposit for the GSA by Mr Nayyar and Mr Kang or that she had stated to Mr Nayyar and Mr Kang that as a UK lawyer she was their guarantee in the transaction. The Respondent said that she had not given evidence in the first High Court action on the advice of her counsel and solicitors, which advice she said had been negligent.

34. The Respondent gave evidence in the Travellers' action.

Witnesses

35. The Respondent chose to give evidence having been informed by the Tribunal that she could choose either to make submissions or to give live evidence from the witness stand. She said that she felt that live evidence would carry more weight.

36. The Respondent said that she had not represented herself before and that she was not familiar with the rules of the Tribunal. She informed the Tribunal that she had a medical condition which might require her to take regular breaks and the Tribunal acknowledged this and agreed that the Respondent had to indicate when she needed a break.

37. The Tribunal confirmed to the Respondent that the Applicant's case was based on the two previous judgments of Hamblen J and Sir Raymond Jack and that Mr Cunningham had put to the Tribunal on behalf of the Applicant that the Tribunal could and should rely on those judgments as admissible proof of their case against the Respondent. The Tribunal said that it needed to look at what new evidence, if any, the Respondent was seeking to introduce which she would say caused doubt regarding the two previous judgments.

38. The Tribunal said that in relation to Mr Shori and the Respondent's wish that he give evidence, he had already given evidence previously and that evidence had been remarked upon by Sir Raymond Jack in his judgment as not having been accepted.

39. Mr Cunningham said that both Mr Shori and the Respondent had previously given evidence before Sir Raymond. Mr Cunningham said that neither he nor the Applicant knew what the new evidence was and he considered that the exercise was not without hazard.

40. The Tribunal noted Mr Cunningham's concerns but stated that the Respondent should be given the opportunity to address the Tribunal on oath albeit her evidence had to be limited to new evidence she wished to put before the Tribunal.

41. The Respondent affirmed and said that there were two issues of new evidence in relation to which she wished to address the Tribunal. Firstly, she referred the Tribunal to Mr Yadav's statement dated 30 March 2012. The Respondent informed the Tribunal that his statement was relevant to these proceedings, but also the previous proceedings, in particular before Hamblen J in 2009. The Tribunal noted that Mr Yadav was not present to give oral evidence. It commented that it could not therefore attach weight to his statement as questions could not be asked of him.

42. The Respondent acknowledged that but said that she could not afford to subpoena anyone as she had been unemployed for the last two years and she wished that Mr Yadav was present. She referred the Tribunal to the invoices attached to Mr Yadav's statement and informed them that it was of no relevance that the hospital was opposite a petrol pump; she said that in India this would not be uncommon.

43. The Respondent said that Mr Yadav had been hospitalised in Agra, not in Delhi. She informed the Tribunal that it would have been impossible for the tests to have been undertaken in Agra and for Mr Yadav to have then been back in Delhi in time for the meeting on 16 September. She informed the Tribunal that the journey to and from Agra from Delhi would have taken approximately eight hours by car.

44. By way of background, the Respondent said that Mr Yadav's accident had occurred in 2001. She said that he had contacted her about the accident and she had referred him to a colleague for legal advice.

45. In relation to the letter dated 20 March 2012 regarding the Respondent's security, she confirmed that there had been some confusion previously as to when her security had commenced and concluded. The Respondent said that when one was a protected person in India, as she had been, twenty-four hour security was provided. She said that she thought there had previously been some misunderstanding that she had only received security for special occasions and as a result, she had requested clarification from the Home Ministry which had provided the document dated 20 March 2012.

46. The Respondent said that this had great relevance since anyone who would have seen her in 2002/2003, would also have seen her bodyguards but such protection had not been mentioned by Mr Nayyar or Mr Kang.

47. Mr Cunningham asked the Respondent why Mr Yadav had not attended voluntarily if she could not afford to subpoena him. The Respondent said that she had been unaware of the rules of the Tribunal and had not appreciated that anyone could be called to give evidence.

48. The Respondent acknowledged that her third statement dated 30 March 2012, the same date as Mr Yadav's statement, had been witnessed by Neelam Sharma, Notary Public, who had also witnessed Mr Yadav's statement but said that one could use the same Notary Public many times over and nothing should be read into this. The Respondent confirmed that she had been in India on Friday, 30 March 2012 and that it was evident that Mr Yadav had also been there at the same time. The Respondent said that had been a coincidence and they had not been there together.

49. The Respondent said that she had bumped into Mr Yadav in Delhi and since she had nothing to lose, she had asked him for a statement as she was aware that at the previous two trials, there had been an absence of any evidence from Mr Yadav. The Respondent could not recall the date/day when she had bumped into Mr Yadav. The Respondent said that she had not drafted his statement and Mr Yadav must have drafted it. She said that Hamblen J's Judgment had been in the public domain and Mr Yadav must have known the facts of the case from that.

50. The Respondent denied that she had asked Mr Yadav or anyone else to say anything on her behalf and that his statement had been his own work. The Respondent said that she would have preferred that he had attended to give oral evidence. She said that Mr Yadav had his own mind.

51. The Respondent denied that she had persuaded Mr Yadav to produce his statement for her own purposes. She also refuted that Mr Yadav had not been prepared to attend before the Tribunal to be questioned. The Respondent repeated that she had no money to pay for Mr Yadav's attendance. In relation to funding the previous proceedings, the Respondent said that she had taken a loan for her legal representation.

52. The Respondent said that Mr Yadav had been admitted to hospital from 5 September 2002 and could not therefore have been at a meeting on 16 September of that year. In relation to the invoices, she said that the dates had been hand written but this was common in India. It was put to the Respondent that the train from Delhi to Agra took approximately one and a half hours, but the Respondent said that she did not know and that would have been a question for Mr Yadav.

53. Mr Cunningham in cross-examination referred the Respondent to the Jack Judgment which stated:

> "Ms Advani blames those acting for her in the first trial for the fact she did not give evidence. In a long e-mail on 21 November 2009 Ms Plumb set out that it was at the end of the day Ms Advani's decision whether to give evidence. She referred to the concern of Ms Advani's advisers that if she went into the witness box there was a real risk that her evidence would not be accepted and it would be found she played a larger role than she admitted, and she would be found dishonest. That was sound advice".

54. The Respondent confirmed that it was her evidence that Sir Raymond had been wrong in his judgment when he had only referred to the e-mail of 21 November 2009. She referred the Tribunal to her first statement wherein she had relied on other e-mails concerning the advice from her former representatives which she said had been negligent. The Respondent said that she had relied on all of that evidence.

55. The Respondent said that she had not attended a meeting on 16 September and that Sir Raymond had been wrong to disbelieve her. She said that she had been at her father's official residence. The Respondent acknowledged that Sir Raymond had found her to have been dishonest and said that he had found others to have been dishonest.

56. Mr Cunningham questioned the new evidence produced by the Respondent in relation to her security, namely the further letter dated 20 March 2012. The Respondent acknowledged that this referred to an earlier letter dated 8 August 2002 and said that this had been exhibited to her second witness statement. The Respondent did not accept that the letter of 20 March 2012 had been phrased neutrally and said that it clearly referred to "Subect (sic):-Security For Ms. Gauri Advani, Protectee, 2002/3".

57. The Respondent said that anyone who had not seen her security/bodyguard had unfortunately not been stating the truth.

Findings of Fact and Law

58. **Allegation 1.1. She was involved, during 2002, in brokering a transaction whereby Mr Romy Nayyar ("Mr Nayyar") and Mr Paramjit Singh Kang ("Mr Kang") made a payment of £400,000 as an intended bribe, so as to procure their appointment as a Global Sales Agent ("GSA") on the basis of that payment rather than on the merits of their application for such an appointment. The Respondent's brokering of the transaction involved introducing the GSA opportunity to Mr Nayyar and Mr Kang, actively seeking to persuade them to go ahead with it, assisting them in doing so and directing them as to what to do;**

Allegation 1.2. In brokering the transaction, the Respondent acted dishonestly; and

Allegation 1.3. On or about 12 September 2002, she wrongly assured Mr Nayyar and Mr Kang that as she was a UK lawyer she was their guarantee in respect of the return of the £400,000 paid for the GSA appointment. This assurance intended to and did reassure Mr Nayyar and Mr Kang and was relied upon by them when they made the £400,000 payment.

<u>Submissions on behalf of the Applicant</u>

58.1 Mr Cunningham referred the Tribunal to the Rule 5 and Rule 7 Statements upon which he relied and to his Skeleton Argument dated 2 April 2012.

58.2 Mr Cunningham confirmed details of the Respondent's professional background..

58.3 Mr Cunningham said that the events in question had occurred in 2002/2003. He referred the Tribunal to the allegations as set out in the Rule 5 Statement. Mr Cunningham submitted that the dishonesty allegation (1.2) underpinned the brokering allegation (1.1) and that the involvement of the Respondent in the brokering of the transaction had gone beyond mere introduction.

58.4 Mr Cunningham informed the Tribunal that there was a very unusual feature to these proceedings, namely that the dishonest brokering of a bribe by the Respondent (allegations 1.1 and 1.2) had already been the subject of two recent High Court actions; the first had been the "Hamblen case" which had been tried by Hamblen J in November and December 2009 and resulted in the Hamblen Judgment. The second had been the "Jack case" which had been tried by Sir Raymond Jack in February and March 2012 and resulted in the Jack Judgment dated 16 March 2012. In the Hamblen case, the Respondent had been the Second Defendant and had been represented by Leading and Junior Counsel. In the Jack case, the Respondent had been the only Defendant and had been represented by Junior Counsel.

58.5 Mr Cunningham said that in both cases, despite the Respondent's protestations that all of the evidence against her had been fabricated, positive findings had been made that she had been involved as alleged and had been dishonest.

58.6 Mr Cunningham said that the Hamblen case had been a claim by Mr Nayyar and Mr Kang for the recovery from the Respondent (and her former employers, DWS) of the money they had paid to procure the GSA. He said that the claim had been dismissed by Hamblen J on the basis of the "ex turpi causa" principle but he had been extremely critical of the Respondent's conduct. Hamblen J had found that:

> "...the payment of £400,000 was intended to be a bribe in civil law terms".

58.7 Mr Cunningham said that Hamblen J had found in relation to the bribe that the Respondent's role had been:

> "...essentially that of a deal broker".

58.8 Mr Cunningham said that Hamblen J had also made findings which were material in relation to the wrongful assurance at allegation 1.3:

> "In response to concerns expressed and queries raised by Mr Kang about guarantees relating to the appointment letter and the return of the deposit if it was not issued, Ms Advani said that, as a UK lawyer, she was their guarantee".

58.9 In the Jack case, Mr Cunningham said that this had principally concerned a claim against the Respondent by an insurance company for the recovery of £501,398 paid to fund her costs of the Hamblen case. He said that the claim had been based on the allegation that the Respondent's involvement in brokering the bribe had been dishonest conduct which had vitiated the contract of insurance.

58.10 Mr Cunningham confirmed that the claim had succeeded. In those proceedings, Mr Cunningham said that the Respondent had submitted herself to cross-examination

unlike the Hamblen case. He said that under the heading "Was Ms Advani involved in attempted bribery?" the Jack Judgment stated:

> "I do not have to decide whether Ms Advani did exactly what Hamblen J held that she did. It is enough if I am satisfied that she knew that the money in question was going to be paid, and was paid, as a bribe and was involved in the discussions which led to the payment. I am fully satisfied of that...".

58.11 Mr Cunningham submitted that Sir Raymond did not have to add the word "fully" but this had added emphasis to his findings and that he had had no doubt regarding the findings he had made.

58.12 Mr Cunningham said that the Jack Judgment continued:

> "I am satisfied that her (the Respondent's) role was to be the means of communication between Mr Yadav and the GSA claimants, and to arrange for the bribe to be paid. There is cogent evidence as to her involvement among the documents relating to 2002 and 2003. She was not honest with Mr Rosenheim of DWS when he was trying to establish the facts in 2004. It also became apparent to me during her cross-examination that she was telling many lies. A witness may lie in an attempt to improve what is at its heart an honest case, and I have had that in mind. But here her dishonesty in the witness box was only explicable on the basis that she was hoping to hide her involvement, namely that, using the phrase of Hamblen J, she was the deal broker".

58.13 Mr Cunningham said that use of the word "cogent" had added further emphasis to Sir Raymond's findings as had use of the word "only". Mr Cunningham submitted that there had been an overt, express and unqualified finding of dishonesty against the Respondent in Sir Raymond's Judgment and this had been the core of the case against the Respondent as set out in the Jack Judgment.

58.14 Mr Cunningham said that in light of the thoroughness and strength of the findings made against the Respondent by Hamblen J and Sir Raymond Jack, in respect of the very same facts as formed the basis of the Applicant's allegations, it was the Applicant's primary submission that the Tribunal could and should deal with and dispose of the case before it solely by reference to the findings made in those two Judgments.

58.15 Mr Cunningham submitted that if the Tribunal was minded to deal with the case before it in that way, it should not permit the Respondent to seek to redeploy evidence which had already been deployed, tested and rejected. Mr Cunningham said that such evidence could only be advanced by the Respondent to contradict the two sets of findings which had already been made and that could not be right.

58.16 In relation to the evidence of Mr Shori, Mr Cunningham said that both he and the Respondent had already given evidence before Sir Raymond Jack and in relation to Mr Shori's evidence, that had not been accepted. Mr Cunningham submitted therefore that it was an unattractive prospect should the Respondent seek to produce Mr Shori as a witness to give evidence.

58.17 Mr Cunningham referred the Tribunal to the procedural position and Rule 15 (4) of the Solicitors (Disciplinary Proceedings) Rules 2007 which states:

> "The judgment of any civil court in any jurisdiction may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based shall be admissible as proof but not conclusive proof of those facts".

58.18 Mr Cunningham said that in light of Rule 15 (4), the two Judgments of Hamblen J and Sir Raymond Jack and their respective findings of fact were admissible as proof but not conclusive proof. He referred the Tribunal to the antecedent rule to Rule 15 (4), namely Rule 30 of the Solicitors (Disciplinary Proceedings) Rules 1994 which stated:

> "(i) In proceedings before the Tribunal, which involve the decision of another court or tribunal, the following rules of evidence apply…
>
> (ii) In any case set out in paragraph (i) of this Rule, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based shall be admissible as prima facie proof of those facts".

58.19 Mr Cunningham acknowledged that the two authorities upon which he relied engaged the antecedent Rule, namely Rule 30 but submitted that although the language was not the same, conceptually it appeared to be the same; the concept of "prima facie proof" (Rule 30) and "proof but not conclusive proof" (Rule 15 (4)). Mr Cunningham submitted that they permitted the findings made in prior judgments to be used as proof of the facts found and whether the proof was sufficient or "conclusive" for the purposes of the Tribunal, would be a matter for the Tribunal in each case, to be determined by the specific facts and circumstances of each particular case.

58.20 Mr Cunningham referred the Tribunal to two Court of Appeal Judgments upon which he sought to rely, namely Choudry v The Law Society [2001] EWCA Civ 1665, 5 November 2001 and Constantinides v The Law Society [2006] EWHC 725 (Admin) 7 April 2006. He said that the authorities provided guidance as to the operation of the Rules and addressed how the Tribunal should deal with prior judgments.

58.21 Mr Cunningham referred the Tribunal to the Choudry case. He said that this had concerned a solicitor (Mr Choudry) who had been charged by the Law Society with unbefitting conduct for having, following a libel action, lodged a bill of costs for taxation which "he knew was excessive and/or improper and/or not lodged in good faith". Mr Cunningham said that the hearing of the preliminary issue as to the bona fides of the bill had come before Nelson J in December 1996. The Judge directed that The Times had to prove its case to the criminal standard and found in favour of The Times. Most pertinently, the Judge had found that the applicant (Mr Choudry) had been dishonest in lodging the bill of costs.

58.22 Mr Cunningham said that Mr Choudry's firm had appealed to the Court of Appeal but the appeal was dismissed in a judgment dated 17 December 1999. Mr Choudry's conduct had subsequently been referred to the Tribunal. Mr Cunningham said that the Tribunal had admitted the Court of Appeal's judgment under Rule 30 and:

> "On the basis of that judgment the Solicitors Disciplinary Tribunal found the case proved and ordered that Mr Choudry should be struck off".

58.23 Mr Cunningham said that the Tribunal should note that the Tribunal in that case had relied only on the prior judgment of the Court of Appeal and on nothing else. This had been regarded as evidentially sufficient to warrant the ultimate sanction of striking off.

58.24 Mr Cunningham referred the Tribunal to the judgment of Lord Phillips dated 5 November 2001, which dealt with Mr Choudry's application for permission to appeal to the Court of Appeal against the Tribunal's decision to admit the prior judgment. In refusing permission, Lord Phillips had observed:

> "The Solicitors Disciplinary Tribunal admitted as prima facie proof of the applicant's misconduct the judgment of the Court of Appeal under rule 30 of the Solicitors (Disciplinary Proceedings) Rules 1994. Mr Choudry was represented by Mr Broatch of counsel who objected to this course, but his objection was dismissed. No attempt was made to adduce evidence to rebut the judgment of the Court of Appeal. On the basis of that judgment the Solicitors Disciplinary Tribunal found the case proved and ordered that Mr Choudry should be struck off.
>
> On appeal to the Administrative Court against that decision, it was argued that the Court of Appeal judgment should not have been admitted by the Solicitors Disciplinary Tribunal. Two points were taken: ...(ii) It was contrary to Article 6 of the International Convention on Human Rights to interpret the regulation as applying to anything other than a judgment in proceedings to which a solicitor had been a party.
>
> ... These considerations are plainly relevant to the second limb of the proposed appeal, namely, that it was contrary to Article 6 that this procedure should be adopted. In a situation where Mr Choudry played a full part at the hearing that gave rise to the judgment, in effect as a party, I cannot see that it is reasonably arguable that there was any breach of Article 6. It would have been open to him before the Solicitors Disciplinary Tribunal to adduce evidence in an attempt to discharge the burden upon him of showing that the judgment was not correct.
>
> Having played a full part in the hearing before Nelson J and the Court of Appeal, he was in some difficulty in seeking to contest the judgment, but it does not seem to me that that position was in any way in conflict with Article 6 of the Convention.
>
> For all these reasons, I can see no reasonable prospect of an appeal succeeding. I refuse the application".

58.25 Mr Cunningham submitted that the Court of Appeal had clearly approved the conduct of the Tribunal in the case of Choudry where the most severe sanction had been imposed upon Mr Choudry, ultimately only on the basis of the prior judgment. Mr

Cunningham said that Lord Phillips judgment was a strong judgment in favour of the premise that prior judgments are of compelling and determinative significance.

58.26 Mr Cunningham referred the Tribunal to the case of Constantinides and the judgment given by Moses LJ on 7 April 2006. He said that in this case, the prior judgment was that of Peter Smith J in the Chancery Division. Mr Cunningham informed the Tribunal that in the case of Mr Constantinides he had been struck off the Roll of Solicitors by the Tribunal by a decision dated 1 March 2005 and he had appealed against that decision. His appeal had included a challenge in relation to the Tribunal's findings of dishonesty against him and that in reaching its conclusion the Tribunal had been improperly influenced by the judgment of Peter Smith J.

58.27 Mr Cunningham referred to the judgment of Moses LJ, which stated:

> "Grounds 1-3 Admission of the judgment of Peter Smith J.
>
> The appellant contended that the Tribunal was wrong to admit in evidence the judgment of Peter Smith J. and to allow the Law Society to make submissions based upon that judgment. The essence of this ground of appeal was that the judgment was so prejudicial to the appellant that no tribunal which read it could fairly and properly perform its task. There was no dispute but that the judgment of Peter Smith J., proved by a certified copy, was prima facie evidence of the findings of fact by the High Court (see Rule 30 of the Solicitors (Disciplinary Proceedings) Rules 1994).
>
> … The poisonous effect of that judgment was exacerbated by the fact that the judge's conclusions as to the dishonest behaviour of the appellant and the truthfulness of his evidence did not relate to the particular allegations made against him before the Tribunal".

58.28 Mr Cunningham acknowledged that the Respondent's case was not on "all fours" with Constantinides and he said that in Constantinides, whilst this limited reliance on a judgment of prior proceedings, Moses LJ had stated:

> "We agree that the mere fact that an adjournment had been sought was no basis for admitting the judgment,but there could be no reasonable objection to the Tribunal reading it, provided it was clear and rigorous in its approach to that judgment. The judgment was admissible to prove background facts in the context of which the appellant's misconduct had to be considered. But that was the limit of its function, in the particular circumstances of this case. The judge's views as to the appellant's dishonesty and lack of integrity were not admissible to prove the Law Society's case against this appellant in these disciplinary proceedings. We are far from ruling that a judge's conclusions as to dishonesty cannot amount to findings of fact within the meaning of Rule 30. There will be cases when a finding of fact, be it in a civil or criminal case, of dishonesty will be prima facie evidence of that dishonesty. But in the instant case the judge's conclusions were far more wide ranging than the allegations made against the appellant in the disciplinary proceedings".

58.29 Mr Cunningham submitted that whilst the Court of Appeal in Constantinides had observed that the Tribunal could not attach determinative weight to the prior judgment of Peter Smith J, the case should not be seen as undermining the Tribunal's entitlement to rely on prior judgments. Mr Cunningham said that it was clear from the judgment of Moses LJ that his observations as to the inappropriateness of dependence on the judgment of Peter Smith J were based on the "particular circumstances of this case".

58.30 Mr Cunningham said that in the circumstances of these proceedings and the two prior cases against the Respondent, findings of dishonesty had been inherent in the Hamblen Judgment and express in the Jack Judgment.

58.31 Mr Cunningham submitted that five principles and guidelines could be extracted from Choudry and Constantinides:

(1) That Rule 30 and, a fortiori, its successor Rule 15 (4), provides that prior judgments can stand as evidence, or proof, of their findings;

(2) A prior judgment can be given determinative weight by the Tribunal, as happened with the Court of Appeal's approval in Choudry;

(3) Whether it is appropriate to give determinative weight to a prior judgment will depend on the "particular circumstances" of the given Tribunal case, per Moses LJ in Constantinides;

(4) Factors which should incline the Tribunal to give determinative weight to a prior judgment include:

(a) whether the respondent solicitor "played a full part at the hearing that gave rise to the [prior] judgment", as per Choudry; and

(b) whether the factual allegations made in the proceedings leading to the prior judgment were sufficiently similar to those faced by the respondent solicitor in the Tribunal; per Moses LJ in Constantinides;

(5) Where a prior judgment is admitted under the rules, the probative burden shifts to the respondent solicitor, per Lord Phillips that it is for the solicitor "…to discharge the burden upon him showing that the [prior] judgment was not correct".

58.32 Mr Cunningham submitted that in relation to his points (4) (a) and (b), the Respondent had played a full part in both sets of previous proceedings. He said that in the Hamblen case, the Respondent had been the second Defendant and had been represented by distinguished counsel and solicitors. As such, she had been a party to the proceedings and fully represented. Mr Cunningham acknowledged that the Respondent had not given evidence in those proceedings but her case had been put to witnesses, including both Mr Nayyar and Mr Kang, who had been cross-examined. Mr Cunningham said that when the Respondent's turn had come to give evidence, she had chosen not to put herself in the witness box.

58.33 Mr Cunningham referred the Tribunal to the Hamblen Judgment which stated:

> "… I am satisfied that there is a core of truth in the allegations underlying the claim…
>
> The other reason given for not calling evidence was that even if the Claimants' evidence, in its broad outline, were accepted, the Claimants' case would still fail for illegality and/or because on that evidence Ms Advani was not acting as a solicitor. Even if that case were made out, I do not consider that it provides an adequate explanation for Ms Advani's failure to back up with evidence the stark denials of central factual allegations made by her in her Defence and put to the other parties' witnesses.
>
> I therefore consider that this is a case in which I would be entitled to draw adverse inferences against Ms Advani from her failure to give evidence…".

58.34 Mr Cunningham said that Hamblen J had not been persuaded by the Respondent's failure to give evidence. Hamblen J had clearly been of the opinion that it had been unsatisfactory for the case to have been put to the Claimants' witnesses but for the Respondent not to have been prepared to go into the witness box, give evidence and be cross-examined.

58.35 Mr Cunningham referred the Tribunal to the Respondent's witness statements. He said that the first six referred to in the letter from the Respondent's solicitors dated 21 March 2012 were headed in the Hamblen case and had been prepared for those proceedings. He said that those statements had been the basis of cross-examination of the Claimants' witnesses but had not been substantiated by the Respondent's witnesses in evidence.

58.36 Mr Cunningham referred the Tribunal to the Jack Judgment, wherein Sir Raymond Jack stated:

> "1. ... Ms Advani had not given evidence during the trial nor called other evidence.
>
> 2. On 16 February 2010 the GSA claimants [Mr Nayyar and Mr Kang], as the claimants in this first action have been called, obtained leave to appeal from Leveson LJ against the findings of illegality and as to whether Ms Advani had acted outside the scope for employment. Ms Advani sought permission to call further evidence. The further evidence was to explain how she had chosen not to give evidence before Hamblen J in reliance on the allegedly negligent advice of those then acting for her. Her object was to obtain a fresh trial and to overturn the finding as to her involvement in the events leading to the monies being paid by Mr Nayyar and Mr Kang. Her application was heard by Pill LJ on 27 May 2010. It was refused on the ground that it was her considered decision on advice not to give evidence: there was "no justification for permitting evidence of her dealings with her legal advisers to be given with the view of obtaining a fresh trial of the issues between her and the claimants'".

58.37 Mr Cunningham submitted that the Respondent had tried and failed before Pill LJ to seek a retrial and that this was what the Respondent sought to persuade this Tribunal to allow.

58.38 Mr Cunningham said that in relation to the Jack case, the judgment had been given by Sir Raymond on 16 March 2012. The Respondent had been the only Defendant in that case and had been represented by both counsel and solicitors. The hearing had lasted for six days during February and March 2012. Mr Cunningham commented that the Hamblen case had taken eight days and therefore over 2 weeks court time in total to date had been taken up considering these matters.

58.39 Mr Cunningham referred the Tribunal to the transcript of the Jack case and that on Day 2, 29 February 2012 the Respondent had been sworn into evidence which had continued into Day 3, 1 March 2012. He said that the Respondent had spent two full days giving evidence, including having been cross-examined, as distinct from the Hamblen case. Mr Cunningham said that the Respondent in the Jack case had been re-examined by her counsel on 2 March 2012 and had then withdrawn, having played a full role in that trial.

58.40 Mr Cunningham said that the proceedings before the Tribunal were on "all fours" with the Hamblen J Judgment as the Rule 5 Statement had been drafted with express reference to that judgment. Mr Cunningham gave the following examples:

- Allegation 1.1 of the Rule 5 Statement in relation to the Respondent's involvement in "brokering a transaction" and the Hamblen Judgment which stated "… I find that Ms Advani's role in respect of the GSA transaction can best be described as being one of deal broker..." and "In light of the above findings I am satisfied that the payment of £400,000 was intended to be a bribe in civil law terms. It was made with the intention of procuring that whoever was mandated to grant the letter of appointment, and thereby in effect the GSA, would grant it to the Claimants, and do so on the basis of a payment rather than of the merits of the application..." and "She did not merely introduce the opportunity to the Claimants; she actively sought to persuade them to go ahead with it, assist them in doing so and direct them as to what to do...";

- Allegation 1.3 of the Rule 5 Statement in relation to "wrongful assurance" and the finding in the Hamblen Judgment which stated "... In response to concerns expressed and queries raised by Mr Kang about guarantees relating to the appointment letter and the return of the deposit if it was not issued, Ms Advani said that, as a UK lawyer, she was their guarantee..." and "… she palmed them [Mr Nayyar and Mr Kang] off with an assurance which was of no real or legal value...".

58.41 Mr Cunningham referred the Tribunal in relation to the Jack Judgment to the heading "Travelers' claim under the policy". He said that the claim brought by the claimants [Travellers and DWS] had been based on dishonesty in relation to the insurance and dishonesty in relation to the bribe. The Jack Judgment stated:

> "… By letter of 12 February Withers replied that Hamblen J had not found Ms Advani to have been dishonest. I comment that he did not describe her conduct as dishonest but what he found her conduct to have been was plainly dishonest, as is now accepted… I have resolved it in favour of Travelers. It follows that they are without more entitled to the indemnity which they seek. The figure is agreed that £501,398.71" and under the heading "The claim of DWS…" "As a result of Ms Advani's dishonesty DWS were drawn into the action brought by the GSA claimants, as was wholly foreseeable. The claim succeeds. The agreed figure is £87,075.29".

58.42 Mr Cunningham said that Sir Raymond had found the Respondent's conduct to have been dishonest and that the Respondent herself had accepted that the findings of Hamblen J were such that a finding of dishonesty was unavoidable if her allegations of fabrication were not accepted.

58.43 Mr Cunningham submitted that the Tribunal should not seek to go behind the two judgements since to do so, would set a bad precedent for the profession and the Tribunal itself.

58.44 Mr Cunningham said that if every case could be conducted again ab initio by Respondents, that would incur considerably more costs and time. He said that it was the Respondent's wish that the case be tried for a third time but that could not be right. Mr Cunningham submitted that the Respondent should not be allowed a "third bite of the cherry". He said that it could not be for this Tribunal to second-guess decisions made by the High Court and in this particular case, two previous decisions.

58.45 Mr Cunningham referred the Tribunal to the Jack Judgment which stated:

> "… The evidence of Mr Nayyar and Mr Kang was tested before Hamblen J and was accepted. I too should accept it".

58.46 Mr Cunningham submitted that Sir Raymond had not countenanced allowing the Respondent, a "second bite of the cherry" and use of the word "should" had been recognition by Sir Raymond that another High Court Judge had seen witnesses and heard oral evidence and it was not for Sir Raymond to do so again. Mr Cunningham submitted that the Tribunal should honour the recognition of that evidence.

58.47 In relation to Choudry, Mr Cunningham submitted that procedurally, that case had given authority for approval by the Court of Appeal that the Tribunal could rely on prior judgments and that the burden then shifted to the Respondent to resist that and to discharge the burden by showing that the prior judgments were wrong.

58.48 In referring to the Respondent's eleven witness statements, Mr Cunningham said that the six witnesses for the Respondent in the Hamblen Judgment had not given "live" evidence. He said that the Tribunal was being asked to rely on those six statements albeit, with the exception of the Respondent and Mr Shori, Mr Cunningham would be unable to cross-examine the witnesses' evidence, just as none of those witnesses had appeared before Hamblen J. Mr Cunningham submitted that that was not a sustainable proposition.

58.49 Mr Cunningham said that he had already referred the Tribunal to Hamblen J's judgment wherein he had stated that he was satisfied that there was a core of truth in the allegations underlying the claim of the claimants, namely Mr Nayyar and Mr Kang. Hamblen J had rejected their claim on a point of law, not that he could not rely on their evidence. Mr Cunningham submitted that the Tribunal could not therefore say that Hamblen J's conclusions had been wrong, as he anticipated they would be invited to do by the Respondent, on the basis of witness statements where those witnesses would still not be giving evidence or be cross-examined.

58.50 Mr Cunningham said that the remaining five witness statements which the Respondent sought to rely on had all been cross-examined by Sir Raymond Jack in February/March 2012. In his Judgment, Sir Raymond had stated that during cross-examination, the Respondent had told "many lies" and her dishonesty in the witness box could only be explained on the basis that she had hoped to hide her involvement as the "deal broker".

58.51 Mr Cunningham referred the Tribunal to the transcript of the Jack case and that in addition to the Respondent, Dr Sabharwal, Mr Saleem and Mr Shori had given evidence. He said that Dr Sabharwal had been cross-examined extensively. Mr Cunningham referred the Tribunal to the Jack Judgment in relation to the meeting on 16 September 2002 being the very important meeting which had been attended by Mr Nayyar, Mr Kang, Mr Yadav and the Respondent. He said that the Respondent had denied having been present at the meeting as referred to in the judgment which stated:

> "Ms Advani's case is that she spent the time when she was alleged to have been with Mr Nayyar and Mr Kang visiting her parents. She said that she could identify the day, Monday 16 September, because it was the day after her nephew's birthday and because she had missed so many birthdays it was important for her to see him. Why she could not have seen him on his birthday, the Sunday, was unclear. Both she and her sister Dr Sabharwal gave detailed evidence as to what had occurred and there was supporting evidence in the statements of two further witnesses from India who did not attend the trial. I am satisfied that this evidence was false".

58.52 Mr Cunningham said that in relation to Mr Saleem, the Jack Judgment stated:

> "...I found Mr Saleem's account of the meeting with Mr Yadav unconvincing".

And in relation to Mr Shori the Jack Judgment stated:

> "...I do not accept that Mr Shori saw Ms Advani back to Belsize Pak (sic) before returning to his flat".

58.53 Mr Cunningham submitted that in relation to the Jack Judgment the Tribunal could not properly go behind the findings and conclusions of Sir Raymond or rely on evidence which had already been rejected, namely that of the Respondent, Dr Sabharwal, Mr Saleem and Mr Shori.

58.54 Mr Cunningham referred the Tribunal to the recently received statement of Mr Yadav, filed by the Respondent. He submitted that no weight should be given to Mr Yadav's

statement. Mr Cunningham said that he questioned firstly the genesis of Mr Yadav's statement and secondly, its lack of substance.

58.55 In relation to the genesis of Mr Yadav's statement, Mr Cunningham said that the statement had been produced at the last minute, which was striking since, if it were true, it would have been of real relevance in the two previous trials. It had not previously been produced and no explanation had been provided for that.

58.56 Mr Cunningham submitted that the statement by Mr Yadav, if true, was of financial and reputational significance to the Respondent in relation to the two previous trials. Her case appeared to be that had it been deployed earlier, the two previous judges may well have reached different views. He said that on the strength of that the Respondent sought to say that the two previous Judgments were wrong.

58.57 Mr Cunningham referred to the Respondent's third statement which stated:

> "The enclosed statement [of Mr Yadav] is self-explanatory and completely changes the primary facts of the case and therefore I may please be allowed to put my case before the tribunal in order to show and demonstrate that (sic) miscarriage of justice has been meted out in the absence of this crucial statement by Mr. Ashok Yadav around whom the primary case was built".

58.58 Mr Cunningham informed the Tribunal that Mr Yadav was not present, could not therefore be cross-examined and his evidence could not be tested. Mr Cunningham said that he could not detect whether Mr Yadav was willing, able or available to attend and in addition, his statement contained no statement of truth.

58.59 In relation to the substance of Mr Yadav's statement, Mr Cunningham referred the Tribunal to the statement which stated:

> "I met with a serious helicopter accident in the year 2001 and was admitted from 5 September 2002 to 5 December 2002 at Dr. DV Sharma's Hospital in Agra, for my care and regular ongoing treatment. Please see attached medical documents of the time".

58.60 Mr Cunningham said that there appeared to be a hiatus between Mr Yadav having suffered his serious accident in 2001 and his having been admitted to hospital in September 2002, which coincidentally covered the crucial meeting in Delhi. Mr Cunningham said that it was not evident from the four documents appended to Mr Yadav's statement that these substantiated his hospitalisation. He said the first document appeared to be an invoice for pathology which was not hospitalisation. The date on the first document of 16 September 2002 was hand written and very little appeared to have been charged, namely 201 Rupees.

58.61 The second document was also an invoice and Mr Cunningham said that the date of 5 September 2002 had again been hand written. He also commented that the numbering of the invoices appeared to run from 80336 to 20004. The third document from "GARG MEDICAL COMPLEX" was dated 15 March 2002 and Mr Cunningham said did not relate to hospitalisation. He said that he had been instructed that the medication referred to was sleeping medication and the date of March 2002 did not

tally with the meeting on 16 September 2002. The fourth document appeared to be an x-ray report dated 5 November 2001 for historical injuries and Mr Cunningham said it did not support hospitalisation of Mr Yadav between September and December 2002.

58.62 Mr Cunningham submitted that the Respondent's defence had been fabricated. In the Jack case on Day 3 of the hearing the Respondent had clearly denied attending the meeting on 16 September 2002. Mr Cunningham referred to the transcript which stated:

> "… as I have stated, the very description of the meeting of 16th September is completely out of line of my style of activities. I did not know it, and I did not attend any such meeting".

58.63 Mr Cunningham referred the Tribunal to the Hamblen Judgment and the finding of Hamblen J in relation to the 16 September meeting which stated:

> "On 15 September 2002, Mr Nayyar and Mr Kang travelled to India. On 16 September 2002, their evidence was that they met Ms Advani in her hotel room at the Oberoi Hotel, following which they left together to meet with Mr Yadav at his residence. This was strongly challenged in cross-examination and it was put that Ms Advani was not involved in any meetings with them that day... I am satisfied that Mr Nayyar and Mr Kang did meet Ms Advani and that later they together met Mr Yadav. She was in Delhi at the time. She was actively pursuing the GSA opportunity. There was evidence that she was in telephone contact with both Mr Nayyar and Mr Yadav that day. I have heard no evidence from her to set against that of Mr Nayyar and Mr Kang... They [Mr Nayyar and Mr Kang] were then taken by car to Mr Yadav's private residence to meet with him. At that meeting Ms Advani and Mr Yadav repeated that there would be a three day guarantee…".

58.64 Mr Cunningham said that Hamblen J had reached his findings without having heard evidence from the Respondent and that the Respondent's case having been put to Mr Nayyar and Mr Kang, Hamblen J found that the Respondent had been present at the meeting on 16 September 2002.

58.65 Mr Cunningham said that Sir Raymond had had an advantage in that the Respondent had been cross-examined in the second trial in relation to the 16 September meeting. The Jack Judgment stated:

> "It was the case of Mr Nayyar and Mr Kang that they met Ms Advani in her room at the Oberoi Hotel in New Delhi on 16 September 2002 and then went with her by car to Mr Yadav's home. Ms Advani said that she had no such meetings.
>
> Hamblen J accepted that meetings took place as alleged by Mr Nayyar and Mr Kang".

58.66 In relation to Mr Yadav's statement, Mr Cunningham submitted that reliance by the Tribunal on his statement, namely that the whole case against the Respondent had been fabricated, sat uncomfortably with what the Respondent had previously said

about Mr Yadav's reliability. Mr Cunningham referred the Tribunal to the Jack Judgment in relation to e-mail correspondence between the Respondent and Mr Yadav after the transaction had gone wrong and the complaint had been made, which stated:

> "On 5 June Ms Advani sent Mr Yadav an email saying that "the party" was thinking of giving the story to the press and his credibility would be damaged forever.
>
> On 17 June Ms Advani sent Mr Yadav by fax a letter headed Misrepresentation and Fraud...She said:
>
> "It goes without saying that the delay, laxity and non-performance from your side has caused us severe loss of precious time.... . This is a clear matter of fraud, Cheating and Embezzlement on your part". [Her underlining]
>
> ...Finally, on 24 June 2003 Ms Advani sent the email which I quoted in my summary of the judgment of Hamblen J. It was in enlarged block capitals and underlined:
>
> "Please return the money back Ashok Yadav and next time fool someone else – we will not leave you in peace till we have the money back".
>
> The effect of this correspondence is to show that Ms Advani had been involved in the dealings with Mr Yadav. It is inconsistent with her only having learnt in May that her introduction had led to the payment of money intended as a bribe".

58.67 Mr Cunningham submitted that firstly, it was odd that the Respondent had written complaint letters at all to Mr Yadav when her whole case had alleged fabrication and secondly, that she had written to Mr Yadav in such critical terms when she now sought to rely on his statement.

58.68 In response to a question from the Tribunal, Mr Cunningham agreed that the Tribunal was not simply a "rubber stamp" to endorse the two High Court judgments. He said that the two judgments were admissible and proof of findings of fact and that it was for the Tribunal to determine what weight should be attached to the judgments and the findings of Hamblen J and Sir Raymond Jack.

58.69 In relation to the Respondent's "new evidence", Mr Cunningham submitted that no weight should be attached to that and that the Respondent had to show sufficient prima facie credibility of that evidence.

58.70 Mr Cunningham acknowledged that the Tribunal had to find the allegations proved beyond reasonable doubt. He referred the Tribunal to the Jack Judgment, wherein Sir Raymond had used the words "fully", "cogent" and "only explicable" and by doing so, Mr Cunningham said that he had gone further than having been persuaded to the civil standard. Mr Cunningham referred the Tribunal to Sir Raymond's comments on the claimants' allegations which stated:

> "In considering whether the allegations against Ms Advani are made out, I must keep in mind their seriousness. The standard of proof remains the civil standard of the balance of probability but cogent evidence is required to overcome the unlikelihood that any one, in particular a solicitor, would act in the manner alleged: per Lord Nicholls in Re H (minors) [1996] AC 563 at 586...".

Submissions of the Respondent

58.71 The Respondent relied on her oral evidence to the Tribunal.

58.72 The Respondent said that for the sake of the Tribunal, she wished to state that she was not dishonest. She said that on 23 July 2004 she had asked her seniors at DWS to download her entire inbox and to take from that any papers required for these matters. She said that if she had really been dishonest or wished to hide anything, she would not have done that.

58.73 The Respondent said that she also had problems recalling events without seeing paper work. She said that when she had met with Mr Rosenheim she had expected to see all documents relating to the matter but had not found her e-mail dated 23 July in the bundle and it had only been because she had raised it, that it had then been included.

58.74 The Respondent said that she was a very open person and had always disclosed documents.

58.75 The Respondent said that she had recollection and memory problems. She said that she had held herself out to scrutiny from everyone and anyone and that she relied on her witness statements. She said that had there been any question of bribery, she would have been the first person to report that to the Indian authorities and that no documents had been produced to support bribery, to meet the requirements in accordance with Indian law.

58.76 In relation to DWS, the Respondent said that even after 2004 she had continued to work with DWS following their internal inquiry. She said that she had served DWS loyally and had even used her own mobile telephone to carry out marketing for the firm. The Respondent said that until 2006, DWS had put out press statement about her such that she had been held in high regard by them and that her life had been DWS.

58.77 The Respondent said that in the 2009 trial, she had had two independent witnesses, Mr Saleem and Mr Singh. She said that unfortunately, the latter had died by 2012.

58.78 The Respondent said that Mr Nayyar and Mr Kang were never her clients or clients of her firm and that she had been introduced to them by Mr D Singh of DWS.

58.79 The Respondent said that she had been unable to appeal the Hamblen Judgment but that technically, she had been a winner in those proceedings. In relation to Pill LJ, the Respondent said that she should have taken matters forward with her legal advisers but had not done so, as she had then received the claim by Travellers and DWS, which she had to concentrate on.

58.80 The Respondent said that she had never been in a situation like this before. She said that she was unemployed, she had had to stop instructing legal representatives and was now representing herself. She said that she had had two years of punishment and that she needed to start her life again and to earn a living.

58.81 The Respondent said that in relation to Mr Yadav, she had been advised by her previous legal advisers that they would contact him on her behalf and so she had left it to them to do.

58.82 The Respondent submitted that she had been honest with the Applicant and that she had continued to be a part of the Applicant's investigation; she had not run away, but had faced up to everything.

The Tribunal's Findings

58.83 The Tribunal applied its usual standard of proof namely beyond reasonable doubt.

58.84 The Tribunal was satisfied that the prior judgments of Hamblen J and Sir Raymond Jack stood as evidence and proof of the Honourable Judges' findings. The Tribunal had had regard to Rule 15 (4) of the Solicitors (Disciplinary Proceedings) Rules 2007 and the preceding Rule 30 of the 1994 Rules and the authorities cited of Choudry and Constantinides; it accepted that a prior judgment could be given determinative weight subject to the "particular circumstances" of the given case.

58.85 In the particular circumstances of this case and this Respondent, the Tribunal found that it could give determinative weight to the two prior judgments. Firstly, since the Respondent had played a full part at both of the hearings which gave rise to the two prior judgments; at the first hearing her evidence was put to witnesses in cross-examination and she had been represented by leading counsel and in the second hearing, she had given evidence in person, which had not been accepted by Sir Raymond. Secondly, that the factual allegations made in the proceedings leading to the two prior judgments were sufficiently similar to those now faced by the Respondent before the Tribunal.

58.86 The Tribunal found that the burden had shifted to the Respondent to show that both of the prior judgments were wrong and she had failed to discharge that burden.

58.87 In relation to the Respondent's new evidence, the Tribunal had regard to the statement of Mr Yadav. The Tribunal was satisfied that the exhibits to his statement did not prove a stay in hospital by Mr Yadav at the material time. The Tribunal considered it unsatisfactory that the Respondent had only now produced a statement by Mr Yadav and her explanation of that and the fact that such a statement had not been produced at either of the two previous trials, had not been credible. The Tribunal also found that Mr Yadav's evidence was untested as he was not present to give oral evidence or to be cross examined on that evidence. The Tribunal could attach no weight to the statement.

58.88 In relation to the matter of the Respondent's security, the Tribunal found that the Respondent's evidence about this had been dismissed by a previous judge. The Tribunal did not accept the proposition advanced by the Respondent that because

witnesses had not referred to her security arrangements their evidence could not be true.

58.89 In summary, the Tribunal dismissed the new evidence produced by the Respondent as the Respondent had not discharged her burden of proof.

58.90 In all the circumstances of the Respondent's case, the Tribunal found allegations 1.1, 1.2 and 1.3 proved against the Respondent on the facts and on the documents, including that she had acted dishonestly in brokering the transaction involving Mr Nayyar and Mr Kang.

Previous Disciplinary Matters

59. None

Mitigation

60. The Respondent relied on her submissions to the Tribunal in mitigation.

Sanction

61. The Tribunal had found allegations 1.1, 1.2 and 1.3 proved.

62. The Tribunal had given careful consideration to its findings against the Respondent, namely that she had acted in a manner unbefitting a solicitor, having been involved in brokering a transaction which involved a bribe and in doing so acted dishonestly and having wrongly assured persons that as a UK lawyer, she was their guarantee of the return of a substantial sum when they had relied on such an assurance.

63. The Tribunal considered that its findings against the Respondent were very serious and in light of those findings, whilst it had to impose a reasonable and proportionate sanction, it also had to balance the public interest, the interests of the profession and maintaining the profession's reputation. The Tribunal considered that if allowed to continue to practise, the Respondent posed a significant risk to the public.

64. The Tribunal had considered all of the possible sanctions, but found that as a result of the balancing exercise, in the particular circumstances of this case, the Tribunal had to strike the Respondent off the Roll of Solicitors.

Costs

65. Mr Cunningham referred the Tribunal to the Applicant's Schedule of Costs and confirmed that the total costs claimed of £65,464.16 were justified in a case which had been properly brought before the Tribunal.

66. Mr Cunningham submitted that in relation to the Respondent, mere assertion of want of means to avoid liability was not sufficient. He submitted that the Applicant should be entitled to its costs and that it should be entitled to test the Respondent's assertions regarding her finances.

67. The Respondent informed the Tribunal that she was impecunious. She had no income. Her mother had been sending her money to pay her mortgage and she had no equity in her property in the UK and owned no property in India.

68. Mr Cunningham invited the Respondent to produce and serve an affidavit of means to enable the Applicant to investigate the Respondent's finances further and reply thereto.

69. The Tribunal was satisfied that the case had been properly brought by the Applicant.

70. The Tribunal noted that it had no evidence before it of the Respondent's finances and had only heard her oral submissions in that regard.

71. The Tribunal also noted that whilst it had had regard to the Applicant's Schedule of Costs, it required more detailed information concerning those costs.

72. The Tribunal had had regard to the relevant authorities, namely Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) and Merrick v The Law Society [2007] EWHC 2997 (Admin) and noted that the Respondent had been provided with the case of Davis and McGlinchey prior to the hearing.

73. The Tribunal ordered costs in favour of the Applicant to be subject to detailed assessment, unless agreed between the parties, taking into consideration the amount of costs claimed and the limited information available to the Tribunal both as to the Applicant's Schedule and the Respondent's finances.

Statement of Full Order

74. The Tribunal Ordered that the Respondent, Gauri Advani, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties.

Dated this 30th day of April 2012
On behalf of the Tribunal

D. Glass
Chairman