SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10986-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SHIRLEY LEWALD Respondent

Before:

Mr. I. R. Woolfe (in the chair)
Miss T Cullen
Mr. D. Gilbertson

Date of Hearing: 18-19 April 2013,
9-10 December 2013, 21 March 2014
and 24 June 2014

Appearances

Robin Havard, solicitor of Morgan Cole Solicitors, of Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant.

The Respondent appeared in person on 18 and 19 April 2013.

The Respondent appeared and was represented by Adam Swirsky, Counsel, on 9 and 10 December 2013, and on 21 March 2014.

The Respondent did not appear on 24 June 2014 but was represented by Adam Swirsky, Counsel.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

1.1 The manner in which the Respondent had conducted herself in certain litigious matters, and generally, had been contrary to her obligations contained within Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

1.2 The Respondent's conduct had been such that she had become the subject of a General Civil Restraint Order dated 13 October 2009 contrary to Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

1.3 The Respondent's conduct had been such that she had become the subject of a General Civil Restraint Order dated 22 October 2009 contrary to Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

1.4 The Respondent had made allegations of improper behaviour, to include dishonesty, against third parties, including members of the Judiciary, without any cogent evidence to support such allegations contrary to Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

1.5 The Respondent had submitted an application for admission as a solicitor and for a Practising Certificate which failed to contain material information and was thereby misleading contrary to Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

1.6 The Respondent had failed to cooperate with the SRA in the course of its investigation contrary to Rules 1.06 and 20.05 of the Solicitors' Code of Conduct 2007.

Documents

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

Applicant:

- Application dated 4 May 2012 together with attached Rule 5 Statement and all exhibits
- Skeleton Argument for the SRA dated 23 October 2012 together with enclosures
- Witness Statement of James Edward Chadwick dated 9 October 2012
- Correspondence Bundle
- Medical Reports and letters of Dr Cutting dated 2 October 2013, 23 October 2013, 4 November 2013, 12 November 2013, 13 November 2013 and 30 November 2013
- Bundle of Chronology – Medical Evidence
- Various emails from Mr Havard to the Respondent and the Tribunal
- Schedule of Costs
- Copy of the Register from The Land Registry for a property at 58 QC, Q Road

Respondent:

- Undated Skeleton Argument on Points Which are Matters of Law by Respondent together with all attached documents
- Response to the Applicant's Statement dated 15 October 2012 together with all exhibits
- Supplemental Summary of Submission from Adam Swirsky dated 30 October 2012
- Undated Respondent's Skeleton Argument for hearing on 18 and 19 April 2013
- Application by Respondent in relation to Preliminary Issues dated 10 April 2013
- Emails from Respondent to Mr Havard dated 2 March 2013, 3 March 2013, 10 March 2013 and 28 March 2013
- Application for Recusal of Tribunal Panel by email dated 23 November 2013
- Respondent's Undated Submissions for 9 December 2013
- Respondent's Undated Submissions for 21 March 2014
- Submissions in response to Dr Cutting's Report dated 27 October 2013
- Email dated 1 August 2013 with attached Request for Directions
- Witness Statement of Robert James Cooles dated 9 October 2012
- Witness Statement of Colin Philip Pinnell dated 25 March 2013
- Letter from client CW dated 8 August 2013
- Extract from Medical Report of Professor S D Martin dated 28 April 2008
- Medical Letters from Dr Hudson dated 16 March 2009, 25 July 2012 and 18 March 2014
- Medical Letter from Dr Pujol dated 9 October 2009
- Medical Reports from Dr Ornstein dated 7 August 2013
- Various medical records and reports/letters dated from 17 August 2004 to 26 September 2007 provided to the Applicant and the Tribunal on 10 December 2013
- Various emails from the Respondent to Mr Havard and the Tribunal
- Costs Application dated 17 April 2013
- Witness Statement of Means of Shirley Lewald dated 17 April 2013 together with attached documents
- Social Security and Statutory Sick Pay Certificate dated 12 June 2014
- Letter of Claim dated 8 April 2014 from S Solicitors to Abbott Cresswell LLP
- Email dated 19 March 2009 from CR LLP to the Respondent
- Letters dated 17 June 2014 and 23 June 2014 from Dr P
- Decision Notice from Social Security Tribunal dated 9 September 2010
- Statement of Shirley Lewald dated 23 June 2014
- Copy of the Respondent's application to the SRA for Removal from the Roll dated 20 June 2014

Preliminary Matters and Applications

Application by Respondent for Hearing to be held in Private (18 April 2013)

3. The Tribunal dealt with the Respondent's application for the hearing to be held in private, in a private hearing. The Tribunal refused the application. In order to maintain the Respondent's right to privacy, the Tribunal determined that the actual details of the Respondent's medical condition should not be disclosed in this Judgment.

Application by Respondent for clarification from the Applicant of "Cogent Evidence" (18 April 2013)

4. The Respondent made an application for the Applicant to clarify what was meant by the Applicant's submission that the Respondent had made Allegations of improper behaviour to include dishonesty against third parties without "cogent" evidence.

5. The Tribunal did not consider it was necessary for any further detail to be provided on that expression. It simply meant clear evidence and the Respondent was reminded that the Applicant must prove its case beyond reasonable doubt in any event.

Application by Respondent for clarification from the Applicant that Allegation 1.1 is a duplicate of Allegations 1.2, 1.3 and 1.4, and if not, then clarification of the difference (18 April 2013)

6. In response to this application, Mr Havard on behalf of the Applicant confirmed that Allegation 1.1 was drafted to cover various pieces of litigation that the Respondent had been involved in, and was not restricted to one particular litigation matter. This Allegation covered the overall picture and the words "and generally" referred to the Respondent's behaviour which it was alleged was in breach of the rules.

7. Mr Havard stated that Allegations 1.2 and 1.3 referred discreetly to two Orders that had been made against the Respondent. Although the Respondent argued that these Orders were void, this was not accepted by the Applicant.

8. Allegation 1.4 was an Allegation of improper behaviour alleging dishonesty against various individuals. This was separate and distinct from the way the Respondent had conducted herself in the course of litigation.

9. The Tribunal confirmed that the Applicant would be requested to set out specifically which facts were relied upon in relation to each individual Allegation so that the Respondent would know exactly the case against her and what she was required to respond to.

Application by Respondent for an Order requiring the Applicant to Reply to the Respondent's Email of 28 March 2013 (18 April 2013)

10. The Respondent had sent an email to Mr Havard on 28 March 2013 requesting confirmation as to whether Mr S would be attending as a witness. If Mr S was not

attending as a witness, then the Respondent had requested confirmation as to whether responses had been obtained from Mr S in relation to the queries raised by the Respondent in her earlier emails of 2 and 3 March 2013 to Mr Havard. The Respondent also required provision of the evidence requested in her email of 10 March 2013 to Mr Havard. The Respondent stated that Mr Chadwick had provided a statement but the Respondent's Counsel had pointed out there was some correspondence relied upon by the Applicant, which had been written by Mr S and not Mr Chadwick. These documents were in the Applicant's bundle. The Respondent stated she had asked for Mr S to attend the substantive hearing and Mr Havard had indicated he would make enquiries and that she could raise any questions if she so wished. The Respondent stated she wished to refer to those documents in the bundle.

11. Mr Havard confirmed he had never relied on any evidence from Mr S, who was a colleague of Mr Chadwick, on whose statement Mr Havard did rely. Mr Chadwick's statement had been served in good time and the Respondent had not requested him to attend the substantive hearing. Mr Havard relied on the chronology of the possession proceedings and Mr Chadwick's statement was simply a chronology relating to those. Mr Havard submitted it was incontrovertible on the documents what had happened and when, particularly in relation to what the court ordered.

12. As Mr Havard had confirmed he did not rely on any evidence from Mr S, the Tribunal confirmed it would not take into account documents relating to him. The Tribunal reminded the Respondent that she could have issued a witness summons requiring Mr S to attend before the Tribunal but she had chosen not to do so. The Tribunal refused to make any Order in relation to Mr Havard's failure to reply to the Respondent's email of 28 March 2013.

Application by the Respondent for Disclosure of Documents (18 April 2013)

13. The Respondent had served a Form 5 Witness Summons on Mr Havard requiring him to produce a number of documents set out in that summons. These documents related to the Respondent's training contract, the SRA Adjudicator's decision of 3 March 2009, and complaints made by the Respondent to the SRA together with the response of Mrs H to one of those complaints. The Respondent stated she no longer had most of these documents and was unable to provide them as they were from 8-10 years ago. The Respondent stated that if the Applicant did not require these documents to be provided by her, then she was content not to pursue this application any further. She had already provided all these documents to the SRA in the past.

14. Mr Havard confirmed that the evidence he relied upon was contained in the exhibits to the Rule 5 Statement and therefore he had met his primary disclosure obligations. There had been a request to the Respondent to indicate in a Response which Allegations/facts were admitted/denied and at that time it was anticipated a review of disclosure could take place. There were many issues and documents that the Respondent had referred to which were not relevant to these Allegations. Mr Havard confirmed that he did not intend to request any further documents from the Respondent.

15. As the Respondent confirmed she would not request disclosure if the Applicant was not requesting documents to be provided by her, and as Mr Havard had confirmed he did not intend to ask for any further documents from the Respondent, the Tribunal did not need to consider this application any further.

Application by the Respondent for clarification of whether the Applicant was alleging "intentional misconduct" or "unintentional misconduct" (18 April 2013)

16. The Respondent submitted that the Tribunal should decide whether the Applicant was alleging "intentional misconduct" or "unintentional misconduct" caused by the Respondent's medical condition. She submitted that Mr S in an email dated 19 May 2011, which was in the Applicant's bundle, had made reference to the Respondent's medical condition and if "unintentional misconduct" was alleged, the Tribunal should decide whether or not an Order should be obtained from the Court of Protection or whether a litigation friend should be appointed to represent the Respondent in these proceedings.

17. Mr Havard confirmed the Allegation was of "intentional misconduct" on the basis that the Respondent must have intended to make the multiplicity of applications to the court which led to the General Civil Restraint Orders being made against her.

Application by the Respondent as to whether the Tribunal had jurisdiction to hear Allegations relating to her conduct prior to 14 December 2010 when the Respondent became a solicitor

And

Application by the Respondent as to whether the Tribunal had jurisdiction to hear Allegations relating to "personal" conduct under the Solicitors Act 1974 (as amended) (18 April 2013)

18. The Respondent was admitted as a solicitor on 15 December 2010. She submitted that the Applicant had been aware of her conduct for many years prior to 14 December 2010 and had chosen to take no action. She referred the Tribunal to the case of Re A Solicitor (Ofosuhene) CA 21 Feb 1997 in which it was held:

> "Where the Law Society had not become aware of an appellant's convictions before becoming a solicitor, it would have been able to file a complaint in respect of their pre-admission convictions and conduct with the SDT and seek an order striking them off the roll."

The Respondent accepted that the extract she had provided relating to that case was an interpretation of that case. However, in that case no action had been taken at the time and no decision was made on many of the issues.

19. The Respondent submitted that in a letter to her from the SRA dated 20 April 2009, the SRA had confirmed the issues they were aware of were not issues they intended to consider further. She also referred to letters she had sent to the SRA in 2003.

20. The Respondent in her skeleton argument submitted that the Tribunal could only decide on allegations concerning conduct prior to the date of her admission under section 54 of the Solicitors Act 1974 (as amended). Under section 54 the Tribunal had the power to strike the name of the solicitor off the Roll if there was a failure or defect concerning enrolment. However, any such application must be made within twelve months from the date of enrolment unless fraud was proved to have been committed in connection with the failure or defect relating to enrolment. The Respondent submitted that the time for making such an application ended on 14 December 2011 which was before the date of the application now before the Tribunal. There was no allegation of fraud being made against the Respondent in any event, and the Respondent submitted that the Tribunal did not have jurisdiction to consider matters prior to the date of her admission.

21. The Respondent also submitted that most of the allegations related to conduct which was not criminal or unlawful or otherwise related to breaches of the Solicitors Act 1974. She submitted that the Tribunal did not have jurisdiction to hear allegations relating to personal conduct except under Section 13B of the Act (fraud or serious crime where conviction has occurred) or Section 15 (bankruptcy). She submitted that no allegation had been made under either of these sections. The Tribunal could only consider allegations under section 54 of the Act and she submitted that allegations under this section were now statute barred. She further submitted that completing an enrolment form was a procedural requirement and any application under Section 54 would be barred after twelve months.

22. The Respondent referred the Tribunal to the case of Bolton v The Law Society [1994] CA in which Sir Thomas Bingham MR had stated:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal..."

The emphasis was on professional duties and the Respondent submitted this was evidence that the Tribunal did not have jurisdiction to consider "personal" conduct.

23. Mr Havard provided the Tribunal with a complete copy of the case of In the Matter of A Solicitor and In the Matter of the Solicitors Act (Ofosuhene)1997 CA 2860/96. Lord Justice Rose had stated in that case:

> "..if, in the past, one who is now a solicitor has behaved in a way which is incompatible with such standards, it is, and should be, open to the tribunal to say so and to control the circumstances in which, if at all, he or she should continue to practise in the future. It is entirely consonant with this purpose, that the tribunal should exercise jurisdiction over one who is a solicitor by reference to past behaviour, whatever his or her status at the time of that behaviour. The tribunal's jurisdiction over a person accused rests solely and entirely on the present status of an accused as a solicitor."

Mr Havard stated that in any event, he relied on the Solicitors' Code of Conduct 2007.

24. Mr Havard also referred the Tribunal to the wording of section 54 of the Solicitors Act 1974 which stated:

> "(1) No solicitor shall be liable to have his name struck off the Roll on account of any failure to comply with the requirements with respect to persons seeking admission as solicitors of any training regulations or on account of any defect in his admission and enrolment, unless:-
>
> (a) the application to strike his name of the Roll is made within twelve months of the date of his enrolment; or,
>
> (b) fraud is proved to have been committed in connection with the failure or defect"

25. Mr Havard accepted that there was no indication that the Respondent had failed in any of the training regulations. The reference to "defect" was in the SRA's procedure when considering the application for admission and did not apply to the Respondent completing a form. Mr Havard strongly submitted that section 54 did not preclude the SRA from pursuing these allegations further.

26. Mr Havard confirmed that section 13B and section 15B of the Solicitors Act 1974 did not apply in this case and the personal conduct alleged did not fall into the serious misconduct category. He referred the Tribunal to the case of Davinder Singh Virdee v The Law Society [2006] EWHC 241 (Admin) in which allegations relating to the conduct of a solicitor in his personal life and the effect this might have on his entitlement to continue to practise as a solicitor were considered by both the Tribunal and the High Court.

27. The Tribunal considered the submissions of both parties and the documents to which it had been referred. The Tribunal noted the language of section 54 and noted the reference to a solicitor not being liable to have his name struck off the Roll in the circumstances set out. It was clear that section 54 concentrated on procedural training irregularities and did not refer to any other matter. The Tribunal also considered the full copy of the Ofosuhene case provided by Mr Havard, and in particular the comments of Lord Justice Rose. The Tribunal was satisfied that it did have jurisdiction to consider the Respondent's conduct prior to her admission as a solicitor, and was further satisfied that the Respondent's personal conduct could be considered in view of the effect this might have on her entitlement to continue to practise as a solicitor. Section 54 did not prevent conduct prior to the date of admission being considered by the Tribunal.

Application by the Respondent as to whether the Tribunal has jurisdiction to hear Allegations of a legal nature against third parties (18 April 2013)

28. The Respondent submitted that the Tribunal needed to decide if it could hear legal issues involving third parties who were not a party to these proceedings. She stated the SRA had said it would not investigate legal issues such as allegations of defamation, blackmail and conspiracy and in such circumstances, the Respondent submitted that the SRA could not substantiate allegations against her based on allegations made by her of fraud and dishonesty against various people. The

Respondent submitted that the Tribunal did not have the power to hear allegations which fell within the jurisdiction of the criminal courts, or the Court of Appeal or the European Court of Human Rights.

29. The Tribunal reminded the Respondent that the Applicant was not making any allegations against third parties and in any event, the Tribunal would not make any findings in relation to the honesty or dishonesty of any members of the judiciary, partly because there was presently no evidence of such before the Tribunal, and also because it would not be appropriate for the Tribunal to do so. The Tribunal would make determinations on law and fact in relation to the allegations against the Respondent based on evidence produced.

Application by the Respondent on jurisdiction of the Tribunal to determine issues relating to "Void" Orders (18 April 2013)

30. The Respondent submitted that the two General Civil Restraint Orders (GCROs) made against her on 13 October 2009 and 22 October 2009 were void and could therefore be ignored. She submitted that she had a legal right, at common law, to ignore those Orders without the need to set them aside. She referred to the cases of Bellinger v Bellinger [2003] UKHL 21 and Benjamin Leonard MacFoy v United Africa Co Ltd [1961] 3 WLR 1405 to support her argument. The Respondent referred the Tribunal to an article on void Orders that she had written in 2010.

31. The Respondent submitted that there was a difference between void and voidable Orders which was set out in the case of MacFoy v United Africa Co Ltd. A voidable Order was valid until set aside, whereas a void Order was not valid and could be ignored. The Respondent said the GCROs had been made without jurisdiction and therefore she was entitled to ignore them at common law.

32. Mr Havard reminded the Tribunal that a GCRO was a severe Order made by a Senior Judge which prevented the Respondent from issuing any claim or making any application in the High Court or any County Court without first obtaining permission from that Judge. The GCRO was so stringent that if the Respondent issued a claim or application without obtaining permission, then the claim or application was automatically struck out or dismissed without the Judge making any further Order and without the need for the other party to respond. Mr Havard submitted that it was legally perverse for the Respondent to suggest that the decision whether or not to adhere to a GCRO was entirely in her gift.

33. Mr Havard further submitted that the Respondent's article was outdated and not specific or relevant to the issue. It was notable that she had set out the procedure for setting aside a void Order in that article. Mr Havard submitted that it was quite clear that a person who believed an Order was void should apply to the court for a determination on the position. This was confirmed in the case of Craig v Kanssen [1943] KB 256 and was the only recourse open to the Respondent.

34. The Tribunal considered carefully the submissions of both parties and the various documents it had been referred to. In particular the Respondent had referred the Tribunal to an article which she had written on void Orders. In that article she had referred to a number of cases. In Craig v Kanssen the Court of Appeal accepted that

a Court Order could be void and held that the procedure for setting it aside was by application to the Court which made the Order, or by appeal, or by judicial review.

35. The Respondent referred to the case of Bellinger v Bellinger where the House of Lords confirmed that a void act is void from the outset, but the Tribunal, having reviewed the facts of that case noted that it referred to a marriage which was found not to have taken place. The Tribunal did not consider that this was relevant to the issue of whether an Order of the Court could be ignored before it had been set aside.

36. The Respondent referred the Tribunal to the case of Firman v Ellis [1978] 2 All ER 851 in which Lord Denning held that a Court Order was a nullity and void ab initio. However the Tribunal found nothing in that case to justify the Respondent's claim that a void Order could be ignored before it had been set aside. The case to which Lord Denning referred was one where a void Order was indeed set aside and was therefore a nullity from the beginning. The Tribunal referred to the judgment of Ormerod L J in Firman v Ellis where he held that a Court Order was void in the sense that the Plaintiffs were entitled to have it set aside. However he commented as follows:

> "That is not, however, to say that the order or the amended writ was a nullity. Each was a document emanating from the court and good on its face. Such orders or documents must be acted on until declared void by the court: see per Diplock J in O'Connor v Isaacs [1956]."

37. The Respondent referred to the judgment of Lord Denning in Macfoy v United Africa Co Limited. However in that case Lord Denning held that if an act (in that case delivery of a statement of claim) is void then it is in law a nullity and there is no need for an Order of the Court to set it aside although he commented that it might be convenient for a Court to declare it void. There was no reference to a Court Order being null and void without a declaration to that effect, nor any statement that parties could ignore such an Order. The Tribunal held that this case referred only to an act and did not include a Court Order.

38. The Respondent sought to rely upon the views of Lord Denning set out in his book The Discipline of Law, which, the Tribunal noted was of no binding authority. However, in relation to a Court Order, on Page 77 Lord Denning stated:

> "But if it is void, what is to happen? Unless and until someone applies to quash it, the determination of the Tribunal will appear to be good. As Lord Radcliffe once said "It bears no brand of invalidity on its forehead". Much work may have been done in pursuance of the void order. Many persons may have acted on it in the belief that it is good. In such circumstances the Court has discretion whether to quash the order by certiorari or declare it bad: and if it does quash it, to make such consequential Orders as it may think fit to do justice between the parties."

The Tribunal found nothing in this passage suggesting that a void Order could simply be ignored, without being set aside.

39. Mr Havard had drawn the Tribunal's attention to the provisions of Practice Direction 3C of the Civil Procedure Rules 1998 which made it clear that a party against whom

a GCRO was made may apply to discharge the Order if he has obtained the permission of the Judge. That provision would not be required if a party to whom the GCRO related was entitled to ignore it if he/she considered it to be void for any reason.

40. The Respondent argued that statute cannot override common law nor remove a common law right. She claimed that there was a common law right to ignore a void Court Order which could not be overwritten by the Civil Procedure Rules.

41. The Respondent did not produce any evidence that Parliament by statute could not override pre-existing common law rights, to support her argument that common law overrides statute. The Tribunal held that Parliament has the ability to enact laws which override any common law rights subject to any restrictions from the European Convention of Human Rights. The Respondent had not suggested that any common law rights to which she referred had been protected by the Convention. The Tribunal rejected the Respondent's submissions that she had a legal right, at common law, to ignore the GCROs.

Application by Respondent on the jurisdiction of the Tribunal to hear an implied allegation of fraud (18 April 2013)

42. As there was no allegation of fraud being made by the Applicant, the Tribunal dismissed this application as it was not relevant to these proceedings.

Application by Respondent on the jurisdiction of the Tribunal to hear Allegations not referred to by the SRA's Adjudicator (18 April 2013)

43. The Respondent submitted that the application made by the SRA to the Tribunal included allegations which were not authorised by the SRA's Adjudicator under Rule 10(3)(c) of the SRA Disciplinary Procedure Rules 2011. The Respondent submitted that she had not been given an opportunity to respond to nor to provide evidence on these new matters prior to their being referred to the Tribunal. She submitted that she had been prejudiced as she had not had the opportunity to explain herself before the application to the Tribunal had been made and that she did not have the documents she required for her defence. The Respondent submitted that the additional allegations were not valid as they did not fall within Rule 10(3) and therefore the Tribunal did not have jurisdiction to hear those allegations.

44. Mr Havard stated Rule 10 of the SRA Disciplinary Procedure Rules 2011 did not constrain the nature of the allegations to be pursued in any way and there was no provision to prevent the SRA from pursuing such allegations as it deemed appropriate, providing there was evidence in support and the public interest requirement was met. Indeed, Mr Havard reminded the Tribunal that it was quite common for allegations to be added which were not authorised by the SRA's Adjudicator. In any event, the Respondent had been aware of the nature of the allegations since May 2012. The documents the Respondent had referred to were in relation to possession proceedings which were ongoing and therefore the Respondent could still obtain copies of those documents.

45. The Tribunal considered the submissions of both parties. The Tribunal was satisfied that it was not necessary for the SRA to refer any proposed allegations against a solicitor to that solicitor before they are included in a Rule 5 Statement. In practice, there was often correspondence between the SRA and a solicitor before an application was made to the Tribunal but this was not a prerequisite of the Rules, nor of natural justice. Furthermore, a lay application could be made against a solicitor and in practice, the allegations contained in such an application were rarely discussed with the solicitor before the application was made.

46. Rule 10 of the SRA Disciplinary Procedure Rules 2011 required authority for an application to the Tribunal to be given, but that authority did not limit the allegations nor the factual nexus behind allegations which might be made in such an application. Furthermore, the factual nexus, which was referred to in the Rule 5 Statement but not in the letter dated 16 March 2011 from the SRA, nor in the Adjudicator's decision, were well known to the Respondent because they related to her own application to the European Court of Human Rights and to her correspondence with the SRA. Accordingly, the Respondent was not prejudiced by inclusion of those facts. The Tribunal was satisfied that it did have jurisdiction to deal with the allegations. The Respondent would still have the opportunity of dealing with these factual matters when responding to the allegations and also, if it proved necessary, when dealing with mitigation.

Respondent's Application for an Adjournment (19 April 2013)

47. The Tribunal reconvened on 19 April 2013, while the Respondent was part way though her evidence, having given her evidence in chief on 18 April 2013. With the agreement of Mr Havard, the Tribunal allowed Mr Robert James Cooles to give his evidence before cross-examination of the Respondent started, so that Mr Cooles could be released.

48. After Mr Cooles had completed his evidence, the Respondent made an application for an adjournment. She informed the Tribunal that, after the previous day's hearing on 18 April 2013, she did not sleep at all due to her health and medical condition. She informed the Tribunal that she was concerned that, although she was currently in remission, the stress of these proceedings might affect her health further. The Respondent had arranged for another witness, Mr Colin Philip Pinnell to attend to give evidence. The Respondent requested he be allowed to give his evidence before any adjournment of today's hearing so that he could be discharged. She considered his evidence would be brief.

49. Mr Havard was not unsympathetic to the Respondent's position but made it clear that the Applicant would like to conclude this hearing as soon as possible. He accepted that if the Respondent was in difficulty, it might be necessary to adjourn the hearing.

50. The Tribunal allowed Mr Pinnell to give his evidence. Having heard that evidence, the Tribunal considered the Respondent's application for an adjournment. The Tribunal, having noted the Respondent's ill-health, was satisfied that it would be appropriate to adjourn that day's hearing part heard. However, the Tribunal informed the Respondent that any potential further applications by the Respondent

for an adjournment based on her health would need to be supported by up-to-date medical evidence. A Memorandum of Adjournment was produced dated 7 May 2013 which gave further directions.

51. The matter was subsequently re-listed for 14 and 15 August 2013.

Respondent's Application for an Adjournment (28 July 2013 by email)

52. In an email dated 28 July 2013 to the Tribunal and Mr Havard, the Respondent made an application for an adjournment of the hearing due to take place on 14 and 15 August 2013. She made reference to her health and indicated she was not well enough to attend that hearing. She attached a letter dated 9 October 2009 from Dr Pujol in support of her application. The Respondent indicated that she was unable to obtain an appointment with Dr Pujol before 6 September 2013. Mr Havard, in an email dated 1 August 2013 opposed the application for an adjournment as it was not supported by an up-to-date medical report.

53. On 1 August 2013, the Tribunal, having considered the emails from the Respondent and Mr Havard, refused the application for an adjournment. In reaching that decision the Tribunal had regard to the Tribunal's Policy/Practice Note on Adjournments. The Tribunal was conscious of the need to ensure that cases were heard with reasonable expedition so that the interests of the public as well as the profession were protected. The Respondent had failed to provide an up-to-date medical report from a Consultant Psychiatrist in accordance with the Direction at paragraph 10(iii) of the Memorandum of Adjournment of the part heard hearing dated 7 May 2013. The Tribunal had also taken into account the fact that the Respondent had failed to comply with the Direction at paragraph 10(i) of that Memorandum dealing with disclosure. The parties were reminded that the Tribunal did have a discretion to proceed in the absence of the Respondent and that the matter remained in the list for 14 and 15 August 2013.

Respondent's Application for Directions (1 August 2013 by email)

54. In an email dated 1 August 2013 to the Tribunal and Mr Havard, the Respondent made an application for directions. She requested a number of directions be made regarding the allegations she was required to answer. By an email dated 2 August 2013 she attached a revised Request for Directions. Mr Havard responded to the Respondent's application by email dated 2 August 2013 and indicated he was of the view that the directions requested were actually submissions that should be made by the Respondent at the resumed hearing. He also reserved his right to respond to some of the issues raised by the Respondent.

55. On 6 August 2013, the Tribunal considered carefully the Respondent's revised Request for Directions. The Tribunal also considered the response from Mr Havard dated 2 August 2013. The Tribunal's decision was that the matters raised therein were matters of argument and submissions and as such should be dealt with by the Respondent at the hearing scheduled for 14 and 15 August 2013. Mr Havard's request regarding a right of reply could also be dealt with at the hearing when the Respondent's arguments had been heard. The parties' attention was once again

drawn to the Tribunal's discretion to proceed to deal with the substantive hearing in the absence of the Respondent.

Respondent's Application for an Adjournment (8 and 14 August 2013)

56. In an email dated 8 August 2013 to the Tribunal and Mr Havard, the Respondent made a second application for an adjournment of the substantive hearing due to take place on 14 and 15 August 2013. This was supported by a medical report dated 7 August 2013 from Dr Ornstein.

57. The Respondent and Mr Havard were both informed by an email from the Tribunal dated 12 August 2013 that the Chairman of the Tribunal had considered the Respondent's request for an adjournment, and Mr Havard's response, and had decided that the Tribunal panel would hear arguments from both parties on 14 August 2013. The Respondent was advised that whether or not she was in attendance, if the application to adjourn was refused, the Tribunal would then proceed to hear the case as planned on 14 and 15 August 2013.

58. On 12 August 2013 the Tribunal received an email from the Respondent indicating she had been advised by her Consultant not to attend the hearing on 14 August 2013 on the grounds that it could cause a severe relapse. She confirmed she was therefore unable to attend the hearing on 14 August 2013.

59. At the hearing on 14 August 2013, the Tribunal, having considered the Respondent's application in her absence and the Applicant's submissions, granted the adjournment. A Memorandum of Adjournment dated 15 August 2013 was produced.

Respondent's Application for Recusal of the Tribunal Panel (23 November 2013 by email)

60. In an email dated 23 November 2013 to the Tribunal and Mr Havard, the Respondent made an application for the Tribunal to consider whether a new panel of Tribunal members should be appointed in light of the medical report provided by the Applicant's medical expert, Dr Cutting. In her email the Respondent made several criticisms of Dr Cutting's reports dated 2 October 2013 and 13 November 2013 and alleged he had defamed her and attempted, by his reports, to mislead and poison the minds of the Members of the Tribunal.

61. The Respondent also made a number of criticisms of Mr Havard alleging he had provided the Tribunal with a letter from Dr Cutting which was defamatory and could poison the minds of the Members of the Tribunal. The Respondent submitted that the Tribunal needed to consider whether the panel should continue to hear the remaining hearing or whether new Members needed to be appointed after striking out Dr Cutting's reports in their entirety and/or his letter of 13 November 2013 in which she alleged he had repeated a non-diagnostic and seriously defamatory statement. The Respondent requested the Tribunal make Orders to strike out all of Dr Cutting's reports and letters, appoint a new panel of Tribunal Members to hear the remaining part of the proceedings and/or strike out the claim.

62. The Respondent's application was referred to the Clerk of the Tribunal who responded by email on 27 November 2013 as follows:

> "I have read Ms Lewald's email dated 23 November 2013 addressed to the Tribunal and Mr Havard. The application envisaged by Ms Lewald must be made to the current Tribunal on the morning of the hearing, and Mr Havard must be given an opportunity to make submissions at that hearing. It will assist Ms Lewald and the Tribunal if written submissions can be made in advance of 9 December 2013."

63. The Respondent did not pursue this application and no submissions were made in relation to it on 9 December 2013.

Respondent's Submission concerning the Burden of Proof (9/10 December 2013)

64. During the course of the morning on 19 April 2013, the Tribunal had indicated to the Respondent that, as the Applicant had submitted that, in relation to Allegation 1.4, there was no cogent evidence of the dishonesty/fraud which the Respondent had alleged against members of the judiciary, it would be of assistance if the Respondent could produce some evidence to cast doubt on the Applicant's case.

65. The Respondent, in a statement delivered immediately before the hearing on 9 December 2013, had suggested that the Tribunal had wrongly shifted the burden of proof from the Applicant to the Respondent.

66. The Tribunal, having received the Respondent's Statement on the morning of 9 December 2013 considered it during the course of the day. The Tribunal stated that it had not shifted the burden of proof. The Respondent had referred to two passages in the transcript of the hearing from 19 April 2013 where the Chairman of the Tribunal had made extempore comments about the Respondent producing some evidence. It remained the Applicant's obligation to establish to the Tribunal beyond reasonable doubt that the allegations were proved. However, as the Chairman pointed out on page 9 of the transcript of the second day's hearing on 19 April 2013, Allegation 1.4 was that the Respondent had made allegations of dishonesty and fraud without cogent evidence. The Chairman had suggested that the Respondent might produce some evidence (not to the criminal standard) to enable the Tribunal to assess whether the allegation that there was no cogent evidence could be found proved beyond reasonable doubt.

67. The Tribunal stressed, for the avoidance of doubt, that it was for the Applicant to prove all the allegations beyond reasonable doubt and that it was not for the Respondent to disprove those allegations. However, there had to be sufficient doubt in the evidence relied upon by the Applicant for the Tribunal to find the allegations not proved and for this reason, it had been suggested that the Respondent could assist the Tribunal in casting some doubt on the Applicant's allegations.

Respondent's Application for Permission to Make an Application regarding No Case to Answer (9 December 2013)

68. On 9 December 2013, the Respondent was represented by Counsel, Mr Swirsky. At the start of the hearing Mr Swirsky stated that he wished to make an application to strike out all the allegations against the Respondent on the basis that there was no evidence to support the Applicant's allegations. Mr Swirsky acknowledged that such an application would normally be made immediately after the Applicant closed his case. However he submitted this was the natural stage for the application to be made and that it would be unfair to the Respondent if the matter continued when she was submitting there was no evidence upon which to base the allegations.

69. Mr Havard informed the Tribunal that until he had arrived for the hearing that morning, he had been unaware that the Respondent had instructed Counsel, and had not known anything about the application now being submitted until about 8.41am that morning, when he had received a 32 page written Submissions document. He strenuously resisted such an application being made many months after he had presented his case and reminded the Tribunal that, not only had he not been given any prior warning of the application, he had completed his submissions and the Respondent was currently part way through giving her evidence. Mr Harvard submitted that it was far too late and unfair to the Applicant, and indeed to the Tribunal, now to listen to such an application which had been made without any notice.

70. The Tribunal considered carefully the submissions of both parties. The Tribunal particularly noted that the application was one that would normally be made immediately after the closure of the Applicant's case, and not midway through the Respondent's evidence. The Respondent had already commenced her representations on 18 April 2013, many months earlier, and was now part way through her evidence. The Tribunal had also heard evidence from two witnesses on her behalf.

71. The Tribunal therefore refused the Respondent permission to make an application to strike out the Applicant's case at such a late stage. The Tribunal stated the Respondent was not prejudiced by the Tribunal's refusal to hear her application as any representations Mr Swirsky was intending to make in relation to that application could be made during his submissions on behalf of the Respondent in the substantive matter.

Hearing Adjourned Part Heard on the Tribunal's own motion (10 December 2013)

72. During cross-examination on 10 December 2013, the Respondent became very distressed and was unable to continue with the hearing as she required immediate medical attention. Mr Havard told the Tribunal that he had not quite completed his cross-examination. He would take instructions and consult with the Applicant on the appropriate way forward.

73. The Tribunal concluded that it had no option but to adjourn the hearing part heard to 21 March 2014 with the agreement of Mr Havard and Mr Swirsky, and subject to the Respondent's availability on that date. The Tribunal also noted in particular that

Dr Cutting, in his medical report dated 2 October 2013 had indicated that the Respondent had been fit to attend the hearing, indeed she had been able to give her evidence on 9 December 2013 with no difficulty. However, it seemed to the Tribunal that no doctor could advise the Tribunal whether the Respondent would be fit on each day of the hearing as this seemed to depend very much on her health from day to day. As it appeared that Mr Havard had dealt with most of his cross-examination, the Tribunal suggested to Mr Havard that the Respondent might find it easier to face future hearing days if no further cross-examination of her was required. The Tribunal did not make any direction on the matter as this was an issue for the Applicant to consider.

Respondent's Application to Adjourn the Hearing on 21 March 2014 (by email dated 18 January 2014)

74. In an email sent to the Tribunal and Mr Havard dated 18 January 2014, the Respondent made an application to adjourn the part heard hearing due to take place on 21 March 2014. She stated she had not yet recovered from the episode in December 2013 and was still suffering from some symptoms. She also stated that she did not intend to subject herself to attending a hearing based on a report from the Applicant's medical expert, who was a Consultant with little knowledge of her condition.

75. Mr Havard, in an email sent to the Tribunal and to the Respondent dated 20 February 2014 at 09.24, confirmed that the Applicant did not agree to the adjournment, particularly as the hearing on 21 March 2014 was still four weeks away. Mr Havard also noted there was no medical evidence to support the Respondent's application.

76. The Chairman of the Tribunal considered the Respondent's application and the Applicant's response. On 20 February 2014 at 11.02, the Tribunal informed both parties that the Respondent's request for an adjournment was rejected. The Tribunal issued a direction that both parties co-operate in arranging for the preparation of a further medical report to be prepared by Dr Cutting, including the attendance on him by the Respondent at a time convenient to both her and Dr Cutting, around 7 March 2014. The report was to advise whether the Respondent was fit to attend the hearing on 21 March 2014 and was to be circulated to all parties as soon as possible after the appointment.

77. In a further email to the Tribunal and Mr Havard sent on the same day at 13.12, the Respondent stated she considered Dr Cutting to be incompetent due to the content of his previous report and his failure to anticipate the Respondent's medical problem at the Tribunal hearing in December 2013. She stated that she refused to attend any further assessment with him. In a further email sent to the Tribunal and Mr Havard on the same day at 13.29, the Respondent stated there was no indication that Dr Cutting would be willing to carry out a further assessment.

78. The Tribunal considered the Respondent's further emails and in an email to both parties sent on 20 February 2014 at 13.48, the Tribunal informed the Respondent that if she failed to attend the appointment with Dr Cutting as directed, then the Tribunal would not consider any application to adjourn on medical grounds at the hearing due to take place on 21 March.

Applicant's Application for Directions (6 March 2014 by email)

79. In an email dated 6 March 2014 to the Tribunal and the Respondent, Mr Havard, on behalf of the Applicant, submitted an application for directions. Mr Havard indicated in the email that he would not pursue cross-examination of the Respondent any further if he was able to make closing submissions and could make reference to medical evidence. These closing submissions would be made before the Respondent made her closing submissions. Mr Havard stated that the Respondent objected to him making closing submissions. Mr Havard also indicated that Dr Cutting, in order to assist the Tribunal, had offered the Respondent an appointment on 12 March 2014 for a further assessment but that the Respondent had refused to attend.

80. The Tribunal considered Mr Havard's application on 7 March 2014. The Tribunal confirmed that it was not prepared to authorise closing submissions by Mr Havard at that stage. The Tribunal indicated that a further application could be made at the resumed hearing on 21 March 2014 if Mr Havard so chose, but the Respondent would be entitled to make representations on such an application, and that the Tribunal anticipated in any event, if it were to permit closing submissions by Mr Havard, it would restrict the areas which could be covered by those closing submissions.

81. The Tribunal further confirmed that it considered it would be helpful for Mr Havard to indicate before the proposed appointment with Dr Cutting whether the SRA intended to proceed further with the cross-examination of the Respondent. It was the Tribunal's view that this would assist Dr Cutting in his assessment of whether the Respondent was fit to attend the hearing.

Applicant's Application to make Closing Submissions and

Applicant's Application in Relation to Respondent's Closing Submissions (21 March 2014)

82. At the resumed hearing on 21 March 2014, Mr Havard reminded the Tribunal that he had a professional duty to put the case of behalf of the SRA to the Respondent. The SRA did not wish to cause the Respondent any further distress or to become unwell, whatever her medical condition, but Mr Havard noted that there was no updated medical evidence since the last hearing in December 2013. He informed the Tribunal that at 8-9pm the previous evening he had received a 33 page document from the Respondent, the status of which was not clear to him, but he needed time to consider whether any issues arose from it.

83. As an alternative to continuing with cross-examination of the Respondent, Mr Havard requested leave to make short succinct closing submissions on limited areas. These submissions would concern Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007, the medical evidence in relation to the period during which the alleged conduct took place, remarks made by the Respondent in her new written submissions and the issue of "cogency of evidence".

84. Mr Havard reminded the Tribunal that this case had been ongoing for a considerable period of time and whilst he made no criticism of anyone, given that he had opened the case in April 2013, almost a year ago, he submitted that he should be allowed to

make short closing submissions. He submitted that this would be the appropriate and proportionate way to proceed and, if he could be allowed to make closing submissions, he would not proceed with cross-examination of the Respondent any further.

85. Mr Swirsky, on behalf of the Respondent, confirmed that the 33 page document contained submissions which had been prepared by the Respondent. This largely duplicated the 32 page Submissions document served by the Respondent in December 2013 and contained very little new information. Mr Swirsky submitted Mr Havard had already had the first Submissions document since December 2013 so there was nothing in the new document which would take him by surprise. The Respondent was happy to rely on the first Submissions document if necessary.

86. Mr Swirsky confirmed that the Respondent was present and was prepared to continue with cross-examination, indeed, she had not requested it should be discontinued. Mr Swirsky stated that it was the pressure of the proceedings, not cross-examination itself, which was likely to have an adverse effect on the Respondent's health. Cross-examination was one of the most pressurised parts of the proceedings but he suggested that the absence of further cross-examination, which was likely to take a short period, was unlikely to make any difference to the Respondent's health.

87. Mr Swirsky confirmed that the application for the Applicant to make closing submissions was opposed. He submitted that it was difficult to see how a decision not to continue with cross-examination entitled the Applicant to make closing submissions. The purpose of cross-examination was to draw out evidence and not to make comments on the evidence. The three areas that Mr Havard had indicated he would refer to in his closing submissions were not matters that related to cross-examination. Mr Swirsky submitted there was no link between those areas and the fact that cross-examination was not completed.

88. Whilst it was accepted that this case had taken an unusually long time to conclude, the Tribunal was reminded by Mr Swirsky that it was an experienced Tribunal, the members of which had taken notes throughout and could be expected to have a clear recollection of how the case had been put. Indeed, the case was set out in the Rule 5 Statement and Mr Swirsky confirmed that the transcripts of each of the hearing days supplied by Mr Havard were accurate and available to the Tribunal. Mr Swirsky submitted the Applicant was trying to "take a second bite at the cherry" and there was no reason to depart from the norm in that the Applicant could not make closing submissions.

89. Mr Swirsky stated the Applicant would have the opportunity to respond but only on any points of law. He submitted that the areas mentioned by Mr Havard earlier were matters that could have been dealt with before the Applicant's case was closed. The proposed submissions regarding the medical evidence were not appropriate at this stage. The Applicant had been aware of the Respondent's medical condition at the outset and if the Tribunal was now being asked to rely on the Applicant's medical expert, the Respondent would need to seek a further adjournment to obtain her own medical evidence.

90. The Tribunal considered carefully the submissions of both parties. The Tribunal was of the view that the matters Mr Havard wished to deal with in his closing submissions were not linked to the non-continuance of the cross-examination of the Respondent. Accordingly, the Tribunal refused permission to the Applicant to make closing submissions. The Applicant did have the right to make submissions on points of law only after the Respondent's closing submissions. The Tribunal confirmed this included any submissions on Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007.

91. At this point Mr Havard requested confirmation as to whether the Tribunal intended to ask questions of the Respondent and whether there would be any re-examination. He also reminded the Tribunal that there had been an indication that both the Respondent and her Counsel would make closing submissions. Mr Havard submitted that they could not both make closing submissions, and that these must be made either by the Respondent or by her Counsel. Mr Havard requested confirmation of these matters so that he could take a view on how to proceed.

92. Mr Swirsky, after taking instructions from the Respondent, confirmed that he did not have any re-examination. He confirmed that the Respondent had a number of closing submissions that she wanted to make personally as she felt that only she could express them properly. They were contained in her written submissions and she simply wished to expand upon them. The Respondent's preference was that Mr Swirsky made short submissions on her behalf in addition to her own closing submissions. If the Tribunal was not minded to agree this, then the Respondent would make closing submissions herself and Mr Swirsky would cease to be an advocate on her behalf, but would remain to give legal advice to her.

93. The Tribunal confirmed it did not intend to ask the Respondent any questions. Mr Havard, having taken instructions, then confirmed on behalf of the Applicant that, being sensitive to the Respondent's position, Mr Havard had decided not to continue his cross-examination of her. However, the Applicant objected to both the Respondent and her Counsel making closing submissions and requested a direction from the Tribunal that the normal procedure should apply whereby only one of them could make closing submissions.

94. The Tribunal, having considered the submissions of both parties on the issue of the Respondent's closing submissions, confirmed that it would not allow both the Respondent and her Counsel to make closing submissions. The Tribunal had not heard anything from either party to cause it to depart from its usual practice for one person to make closing submissions on behalf of the Respondent. It was a matter for the Respondent to decide whether she preferred those closing submissions to be made by her personally or by her Counsel. At this point Mr Swirsky confirmed he would step down as advocate and the Respondent would continue to represent herself and deal with closing submissions.

95. The Respondent requested a break so that she could prepare her closing submissions which the Tribunal granted.

Respondent's Application to Make Further Closing Submissions (23 March 2014 by email)

96. In an email dated 23 March 2014 from the Respondent to the Tribunal and Mr Havard, sent after the Tribunal had retired on 21 March 2014 to consider all the evidence and submissions on the allegations, the Respondent made an application to the Tribunal to make further submissions to the Tribunal before it made its final decision. She stated that her concern was that the Tribunal had made some decisions on points of law without inviting the parties to make submissions and that some points of law were not addressed which she believed needed to be addressed. The Respondent set out in her email a number of such issues.

97. The Tribunal considered the Respondent's application and informed the parties that all evidence and submissions from the parties closed on 21 March 2014. Furthermore, the Tribunal confirmed that it had retired on the afternoon of 21 March 2014 and had already started to deliberate. In the circumstances, the Tribunal confirmed it would not consider any further evidence or submissions, except in relation to mitigation in the event that the Tribunal found any of the allegations proved, or any consequential matters in due course such as costs.

Respondent's Application for an Adjournment (13 June 2014 by email)

98. In an email dated 13 June 2014 to the Tribunal and Mr Havard, the Respondent made an application for an adjournment and further directions. She attached to her email a Statutory Sick Pay Certificate dated 12 June 2014. In her email the Respondent stated that her Consultant Psychiatrist had informed her that the sick note would be sufficient to inform the Tribunal that she was unable to attend the resumed hearing on 24 June 2014 due to ill-health. She provided the Tribunal with details of her symptoms.

99. The Respondent stated in her email that she had been unable to find a psychiatrist who would be willing to provide a medical report without sight of all her medical records, which could take weeks to arrange. She indicated she was not prepared to see the Applicant's medical expert, Dr Cutting, again on the basis that she believed his previous opinion had been proved to be incorrect. The Respondent stated she was keen for the Tribunal's Judgment on the allegations to be given on 24 June 2014 but requested that if the Judgment was against her, the hearing be adjourned and any mitigation, sanction or costs be dealt with at a later date.

100. The Tribunal considered carefully the Respondent's email and the Statutory Sick Pay Certificate. The Tribunal referred the Respondent to its Policy/Practice Note on Adjournments which stated at paragraph 4(c) that a doctor's certificate issued for social security and statutory sick pay purposes only, or other certificate merely indicating that the person is unable to attend for work, is unlikely to be sufficient as providing justification for an adjournment. The Statutory Sick Pay Certificate was not sufficient for the Tribunal to adjourn the hearing due to take place on 24 June 2014. Accordingly, the Tribunal refused the Respondent's application for an adjournment, and advised the Respondent by email that if she intended to pursue the application further, a reasoned report from a fully instructed psychiatrist was likely to be required.

Respondent's Application for Disclosure (16 June 2014 by email sent at 09.59)

101. In an email dated 16 June 2014 sent to the Tribunal and Mr Havard at 09.59, the Respondent made an application for the SRA to disclose information requested in her email to the Applicant dated 13 June 2014 sent at 9.19pm. She submitted she required the information as a matter of urgency for the purpose of any mitigation she might need to submit if the hearing on 24 June 2014 proceeded, despite her request for an adjournment, and if any allegations against her were found proved.

102. The Respondent submitted that it was imperative for her to know, for the purposes of any mitigation which might be necessary:

> "…whether or not the SRA would have allowed me to be enrolled, or indeed enter into the training contract with Abbott Cresswell in 2009 if they recalled that I suffered from [medical condition] as they were aware of".

The Respondent submitted that this information was also required as it would be relevant to the issue of costs, and that she had been subjected to this very stressful case at the SDT unnecessarily and had suffered considerable loss as a result.

103. The Tribunal considered carefully the Respondent's email of 09.59 and, in an email sent to her on 16 June 2014 at 10.37, refused her application for information. The Tribunal stated:

> "It is now too late for the Respondent to require any disclosure from the SRA. In any event, any response from the SRA could be no more than supposition as to what decisions might have been taken based on the circumstances relating to the Respondent's condition at the relevant times."

Respondent's Second Application for Disclosure (16 June 2014 by email sent at 10.56)

104. In an email dated 16 June 2014 sent to the Tribunal and Mr Havard at 10.56, the Respondent stated that she disagreed with the Tribunal that it was too late for information to be provided, as she considered it was required for any mitigation on 24 June 2014. She submitted that the SRA must have certain rules in place for applicants who have recognised medical conditions which were incurable. She was concerned that her medical condition had been ignored or played down and that "they want me out for that but under the guise of misconduct".

105. The Tribunal considered the Respondent's email sent at 10.56 and in an email to the Respondent dated 17 June 2014 sent at 12.33 stated the following:

> "The request for provision of information by the SRA is again refused for the reasons previously set out.
>
> As regards the request to adjourn any mitigation by the Respondent or any application by the Respondent for costs against the SRA, the Respondent has known of the hearing date of 24 June for some time. The Respondent has not provided sufficient evidence for the Tribunal to grant an adjournment of the hearing or any part of it. A statement of truth by the Respondent is unlikely

> to be adequate to persuade the Tribunal to grant any adjournment on health grounds. The Tribunal cannot specify in advance what evidence might be adequate to persuade it to grant an adjournment, other than to refer the Respondent again to the Practice Note on Adjournments."

Respondent's Application to Submit Further Evidence (17 June 2014 by email sent at 13.41)

106. In an email dated 17 June 2014 sent to the Tribunal and Mr Havard at 13.41, the Respondent submitted a new document and requested the Tribunal considered this before a decision was made, or in the alternative for the document to be used as mitigation. The document attached was a letter of claim dated 8 April 2014 from S Solicitors to Abbott Cresswell LLP.

107. The Tribunal considered the Respondent's email sent at 13.41 and in an email to the Respondent dated 17 June 2014 sent at 14.09, stated the following:

> "The Respondent's right to submit further evidence in relation to the allegations ended at the closure of submissions on her behalf. If any of the allegations are found proved, she may produce at the hearing evidence directly related to mitigation."

Respondent's Second Application to Submit Further Evidence (17 June 2014 by emails sent at 14.20, 20.09 and 20.16, and 18 June 2014 by emails sent at 10.16 and 11.32)

108. In an email dated 17 June 2014 sent to the Tribunal and Mr Havard at 14.20, the Respondent disputed the Tribunal's decision refusing to allow her to submit further evidence in relation to the allegations after the closure of submissions on her behalf. She stated that the document she had attached was a new document and could not have been produced earlier as it came to her knowledge after the last hearing. In a further email to the Tribunal and Mr Havard sent the same day at 14.20, the Respondent submitted her medical condition was not a mitigation issue but rather a substance of the allegations. The Respondent sent further emails to the Tribunal and Mr Havard on the same day at 20.09 and 20.16. On 18 June 2014, the Respondent sent emails to the Tribunal and to Mr Havard at 10.16, in which she commented on the Tribunal process, and at 11.32 in which she appeared to make further closing submissions.

109. The Tribunal considered all the Respondent's emails and in an email to the Respondent dated 18 June 2014 sent at 15.05, stated the following:

> "The Tribunal has considered the Respondent's emails to the Tribunal dated 17 June timed at 14.20, 20.09 and 20.16, and dated 18 June timed at 10.16 and 11.32. The Tribunal made its decision as noted in the email from the Tribunal dated 17 June at 14.09. It does not agree to vary that decision. Any further application which the Respondent wishes to make to submit further evidence in relation to the allegations (as opposed to mitigation) will not be considered until the hearing on 24 June.
>
> The Tribunal has noted the comments made by the Respondent in her email dated 18 June timed at 10.16."

Respondent's Application for an Adjournment (18 June 2014 by emails sent at 16.40 and 17.07)

110. In an email dated 18 June 2014 sent to the Tribunal and Mr Havard at 16.40, the Respondent made an application for an adjournment of the hearing on 24 June 2014. Attached to the Respondent's email was a letter dated 17 June 2014 from Dr P who provided details of the Respondent's medical condition and confirmed she was taking medication. He also stated that the Respondent felt unable to cope with her caseload at work and had been issued with a sick note for six weeks. Dr P stated that if the Respondent should attend the Tribunal hearing on 24 June 2014, this would add more stress to her current situation. In a cover letter also dated 18 June 2014 to the Respondent, Dr P stated that if the court required a medical legal report, it should be requested in writing with specific questions that the court required answers to.

111. In a further email sent to the Tribunal and Mr Havard at 17.07, the Respondent stated that she was also suffering from considerable pain, which might be stress related, but she could not get an appointment with the doctor until 30 June.

112. In an email from Mr Havard to the Tribunal and the Respondent, sent on 19 June 2014 at 15.46, Mr Havard confirmed that the Applicant opposed the Respondent's application for an adjournment. The Applicant was concerned that Dr P appeared to be a locum specialist registrar and that it was not clear whether the observations contained in his letter were based on a consultation with the Respondent, nor whether he had had access to the Respondent's medical records or had any prior involvement.

113. The Respondent sent a number of further emails to the Tribunal and to Mr Havard. In an email sent at 16.23, the Respondent stated that Dr P had advised her on 12 June 2014 not to attend the hearing on 24 June if she did not feel able to do so, and that the sick note would be sufficient. In a further email sent at 16.36, the Respondent stated Dr P had given her a sick note of his own accord and advice on 12 June and that he had had access to all her medical records at the hospital. She also confirmed this had been her third appointment with him and that he was familiar with her case.

114. In a further email from the Respondent to the Tribunal and Mr Havard sent at 16.52, the Respondent stated she had been informed that Dr Pujol had been removed from the Respondent's case and that was the reason why Dr P had been assigned to deal with the Respondent's care.

115. The Tribunal carefully considered all the emails from the Respondent and from Mr Havard. In an email to both parties dated 20 June 2014 sent at 09.40, the Tribunal stated the following:

> "The letter from the locum specialist registrar is not considered adequate for the Tribunal to agree an adjournment. It is not the reasoned report from a fully instructed psychiatrist, which has been previously required by the Tribunal. He does not state whether he has carried out a detailed review of all the Respondent's medical notes, including all the reports from various specialists which have been provided to the Tribunal. It is not clear from the report when the registrar saw the Respondent, nor for how long, nor whether

> he has had any previous involvement with the Respondent. The registrar accepts that his report is not a medico-legal report. If the Respondent seeks an adjournment on health grounds, she must provide a much more detailed medico-legal report, in which the registrar sets out all the reports which he has reviewed, the views he has reached personally as to the Respondent's medical condition, what he has been told by the Respondent, his conclusions based on his medical expertise, and his prognosis. The Tribunal expects the registrar to have reviewed and to comment on all the reports of Dr Cutting.
>
> The Tribunal accepts that appearance before it is inevitably stressful, but after the incident in December 2013 the Respondent was able to attend and participate in the hearing in March 2014.
>
> The Tribunal is concerned, in the interests of the public, the interests of the profession, the interests of justice and, indeed, in the interests of the Respondent for these proceedings to be brought to their conclusion. It is conscious that, while the Respondent is not currently at the office, she is free to practise as a solicitor, and it is therefore important for the matter to be finally determined."

Respondent's Further Emails Regarding an Application for an Adjournment (20 June 2014 sent at 10.57, 11.36, 11.51, 12.04 and 12.17)

116. Having received the Tribunal's decision sent by email on 20 June 2014 at 09.40, the Respondent sent a number of further emails to the Tribunal and Mr Havard on the same day. In the first email sent at 10.57, the Respondent stated an NHS psychiatrist could not do what the Tribunal was asking and that she would need to appoint a private psychiatrist, who would take weeks to provide a report as they would need access to all her medical records. The Respondent submitted there was insufficient time for her to arrange this. She further submitted that there were no allegations against her by her employers or clients, and therefore she did not understand the Tribunal's concerns that she continued to practise, unless these were concerns related to her medical condition.

117. In a second email sent at 11.36, the Respondent referred the Tribunal to the content of an email from Dr Ornstein dated 22 November 2013, which referred to the Respondent's own email to him dated 19 November 2013. In her third email sent at 11.51, the Respondent again referred the Tribunal to the content of the email from Dr Ornstein dated 22 November 2013. In her fourth email sent at 12.04, the Respondent reminded the Tribunal that the Tribunal already had before it letters from Dr Hudson and Dr Pujol, which, she submitted, stated that stress could cause a relapse to her underlying medical condition. In her fifth email sent at 12.17, the Respondent attached a copy of a Decision Notice from the Social Security Tribunal dated 9 September 2010, and submitted that that tribunal had agreed that the Respondent suffered from the medical condition she had referred to.

118. The Tribunal reviewed all the emails from the Respondent and informed the parties in an email sent on 23 June 2014 at 12.42 that it had not received evidence sufficient to order an adjournment of the hearing due to take place on Tuesday 24 June 2014.

Respondent's Application for Recusal of the Tribunal Panel (20 June 2014 by email sent at 13.29)

119. In an email dated 20 June 2014 sent to the Tribunal and Mr Havard at 13.29, the Respondent stated she had made an application to the Tribunal on 23 November 2013 for the Tribunal to consider whether a new panel of Members needed to be appointed. She stated she did not receive a decision on that application. The Respondent further submitted:

> "Given the Tribunal's reliance on Dr Cutting's report - despite informing me at the last hearing that they would not be considering it - by them requiring Dr [P] to comment on Dr Cuttings' reports – the Tribunal should reconsider my application of 23 November 2013."

120. The Respondent further submitted the Tribunal was asking Dr P to do something impossible - to provide an expert evidence report when he was her treating psychiatrist, and therefore she submitted he could not provide such a report which would require her to pay for it. She further submitted Dr Ornstein confirmed in his email of 22 November 2013 that it would not be appropriate for a doctor on the NHS team treating her to take on paid work. The Respondent submitted that Dr P did not have all the reports of Dr Cutting, and, as an NHS doctor, he could not officially comment on them. She further submitted that there was insufficient time to produce such a detailed report before 24 June 2014. The Respondent stated the Tribunal had shown a total lack of knowledge and understanding of her medical condition.

121. The Tribunal considered carefully the Respondent's application for recusal of the Tribunal Panel. The Tribunal informed the parties by an email dated 23 June 2014 sent at 15.10 the following:

> "The Tribunal does not consider that the members hearing the case have been adversely affected by their having reviewed the evidence of Dr Cutting. In any event, the members, comprising an expert Tribunal, are capable of putting out of their consideration any evidence which they consider to be incorrect or irrelevant. The request for the members to recuse themselves is rejected."

Respondent's Application for an Adjournment (24 June 2014)

122. After the Tribunal had announced its decision on the Allegations on 24 June 2014, Mr Swirsky, on behalf of the Respondent, applied for an adjournment. He submitted the Tribunal would now be required to look at appropriate mitigating factors and in this case, it was clearly apparent that the Respondent was suffering from a medical condition. Mr Swirsky accepted there was no current medical evidence before the Tribunal and that the conduct related to events in 2009/2010 which was a time when, he submitted, the Respondent was very likely suffering from her medical condition.

123. Mr Swirsky reminded the Tribunal that the Tribunal's Guidance Note on Sanctions stated that if the Respondent was affected by a medical condition at the material time, there must be some supporting medical evidence. Mr Swirsky submitted that it

was clear that the Respondent was suffering at the material time and this could be seen from the documents, which indicated she had not been acting rationally.

124. Mr Swirsky further submitted that the Tribunal needed to consider the impact the Respondent's medical condition had on her at the material time. He stated that none of the medical evidence currently before the Tribunal covered that period, and that now was the appropriate stage for the Respondent to obtain such a report. She could not afford to pay for such a medical report prior to receiving the Tribunal's decision and Mr Swirsky reminded the Tribunal that it was common practice in criminal proceedings for medical evidence to be obtained at this stage. Mr Swirsky reminded the Tribunal that there was no proper medical report before the Tribunal save the report from Dr Cutting. The recent flurry of emails from the Respondent was an indication of her medical condition and, he said, reinforced the submission that medical evidence was necessary.

125. Mr Havard, on behalf of the Applicant, opposed the application for an adjournment. He reminded the Tribunal that there was already some medical evidence before the Tribunal, and that evidence indicated that the Respondent was in remission at the material time. Whilst the Applicant did not belittle the Respondent's medical condition in any way, it was submitted that the Respondent had tried to explain her behaviour throughout the case by reference to her health but yet had never sought any medical evidence to support this. The Respondent had also made reference to documents which were not part of the SRA's case, to indicate that she was unwell at the material time. At various stages before each hearing, the Respondent had sent flurries of correspondence requesting various adjournments but at no time had the Respondent instructed an appropriate medical expert to produce a medical report within a reasonable time before the hearing.

126. The Applicant had concerns about whether the Respondent would in fact instruct a medical expert. She had known about today's hearing for many months and there was no basis for the Tribunal to be satisfied that the Respondent would indeed obtain the necessary report. Mr Havard submitted that the Respondent currently had an unconditional practising certificate and that those allegations which had now been found proved, showed she was a real risk to the public.

127. The Tribunal considered the submissions of both parties very carefully. The Tribunal also considered its Policy/Practice Note on Adjournments. Paragraph 45 of the Tribunal's Guidance Note on Sanctions indicated that personal mitigation including misconduct arising at a time when a respondent was affected by a physical or mental illness that affected his/her ability to conduct him/herself to the standards of a reasonable solicitor may be relevant and may serve to reduce the nature of the sanction. However the Guidance Note on Sanctions made it clear that any such mitigation should be supported by medical evidence from a suitably qualified practitioner.

128. The Respondent in this case had been aware of today's hearing for a number of months and the email correspondence showed that the Respondent was aware that if any of the allegations were found proved, she would be required to mitigate today. The Respondent had failed to produce any medical evidence to satisfy the requirements of Paragraph 45 of the Guidance Note on Sanctions.

129. Mr Swirsky had been instructed by the Respondent and represented her on 24 June. He was able to mitigate on her behalf. The Tribunal's Practice Note on Adjournments specified that lack of readiness of the Respondent was not generally regarded as providing justification for an adjournment. Equally, the inability of a Respondent to afford the services of a representative at a hearing was not a ground for an adjournment. By correlation, the inability, or unwillingness, of this Respondent to afford to instruct a Consultant Psychiatrist before the announcement of the Tribunal's findings on the Allegations was not a ground for an adjournment. Accordingly, the Tribunal refused the Respondent's application for an adjournment.

Other Matters Arising

130. The Respondent had submitted written Submissions for the hearing on 21 March 2014 which, broadly, duplicated her written Submissions submitted for the hearing on 9 December 2013. Some of the written Submissions duplicated applications which had been made by the Respondent during the course of the proceedings and upon which the Tribunal had already made decisions. Other written Submissions related to the actual allegations themselves, and the Tribunal dealt with these when considering the respective allegation. However, there were some written Submissions that had been made by the Respondent which did not relate directly to any of the applications or the allegations. The Tribunal therefore considered those additional written Submissions and made determinations on the points raised by the Respondent. The Tribunal's decisions on those additional points, not covered in any application or allegation are set out below.

131. In her written Submissions dated 21 March 2014, at paragraph 7 the Respondent submitted the Applicant had made a new allegation on 18 April 2013 concerning the Respondent's allegation that she did not receive a fair trial from Mr Justice MacDuff. The Respondent made reference to a comment made by Mr Havard on 18 April 2013 which was set out in the transcript of that hearing at page 8. The Tribunal considered the comments made by Mr Havard and was satisfied that he did not make any new allegation.

132. At paragraph 8 of her written Submissions dated 21 March 2014, the Respondent alleged the Applicant had made a new allegation that the Respondent had failed to disclose a 'registered' County Court judgment on her application form for admission as a solicitor. The Tribunal was satisfied the Applicant had not made a new allegation in this regard and indeed, the Tribunal set out its views on the issue of a 'registered' County Court judgment in its decision on Allegation 1.5.

133. At paragraph 13 of her written Submissions dated 21 March 2014, the Respondent submitted that the Tribunal had wrongly refused the Respondent's application for disclosure particularly concerning the category of documents in relation to Mr M. She submitted disclosure was required under the Tribunal's Practice Direction No 2 because:

- It was 'possibly relevant' to the allegation

- It would or might assist the Respondent in fully testing the Applicant's case in relation to her allegation of dishonesty against Mr M or introducing evidence in rebuttal

- It had a real prospect of providing a lead on evidence because the Respondent was certain that Mr M acted dishonestly.

134. The Respondent submitted she had been entitled to all such disclosure from the Applicant. The Tribunal had already dealt with the Respondent's application for a private hearing in which she had discussed the case concerning Mr M in an earlier preliminary application. That application was dealt with in a private hearing and a Memorandum had been produced. During the course of that application the Tribunal had concluded the Respondent's allegations concerning Mr M did not form part of the Applicant's case and had no relevance to the actual allegations before the Tribunal. The Tribunal had decided that it would not be necessary for the Tribunal to consider that case or the Respondent's application for disclosure in relation to it any further.

Factual Background

135. The Respondent was born on 7 March 1954 and admitted to the Roll on 15 December 2010. At all material times she was employed by Abbott Cresswell LLP, 179 Upper Richmond Road West, London, SW14 8DU ("the firm").

Allegations 1.1, 1.2 and 1.3

136. Civil Restraint Orders can be made in certain circumstances to restrain a litigant from pursuing further claims or applications where a large number of claims or applications have already been found to be wholly without merit. There are three types of Civil Restraint Orders - Limited Civil Restraint Orders, Extended Civil Restraint Orders and General Civil Restraint Orders. The extent to which a person is restricted from making further applications or bringing further claims increases depending on the type of Order made. A General Civil Restraint Order (GCRO) provides the greatest level of restriction as it restrains a person from issuing any claim or making any application in specified Courts without leave.

137. Two GCROs were made in respect of the Respondent dated 13 October 2009 and 22 October 2009 at a time when she was a trainee solicitor with the firm.

138. The Respondent had brought a series of actions in the course of which she had sought to apply for permission to appeal against the various orders made against her. On 13 October 2009 the Honourable Mr Justice MacDuff ordered that the applications for permission to appeal in all four appeals against the Orders of Master Foster and Master Eastman were refused as being wholly without merit and each action was struck out. Mr Justice MacDuff made a GCRO on the same day. On 22 October 2009, having decided that the Respondent had made an application in proceedings against SIL Ltd and others which was totally without merit, the Honourable Mr Justice Blake made a GCRO.

139. The Respondent suggested that neither GCRO should have been made as the Orders made by Master Foster and Master Eastman were void, and accordingly there were no court orders in respect of which the GCRO could be validly made. She refused to accept any of the rulings made against her and made allegations of dishonesty and/or fraud and/or unlawful conduct against a wide range of persons to include a significant number of the Judiciary. Details of those persons were provided.

140. In a document entitled "Statement of the Facts" produced by the Respondent she stated the following:

> "14.3 Mr Justice MacDuff failed to give me a fair hearing because he dishonestly failed to consider my submissions as set out in my Grounds of Appeal and Skeleton Argument……
>
> 14.4 Master Foster's and Eastman's Orders on which Mr Justice MacDuff relied on in his Order of 13 October 2009 are void because both Master Foster and Eastman acted dishonestly in producing those Orders ……
>
> 14.4.1 Master Foster acted dishonestly in deciding against me in his Orders of 4 March 2009 relating to claim number [RC] on which Mr Justice MacDuff relied because he decided that RC did not provide legal advice in order to unlawfully protect RC from liability ……
>
> Master Foster was aware that the Tribunal's decision that I was dismissed was void but he dishonestly relied on it in order to unlawfully protect RC as detailed above.
>
> 14.4.2 Master Foster acted dishonestly in deciding against me in his Orders of 4 March 2009 relating to claim number [SRB] on which Mr Justice MacDuff relied because he decided that SRB's advice …… was correct …..
>
> 15.1 The High Court/Mr Justice MacDuff of the United Kingdom failed on 13 October 2009 to give me a fair hearing in respect of claim numbers …. as detailed in 14 above because he was not independent and impartial. He acted dishonestly by knowingly relying on decisions of Masters Foster and Eastman which decisions of those Masters he knew to be void/unlawful. He acted unlawfully in order to unlawfully protect Masters Foster and Eastman from being exposed for their unlawful acts as detailed in 14 above and to unlawfully protect the Government from liability to me in my claim number..."

141. In a document entitled "Grounds of Appeal" the Respondent stated:

> "Mr Justice Cranston knew that the High Court Orders of 13 and 22 October 2009 made by Mr Justice MacDuff and Mr Justice Blake respectively are void but dishonestly refused the application. His refusal was based on fraud because he was unlawfully protecting the Government and Judiciary from financial liability against the Appellant."

In a letter to the SRA dated 4 October 2011, the Respondent stated:

> "The Judgment of Mr Justice Underhill …… evidences that my appeal in case [number] was successful which proves that Mr Justice Blake's CRO is void because he has no jurisdiction to overrule the Judgment of Mr Justice Underhill which he has in effect done and did so deliberately/dishonestly."

Allegations 1.1 and 1.4

142. Irwin Mitchell LLP ("IM") acted on behalf of the Bank of Scotland plc. James Chadwick and TS of IM were instructed to institute possession proceedings against both the Respondent and RLJ, because the mortgage account relating to a property owned by them had fallen into arrears. Proceedings were instituted and were still ongoing. The Respondent and RLJ made two applications dated 9 March 2010 and 7 July 2010 which were both dismissed and considered to be totally without merit in an Order dated 20 September 2010.

143. At a possession hearing on 6 June 2011 the Respondent and RLJ were heard but the Order for possession was made. Permission to appeal was refused as showing no reasonable prospects of success.

144. A report to the SRA dated 9 November 2010 made by Mr Chadwick included faxes and emails sent by the Respondent to IM and the Court. In that correspondence the Respondent made accusations of dishonesty against GH (Counsel instructed by IM), IM, District Judge G and District Judge H. The allegations of dishonesty against District Judges G and H were based on an assertion by the Respondent that they were attempting to protect the Claimant's solicitors from the consequences of their alleged negligence. The Respondent continued to make allegations of dishonesty, fraud, intimidation and harassment in her letters to the SRA dated 22 March 2011. In a further letter dated 4 October 2011, she made the same allegations against an SRA employee, Mr Chadwick, Mr S and various High Court Judges.

Allegation 1.5

145. The Respondent signed an application form for admission as a solicitor and for a practising certificate on 10 November 2010. Under Section 5 of that form the Respondent was required to answer a series of questions designed to identify whether there were any issues which could call into question her character and suitability as a solicitor. Question 7 asked the Respondent to confirm whether there were any other factors which might call into question her character and suitability to become a solicitor to which the Respondent answered "No". At this time the Respondent was subject to two GCROs, and various Orders and judgments had been made against her in the possession proceedings brought by the Bank of Scotland.

Allegations 1.1, 1.4 and 1.6

146. A report was prepared by Mr S, a caseworker at the SRA dated 20 September 2011. Correspondence subsequently took place between the Respondent and Mr S. In a letter to Mr S dated 4 October 2011 the Respondent stated she did not consider he was capable of dealing with the complaint by IM. In emails to Mr S dated 7 October

2011 the Respondent accused him of being dishonest in the matter and accused him of harassment. In a further email to Mr S dated 8 October 2011 the Respondent accused him of being dishonest in failing to include certain documents to be submitted to the Adjudicator. Allegations of dishonesty and bias were contained in an email from the Respondent to Mr S dated 6 October 2011 and 7 October 2011, and in a letter and an email to him dated 5 October 2011.

Witnesses

147. The following witnesses gave evidence:

- Shirley Lewald (The Respondent)
- Robert James Cooles
- Colin Philip Pinnell

Findings of Fact and Law

148. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

149. The Tribunal wished to stress that, although the Members of the Tribunal panel had witnessed the effects of the Respondent's medical condition, having seen her distress during cross-examination on 10 December 2013, the Tribunal had put that incident out of its mind and it did not affect its decisions on the allegations.

150. The Respondent in her closing submissions made several references to her medical condition and submitted that it was for the Applicant to show that any conduct alleged was not attributable to her medical condition..

151. In her written Submissions dated 21 March 2014 at paragraph 9, the Respondent also referred to her medical condition and submitted that it was for the Applicant to prove beyond reasonable doubt that any alleged wrongdoing on her part was intentional and not unintentional because it was caused by her medical condition. The Respondent had referred the Tribunal to a letter dated 10 November 2006 from Dr Stobart in which Dr Stobart stated:

> "What is clear is that Mrs Lewald-Jezierska has a troubled personality structure, expressed through impulsive behaviours and mental ruminations, which may have contributed to her present difficulties. What is not clear is whether she has any awareness of her possible contribution."

The Respondent submitted this was evidence that she could not possibly have 'intentionally' done anything wrong as alleged. She further submitted at paragraph 10 of her written Submissions that she suffered from an incurable condition and that the Tribunal needed to decide if it had the power to decide on her fitness to practise.

The Respondent submitted that the Tribunal did not have the power to decide on her fitness to practise as there was no possibility of her recovering in the future.

152. The Tribunal accepted that the Respondent had the medical conditions as set out in the medical evidence provided. However, the Tribunal found that there was no evidence before it to indicate that the Respondent's conduct at the material time was due to her medical condition. The letter from Dr Stobart was historical and pre-dated the Respondent's conduct in relation to the allegations by three years. No formal medical report had been prepared for these proceedings which would enable the Tribunal to conclude that the Respondent's medical condition had affected her behaviour at the time of the conduct complained of or that her conduct was not intentional. The Tribunal also noted that there was no allegation of the Respondent's lack of fitness to practise as all the allegations related to her conduct. The Tribunal rejected the Respondent's submissions in this regard.

153. The Tribunal first considered Allegations 1.2, 1.3, 1.4, 1.5 and 1.6, then having made decisions on those allegations, it proceeded to consider Allegation 1.1 last.

154. **Allegation 1.2: The Respondent's conduct had been such that she had become the subject of a General Civil Restraint Order dated 13 October 2009 contrary to Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.**

Allegation 1.3: The Respondent's conduct had been such that she had become the subject of a General Civil Restraint Order dated 22 October 2009 contrary to Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.

154.1 Rule 1.01 of the Solicitors' Code of Conduct 2007 ("SCC") stated:

> "You must uphold the rule of law and the proper administration of justice."

Rule 1.02 of the SCC stated:

> "You must act with integrity."

Rule 1.06 of the SCC stated:

> "You must not behave in a way that is likely to diminish the trust the public places in you or the legal profession."

154.2 On 13 October 2009, while the Respondent was a trainee solicitor, the Honourable Mr Justice MacDuff had made a General Civil Restraint Order ("GCRO") against the Respondent, having refused four applications for permission to appeal as being wholly without merit, and having struck out each of the actions. On 22 October 2009, the Honourable Mr Justice Blake had made a further GCRO against the Respondent, having dismissed an application she had made on the basis that it was totally without merit. The GCROs prevented the Respondent from issuing new proceedings, any application, appeal or other process in those actions against any Defendant in any High Court or County Court for a period of two years without first obtaining the permission of a Master.

154.3 The Applicant's case was that the Respondent, by becoming subject to two GCROs, at a time when she was a trainee solicitor, had failed to uphold the rule of law and the proper administration of justice, she had failed to act with integrity and had damaged the reputation of the profession. Mr Havard, on behalf of the Applicant, submitted that these were the most stringent of Orders that could be made in litigation and this was an indication of their seriousness.

154.4 The Respondent's position was that both of the GCROs were void and that she could therefore ignore them. The Tribunal had already dealt with this issue as a result of an earlier application by the Respondent and had determined that she was not entitled to ignore the Orders even if she considered them void. The correct procedure would have been for the Respondent to apply to set aside the Orders, not simply ignore them.

154.5 The Respondent gave evidence before the Tribunal. She accepted that the GCROs had been made but she reminded the Tribunal that she was not on what she referred to as "the list of vexatious litigants". She submitted that there had not been any discussion as to whether a lower Civil Restraint Order could be considered. The Respondent submitted that the acts of Master Foster and Mr Justice MacDuff had been without jurisdiction and that she had never been informed by any judge that an Order that was void must be set aside.

154.6 On cross-examination the Respondent stated the GCROs related to conduct concerning matters which first arose in 2003. She accepted that the GCROs had been made but disputed that they should have been made. She stated that she had tried to apply to get them set aside at the Court of Appeal but had been told she had been given no right of appeal by Mr Justice MacDuff. The Respondent stated that she had tried to apply to discharge the GCRO but the court staff would not accept her application as they informed her that Mr Justice MacDuff did not give her permission to appeal. Although the Respondent had not, and did not, accept that a High Court judge had jurisdiction to grant/refuse permission to appeal, and she had stated that her right of appeal should have been to the Court of Appeal, the court staff had refused her permission based on Mr Justice MacDuff's decision. She submitted that she had not failed to have the GCROs set aside but that her application had not been heard or progressed.

154.7 The Respondent accepted that a GCRO was a very serious matter but stated that she was annoyed with the judges "for being so reckless in making it". She also submitted that the second GCRO was void because the maximum time limit for a GCRO was two years, and the second GCRO had the effect of extending the two-year limitation. The Respondent also stated that these were not two separate GCROs as they both related to the same application and the same facts.

154.8 On cross-examination the Respondent did not accept that a GCRO damaged the reputation of the profession in circumstances when it was made unlawfully. She maintained that she had done nothing wrong and that she disputed the lawfulness of the GCROs. She stated that Mr Cooles and Mr Pinnell were aware of the GCROs. Mr Cooles was aware when the Respondent enrolled as a solicitor, but he had thought they were void. Throughout her evidence the Respondent maintained the GCROs were not lawfully made and were therefore void.

154.9 In her closing submissions, the Respondent reminded the Tribunal that in previous correspondence with the SRA she had disclosed the GCROs to the SRA herself, and that the SRA was aware of them before she had enrolled. She continued to dispute the facts upon which the GCROs had been made, and reminded the Tribunal that she could not apply to set them aside as the court staff would not allow her to do so without permission to appeal. She had had no alternative other than to pursue the matter to the European Court of Human Rights.

154.10 In her written Submissions dated 21 March 2014 at paragraph 1.2 the Respondent submitted that the Applicant's allegations were based on 'assumptions' that the GCROs were made for the reasons alleged by the Applicant with no evidence in support as was required by Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR). She submitted that the Applicant had a duty to obtain the judgment/findings of fact on which the judgments were based, and all relevant documents concerning those cases under Rule 15(4), and to present all this information for consideration by the Tribunal.

154.11 The Tribunal considered Rule 15(4) which stated:

> "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."

The Tribunal noted that the Rule made it clear that the judgment of any civil court may be proved by producing a certified copy of the judgment and the findings of fact. However, the Rule also stated that these documents were not conclusive proof of those facts. The Rule did not state that an uncertified copy of a judgment could not be used as proof of a judgment or of the findings of fact on which the judgment was based.

154.12 The Tribunal had been provided with copies of the GCROs, and indeed, the Respondent herself accepted that they had been made. She simply did not accept that they were valid. The Tribunal rejected the Respondent's submission that the Applicant was required to obtain and submit to the Tribunal all the facts on which the GCROs were based. The Tribunal had informed the Respondent during the course of proceedings that it would not seek to go behind the GCROs. They were lawfully made and the Applicant was entitled to rely upon them.

154.13 In her written Submissions dated 21 March 2014, the Respondent submitted that the Applicant had failed to inform the Tribunal that all the matters concerning these allegations, including the allegations of dishonesty made by the Respondent against members of the Judiciary and others, stemmed from one particular case. The Tribunal was satisfied that there was no need for the Applicant to provide further detail of that case, nor details of the Respondent's applications in that case, as they were not relevant to these allegations. In any event, the Tribunal would not seek to go behind decisions made by members of the Judiciary.

154.14 The Tribunal, whilst noting the Respondent's mistaken belief that the GCROs were void, was satisfied that they had been made and that they were valid Orders as they

had not been declared void by the Court. It was clear to the Tribunal that the Respondent, in continuing to make applications again and again, had failed or refused to accept earlier decisions of the Court. She had thereby shown a failure to uphold the rule of law and the proper administration of justice. The Tribunal was satisfied the Respondent had breached Rule 1.01. The Tribunal was also satisfied that in so doing, the Respondent had behaved in a way that was likely to diminish the trust the public placed in her or in the legal profession. The Tribunal found the Respondent had breached Rule 1.06.

154.15 The Respondent had a mistaken belief that she was entitled to ignore the Orders as she wrongly believed them to be void, and she therefore believed she was acting properly. She had made multiple applications which were held to be wholly without merit and this had led to the GCROs being made against her. The Court acted on its own motion when making the GCRO dated 13 October 2009. The Respondent genuinely believed that she was entitled to make the applications she had made, but her misguided determination in making those applications eventually led to her being made subject to the GCROs. The Tribunal was not satisfied that the Respondent had acted with a lack of integrity by becoming subject to GCROs in these circumstances. The Tribunal did not find that she had breached Rule 1.02.

154.16 Accordingly the Tribunal found Allegations 1.2 and 1.3 proved in relation to Rules 1.01 and 1.06. The Tribunal did not find Allegations 1.2 and 1.3 proved in relation to Rule 1.02.

155. **Allegation 1.4: The Respondent had made allegations of improper behaviour, to include dishonesty, against third parties, including members of the Judiciary, without any cogent evidence to support such allegations contrary to Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.**

155.1 The Tribunal had been referred to a Schedule, prepared by Mr Havard, containing a list of the people that the Respondent had accused of dishonesty. The list included various District Judges, a barrister, various firms of solicitors, High Court staff, a caseworker from the SRA, High Court Judges, Circuit Judges, various Masters, the Prime Minister, the Chancellor of the Exchequer, the Secretary of State, the Lord Chancellor and two solicitors. The list contained 18 individual names/titles, of which 10 were members of the Judiciary and 4 were senior Members of Parliament.

155.2 Mr Havard referred the Tribunal to a document exhibited to the Rule 5 Statement called "Statement of the Facts". This was a document that had been submitted by the Respondent to the European Court of Human Rights. The Tribunal's attention was particularly drawn to the following statements made by the Respondent in that document:

> "14.3 Mr Justice MacDuff failed to give me a fair hearing because he dishonestly failed to consider my submissions as set out in my Grounds of Appeal and Skeleton Argument …" *(page 142)*
>
> "14.4 Master Foster's and Master Eastman's Orders on which Mr Justice MacDuff relied on in his Order of 13 October 2009 are void because both

> Master Foster and Eastman acted dishonestly in producing those Orders." *(page 142)*
>
> "14.4.1 Master Foster acted dishonestly in deciding against me in his Orders of 4 March 2009 relating to claim no [RC] on which Mr Justice MacDuff relied because he decided that RC did not provide legal advice in order to unlawfully protect RC from liability because RC had failed to file a Defence and were relying on their application to strike out my claim….. Master Foster was aware that the Tribunal's decision that I was dismissed was void but he dishonestly relied on it in order to unlawfully protect RC as detailed above" *(page 143/144)*
>
> "14.4.2 Master Foster acted dishonestly in deciding against me in his Orders of 4 March 2008 relating to claim no [SRB] on which Mr Justice MacDuff relied because he decided that SRB's advice (that I had been unfairly dismissed and had a good claim for unfair dismissal) was correct because the Tribunal decided that I was unfairly dismissed …. " *(page 144)*
>
> "15.1 The High Court/Mr Justice MacDuff of the United Kingdom failed on 13 October 2009 to give me a fair hearing in respect of claim numbers [6 claim numbers] as detailed in 14 above because he was not independent and impartial. He acted dishonestly by knowingly relying on decisions of Masters Foster and Eastman which decisions of those Masters he knew to be void/unlawful. He acted unlawfully in order to unlawfully protect Masters Foster and Eastman from being exposed for their unlawful acts as detailed in 14 above and to unlawfully protect the Government from liability to me in my claim no [X]." *(page 150)*

155.3 The Tribunal's attention was drawn to another document called "Grounds of Appeal" which had been submitted by the Respondent in appeal proceedings. This document contained the following statements:

> "Mr Justice Cranston knew that the High Court Orders of 13 and 22 October 2009 made by Mr Justice MacDuff and Mr Justice Blake respectively are void but dishonestly refused the application. His refusal was based on fraud because he was unlawfully protecting the Government and Judiciary from financial liability against the Appellant …. and thereby defrauding her which makes his Order void also as fraudulent proceedings are void …." *(page 230)*

That document implied that there was a conspiracy between various members of the Judiciary.

155.4 In a letter to the Applicant dated 4 October 2011, the Respondent stated the following about a case worker at the SRA:

> "The reason for Mr [S]'s dishonesty may be because I complained of the incorrect information he provided me and although he/the SRA is according to the SRA's guidelines due to apologise to me he is failing to because he does not want to admit that he is wrong." *(page 134)*

She also stated:

> "The Judgment of Mr Justice Underhill ….. evidences that my appeal in case [number] was successful which proves that Mr Justice Blake's CRO is void because he has no jurisdiction to overrule the Judgment of Mr Justice Underhill which he has in effect done and did so deliberately/dishonestly." *(page 135)*

155.5 The Tribunal was provided with some details of the background concerning a repossession action against the Respondent and her husband. The Tribunal was also referred to a witness statement from Mr James Edward Chadwick, a solicitor from Irwin Mitchell Solicitors, dated 9 October 2012. Mr Chadwick referred to his statement in the possession proceedings dated 3 June 2011 in which he stated that, during the course of the repossession litigation, the Respondent, with her husband, had accused District Judge G of dishonesty in a letter to the Wandsworth County Court dated 10 July 2010. A copy of that letter was before the Tribunal.

155.6 The Tribunal was referred to an email from the Respondent to Mr Chadwick dated 28 October 2010 in which she stated the following:

> "If your client is not acting unlawfully then it is yourselves you are [sic]….." *(page 243)*

The Tribunal was referred to another email dated 5 November 2010 from the Respondent to Mr Chadwick in which she accused his firm of fraud and blackmail.

155.7 The Applicant's case was that there was no evidence to support the allegations of dishonesty and improper behaviour made against the various people listed on the Schedule provided. It was submitted that the Respondent had made a raft of extremely serious and unfounded dishonesty allegations against a large number of people without any evidence in support, and that this behaviour showed a lack of integrity and was likely to diminish the trust placed in the Respondent by the public.

155.8 The Respondent, when giving her evidence accepted that the dishonesty allegations had been made and maintained during her evidence in chief that it had not been wrong to say that Judges had acted dishonestly. She stated that certain acts of two Masters in particular had been without jurisdiction. She submitted that Judges had refused to allow her to participate in proceedings, which was wrong as she was entitled to defend herself. The Respondent stated that she had tried to obtain judgment in default on one claim and that the Court knew she was legally entitled to judgment but that the Court had tried to deny her that judgment.

155.9 In relation to the repossession claim, the Respondent stated that she had alleged that the solicitors for the Claimant had acted dishonestly because the mortgage agreement had been terminated and therefore any possession claim had been invalid. She was of the view that there could not be any mortgage arrears beyond the date of termination of the mortgage agreement. She believed that the possession claim had been invalid for those reasons.

155.10 On cross-examination the Respondent stated that as a redemption statement had been sent to a third party, confidentiality had been breached by the mortgage company and, as that was a fundamental condition of the contract, the mortgage agreement had terminated in law. She stated that the solicitors had claimed arrears which could not be due as the mortgage agreement had been terminated and that they had known this. She also stated that the Court had made an invalid claim valid, by refusing to accept that the mortgage agreement had been terminated when it clearly had. She submitted District Judge G had acted dishonestly having made decisions without hearing from the Respondent.

155.11 Mr Havard, on behalf of the Applicant, cross-examined the Respondent at length about the reasons why she thought various Judges had acted dishonestly. The Respondent maintained her position and stated:

> "I continue to allege in my mind that to my knowledge and my honest belief all those Judges and anyone against whom I made allegations did act either dishonestly or so recklessly that it would amount to dishonesty because they didn't care whether they were right or wrong. For example Mr Justice MacDuff clearly says if I'm wrong I'm wrong and that's the end of it. They really didn't care and I know you produced the Orders but you haven't produced Judgments to show that all points of law that I have made weren't even considered by the court, and in fact they were not, and I can't see how so many Judges you know can possibly be so incompetent as to not even care to apply the law ……I'm saying they did act unlawfully and in my opinion they did so knowingly and that they didn't just do so knowingly then they do so, so recklessly not caring whether they were right or wrong." *(9 December 2013, page 7 of transcript)*

155.12 The Respondent made reference to her medical condition and indicated that as a result of her health, she could not see whether the allegations of dishonesty were true and that she did not have "insight". The Respondent was asked whether she thought it was normal for a solicitor to allege dishonesty or fraudulent activity against so many members of the judiciary, solicitors and barristers. She responded that she did not think it was abnormal because they all related to the same thing. She stated:

> "…I don't believe that I have made my allegations wrongly because they all concern the same thing and because it is very difficult for one Judge to stand up and actually go against another Judge because mostly people don't have that kind of courage…. there are all these unlawful conducts no-one has said to me or shown to me or proved to me that it's wrong or that the Judges have acted correctly then I don't think there is anything abnormal …." *(9 December 2013, page 27 of transcript)*

155.13 The Respondent stated that she had provided evidence of the dishonesty to the people against whom she had made the allegations. She continued to maintain throughout her evidence that various members of the Judiciary had acted dishonestly and gave various explanations as to why she believed this to be the case. On one matter put to her she alleged Master Foster acted dishonestly because he dealt with a trial for summary judgment and had not allowed her to call any witnesses. She was

of the view that Master Foster acted unlawfully, deliberately or knowingly or recklessly and his motive was to protect a solicitor.

155.14 In relation to Master Eastman, the Respondent stated she had made the allegation that he acted dishonestly because he had refused to give her default judgment. She said that Master Eastman had held a hearing that she was not aware of, and that the solicitors, who apparently attended, had informed Master Eastman that she had withdrawn her claim when she had not.

155.15 The Respondent confirmed that she believed Mr Justice MacDuff had acted dishonestly because he had relied on the void Orders of Masters Foster and Eastman knowing them to be void and did so dishonestly to unlawfully protect them and dishonestly defraud her. She stated he had dishonestly denied her permission to appeal to the Court of Appeal and had dishonestly made a GCRO against her. When questioned further about this, the Respondent said that she was of the view that Mr Justice MacDuff, being a Senior Judge could not possibly make the amount of errors of law he had made on her four appeals. She alleged he knew she was entitled to default judgment and he must have known that once default judgment was entered, it could not be "thrown out" on the merits in the absence of a trial to decide on the merits.

155.16 The Respondent stated that with hindsight, having become a qualified solicitor and experienced in litigation, she now knew that it was not appropriate for anyone to allege dishonesty by Judges, even if a person believed the Judges were dishonest. However, she continued to maintain that the Judges in her case had acted dishonestly either consciously or by being reckless as to whether they were right or wrong.

155.17 The Tribunal also heard evidence from Mr Robert James Cooles, who was the Senior Partner at Abbott Cresswell LLP, the Respondent's employer. He confirmed the Respondent had been employed by his firm for 6½ years, initially as a secretary, then as a trainee solicitor and currently as an assistant solicitor. Mr Cooles stated that he had taken the view that the Respondent's personal proceedings were her own business and he did not see how they impinged on his firm. He accepted that the list of people the Respondent had accused of dishonesty did cause concern and was significant. However, he said that his opinion of the Respondent as an employee was that she was a person of integrity, not predisposed to take the 'soft option' and determined to maintain the cause of herself and her client, if she believed it to be right. He confirmed that if the Respondent believed there had been an injustice in any way, she would not allow the matter to settle as she was "pretty tenacious" and would fight.

155.18 The Respondent, in her closing submissions, submitted that the Applicant had failed to ask her for evidence to support her allegations of dishonesty against the individuals referred to. She submitted that it was for the Applicant to prove the allegations and not for her to provide evidence to cast doubt on them. She submitted that the Applicant should have requested this evidence from the outset and that the allegation had been made without any evidence to support the proposition that she had made her allegations "without any cogent evidence". The Respondent submitted that she had sent documentary evidence to the European Court of Human Rights and to the SRA, but did not have copies of those documents. She had requested copies

but the Court had refused to provide them. She stated that the burden of proof was on the SRA and they had the power to obtain evidence from the courts. It was not for the Respondent to provide that evidence. Even if the Respondent had produced documents after the Rule 5 Statement was issued, she submitted that the application would still fail as the Applicant could not then rely on her documents to support its case. The Respondent submitted that the Applicant had failed to inform the Tribunal of the 'reasons' why she had made her allegations and that the Applicant had failed to prove that those reasons were incorrect.

155.19 These submissions were also repeated in paragraphs 1.2(ii), 1.4 and 12 of the Respondent's written Submissions dated 21 March 2014. She submitted at paragraph 12.9 that the Tribunal had wrongly shifted the burden of proof on to the Respondent. In addition at paragraph 1.3 of the Respondent's written Submissions, she referred to Section 44B of the Solicitors Act 1974 which gave the Applicant the power to apply for information and documents from the Respondent. The Tribunal observed that while the Applicant had the power to give notice to a solicitor, requiring information and documents to be made available, there was no obligation on the Applicant to exercise that power.

155.20 In her written Submissions dated 21 March 2014 at paragraph 4.1, the Respondent made reference to the Chairman of the Tribunal stating the following:

> "My colleague is reminding me that we cannot make a judgment as to, for example, the honesty or dishonesty of a Judge." *(Page 17 Transcript of morning of 18 April 2013)*

The Respondent had submitted that as most of the allegations of dishonesty related to Judges, the Tribunal did not have jurisdiction to consider them. However, the Tribunal noted that Allegation 1.4 did not require the Tribunal to decide whether the Judges were or were not dishonest. The allegation was a specific allegation relating to the Respondent making her own allegations of improper behaviour, to include dishonesty against third parties, without cogent evidence in support. The Tribunal did have jurisdiction to consider this as it related to the Respondent's conduct, not the conduct of Judges.

155.21 In her written Submissions dated 21 March 2014, on page 32 the Respondent submitted that:

> "Even if the Judges were not dishonest, there can be no doubt that they were so reckless that their conduct would amount to dishonesty, because they were then totally reckless as to whether they were right or wrong."

The Tribunal reminded itself that Allegation 1.4 was an allegation that the Respondent had made allegations of "improper behaviour".

155.22 The Tribunal also noted that the Respondent in correspondence had referred to Judges and third parties acting 'intentionally', 'knowingly' and 'fraudulently'. These allegations by the Respondent could not be interpreted on any basis other than that the alleged conduct was intentional, and not merely reckless. There were

several examples of this. In the Respondent's letter to Wandsworth County Court dated 15 July 2011, she stated:

> "….. District Judge [G] (like the previous District Judges in this case) intentionally acted unlawfully/without jurisdiction….". *(page 173)*

155.23 In the Respondent's letter dated 1 November 2010 to the Wandsworth County Court she stated:

> "As both the Claimant's solicitors and their Counsel and Judges [G] and [H] are all legal professionals they are fully aware that the contract was terminated by the Defendants and therefore their attempts to dishonestly protect the Claimant's Solicitors for their negligence in filing an invalid claim constitutes fraud ……
>
> …We maintain that the Claimant's solicitors and their legal representatives acted fraudulently in denying that the contract was terminated by the Defendants ….. We also maintain that Judges [G] and [H] acted fraudulently by producing their void Orders knowing them to be dishonest." *(page 94)*

155.24 In the Respondent's Statement of the Facts document submitted to the European Court of Human Rights the Respondent stated:

> "The High Court/Mr Justice MacDuff …. acted dishonestly by knowingly relying on decisions of Masters Foster and Eastman which decisions of those Masters he knew to be void/unlawful." *(page 150)*

155.25 The Respondent's submissions, that Judges had acted not deliberately but so recklessly that their conduct amounted to dishonesty had been raised at a very late stage. The Tribunal was satisfied that allegations of recklessness made against Judges, without any evidence or justification could still be regarded as "improper behaviour".

155.26 The Tribunal had made it clear that the burden of proof rested with the Applicant. The Tribunal was mindful that the Applicant could not prove a negative. The Applicant had referred the Tribunal to the scope, extent, depth and breadth of the allegations of dishonesty/improper behaviour made by the Respondent in various documents at length. There was clearly a case to answer based on those documents. The Respondent had been given the opportunity to produce some evidence to cast any doubt in the Tribunal's mind. In this case the Tribunal had considered carefully all the documents produced by the Respondent but had seen nothing in those documents to cast any doubt or raise the possibility that she might have had a sound basis upon which to make those allegations.

155.27 The Tribunal further held that the comment made by Mr Justice MacDuff, when he stated "if I'm wrong I'm wrong and that's the end of it", was not reckless and did not indicate that he did not care if he was wrong. The Tribunal found that this was simply a statement of fact and that it was not any evidence of dishonesty.

155.28 The Tribunal found the Respondent's explanations and justification for making the allegations of improper behaviour, including dishonesty, to be astonishing, wholly inappropriate and unsupportable. The Tribunal was not persuaded that her views were correct and concluded there was no cogent evidence to justify such allegations being made. It was clear to the Tribunal that the Respondent's allegations of dishonesty were her way of responding when she did not achieve her objective and obtain the result she wanted. The Tribunal accepted that the Respondent believed in her own mind that all the people she alleged had acted dishonestly had wronged her in some way, but the Tribunal held that there was no evidence that they had behaved improperly or acted dishonestly.

155.29 The Tribunal was satisfied that the Respondent, in making allegations of improper behaviour, including dishonesty, against third parties including members of the Judiciary, had acted improperly and had shown a lack of integrity. Her behaviour was such that it was likely to diminish the trust the public placed in her or the legal profession. The Tribunal found Allegation 1.4 proved.

156. **Allegation 1.5: The Respondent had submitted an application for admission as a solicitor and for a Practising Certificate which failed to contain material information and was thereby misleading contrary to Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.**

156.1 The Tribunal was referred to the Respondent's Application for Admission as a Solicitor dated 10 November 2010. At the time that this application had been submitted both GCRO's dated 13 October 2009 and 22 October 2009 had been in place for over a year and were still in force. The Tribunal's attention was drawn in particular to two questions on Section 5 of the application form which were as follows:

> "3. Have you ever had a County Court Judgment registered against you?....
>
> 7. Are there any other factors which may call into question your character and suitability to become a solicitor?" *(page 102)*

In response to both questions the answer ticked was "No". The application form had been signed by the Respondent.

156.2 The Applicant's case was that as the GCROs were still in place these should have been mentioned on the application form, particularly as, it was submitted, they were serious Orders. Mr Havard submitted that the application form was misleading because the GCROs had not been declared. Mr Havard further submitted that when applying to become a solicitor, it was important that an applicant was entirely open and transparent with the SRA, and that it was irrelevant and not a defence to argue that another department at the SRA was already aware of the Orders.

156.3 Mr Havard also referred the Tribunal to an Order for Possession from the Wandsworth County Court dated 3 March 2010. This included a judgment against the Respondent for a monetary sum and, Mr Havard submitted, the Respondent therefore did have a County Court judgment registered against her. Mr Havard

submitted that this should have been declared on the application form for admission as a solicitor.

156.4 The Respondent denied misleading the SRA and stated that she was not aware the GCROs should have been declared as there was no reference to them on the form. She stated that in any event, she did not consider the GCROs called into question her suitability or character as a solicitor. She further submitted the SRA had known about the GCROs. In relation to declaring any registered County Court judgments, the Respondent stated she did not realise that the Possession Order from Wandsworth County Court dated 3 March 2010 was considered to be a "registered" judgment. She stated she had checked for judgments registered against her and nothing had been disclosed. She had therefore not considered the Possession Order to be an order that should have been disclosed.

156.5 On cross-examination the Respondent maintained that the GCROs were not valid as they had not been made correctly and lawfully. She stated that these had never come to her mind when completing the application form. She accepted there were a number of judgments against her but stated that none of them were registered as they did not appear in any of the searches she conducted.

156.6 The Tribunal heard evidence from Mr Cooles, who confirmed he had written to the SRA with the Respondent's application for admission as a solicitor, although he stated the form was completed by his colleague, Mr Pinnell. Mr Cooles stated that he had never seen the GCROs. He accepted that by 28 October 2010 he had known about the GCRO, as an email had been sent to him on that date from Mr Chadwick, which attached an email from the Respondent to Mr Chadwick of the same date, making reference to the GCRO. Mr Cooles stated that the firm had been bombarded by emails from Mr Chadwick and that he could only think that they had been informed that the GCROs were void and he had therefore put them out of his mind. Mr Cooles stated that he did not make detailed enquiries on receipt of the email as he believed the GCROs were old and historical and therefore did not ask for copies. He could not recall whether he had been aware that there were two GCROs.

156.7 The Tribunal also heard evidence from Mr Colin Philip Pinnell, with whom the Respondent had worked as a trainee solicitor at Abbott Cresswell LLP. Mr Pinnell confirmed he had been involved with the Respondent's application for admission as a solicitor. He had signed the application form on behalf of the firm. Mr Pinnell stated that he had been aware of the email from Mr Chadwick dated 28 October 2010, but he was not sure when he became aware of the GCROs. He stated the Respondent had told him the GCROs were void. He stated he did not take any further action having become aware of the email as the SRA were investigating the matter. He confirmed he did not know what a GCRO was. Mr Pinnell stated that he had signed the Respondent's application for admission as a solicitor based on his own knowledge and if he had known about the GCRO at the time he would have made further enquiries. Whilst he could not recall the date that he signed the application form, he confirmed he would not deliberately mislead the Law Society or any other Authority.

156.8 In her closing submissions, the Respondent submitted that the Applicant had not provided the Tribunal with any evidence that her application had been misleading, or

that anyone had been misled by it. She submitted she had never intended to mislead, and that Mr Cooles and Mr Pinnell had been aware of the GCROs, but had simply forgotten about them. The Respondent submitted that on 25 February 2009 an Adjudicator of the SRA had refused to make any decision on her character and suitability, and this was at a time when the SRA were aware of her medical condition.

156.9 In her written Submission dated 21 March 2014 at paragraph 5.6 the Respondent submitted that the Applicant had made no submissions or provided any evidence that disclosure would have had an impact on the SRA's decision. She submitted that if disclosure would have had no impact, then non-disclosure was irrelevant.

156.10 Also, in her written Submissions at paragraph 1.2(iii) and (iv), the Respondent submitted that the allegation was based on an 'assumption' that she had 'intentionally' failed to disclose the GCROs on her application form. The Respondent further submitted that there was an 'assumption' that the 'intentional' misconduct occurred and that the Applicant had failed completely to consider whether the Respondent's health could have affected her judgment causing non-disclosure to be 'unintentional'.

156.11 The Tribunal had already dealt with a preliminary application made by the Respondent for clarification regarding whether the Applicant was alleging "intentional misconduct" or "unintentional misconduct". The Tribunal was mindful that there was no medical evidence before it in relation to the Respondent's medical condition at the actual time she completed the application form on 10 November 2010. The Respondent had provided the Tribunal with some extracts from her medical records dated 17 August 2004 to 26 September 2007. There was also a report from Professor Martin dated 28 April 2008, a letter from Dr Hudson dated 16 March 2009, and a letter from Dr Pujol dated 9 October 2009, but none of these gave any clear evidence concerning the Respondent's mental health at the time of completion of the application.

156.12 Furthermore, the Tribunal noted that in the medical report of Dr Cutting dated 4 November 2013, he reviewed the Respondent's medical records and stated the following:

> "In 2010 there is a reference 16.06.10 to her finding her reading and absorption of written materials to be slower than other people and is doing a law degree and would like a letter explaining this presumably to the university.
>
> However on 22.06.10 there is reference to a letter from her consultant psychiatrist who feels that her [medical] condition is not contributing to her difficulty in processing information."

These were the only references to the Respondent's mental health in 2010. Accordingly, the Tribunal rejected the Respondent's submissions in relation to the issue of 'unintentional' misconduct.

156.13 In her written Submissions dated 21 March 2014 at paragraph 5, the Respondent also submitted that the Applicant should have produced the certified judgments/findings of fact pursuant to Rule 15(4) of the SDPR if the Applicant relied upon a failure by the Respondent to disclose the GCROs on her application form. The Tribunal had already made a decision concerning the relevance of Rule 15(4) earlier in its decision and had found that the Applicant was not required to obtain the judgment/findings of fact on which the GCROs were based. The GCROs were lawfully made and the Applicant was entitled to rely upon them.

156.14 In her written Submissions dated 21 March 2014, at paragraph 11 the Respondent made reference to Section 54 of the Solicitors Act 1974 and submitted that there had been a procedural irregularity. The Tribunal had already dealt with a preliminary application from the Respondent concerning Section 54 and had concluded it did not prevent conduct prior to the date of admission being considered by the Tribunal. The Tribunal was satisfied that Section 54 did not apply to the Respondent's situation in relation to Allegation 1.5.

156.15 The Tribunal noted that it had not been provided with any evidence of a registered County Court judgment against the Respondent. Furthermore, the Tribunal noted that paragraph 40 of the Rule 5 Statement did not refer to a "registered" judgment, which was specifically mentioned in question 3 of Section 5 of the application form. The Tribunal was therefore not satisfied that the Respondent should have disclosed the Possession Order from the Wandsworth County Court dated 3 March 2010 under question 3. However, the Tribunal was of the view that the Possession Order should have been disclosed in response to question 7 of Section 5 of the application form, as this was information that could call into question the Respondent's character and suitability. The Tribunal found that the Respondent had failed to disclose it.

156.16 In relation to the GCROs dated 13 October 2009 and 22 October 2009, these had been made just over a year before the Respondent applied for admission as a solicitor, at a time when she was a trainee solicitor. Notwithstanding the fact that a department within the SRA may have been aware of the GCROs, the Tribunal found that they were valid Orders which had not been set aside and they should have been disclosed by the Respondent in response to question 7 of this Section 5 of the application form, as they related to matters that could call into question the Respondent's character and suitability.

156.17 The Tribunal was further satisfied that both the Possession Order and the GCROs were material information which "may" call into question the Respondent's character and suitability to become a solicitor. It was not necessary for the Applicant to prove that they actually would have had an impact on the SRA's decision. The Tribunal was satisfied that by failing to disclose the Possession Order and the GCROs on her application form for admission, the Respondent's application form had misled the SRA, as her response to question 7 had not been correct. Although the Respondent had considered the GCROs to be void orders, she should still have disclosed them on her application form. The Tribunal was satisfied that the Respondent, in failing to disclose these matters, had acted with a lack of integrity and had acted in a way which was likely to diminish the trust the public placed in her or the legal profession. The Tribunal found Allegation 1.5 proved.

157. **Allegation 1.6: The Respondent had failed to cooperate with the SRA in the course of its investigation contrary to Rules 1.06 and 20.05 of the Solicitors' Code of Conduct 2007.**

157.1 Rule 20.05 of the Solicitors' Code of Conduct 2007 states:

> "(1) You must deal with the Solicitors Regulation Authority, the Legal Ombudsman and the Legal Complaints Service in an open, prompt and co-operative way."

157.2 Mr S, a caseworker at the SRA, had been dealing with the Respondent and the Tribunal was referred to correspondence between the Respondent and Mr S. Mr Havard submitted that, during the course of that correspondence, the Respondent had communicated with Mr S in an abusive manner and that this amounted to non-cooperation with the SRA.

157.3 The Respondent, when giving her evidence, stated she did not believe her allegations of dishonesty against Mr S were abusive. She stated that he believed the GCROs were from the Court of Appeal, even though she had informed him that they were from the High Court, and had provided him with copies of the Orders. The Respondent stated she felt Mr S was acting unfairly and was biased against her.

157.4 On cross-examination the Respondent accepted she had made a number of allegations against Mr S. She stated Mr S was not legally qualified to make the statements he had made and in her opinion he was dishonest, because he made false statements knowing they were false. The Respondent stated that when she alleged dishonesty, she meant fraud and she felt that Mr S was trying to cause her financial loss. She also stated that Mr S refused to include some documents in the bundle of documents he sent to the SRA Adjudicator and that the omission of these documents had prejudiced her. She also stated that he had provided her with false information.

157.5 In her closing submissions, the Respondent submitted that there was no evidence of her failure to cooperate with the SRA. She had attended before the Tribunal, she had provided documents and she submitted she had never failed to cooperate. She submitted her communications were not abusive.

157.6 In her written Submissions at paragraph 6, the Respondent submitted Allegation 1.6 was a duplication of Allegation 1.4 insofar as it related to the Respondent's allegations of dishonesty against Mr S. The Respondent submitted Allegation 1.6 therefore failed. The Tribunal noted that Allegation 1.6 was entirely different from Allegation 1.4 in that Allegation 1.6 concerned the Respondent's co-operation with the SRA during the course of its investigation, whereas Allegation 1.4 referred specifically to the Respondent's conduct in making allegations of dishonesty against third parties without any cogent evidence in support. The Tribunal rejected the Respondent's submission that the allegation failed on the grounds of duplication.

157.7 The Tribunal considered a letter from the Respondent to the SRA dated 4 October 2011, and in particular whether the comments in that letter amounted to abusive comments. The Tribunal noted the Respondent stated the following:

> "1. With respect, Mr [S] is not suitably qualified to form a view or make any suggestion relating to the complaints by Irwin Mitchell because the issues relate to those of 'law' and Mr [S] appears not to have a suitable, if any, legal qualification …..
>
> … Had Mr [S] been suitably qualified he would know that only a Civil Restraining Order by the Court of Appeal (and not the High Court) could prevent me from making any application in the Court of Appeal……. " *(page 132+)*

The Tribunal did not consider either of these to be abusive comments. However, the Respondent also stated the following:

> "2. Mr [S] is not suitable to form a view or make a suggestion in this matter also because he has acted dishonestly by failing to consider in any way at all my submissions and the supporting documentation I sent him ……
>
> The reason for Mr [S]'s dishonesty may be because I complained of the incorrect information he provided me ……."*(page 132+)*

The Tribunal found that these two statements were abusive, in that they alleged that Mr S had acted dishonestly when there was no basis for such an allegation. The tone of the language used was unnecessary.

157.8 The Tribunal had been referred to an email from the Respondent to Mr S dated 5 October 2011 in which she stated the following:

> "…. The exhibits will follow but you already have most of them which the Adjudicator can obtain from you since you dishonestly did not include them in the bundle….. I believe that your refusal to give time relates to your dishonesty referred to in my letter to the Adjudicator bearing in mind that you took over 4 months to initially address the complaint….." *(page 354)*

The Tribunal found that these statements were abusive in that they alleged Mr S had acted dishonestly when there was no basis for such an allegation. The tone of the language used was unnecessary.

157.9 The Tribunal had also been referred to a letter dated 5 October 2011 from the Respondent to Mr S at the SRA in which she stated the following:

> "I refer to Mr [S]'s refusal to grant me an extension in time to comment on his case notes and consider that as further evidence of his bias and harassment against me ….
>
> I have no doubt that Mr [S]'s refusal was based on his dishonesty and bias in this matter…..
>
> More importantly the extra time required was due to the fact that Mr [S] dishonestly and in bias failed to include ANY of my supporting documents……

> I also reserve my right to claim for injury and/or aggravated injury caused to me by Mr [S]'s dishonest and/or bias conduct towards me ……"*(page 357-358)*

The Tribunal found all these statements were abusive in that they made allegations of dishonesty, harassment and bias against Mr S when there was no basis for such allegations. Again, the tone of the language used was unnecessary.

157.10 The Tribunal had been referred to another email dated 6 October 2011 from the Respondent to Mr S in which she stated:

> "Kindly note that as a result of your dishonest conduct I have been unable to prepare for the CPD Advocacy Course I have to attend tomorrow …" *(page359)*

In another email from the Respondent to Mr S dated 7 October 2011 she stated:

> "As I have said in my submissions to the Adjudicator sent on 5 October 2011 by email and by DX on 6 October 2011 which you will receive and which please ensure are placed before the Adjudicator you have acted dishonestly in this matter throughout and your conduct has also constituted harassment of me which is both a civil and criminal offence and has caused me severe anxiety and distress for which compensation will be claimed on both the SRA and yourself personally if any further detriment is caused to me by your misconduct and dishonest and harassing behaviour towards me." *(page 360)*

In a further email dated 8 October 2011 from the Respondent to Mr S she stated:

> "Below is the further chain of emails I sent you which proved that there was no CRO made against me by the Court of Appeal and which you dishonestly did not include in the bundle." *(Page 361)*

The Tribunal was satisfied that all of these comments were abusive as there was no evidence or basis for the allegations of dishonesty and harassment being made against an employee of the SRA who was simply carrying out his job. Again, the tone of the language used was unnecessary.

157.11 The Tribunal then went on to consider whether the abusive communications amounted to a lack of cooperation. The Tribunal considered the guidance provided in the Solicitors Handbook 2011 which stated the following on page 847 at paragraph 31:

> "Abusive communications and unreasonable attempts to delay an investigation or enquiry are inconsistent with the cooperation required by 20.05."

157.12 The Tribunal was mindful that this was simply guidance and that it was not binding upon the Tribunal. Although the Tribunal had found that some of the language used by the Respondent in communications with the SRA was abusive, the Tribunal had considerable doubt about whether this alone amounted to non-cooperation. It was

clear from the number of emails and letters sent to the SRA by the Respondent that she had replied and dealt with all their correspondence and indeed, had cooperated with their enquiries and investigation openly and promptly. The Tribunal concluded that it could not be satisfied beyond reasonable doubt that the Respondent had failed to cooperate with the SRA. Accordingly, the Tribunal was not satisfied that the Respondent had breached Rule 1.06 in relation to this matter. The Tribunal found Allegation 1.6 not proved.

158. **Allegation 1.1: The manner in which the Respondent had conducted herself in certain litigious matters, and generally, had been contrary to her obligations contained within Rules 1.01, 1.02 and 1.06 of the Solicitors' Code of Conduct 2007.**

158.1 Having made decisions on Allegations 1.2, 1.3, 1.4, 1.5 and 1.6, the Tribunal then considered Allegation 1.1 which appeared to encompass much of the conduct referred to in the other allegations.

158.2 Mr Havard, on behalf of the Applicant, relied in his Rule 5 Statement on the Respondent's conduct in relation to the General Civil Restraint Orders ("GCROs"), her conduct in the possession proceedings and her conduct in relation to cooperating with the SRA. He submitted that the Respondent's behaviour in conducting litigation had been so serious that it had led to Mr Justice Blake and Mr Justice MacDuff imposing GCROs, which were the most stringent of the orders available, to restrain the Respondent from pursuing further claims or applications.

158.3 In his submissions, Mr Havard submitted that this was a particularly serious case in that the way the Respondent had conducted herself with senior members of the Judiciary, other lawyers and the SRA showed little regard or respect for the judicial process. He alleged she had taken a scattergun approach making fanciful allegations of dishonesty/fraud, without any evidence to support them, against senior members of the Judiciary. Mr Havard submitted that her refusal to accept decisions made by the Courts indicated her lack of insight. Mr Havard submitted the Respondent had acted in a manner which was in breach of her core duties as a solicitor.

158.4 The Respondent in her written submissions, and in a preliminary application before the Tribunal had submitted Allegation 1.1 appeared to be a duplication of Allegations 1.2, 1.3 and 1.4. The Tribunal had already made a decision regarding the preliminary application and had stated it would ask the Applicant to set out specifically which facts were relied upon in relation to each individual allegation. In her closing submissions the Respondent reminded the Tribunal that the Chairman had indicated, when dealing with the preliminary application, he would remind the Applicant to specify which facts related to Allegation 1.1. The Respondent submitted the Chairman had not done this, and accordingly Allegation 1.1 failed. She submitted Allegation 1.1 was not clear, that the Applicant had not clarified the case against her and any conduct alleged fell within Allegations 1.2, 1.3 and 1.4.

158.5 In the alternative, the Respondent submitted that if the Tribunal found Allegation 1.1 did not fail, then she submitted Allegations 1.2 and 1.3 were a duplication of Allegation 1.1.

158.6 The Tribunal was mindful that it had not specifically asked Mr Havard to explain which facts related to Allegation 1.1. However, Mr Havard had clearly explained, when he opened his case, that Allegation 1.1 was based on the Respondent's conduct in relation to the GCROs, her conduct in the possession proceedings, her conduct in relation to the SRA and her conduct in the way she had conducted herself with senior members of the Judiciary and other lawyers showing little regard or respect for the judicial process. The Tribunal was therefore satisfied that this allegation did not fail due to lack of clarity, as Mr Havard had spent some considerable time taking the Tribunal through the evidence relating to the above matters.

158.7 The Tribunal having considered all matters was satisfied that the Respondent, in her conduct which led to the GCROs, her conduct with a firm of solicitors and members of the Judiciary in the possession proceedings and her conduct in sending abusive communications to Mr S at the SRA, had failed to uphold the rule of law and the proper administration of justice, that as such she had failed to act with integrity and that she had behaved in a way that was likely to diminish the trust the public placed in her or in the legal profession. Accordingly, the Tribunal found Allegation 1.1 proved. However, the Tribunal made it clear that it considered Allegation 1.1 did not add anything to the other allegations which had already been found proved.

Previous Disciplinary Matters

159. None.

Mitigation

160. Mr Swirsky, on behalf of the Respondent, reminded the Tribunal that the role of the SRA was to maintain public confidence in the profession, and that any sanction, to be imposed where there had been a breach of the rules, should ensure solicitors were sanctioned in an appropriate way to maintain that public confidence. Mr Swirsky submitted that there were two steps for the Tribunal to consider when determining sanction – the seriousness of the matters proved and the personal circumstances of the solicitor.

161. Mr Swirsky submitted that the breaches were historic. Most related to 2009/2010 and some were in 2011. This was not a case of a long standing solicitor with many years of practice. The allegations had taken place at a time when the Respondent had been through an unsatisfactory period of training which had led to legal proceedings between her and her previous firm. In 2007, when the SRA was involved in making formal findings of fact into the Respondent's training contract, the Respondent had disclosed documents to the SRA. As a result Mr Swirsky submitted that the SRA was aware of the allegations the Respondent had been making against members of the judiciary, indeed the SRA had referred to these matters in their letter to the Respondent dated 20 April 2009. This had been sent 18 months prior to the Respondent's admission as a solicitor. Mr Swirsky submitted that the SRA already had knowledge of the breaches when they allowed the Respondent to be admitted as a solicitor. Indeed, some of the allegations had come about due to the Respondent's disclosure of documents to the SRA.

162. The Respondent was not admitted until December 2010. At the time of the conduct complained of, she had either been a trainee or about to qualify as a solicitor, and was therefore inexperienced. The allegations did not involve any clients and all arose out of the Respondent's own litigation and personal disputes. Mr Swirsky submitted that breaches involving clients were far more serious, and that the Respondent's conduct was not at the top end of seriousness.

163. There was no allegation that the Respondent had breached the GCROs, indeed, she had attempted to appeal the Orders but had been prevented from doing so by the court staff. The Tribunal was reminded that the Respondent did actually believe the allegations she had made, however misguided the Tribunal found her belief.

164. The Respondent was now 60 years of age and at the end of her career with limited means. It was submitted that any of the harsher sanctions would end her career and that these should not even feature in the Tribunal's considerations. The Respondent had been a relatively inexperienced lawyer and the Tribunal should have some regard to her medical condition. Mr Swirsky submitted it was brutally apparent that the Respondent's medical condition had had an impact on all these matters and had played a role in her conduct. The documents submitted to the European Court of Human Rights had a clear underlying indication that the Respondent had not been well at the time. Mr Swirsky submitted that the Tribunal should be very cautious of any medical evidence before it as such evidence was short and unsatisfactory. Dr Cutting's report had been prepared solely for the purpose of ascertaining whether the Respondent was well enough to attend the Tribunal hearing. The Respondent had not agreed that report and Mr Swirsky submitted Dr Cutting had got matters badly wrong, as had been seen at the hearing on 10 December 2013.

165. Mr Swirsky submitted that the Tribunal could impose a separate sanction for each allegation, or one sanction to cover all of the allegations which concerned the same broad circumstances. He submitted that the Tribunal should not consider striking the Respondent's name off the Roll because these were matters that were within the SRA's knowledge at the time that the Respondent had been admitted. Mr Swirsky submitted that in view of this, the Respondent should never have been admitted as a solicitor in the first place. Furthermore, it would be inappropriate to strike the Respondent from the Roll of Solicitors because these had not been breaches of rules at the highest level. There was no dishonesty, no breach of trust, no criminal behaviour and no clients involved. Mr Swirsky submitted for the same reasons that a long period of suspension or an indefinite suspension would not be appropriate either. If the Tribunal was minded to suspend the Respondent, Mr Swirsky requested any such suspension should be short otherwise it would have the effect of ending the Respondent's career.

166. Mr Swirsky further submitted that the most appropriate sanction would be to allow the Respondent to continue to practise with conditions on her practising certificate. It was accepted that the allegations had not been trivial but the Tribunal's role was to protect the public and a condition preventing the Respondent from practising as a sole practitioner or manager would achieve this. The Respondent had already made an application to the regulator to be removed from the Roll and so any sanction may be otiose in any event. It was clear from the Respondent's application to remove

herself from the Roll that she now appreciated that she needed to take responsibility for her actions.

Sanction

167. The Tribunal had considered carefully the Respondent's submissions and documents, and the evidence it had heard. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

168. The Tribunal did not accept the Respondent's submissions that the SRA had been aware of all the information relating to these allegations prior to her admission. It was quite clear that the Respondent had not disclosed the existence of the GCROs or the repossession order on her application form for admission as a solicitor. Failure to disclose this information was a serious matter.

169. The Tribunal considered that it was a very serious matter for any solicitor, or trainee solicitor, to become subject to a General Civil Restraint Order. No member of the legal profession should ever conduct themselves in such a way that two senior Judges have to make such serious orders restraining that member from pursuing further litigation. At the time that the two GCROs were made in October 2009, the Respondent had been a trainee solicitor.

170. Furthermore, making multiple allegations of dishonesty against numerous third parties, including senior members of the judiciary, without a scintilla of evidence in support, were extremely serious matters indeed. No member of the profession should ever behave in this way. The Respondent had acted with a complete lack of integrity, not only in relation to the unfounded allegations of dishonesty against third parties that she had made, but also in relation to becoming subject to two GCROs and failing to disclose material information on her application for admission as a solicitor. She had failed to uphold the rule of law and the proper administration of justice and she had behaved in a way that had undoubtedly diminished the trust the public placed in her or the legal profession.

171. The Tribunal accepted that the Respondent suffered from the medical condition disclosed. It was clear from the medical evidence available that the Respondent had suffered from this condition for some considerable time and still suffered from it now. Indeed, the Applicant did not dispute this. The Respondent had been given the opportunity to produce any further medical evidence on numerous occasions throughout the hearing but had failed to do so. On the medical evidence before the Tribunal, there was no causal link between the Respondent's medical condition and her conduct at the time of the allegations. Indeed, the medical evidence that was available referred to the Respondent being in remission at the material time. As there was no other medical evidence before the Tribunal, dealing with the Respondent's medical condition at the time the conduct took place, the Tribunal was unable to find that her medical condition had either led to, or contributed to, the breaches, or affected her behaviour at the material time.

172. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent's unfounded allegations of dishonesty had been deliberately repeated over a long period of time. She had concealed the two GCROs and the Repossession Order by not disclosing them on her application for admission as a solicitor. Regardless of whether the Respondent was inexperienced as a solicitor, she still ought reasonably to have known that her conduct was in breach of her obligations to protect the public and the reputation of the profession. These were all aggravating factors. The Respondent had not made any open and frank admissions, nor had she shown any insight, maintaining throughout her evidence and submissions that her allegations of dishonesty/improper behaviour against various third parties were justified. The Tribunal took into account that there had been no complaints from clients and there was no evidence of any loss to clients.

173. The Tribunal considered the case of Bolton v The Law Society [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal..... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well …….… In most cases the order of the Tribunal will be primarily directed to one or other or both of two purposes. One is to be sure that the offender does not have the opportunity to repeat the offence……. The second purpose is the most fundamental of all; to maintain the reputation of the solicitors' professions as one in which every member, of whatever standing, may be trusted to the ends of the earth. ….....……The reputation of the profession is more important that the fortunes of any individual member."

174. Given the serious nature of the allegations found proved, the Tribunal was not satisfied that a reprimand would be a sufficient sanction. Nor did the Tribunal consider a fine would be appropriate in this case as it would not adequately protect the public or the reputation of the profession. The Tribunal considered a Restriction Order but determined that conditions on a practising Certificate were not appropriate in this case given the nature and seriousness of the allegations. As the conduct had not taken place in the context of the Respondent's work, the Tribunal failed to see how any conditions would adequately protect the public and the reputation of the profession.

175. The Tribunal considered whether a suspension would be an appropriate sanction in this case. The Tribunal was mindful of the seriousness of the misconduct, and the need to protect the public and the reputation of the profession from future harm from the Respondent. The Tribunal was satisfied that the Respondent had shown a lack of sufficient insight such as to call into question her continued ability to practise, and it therefore decided that a fixed term of suspension would not be sufficient in this case.

176. The Tribunal then considered whether an indefinite suspension would be appropriate. The Tribunal was satisfied that the misconduct, particularly the voluminous unjustified allegations of dishonesty/improper behaviour against numerous third parties, was at the highest level. There was no truly compelling and exceptional mitigation from the Respondent. The Tribunal did not consider there was a realistic prospect that the Respondent would recover or respond to retraining such that she would no longer represent a material risk of harm to the public or the reputation of the profession.

177. The Respondent's conduct had been a serious departure from the required standards of integrity, probity and trustworthiness. The Tribunal had regard to the overall facts of the misconduct and in particular the effect that allowing the Respondent's name to remain on the Roll would have on the public's confidence in the reputation of the profession. The Tribunal was satisfied that the Respondent's misconduct had been at the highest level, such that a lesser sanction would be inappropriate, and that the protection of the public and the protection of the reputation of the profession required no less than that the Respondent's name be removed from the Roll of Solicitors. The Tribunal so Ordered.

Costs

178. Mr Havard, on behalf of the Applicant, requested an Order for his costs in the total sum of £50,029.25 and provided the Tribunal with a breakdown of those costs. He confirmed that he had not claimed any costs for the earlier hearing in October 2012 which had been adjourned due to his personal circumstances. He also provided the Tribunal with a copy of the Register from the Land Registry of a property in which the Respondent had an interest, together with details of a valuation for that property from a website on the internet. The Respondent appeared to have an interest in half of that property. Mr Havard submitted the Respondent had been informed of the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) but had failed to provide evidence that there was no equity in the property.

179. Mr Swirsky referred the Tribunal to the Respondent's statements dated 17 April 2013 and 23 June 2014 in which she had confirmed she did not have any savings, capital or equity in the property and little income. He further submitted it was dangerous for the Tribunal to rely on internet valuations which did not take into account the condition of the property.

180. Given the considerable amount of the costs involved, Mr Swirsky submitted that an order should be made for costs to be assessed. He also reminded the Tribunal that although the Applicant had not claimed any costs for the earlier adjourned hearing in October 2012, the Respondent had incurred the costs of Counsel attending on that day, as well as her own costs of preparing for that hearing and they should be taken into account. The Respondent's total costs were £3,780. Mr Swirsky submitted these should be offset against the Applicant's costs.

181. Mr Swirsky further submitted that some of the matters the Tribunal had dealt with had already been known to the SRA. In such circumstances, Mr Swirsky submitted, the SRA should not be awarded any costs as they should never have admitted the

Respondent to the Roll in the first place. Indeed, he submitted the SRA should pay the Respondent's costs.

182. If the Tribunal was minded to make an order requiring the Respondent to pay the Applicant's costs, then Mr Swirsky sought a brief adjournment to take instructions from the Respondent and provide the Tribunal with documents confirming there was no equity in the property. Mr Swirsky was unable to assist the Tribunal with clarification regarding the Respondent's pension.

183. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was rather high. There appeared to be some element of duplication as various assistants had been working on the case along with Mr Havard and it was unfair for the Respondent to meet all these costs. The Tribunal made a reduction of about £5,000 to reflect this.

184. The Tribunal agreed that the Respondent should recover the costs incurred by her relating to the hearing in October 2012 which had been adjourned owing to Mr Havard's unforeseen personal circumstances. However, the Tribunal would only allow the costs of the Respondent's Counsel's fee, and would not allow any of the Respondent's personal costs. The costs in favour of the Respondent would be deducted from the Applicant's costs. Taking all these factors into account the Tribunal assessed the Applicant's total costs at £42,000 and Ordered the Respondent to pay this amount.

185. In relation to enforcement of those costs, the Tribunal noted that the Respondent had provided two statements containing details of her finances. There were only brief details, and the Respondent's first statement of 17 April 2013 attached various documents. However, these documents did not reflect the Respondent's current financial position as they all predated 17 April 2013. The Tribunal had not been provided with any recent documentary evidence in support of the Respondent's second statement dated 23 June 2014 such as wage slips, bank statements, mortgage statements, bills or property valuations and the Respondent's representative had been unable to assist with the Tribunal's queries. There was no indication of the level of the Respondent's debts, no information on the value of the Respondent's property, and no evidence of the Respondent's current income.

186. The Tribunal had particular regard to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

The Tribunal noted that Mr Havard had written to the Respondent on 22 June 2014 attaching a copy of that case.

187. In this case the Respondent had not provided any documentary evidence of the lack of equity in the property in which she had an interest, and there was insufficient

detail concerning the other matters mentioned in her second statement dated 23 June 2014.

188. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the costs. However, in the absence of sufficient financial evidence from the Respondent, it was difficult for the Tribunal to take a view of her financial circumstances. The Tribunal could not therefore be satisfied that the Respondent did not have sufficient means to pay the costs Ordered.

Statement of Full Order

189. The Tribunal Ordered that the Respondent, SHIRLEY LEWALD, 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 fixed in the sum of £42,000.00.

DATED this 11th day of August 2014
On behalf of the Tribunal

I.R. Woolfe
Chairman