SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11253-2014

BETWEEN:

HAFIZ & HAQUE (A FIRM) Appellants

MD NIZMUL HAQUE

and

SOLICITORS REGULATION AUTHORITY Respondent

Before:

Mr J.C. Chesterton (in the chair)
Mr S. Tinkler
Mrs L. McMahon-Hathway

Date of Hearing: 15 December 2014

Appearances

Parminder Saini, Counsel, of 12 Old Square Chambers, 12 Old Square, Lincoln's Inn, London WC2A 3TX for the Appellants

Iain Miller, Solicitor, of Bevan Brittain LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF for the Respondents

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APPEAL JUDGMENT

Introduction

1. The Appellants, MD Nizamul Haque and Hafiz & Haque (individually in this Judgment, "the Solicitor" and "the Firm" respectively), appealed under Section 44E of the Solicitors Act 1974 (as amended) ("the Act") against a decision of the Solicitors Regulation Authority ("SRA") Adjudication Panel dated 24 February 2014 ("the Decision") made pursuant to its powers under Section 44D of the Act.

2. The appeal was summarised by Mr Saini, Counsel for the Appellants, at paragraphs 7 and 8 of the Appellants' Skeleton Argument dated 14 December 2014 as follows:

> "7. As observed at paragraph 12 of the Response to the Notice of Appeal ("the Response"), the Appellants appeal on the basis that the decision has arisen as a result of misapprehension of the facts which has resulted in a factually flawed decision that has preceded (sic) on the basis that the SRA's communications and actions of the SRA's steps were effective whereas they were not (sic).
>
> 8. Consequently, any decision reached by the SRA upon an incorrect understanding of the facts is materially flawed and ought to be revoked by virtue of the Tribunal's powers under section 44E(4) under the Act accompanied by costs pursuant to section 44E(4)(f) (sic)."

Documents

3. The Tribunal reviewed all the documents submitted by and on behalf of the Appellants and the Respondent, which included:

Appellants

- Appellants' Notice and Grounds of Appeal dated 8 April 2014 with supporting documents
- Supplementary Grounds of Appeal dated 16 July 2014 with supporting documents
- Appellants' Skeleton Argument dated 14 December 2014
- Appellants' Schedule of Costs as at 15 December 2014 – updated during the hearing

Respondent

- Response to the Notice of Appeal and supporting documents (undated, but filed at the Tribunal on 14 August 2014)
- Respondent's Skeleton Argument dated 8 December 2014
- Respondent's Schedule of Costs as at 5 December 2014

The Legal Framework

4. The relevant sections of the Act and the Civil Procedure Rules are at Appendix 1 to this Appeal Judgment.

5. The procedure for the hearing of the appeal was governed by The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 ("the Appeal Rules") which came into force on 1 October 2011.

6. The Tribunal had power under Section 44E(4) to:

- Affirm the Decision;
- Revoke the Decision;
- Make an Order under the Tribunal's own powers under Section 47(2) of the Act which included the power to fine, suspend and strike off. The Tribunal also had the power to deal with costs.

7. The Appellants invited the Tribunal to revoke the Decision and make an order for costs in their favour. The Respondent invited the Tribunal to affirm the Decision and to dismiss the appeal with costs in favour of the Respondent.

Legal Framework - Standard Of Proof

8. The Chairman invited the advocates to consider whether the standard of proof to be applied to this appeal by the Tribunal (namely criminal or civil) was a live issue. Mr Miller reminded the Tribunal that when exercising its first instance disciplinary jurisdiction the Tribunal's practice was to include a paragraph in its Judgment specifying the standard of proof applied. He suggested that the parties could argue the applicable standard and the Tribunal make a decision. Alternatively, the Tribunal may decide that the standard of proof is irrelevant for determining this appeal, leaving the applicable standard of proof argument open. The Tribunal retired to consider the options.

9. On resuming the hearing, the Chairman invited the advocates to comment on whether the appeal should be decided by way of review or rehearing. The advocates agreed that the appeal should be decided by way of review. On that basis, the Tribunal's decision on the standard of proof was that it would be difficult for it to come to conclusions on the submissions without accepting or rejecting what the parties said about the standard of proof to be applied. This exercise might have consequences as to whether the Tribunal had to canvass the standard of proof in its findings. It would therefore assist for the Tribunal to hear from the advocates on the applicable standard of proof, in the full knowledge that the submissions might prove to be superfluous. The advocates said they were content with this approach.

10. Mr Saini largely adopted what was said on behalf of the Respondent at paragraphs 14 and 15 of the Response. Either the criminal or a higher standard of proof than the civil standard should apply. The effect of the Decision was punitive, namely a rebuke, reprimand or a fine. The Decision referred to matters of intent such as recklessness. No dishonesty was alleged but the Suitability Test form itself underlying the third allegation stated that failure to disclose information will be treated as prima facie

evidence of dishonest behaviour. There was therefore a substantial burden on those who completed the form to comply. In Mr Saini's submission, a solicitor might even be liable to prosecution for dishonesty, because of the standard imposed by the SRA when completing the form. For those reasons the criminal standard was the appropriate standard to apply to this appeal, albeit that the SRA's internal standard was the civil standard. No relevant procedural rules of the SRA had been approved by the Court. Given that the previous jurisprudence preferred the criminal standard (which must be at least persuasive given that it had not been overturned) and Parliament had not sought to put into force rules which said the opposite, the Tribunal should retain the previous wisdom. There had been no change save in respect of the SRA's own internal rules.

11. Mr Miller relied on his submissions in the Response. The basis upon which the Tribunal applied the criminal standard in relation to its first instance disciplinary hearings came from the cases of Re A (a Solicitor) [1993] QB 69 and Campbell v Hamlet [2005] UKPC 19. In Re A, the Divisional Court held that the criminal standard should be applied in disciplinary cases involving lawyers. Nothing that Mr Miller said here was intended to affect that common law position.

12. The appeal was to be heard under a new statutory framework created by Parliament under Sections 44D and E of the Act, introduced by the Legal Services Act 2007. The provisions sought to put on a statutory footing what the SRA had been doing for a number of years: the SRA dealt with matters not thought serious enough to be referred to this Tribunal internally by way of rebuke or reprimand. The SRA also had fining powers, currently limited to £2,000. Section 44D(7) placed a requirement on the Respondent to create procedural rules. Before doing so, the Respondent was required to consult with the Tribunal under Section 44D(8). The preamble to the SRA Disciplinary Procedure Rules 2011 ("SRA Rules") recorded that the SRA Rules came into force following consultation with the Tribunal. The SRA Rules were approved by the Legal Services Board ("LSB") under the Legal Services Act 2007. This was an entirely self-contained statutory scheme which specifically provided that the standard of proof to be applied by the Respondent shall be the civil standard (SRA Rule 7.7).

13. Under Section 44E, the scheme provided for review by the Tribunal of the SRA's decisions. Mr Miller submitted that, as a matter of logic, when reviewing a decision of the SRA, it would be "nonsensical" for the Tribunal to apply a different standard of proof to the civil standard applied by the SRA Adjudication Panel on its review of the decision of an SRA Adjudicator. Mr Miller could identify no example where on appeal a different standard of proof was applied to that applied to the first instance decision. He stated that it was obvious that whilst the main aspects of this Tribunal's work were dealt with under the criminal standard, here the civil standard of proof should apply, because the Tribunal was operating an appellant review jurisdiction of decisions taken by the SRA under the civil standard of proof pursuant to a statutory scheme.

14. Mr Miller addressed the submission by Mr Saini in relation to dishonesty being a justification for the criminal standard of proof being applied to this case. Dishonesty was not alleged in this case. It was neither likely nor conceivable that the SRA would decide to determine under its own statutory scheme a case involving an allegation of

dishonesty, which would generally be referred to the Tribunal. The SRA's statutory scheme operated at the lower level and was designed to reflect that fact.

15. The Solicitor Member asked Mr Miller whether it was the Respondent's case that proceedings under Section 44E of the Act were not disciplinary in nature (on the basis that the case law to which Mr Miller had referred was said to apply to disciplinary matters). Mr Miller replied that he had referred to common law cases. It was not the case that the SRA Rules were silent as to the standard of proof: they included express statutory provision as to the standard of proof, effectively ousting common law jurisdiction in relation to this statutory framework. In Richards v The Law Society [2009] EWHC 2087 (Admin), the Divisional Court decided not to disturb the decision in Re A (above). This approach was entirely consistent with Mr Miller's submissions, because in that case there was no statutory arrangement in place in respect of the standard of proof. Mr Miller relied upon the requirement placed on the SRA to make rules under Section 44D(7) which brought those Rules within the statutory regime of Sections 44(D) and, he submitted, (E). The Tribunal should apply the civil standard to this appeal.

16. Mr Saini was invited to make further brief submissions on this point in response. He suggested that use of the word "review" by Mr Miller was interesting. The statutory power under which this hearing was taking place was Section 44E(1). By way of pragmatism and efficiency, the hearing was proceeding by way of submissions only, but it was not a review. The fact that the Tribunal was not to hear oral evidence did not rob the appeal of its appellate nature. A regulator that made decisions subject to appeal should not be able to set the standard of proof by which the independent tribunal determined the lawfulness of the decision appealed. To do otherwise would rob the Tribunal of its independence as a statutory body considering on appeal the lawfulness of the regulator's decision but applying the standard of proof which only the regulator had deemed to be applicable. By virtue of Section 44D(7)(a) Parliament had not mandated that the Society may bind the independent Tribunal by its SRA Rules. As an example, at Section 44D(7)(b) provided for rules relating to practice and procedure to be followed by the Society (Mr Saini's emphasis), not this Tribunal. There was nothing in Sections 44D or E which could bind the Tribunal to the standard of proof that the Society had mandated for and to bind itself. The procedural rules put in place specifically by this Tribunal were silent on the standard of proof. The common law should be followed because the Tribunal was independent and did not operate beyond the auspices of the common law. The Act itself could not bind or better the standard of proof which an independent tribunal should apply.

17. Mr Saini submitted that, as the Tribunal was being asked to decide whether the Adjudication Panel's disciplinary Decision should be affirmed or revoked, this was by its very essence an appeal against a disciplinary decision in name and form. Mr Saini confirmed that procedurally the Appellants were content with a review by the Tribunal (rather than a rehearing) but only in terms of form rather than substance.

18. Mr Miller commented that within the appeal, this Tribunal had to do its best to give justice and fairness to the parties. Mr Miller understood Mr Saini to be saying that this particular case was being dealt with by review, but that there may be other cases that the Tribunal decides under its statutory jurisdiction should be dealt with by way of rehearing because of the circumstances. This is the approach adopted by the

Divisional Court. This hearing was however still an appeal: it was not an original decision by this Tribunal. It was "nonsense" to say that an SRA Adjudication Panel was required to decide a case on the balance of probabilities and yet when the case came to the Tribunal, the latter would apply a higher standard of proof. In those circumstances it would not be an appeal because the Tribunal would have adopted a different process from that adopted in respect of the original decision. The Chairman observed that this might be one of the consequences of the SRA Rules that had been put in place. Mr Miller replied that it would "drive a coach and horses" through the procedure if the Tribunal was saying that because the SRA had decided to adopt the civil standard, one consequence might be that the Tribunal would adopt a different standard. The Tribunal was a statutory consultee on the SRA Rules and "that was the time for the point to be aired". The Solicitor Member commented that this was a matter that was discussed at the time of the consultation, and the Tribunal must reach its decisions based on the legal authorities that bind it.

Relevant Background

19. The chronology of events is set out at Table 1 below:

Date	Event
31.05.12	SRA sends mass reminder mailing to firms
03.07.12	SRA sends email to firms
13.07.12	SRA sends letter to firms
24.07.12	SRA sends reminder email
31.07.12	COLP/COFA to be nominated by firms using online process
01.08.12	Notice on SRA website confirming that date approval process was to be completed was 01.01.13
01.10.12	SRA office move from Redditch to The Cube
04.10.12	SRA publishes warning on its website
05.10.12	SRA sends reminder email to firms
10.12.12	SRA issues notice of failure to nominate COLP/COFA to Appellants by letter
11.12.12	Appellants send two emails to SRA Compliance Officer
20.12.12	SRA acknowledge receipt by email
04.01.13	SRA call Appellants
15.01.13	Process for nomination completed
16.01.13	SRA call Appellants concerning alleged failure to comply
16.01.13	SRA send Appellants Suitability Test questionnaire to complete
21.01.13	Appellants complete and return questionnaire
31.01.13	SRA call Appellants regarding COLP/COFA roles
01.02.13	SRA email further questionnaires to Appellants
06.02.13 and 13.02.13	Appellants respond
09.03.13	Appellants respond to SRA allegations
26.04.13	Appellants respond to character and suitability allegations

Date	Event
14.11.13	Decision of Adjudicator
03.12.13	Appeal to Adjudication Panel
24.02.14	Appeal refused
11.03.14	Adjudication Panel Decision issued to Appellants
09.04.13	Notice and Grounds of Appeal dated 08.04.13 submitted to High Court
09.06.14	Appeal transferred by High Court with consent of parties to the Tribunal
19.09.14	SDT Memorandum of Case Management Directions By Consent

Table 1

20. At all material times the Solicitor was a recognised sole practitioner and the Firm an authorised body. They were required to nominate a compliance officer for legal practice ("COLP") and a compliance officer for finance and administration ("COFA") under the SRA Authorisation Rules 2011, Rule 8.5. When deciding whether a candidate should be approved as a COLP or COFA, the SRA takes into account criteria set out in the SRA Suitability Test and any other relevant information. The SRA Suitability Test assists the SRA in determining whether the candidate is a fit and proper person to undertake the role(s).

21. The introduction of the roles of COLP and COFA was publicised on The Law Society and SRA websites on 8 September 2011 and 1 August 2012 respectively. On 5 and 19 December 2012, the SRA issued a news release containing statistics on the number of firms who had completed their COLP and COFA nominations and a summary of the risks in relation to non-compliance. Approximately 10,000 authorised bodies in existence prior to 31 July 2012 were told that they should nominate their COLP and COFA by that deadline with all to have approved COLPs and COFAs in place by 1 December 2012. Every authorised signatory of firms was emailed a link by 31 May 2012 requesting that they complete their firm's nominations by 31 July 2012.

22. A reminder was said by the Respondent to have been sent to the Solicitor by email on 24 July 2012. It noted that, according to the SRA's records, the Appellants had not begun the nomination process, and that failure to complete that process by 31 July 2012 may result in a breach of Rule 8.5 (see paragraph 20 above). A further reminder was said to have been sent by the Respondent to the Solicitor on 5 October 2012. By letter dated 10 December 2012 entitled "Failure to Nominate your COLP and COFA", the Appellants were contacted by the SRA's Legal & Enforcement Department in order to obtain an explanation for the delay by 27 December 2012.

23. JL, an SRA legal adviser, contacted the Solicitor by telephone on 4 January 2013. The Solicitor explained that he had responded to the SRA by email dated 11 December 2012. On checking, the response was sent to compliance officers@SRA.org.uk, an address used by the SRA during the nomination process instead of to a postal address contained in the SRA's letter dated 10 December 2012. The Solicitor informed JL that he would resend his explanation and that he believed he had nominated on paper as he was "not good" with computers and IT. He emailed the Legal and Enforcement

Department with copies of two emails dated 11 December 2012 addressed to compliance officers@SRA.org.uk. The first email attached a copy of a letter dated 31 July 2012 referring to the Solicitor as COLP and COFA for the Firm addressed to the SRA at The Cube in Birmingham and a DX number in the same city. The second email stated that the Firm Appellant did not receive the SRA's letter dated 13 July and that in relation to the SRA's email the Firm:

> "might have thought it was "sales-related emails, as we do receive so much correspondence and/or email on the same, on a regular basis (sic). Hence, it might have been deleted without reading …"

24. JL contacted the SRA's compliance officer, who confirmed that she had responded to the Firm's emails of 11 December 2012 by email dated 20 December 2012 and that a new link (for online nomination of COLP and COFA) had already been provided. She had also reminded the Solicitor that the SRA was not in a position to accept nominations by letter, fax or email and that his letter dated 31 July 2012 did not therefore constitute a nomination.

25. On 7 January 2013 the Firm nominated the Solicitor as its COLP and COFA. In answer to the questionnaire supporting the SRA's Suitability Test, the Solicitor responded "no" to a question concerning previous rebukes or reprimands. On 6 February 2013, in response to further questions from the SRA, he apologised for not answering "yes" to that question, describing it as an "error of judgement" on the understanding that the SRA had records and as such the information requested did not need to be reported as the question related to rebukes or reprimands of which the SRA would be unaware.

26. On 17 July 2013 an SRA employee drafted a report setting out background facts relating to the Appellant's conduct and recommendations. The report was provided to an SRA Adjudicator, together with additional information requested during the course of the adjudication. On 14 November 2013 the SRA Adjudicator made the following findings:

26.1 The Firm had acted in breach of Principle 7 of the SRA Principles 2011 ("the Principles") and failed to achieve Outcome 10.8 by failing to nominate a COLP and COFA by the deadline of 31 July 2012 and failing to respond to reminders and communications by the SRA;

26.2 The Firm had acted in breach of Rule 8.5 of the SRA Authorisation Rules 2011 in not having a COLP and COFA in place by 1 January 2012;

26.3 The Solicitor had acted in breach of Principle 7 of the Principles by failing to disclose all character and suitability issues he was required to, in accordance with Part 1(2) of the SRA Suitability Test 2011 when completing his COLP and COFA application and declaration;

26.4 There was no finding in relation to a fourth allegation.

26.5 The SRA Adjudicator decided to impose a written rebuke on the Appellants.

27. The Appellants appealed to the SRA Adjudication Panel against the SRA Adjudicator's decision on 5 grounds.

The Adjudicator Panel's Decision

28. The Adjudication Panel considered the matter on 24 February 2014. The appeal was refused. The Chair of the Adjudication Panel gave full reasons for the Decision, including as follows:

> "8.1 Hafiz and Haque did not nominate a COLP and COFA by 31 July 2012. We note the comments made by Mr Haque that he nominated himself by sending a letter to the SRA on 31 July 2012. However, he should have been aware that sending a letter to the SRA stating that he would be the COLP and COFA is not the same as following the required procedure to nominate, and obtain(ing – sic) approval from the SRA. In any event, sending a letter in the post on 31 July when the deadline for receipt of nominations was 31 July would be too late. Mr Haque states that he regularly monitored updates on the SRA website, the Gazette and Law Society websites and it is clear that the firm noted the change of nomination date from 31 March to 31 July 2012. Mr Haque also confirmed that he attended a training course in respect of COLPs and COFAs in 2011. The firm had a responsibility to have procedures in place to ensure compliance with a process they knew to be crucial.
>
> 8.2 We note production of details of the personal email account of Mr Haque (D33). We also note an error in Mr Haque's personal email address used by the SRA at this time (D25). We accept that the firm may not have received some emails from the SRA. Despite this, the firm were on notice of the need to nominate and should have made contact with the SRA to ascertain the outcome of the nomination. They rely on guidance issued by the SRA in May 2011 entitled "Outcomes Focused Regulation at a Glance". This provides the deadline for nomination as 31 March 2012 and for the role to be effective from 31 October 2012. They changed the office diary to reflect the date change from 31 March to 31 July and did not change the 31 October date to 31 December. They had extra time to ensure compliance and yet did not achieve this. Additionally, a written notice was sent to the firm on 10 December 2012 (A31) stating they had failed to nominate a COLP and COFA.
>
> 8.3 Mr Haque states that he is not good with IT. We note from his personal email account logs that he receives and deals with emails accounts (sic) from other companies and organisations such as [account names]. We acknowledge there have been IT difficulties for MySRA, however, this portal was not used for the nomination form.
>
> 8.4 We have considered the representations from the firm and Mr Haque that his mother died in December 2012 and he had to travel abroad. However, the responsibility is on the firm as a whole to ensure it complied with regulatory obligations which it had been aware of at least 6 months previously. The firm has accepted the importance of the COLP and COFA roles yet it did not act in

a timely way and failed to comply with their legal and regulatory obligations (sic).

8.5 It is a matter of fact that Hafiz and Haque Solicitors did not have a COLP and COFA designated and approved by the SRA in place as required by Rule 8.5 of the Authorisation Rules. The fact that the firm may have written a letter with the nomination does not equate to approval and designation by the SRA. There was a misunderstanding on the part of the firm that the process for nomination was an administrative one rather than a fundamental change in the SRA's approach to outcomes focused regulation. The Guidance referred to in paragraph 8.2 and submitted by the firm clearly states that the SRA must approve designation of the roles (A155).

8.6 Mr Haque was required to disclose any reprimands in his questionnaire. He did not do so. He says he was mistaken in thinking that because the SRA was aware of these he was not required to disclose them. It was his responsibility to ensure that the SRA was aware of all relevant factors in relation to his application."

The Adjudication Panel upheld the written rebuke, stating:

"9.1 We have decided to give a written rebuke to the recognised body of Hafiz and Haque and to Mr MD Haque in respect of each allegation upheld.

9.2 We have considered whether it is appropriate to impose a penalty on Hafiz and Haque Solicitors and/or Mr MD Haque. We have not done so for the following reasons:

9.2.1 The firm and Mr Haque have apologised for the failure to co-operate fully with the SRA

9.2.2 We note Mr Haque suffered the bereavement of his mother in December 2012

9.2.3 We accept the conduct of the firm and Mr Haque was not deliberate, intentional or purposeful

9.3 We consider a rebuke to be appropriate for the following reasons:

9.3.1 The firm delayed in nominating a COLP and COFA for over 4 months despite being aware of the need to do so. Over 10,000 firms were part of the process and over 90% successfully complied with their legal and regulatory requirements.

9.3.2 It was made clear by the SRA that nominations required approval and designation in advance of the role being activated on 1 January 2013

9.3.3 We consider the conduct of the Hafiz and Haque (sic) and Mr Hafiz (sic) to have been reckless."

29. Mr Miller added that the Appeal against the Adjudication Panel's Decision was made to the High Court after 28 days by which time the Respondent had published the Decision in accordance with its usual practice. The Decision was not taken down by the SRA when the appeal was notified. The Respondent apologised to the Appellants for this failure, which should not have happened.

The Appeal

30. The original grounds of appeal were that:

30.1 The decisions of the Appeal Committee as well as the Adjudicator were wrong in law and/or mired by serious procedural irregularity, and/or biasness;

30.2 The decisions were perverse or irrational on the fact and evidence and the delay was not intentional or reckless on the reasonable basis;

30.3 The sanction was disproportionate and no reasonable body could impose the sanction given the relevant facts and evidence.

31. In the Supplementary Grounds of Appeal, it was further asserted that:

31.1 As reprimands were published the Solicitor had no reason to believe he needed to mention them in the suitability questionnaire;

31.2 As he had disclosed in the questionnaire details of a complaint and this demonstrated that there was no intention of misleading the public (sic);

31.3 Not disclosing the reprimand was a lack of judgement and was not reckless and he did not understand "regulator" to mean the SRA and that it could be other regulators;

31.4 The Solicitor would expect the regulator to hold the regulatory information and that it would therefore not need to be disclosed;

31.5 His error or misunderstanding was caused by his personal circumstances which were not considered by the Adjudicator or Appeal Committee.

Submissions

<u>Appellants</u>

32. Mr Saini submitted that the chronology surrounding these events was important, in particular in relation to the interplay in communications between the various parties. The first item of correspondence that the Respondent had allegedly sent to the Appellants was on 24 July 2012 requesting urgent nomination of a COLP and COFA. The address on that email was bar_mizam@yahoo.co.uk. The Solicitor had provided a printout (in the bundle) for his personal email address inbox, confirming that the prefix to the address was bar_nizam. The email address used by the Respondent on 24 July 2012 was therefore incorrect. The printout further confirmed that no emails were received into the inbox by the Solicitor from the Respondent during the period when emails were alleged to have been sent. The Appellants were under a SRA

"mentor" at that time, as evidenced by an email exchange between the mentor and the Firm dated 25 June 2012 timed at 11:28. This email (and others in the bundle) were sent to the email address info@hafizandhaque.co.uk. The mentor never mentioned to the Appellants the requirement to comply with nominations for COLP and COFA, in spite of his apparently all-encompassing supervisory role. Even the mentor sent an email on 25 June 2012 to an incorrectly prefixed email address, namely bar_nitzam before ultimately using the correct address. The use of incorrect email addresses appeared to be a recurrent error on the Respondent's part in relation to this Firm. Further, the Respondent purported to email the Solicitor via his personal email address as opposed to using the Firm's professional email address provided on their website. The mentor took the initiative to discover the correct email address, which those dealing with the nomination process could also have done.

33. The first email allegedly sent to the Appellants by the Respondent was said to be dated 31 May 2012. Neither the Appellants nor the Tribunal had seen a copy of that email, which was said to contain the link necessary to carry out the nomination process. The Respondent had not disclosed or served any evidence to substantiate the assertion that such an email was served on the Appellants as alleged.

34. The second example of unsubstantiated contact was said to be a letter from the Respondent to the Appellants dated 13 July 2012 (sent to all firms). The Respondent had produced a template of what that letter would have looked like. However, the Respondent had produced no evidence of the actual letter addressed to the Firm with the website link for the online nomination process. The Appellants were not the only solicitors who failed to comply with the deadlines, which were regularly extended. Mr Saini submitted that this should be an "empathetic yardstick" by which the Tribunal should measure the "moving target of compliance" in the nomination procedure.

35. The next step taken by the Respondent was an email reminder dated 5 October 2012 which appeared in the Respondent's bundle. That email was sent to bar_nitzam, again an incorrect email prefix (previously used by the mentor on 25 June 2012). This meant that there had not been effective communication between the Respondent and the Appellants of past or forthcoming deadlines for the nomination process. The Appellants recognised that compliance with the nomination process was important. This could only be done by means of a secure online process using a personalised password via the online link. Even if by their best endeavours the Appellants were somehow to come across this link on the Respondent's website, they could not follow through without the personalised password.

36. The only evidence that was available in relation to the Appellants' awareness of the nomination procedures and process was their attendance at a lecture entitled "Outcomes-focused Regulation at a Glance" in May 2011. The content of that lecture was disclosed in the Appellants' bundle, and included a general discussion about the COLP and COFA, namely what they will do, who can be appointed, and the roles. Included in the lecture was a discussion on timelines for appointing a COLP and COFA. The notes referred to the need to nominate the COLP and COFA for approval by 31 March 2012, with authorisation from 31 October 2012. There was no discussion of the online nomination process or the means by which solicitors should make themselves compliant by the Respondent's standards. Mr Saini submitted that this

should be used as a compass when gauging the allegations against the Appellants, and in particular whether or not they were "reckless". It may be said that the Appellants should have kept themselves apprised by looking at websites and other published material. This was a small firm, and as recently as 1 December 2014 there had been discussions in the legal press about small firms (2 partners or less) being "left out in the cold" by the Respondent in relation to provision of regulatory guidance.

37. The Appellants confirmed they had received the Respondent's letter dated 10 December 2012 by post on 11 December 2012, informing the Solicitor of his failure to nominate a COLP and COFA. This letter was taken so seriously that the Appellants emailed the Respondent twice on the day they received it. This was not a case where the Appellants had ignored the Respondent's correspondence. On the contrary, the first piece of letter received by post was acted upon. An email was sent by the Appellants to complianceofficers@SRA.org.uk on 11 December 2012 at 11:05. This email address was mentioned specifically on the second page of the Respondent's letter dated 10 December 2012, with the statement "if you need to be re-sent this link, please email complianceofficers@SRA.org.uk without delay to request this." It had been suggested by the Respondent that the Appellants had used an incorrect email address, but it was the email address provided in the Respondent's letter. It was unquestionably the correct email address if one needed the online link to be re-sent, which the Appellants did.

38. The Appellants said in their email to the Respondent on that day that they did not receive the Respondent's letter dated 13 July. By 11:05 that day, the Respondent's letter had been received in the post, and a response by email drafted and sent by the Appellants. Further, there had been a quick check of the correspondence and no hard copy letter dated 13 July had been received. The email included the phrase "nonetheless, we fully complied with the duty of notification". It was evidently in the Appellants' minds that they had complied by sending the letter to the Respondent dated 31 July 2012, a copy of which was sent to the Respondent under cover of the 11 December 2012 email. Mr Saini submitted that the Appellants had unwittingly revealed their innocence. If it were the case that they were distracting attention from the truth and knowledge that they had, were fully aware of the compliance procedures, they would have played more upon the fact that they had not received the previous emails and correspondence, rather than saying that they had sent a letter to the Respondent as attached to their email. Mr Saini invited the Tribunal to place itself in the shoes of the Appellants.

39. The Respondent replied to the 11 December 2012 emails on 20 December 2012, by what seemed to be a fairly generic email, stating that nominations by email, letter, or fax, were not acceptable. The Appellants said this was the first time that they were aware that their attempted nomination by letter(s) would have been unsuccessful, because there had been no reply in the interim period. The Respondent's case was that it had not received any letters. Be that as it may, and whatever the problems with the post, this was the first time that there was clear, hard evidence of communication between the parties and that in the minds of the Appellants they had to comply with the nomination process. It was said in the email dated 20 December 2012 that the link had been resent to that email address. There was no evidence in the Respondent's bundle that the link was resent on that date. This was again a lapse on the Respondent's part as that the link, which did not appear to have been sent, was the

only means by which the Appellants could comply with the nomination process. It may have been a lapse because the link was to come from the compliance officers email address as opposed to another email address. Mr Saini submitted that in any event this could not have occurred until sometime between 4 January 2013 and actual compliance on 7 January 2013. There was a note of a telephone conversation between JL and the Solicitor on 4 January 2013. JL called the Solicitor at 15:30 to establish the position regarding his lack of response. It was clear from the content of the attendance note that JL was not aware of the emails sent by the Firm on 11 December 2012 to the compliance officer email address. When JL became aware of the email sent to the compliance officer address, he explained that the link would be resent. The note included confirmation that the COLP and COFA had not been nominated but there was no evidence of the Appellants having been given the "weapon" to make the nomination online. The Tribunal did not have an email from the SRA to the Appellants sent between 4 and 7 January 2013 to confirm that they were equipped with the link to enable compliance during that period. They were ultimately provided with the link on 7 January 2013.

40. In summary, the Appellants became aware of their failure to comply with the nomination process on 20 December 2012 when the Respondent sent them the email of that date confirming that nomination by letter was unacceptable. At some point between the afternoon of 4 January 2013 and the morning of 7 January 2013 they were sent the online link and complied with the process. This was evidenced by the form in the bundle time stamped 9:20 a.m. on 7 January 2013. There was fairly timely and expeditious compliance by the Appellants on the first available opportunity once they had the link. The email address given by the Appellants during the online nomination process was "info@hafizandhaque.co.uk". This should be contrasted with the email address which was used by the Respondent to serve compliance notices. In respect of the first two allegations, it was accepted by the Appellants that they failed to have an approved COLP and COFA in place until 13 January 2013. Mr Saini said his submissions were trying to establish the means and effectiveness of the method by which they could have done so sooner and the reasonableness of the allegations raised against the Appellants in contrast to the contemporaneous evidence.

41. In respect of the non-declaration on the nomination form, Mr Saini said that a good deal had been made by the Respondent of the Solicitor's telephone conversation with BM from the SRA on 31 January 2013 requesting additional information regarding his suitability to undertake the COLP and COFA roles. During that conversation, the Solicitor said that he was running a small firm and did not have the time to be on the telephone. Whilst dealing with this telephone call the Solicitor could not deal with other calls and manage the Firm. BM ultimately approved the Solicitor as the COLP and COFA.

42. The Respondent sent the Solicitor a COLP/COFA questionnaire with a Suitability Test by email on 16 January 2013. He returned the Suitability Test on 21 January 2013. BM quickly picked up the non-declaration, which she queried in her email to the Solicitor on 1 February 2013. The Solicitor responded by email dated 6 February 2013, in which he was apologetic for his lapse. He said that "It was an error of judgment on the understanding…" as to the records that the SRA already had. The error of judgment had already been emphasised, but not the error of understanding. The Solicitor had attempted in his correspondence to explain his understanding, albeit

not clearly. In his mind the SRA was a comprehensive body which would know what records it had. He admittedly should have been more accurate, but the underlying implication was that he had undergone training further to the previous reprimand several years prior to the questionnaire in which he should have disclosed that reprimand. He had accepted that the reprimand was binding. He understood that the SRA already knew about the reprimand. The SRA as a regulator would have knowledge of its own regulatory records when assessing pre-existing action as part of the COLP/COFA process.

43. Mr Saini submitted that the Solicitor had been careless rather than reckless. "Recklessness" demanded that he had performed the disclosure in an informed manner, on the basis that he would have the understanding that he had to disclose information because the SRA was ignorant of previous actions. If the Solicitor's understanding was that the SRA was the same overall body, then it could not be truly said that he was reckless. He did not have the requisite level of intent. The Chairman asked Mr Saini whether it was the Appellants' case that the Solicitor answered "no" to the question because he believed that the SRA knew about the reprimand, but brought to the SRA's attention a complaint to the Ombudsman which the SRA would not necessarily have known about. Mr Saini confirmed (after taking instructions from his client) that the Ombudsman matter was not believed to be known to the SRA at the time the form was submitted. Mr Miller pointed out that the conclusion of the relevant paragraph invited the SRA to verify the information with their records. Mr Saini informed the Tribunal that the matter in question was subject to successful Judicial Review by the Appellants. The Solicitor had disclosed information that it was not mandatory for him to disclose as part of the nomination process and of which the SRA would not have been apprised. Further, an extension of time in which to complete and submit the form was requested from the SRA by the Appellants, but was refused. This corroborated the fact that the Solicitor was under a lot of pressure and that there was not enough time to deal with the form comprehensively. Even though the extension was refused the Solicitor dealt with the form and complied as best he could within the time allowed. An extension was needed predominantly because the Solicitor's mother was unwell abroad. Despite the fact that the Solicitor was worried about his mother's situation, running his practice, and dealing with compliance, he did give disclosure. His mother died on 18 January 2013. One must examine whether the Solicitor was reckless or not in that context. He was careless but was under immense pressure and turmoil. Recklessness should be determined against the Solicitor's awareness of what needed to be filled in. When filling in the form, in the Solicitor's mind he had disclosed everything necessary that the SRA may not already have known about.

Respondent

44. The Respondent is a statutory decision maker. This Tribunal therefore ought to give respect to their views and the Decision in the same way as the Divisional Court does to appeals from decisions by the Tribunal.

45. The decisions of the Adjudicator and Adjudication Panel were made following a thorough documentary review of all the facts and evidence. There was no basis for asserting irrationality or unreasonableness on the part of the decision maker - both decision-makers gave proper reasons for their decisions.

46. The publicity in respect of monitoring COLPs and COFAs was widespread, and the process undertaken by the SRA to ensure every authorised body in England and Wales was aware of the implementation was carefully considered. Press releases and guidance notes on consultation papers were widely distributed so as to put firms on notice. Emails were sent to the relevant authorised email account that was held on the SRA's system (and which individuals had a duty to keep updated) with chasers and telephone calls being made to those firms who were failing to comply with deadlines. The Solicitor had every opportunity to act promptly and in compliance with Principles and Outcomes. Almost 10,000 firms managed to comply with the requirement to nominate their COLP and COFA, and those that did not comply were the subject of investigations into the reasons for the failure. 964 firms were investigated. As at 27 November 2013, 715 firms had received an internal sanction ranging from a "Dear Partner" letter, letter of advice, finding and warning or a rebuke. It was also open to an Adjudicator to issue a fine or recommend referral to the Tribunal. As at the date of the Respondent's Response, Adjudicators or Adjudication Panels had issued 11 firms/individuals with rebukes. 6 were for a delay in nominating/failure to nominate only, 3 for a failure to disclose character and suitability issues only, and 2 firms (including the Appellants) had multiple issues. The sanction given to the Appellants was entirely proportionate in the circumstances, particularly when there were additional issues surrounding the failure to report information as to character and suitability.

47. It was a matter of central importance to the effective and efficient regulation of legal services by the SRA that solicitors cooperated promptly and effectively with the regulator. Otherwise, the cost of regulation was increased for all solicitors and the protection that the SRA could offer to the general public was reduced. The Appellants fell short of the required standard in Mr Miller's submission.

48. What lay at the heart of this matter was a misunderstanding by the Solicitor as to his relationship with his regulator. The Respondent regulates 160,000 solicitors and 10,000 law firms. It is part of the regulatory scheme, and indeed part of being a member of the legal profession, that it is the solicitor's individual obligation to find out what he has to do in connection with compliance with his regulatory obligations. If a solicitor has not done that, or even if he has done that and then did not do what he ought to do, he could not blame his regulator for not telling him what to do. Much of what the Solicitor said appeared to emanate from a fundamental misconception as to what it is to be a solicitor. The obligation remained on the solicitor to understand what he needed to do, partly to make the Respondent's life easier in respect of the people it has to regulate but also to make the whole system work the way it should do. If the SRA had to spend its time chasing solicitors who had not done what they ought to have done, the burden on the whole profession and the SRA would be so much the greater.

49. There did not seem to be any factual dispute that the Appellants failed to nominate a COLP and COFA for the practice by the deadline of 31 July 2012. This was their regulatory obligation which they knew to be such. The Solicitor Member observed that it was not in dispute that nomination had not been made in the way required by the SRA, but it was in dispute that the Solicitor had nominated by letter to the SRA dated 31 July 2012. Mr Miller replied that to write a letter to the Respondent on 31 July 2012 stating who was to be nominated was by definition not compliance and

therefore a breach even if the letter was in fact sent (other than if it was delivered on that day to the SRA by hand about which there was no evidence). Authorisation for the Solicitor was not in place by 1 January 2013, so for a period of time the Firm had practised in breach of Rule 8.05 of the SRA Authorisation Rules 2011, which required each firm to have a COLP and COFA. The Solicitor further failed to declare material facts to the Respondent when asked to do so. He described this as "a serious error of judgment". Taking the three matters (all of which Mr Miller submitted to be "substantial") together, the Adjudication Panel decided that the appropriate outcome was to administer a rebuke. This was an entirely proportionate, sensible outcome based on the facts.

50. The Respondent's internal decision making process was broadly that decisions were taken by a single Adjudicator and were subject to appeal before an Adjudication Panel. This Decision was reached on 24 February 2014. The allegations were set out at paragraphs 1.1 to 1.4. The Decision dealt at paragraphs 1.5 and 1.6 with the fact that this was an appeal against a decision by an SRA Adjudicator on 14 November 2013. The Adjudication Panel made it clear that they considered the matter afresh, in accordance with the Respondent's normal process. The Chairman queried this approach by reference to Rule 11.6 of the SRA Rules. Mr Miller confirmed that "consideration afresh" was the normal approach adopted by the Adjudication Panel. Rule 11.6 might say something else, in that it provided for review of the decision being appealed. "Consideration afresh" was dealt with on the papers with no oral hearing.

51. The Adjudication Panel set out the documents considered and its Decision. The appeal was refused (paragraph 3). Mr Miller referred in detail to the Summary of Facts in the Decision. Reference was made to the mass email sent on 31 May 2012 and a template mail merge letter, which was in the bundle, dated 12 July 2012. Details were entered into the letter and the letter sent out. By virtue of that process there was no copy of the letter sent to the Firm.

52. Mr Miller referred the Tribunal to the Statutory Declaration of SAKP dated 26 April 2013 in the bundle. SAKP recalled that on 31 July 2012 he drew to the Solicitor's attention a note in the diary on the COLP and COFA. The Solicitor dictated a letter to be sent to the Respondent. SAKP prepared the letter but could not send it by himself as he worked part-time and his rota on that day ended at 2 p.m. Mr Miller submitted that the diary note could only exist if either the Solicitor or someone else knew that action had to be taken by 31 July 2012: it was clear that the Solicitor knew that he had to do something by 31 July 2012. SAKP said that the matter did not come to his attention again until 31 October 2012 when he noticed a further note on the daily cause list/diary when he "got the SRA file out as usual". On checking, he could not see a copy of the letter. He discussed this with the Solicitor who told him to forward the same letter again to the SRA to their new address [The Cube] which he did as a precaution in case there had been an oversight. SAKP noted that it appeared that he changed the address, but not the date. SAKP noted that the Solicitor had signed the October letter without noticing that the date had not been changed. This was evidence that the Appellants knew what they had to do and that SAKP had put this in train before he left the office on 31 July 2012. It was not known what happened to the letter save that the SRA did not receive it. The last day for nomination was 31 July 2012.

53. The Solicitor was asked in a questionnaire to explain what he had done to prepare himself for carrying out the roles of COLP and COFA. He replied that he regularly monitored SRA updates through their website, reports in the Gazette, relevant books and information booklets. He referred to the "important issue" having been discussed a number of times during meetings of the Management Team, which normally took place monthly. All lawyers gave their input during those meetings. He had read the SRA rules/code of conduct 2011 and/or relevant information on their website which were again "very helpful". He referred to carrying out Google searches of "COFA and COLP", and to using the Law Society's website for clarification and/or education. Mr Miller submitted that the Solicitor was therefore keeping an eye on his obligations in order to prepare himself for the role. It was not surprising that he knew that he needed to do something by 31 July 2012.

54. In his email to complianceofficers@SRA.org.uk on 11 December 2012, the Solicitor noted that he might have deleted the Respondent's correspondence believing it to be "sales-related emails" which he said he received on a regular basis. Mr Miller observed that initially the Solicitor seemed to think that he might have received the email and had not actioned it because he might have deleted it without reading. A similar point was made by the Solicitor when he spoke to reference TC at the SRA on 16 January 2013, where he made reference to the Appellants having thought that the emails they had received were from a sales company. Mr Miller submitted that there was substantial evidence from the documents that the Solicitor was aware, either by his own actions or from letters which he might not have fully appreciated were from the Respondent that he had until 31 July 2012 to comply with his obligations. He must have been aware of this otherwise a diary note would not have existed. In addition, the Respondent sent a briefing note on 1 August 2012 which specified the deadline for all firms and recognised sole practitioners to nominate a COLP and COFA as being 31 July 2012. The note recorded that the deadline was set to allow enough time for the Respondent to review all nominations and complete the approval process by 31 December 2012. COLPs and COFAs must take up their responsibilities by 1 January 2013. This note meant the process was to be completed by 31 July 2012, which was unsurprising as the process was instantaneous and electronic. The same document set out details concerning the requirements. It appeared from what was said by the Solicitor that he was monitoring the Respondent's website, and one would normally have expected to have come across this document during that process.

55. On 10 December 2012 the Respondent sent a letter to the Solicitor referring to the deadline for nominations of 31 July 2012. In bold type on the second page of that letter, was the wording set out at paragraph 37 above. The Solicitor needed to nominate a COLP and COFA and was given an email address if he needed the link to be emailed to him. The Solicitor sent two emails addressed to the "compliance officer". The "compliance officer" address was intended for a specific purpose; it was not intended for general correspondence in response to that letter. The Respondent sent an email to the Appellants on 20 December 2012 informing them that nominations via letter, email or fax were not accepted, and that the letter of 31 July 2012 had not been regarded as their nominations. It was stated that the link had been resent to the Appellants at the email address on the letter with instructions on how to proceed. It had been suggested that the Respondent could not produce a copy of the document in which the link had been resent to the Appellants. However, it was the Respondent's case that the link was resent. He agreed with the observation of the

Solicitor Member that it was incorrect to say (as the Respondent stated in the letter) that nominations were via mySRA.

56. The Solicitor Appellant was telephoned by JL, an SRA legal adviser, on 4 January 2013, when the former explained that he had nominated the COLP and COFA but not via the link sent to the Firm because he was not good with IT. The nomination process was eventually completed on 15 January 2013. On 16 January 2013 the Solicitor was sent a questionnaire to complete, which he did on 21 January 2013. He said that he had not done this sooner due to the death of his mother. BM called the Solicitor to discuss his nominations on 31 January 2013. Mr Miller referred the Tribunal to the contents of the attendance note of that conversation. On 1 February 2013, BM emailed the Solicitor with questions that they had been unable to deal with during their telephone conversation. In his answers sent on 6 and 13 February 2013, the Solicitor confirmed that he made an error of judgment in relation to declaration of the reprimand. This explanation was accepted by the Respondent.

57. On 9 March 2013 the Solicitor provided an explanation by email regarding the failure to nominate a COLP and COFA and alleged breach of the Authorisation Rules. He said that the Appellants had written to the SRA's Birmingham office on 31 July 2012 confirming the nominations by using "the usual means of commutation (sic)". Following the letter he had been in regular contact with sections of the SRA on issues surrounding the Firm. Mr Saini had suggested that a person carrying out supervision on behalf of the SRA was somehow a "mentor" to the Solicitor. This was a misrepresentation of the regulatory relationship. A supervisor is someone who has a number of firms in their "pot". If there are issues in relation to those firms the supervisor tries to deal with them. However, this is the regulator supervising firms rather than mentoring them. Mr Miller agreed with the Solicitor Member that this is a focus point for the supervisory function of the regulator. The Solicitor confirmed the understanding that all firms were required to nominate their COLP and COFA by 31 July 2012, i.e. he knew he had to do it. He suggested that as he had previously provided his Firm's nominations, he considered the email from the compliance officer dated 20 December 2012 to be "procedural correspondence which overlapped by correspondence (sic)". Mr Miller submitted that this was a different explanation for how that correspondence was regarded. The explanation continued to suggest that the compliance officer had provided the Solicitor with a link to the e-portal by a separate email. Under the heading "submissions" the Solicitor disagreed that the Firm failed to nominate a COLP and COFA by 31 July 2012. He said that the Appellants notified the Respondent of the Firm's nomination in writing on 31 July 2012 within the deadline. He suggested that the COLP and COFA were operative at the Firm from 1 January 2013.

58. The Solicitor dealt with the failure to disclose the reprimand in a witness statement submitted to the Respondent dated 6 August 2013. He referred to having believed that the Respondent already held all the information. This was one of the reasons why he did not particularise the reprimand, which he later appreciated as being a "serious error of judgment and as such I have apologised".

59. The letter dated 31 July 2012 provided to the Respondent was addressed to offices which they did not occupy at that time. The Solicitor's explanation for this was that when the letter was sent again to the Respondent on 31 October 2012 the address was changed but not the date.

60. The Decision noted that the Solicitor was the approved COLP and COFA for the Firm. The Firm and the Solicitor denied all the allegations and the Decision listed their representations.

61. The Adjudication Panel found the allegations proved. Mr Miller submitted that the factual summary had been carefully prepared by reference to the underlying documents (as one would expect). The Adjudication Panel found that the Firm failed to nominate a COLP and COFA by 31 July 2012. Mr Miller submitted that this was an "inescapable" factual finding in view of the evidence. The Firm failed to respond to written notices, reminders and communications from the SRA in breach of Principle 7 and Outcome 10.8. The Adjudication Panel recognised that there was an issue with the Solicitor saying that he did not receive all the emails. There were a number of communications where it did seem that there was no response from the Solicitor. In Mr Miller's submission this was a breach of Principle 7 of the SRA Code of Conduct 2011 (the requirement to comply with legal obligations) and Outcome 10.8 (a requirement to comply promptly with any written notices from the SRA).

62. The Adjudication Panel found that the Firm did not have a COLP and COFA in place whose designation was approved by the Respondent by 1 January 2013 (incorrectly stated in the Findings as 31 January 2013). Mr Miller submitted that this was "factually incontrovertible". This was a breach of Rule 8.5 of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011.

63. The Adjudication Panel found that the Solicitor did not disclose all relevant character and suitability issues when making his nomination in breach of Principle 7. There was no dispute that at the time this was correct.

64. The Adjudication Panel did not make any findings in relation to the preparation and reliance upon a letter dated 31 July 2012 (incorrectly stated in the Findings as 31 July 2013). It was said that the particulars of that allegation needed to be further specified and if it was alleged that there had been dishonesty this should be particularised to enable it to be responded to fully. Mr Miller submitted that, as one would expect, a Committee considering all of these matters had found three matters proved on the basis of the allegations put, and one matter on which they did not consider they had enough information to reach a decision and which is not being pursued in any form. The Decision stated that the standard of proof was the balance of probabilities.

65. Mr Miller made submissions on the Reasons set out at paragraph 8 of the Decision. The Adjudication Panel noted that the Solicitor should have been aware that sending a letter to the SRA stating that he would be the COLP and COFA was not the same as following the required procedure to nominate, and obtaining approval from the SRA. Sending a letter in the post on 31 July when the deadline for receipt of nominations was that day would be too late. The Adjudication Panel referred to the Solicitor's research to keep himself up to date. It was clear that the Firm noted the change of

nomination date from 31 March to 31 July 2012. The Firm had a responsibility to have procedures in place to ensure compliance with a process they knew to be crucial. These were entirely justified reasons, given the evidence.

66. The Adjudication Panel noted the details of the Solicitor's personal email account. This document was the screenshot of the Solicitor's emails. The Adjudication Panel noted an error in the Solicitor's personal email address used by the SRA at this time and accepted that the Firm may not have received some emails from the SRA. Despite this the Firm was on notice of the need to nominate and should have made contact with the SRA to ascertain the outcome of their nomination. The guidance issued by the SRA in May 2011 was relied on by the Firm and it provided the deadline for nomination as 31 March 2012 and for the role to be effective from 31 October 2012. The Firm changed the office diary to reflect the date change from 31 March to 31 July and did not change the 31 October date to 31 December. They had extra time to ensure compliance and yet did not achieve this. Additionally, a written notice was sent to the firm on 10 December 2012 stating that they had failed to nominate a COLP and COFA. Mr Miller submitted that these were perfectly sound reasons based on the evidence.

67. The Adjudication Panel noted that the Solicitor said he was not good with IT, but observed his use of his personal email account from the printout provided. They acknowledged that there had been IT difficulties with mySRA but that this portal was not used for the nomination form. They recorded receipt of representations from the Firm and the Solicitor concerning his bereavement and consequential travel abroad. The responsibility was on the Firm as a whole to ensure that it complied with regulatory obligations of which it had been aware at least 6 months previously. The Firm had accepted the importance of the COLP and COFA roles, yet did not act in a timely way and failed to comply with their legal and regulatory obligations.

68. It was a matter of fact that the Firm did not have a COLP and COFA designated and approved by the SRA in place as required by Rule 8.5 of the Authorisation Rules. The fact that the Firm may have written a letter with their nomination did not equate to approval and designation by the SRA. There was a misunderstanding on the part of the Firm that the process for nomination was administrative rather than a fundamental change in the SRA's approach to outcomes focused regulation. The SRA guidance relied on by the Firm stated that the SRA must approve designation of the roles.

69. It was recorded that the Solicitor was required to disclose any reprimands in his questionnaire. He did not do so. He said he was mistaken in thinking that because the SRA was aware of these he was not required to disclose them. It was his responsibility to ensure that the SRA was aware of all relevant factors in relation to his application. Mr Miller submitted that again this was valid reasoning based on the documents and evidence.

70. In respect of sanction, the Adjudication Panel decided to give a written rebuke to the recognised body of Hafiz and Haque and to the Solicitor in respect of each allegation upheld. The Adjudication Panel provided its reasons for not imposing a penalty on the Firm and/or the Solicitor. An apology had been provided for failure to cooperate fully with the SRA, the Solicitor had suffered the bereavement of his mother in December 2012 and the Adjudication Panel accepted that the conduct of the Firm and the

Solicitor was "not deliberate, intentional or purposeful". Mr Miller submitted that the Adjudication Panel had properly taken into account the explanations provided, and the Solicitor's circumstances. The Adjudication Panel explained why it considered a rebuke to be appropriate, namely: the delay in nominating a COLP and COFA for over 4 months despite being aware of the need to do so; it was made clear by the SRA that nominations required approval and designation in advance of the role being activated on 1 January 2013; and, the Adjudication Panel considered the conduct of the Firm and the Solicitor to have been "reckless". Mr Miller submitted that "reckless" in this context meant not caring sufficiently about their regulatory obligations and ensuring that they complied with them. Mr Miller submitted that this was an entirely reasonable, appropriate and sensible approach by the Respondent to a matter which they kept straightforward in terms of the Appellants not having done what they needed to do. Virtually everyone else that was regulated had managed to comply, and the Solicitor seemed to have an issue around not realising what he needed to do in order to be properly regulated. The response by the Adjudication Panel was, in Mr Miller's submission, entirely proportionate, sensible and right.

71. Mr Miller referred the Tribunal to the SRA Rules which set out the framework in relation to the exercise by the SRA of its disciplinary powers. In particular, Mr Miller referred the Tribunal to Rule 3.1 which provided for the SRA to make a disciplinary decision to give a regulated person a written rebuke when 3 conditions were met. The SRA had to be satisfied that the act or omission by the regulated person which gave rise to the SRA finding fulfilled one or more of 9 indicators. One indicator was that the act or omission was deliberate or reckless. The Adjudication Panel decided in this case that the act or omission was reckless. A further indicator was that the act or omission was related to a failure or refusal to ascertain, recognise or comply with the regulated person's professional or regulatory obligations, and examples were given. Mr Miller submitted that these 2 indicators amply fulfilled criteria one.

72. The second criteria was that a proportionate outcome in the public interest was met by, in this case, a written rebuke. The third condition was that the act or omission by the regulated person which gave rise to the SRA finding was neither trivial nor justifiably inadvertent. Mr Miller submitted that the finding in this case was above that level. The Decision and the sanction both fitted fairly and squarely within the SRA's own policy and procedures. On that basis Mr Miller's submitted that the Tribunal, having reviewed the matter, should dismiss the appeal.

73. The Solicitor Member referred to paragraph 9.3.3 of the Decision, namely that the Adjudication Panel considered the conduct of the Firm and the Solicitor to have been reckless. He asked which allegation this finding related to or did it relate to all 3 allegations. Mr Miller thought that the finding was certainly capable of relating to all 3 allegations and probably did so. Mr Miller explained that the process started with the initial decision of the SRA Adjudicator. The matter went round the houses again resulting in the allegations contained in the first paragraph of the Decision. The Adjudication Panel had to decide whether the allegations were proved or not. When it came to whether to impose a penalty, the Respondent looked at the guidance contained at SRA Rules, Rule 3.1. A decision as to whether someone was reckless or not was a finding but it was a finding in the context of the criteria for imposing sanction. In this context "reckless" meant not doing things with adequate care. The Solicitor Member observed that, given that this was the only place in the findings

where the word "reckless" appeared, there did not appear to be any explanation as to where it had come from. The Tribunal was being asked to speculate as to the basis on which this part of the decision was reached. In the absence of further guidance, the Tribunal would have to form its own view. Mr Miller was not prepared to enter into speculation on the point. He observed that, having gone through the evidence, his submission was that "reckless" did seem to him to be a perfectly adequate and appropriate finding to make.

74. The Chairman referred to the finding at paragraph 5.4, which went back to the original Adjudicator's decision, where it was stated that if it was alleged that there had been dishonesty this should be particularised so that it could be responded to fully by the Appellants. He asked Mr Miller whether the same point applied to "reckless". Mr Miller accepted that dishonesty had to be particularised up front. There was an increasing debate that the same approach applied to an allegation of lack of integrity. The word "reckless" meant not having adequate regard to one's professional obligations. At its highest it was not caring whether one got it right or wrong. If someone had not nominated a COLP or COFA in the right way, and had not bothered to complete a questionnaire correctly by ticking the right box, a decision that the conduct fell into the category of "reckless" was justified. It meant no more (given that the outcome was one of rebuke) than that the Appellants needed to be more careful. "Reckless" was the absence of carefulness.

75. The Solicitor Member asked Mr Miller about the finding at paragraph 5.1 of the Decision, failure to respond to a written notice, reminders and communications from the SRA. Specifically which documents were being referred to? Mr Miller submitted that the finding did not require the communications to have been sent directly to the Solicitor. They could refer to notices published on the SRA's website (for example that posted on 1 August 2012). There seemed to be some acceptance by the Solicitor in his emails dated 11 December 2012 and in the telephone attendance note of 4 January 2013 that he had received emails from the Respondent but might not have read them. Mr Saini effectively submitted that the Respondent could not prove that the Solicitor had received these documents; therefore the Respondent was in the wrong and the Appellants entirely in the right and blame free throughout the process. The evidence was that the Appellants had received information from a variety of sources, including from the Respondent. The Solicitor Member suggested to Mr Miller that the Solicitor said that he "may have received" an email or it may have gone into junk, but he did not remember seeing it. Which written notice was referred to at finding 5.1? Mr Miller suggested that this could include the notice of 12 July 2012 and the 1 August 2012 internet notice on the SRA's website.

76. The Solicitor Member asked which address the 31 May 2012 email was sent to. Mr Miller responded that there was no evidence as to where it was sent. He confirmed that the reminder email was sent out by mailshot, with no records held by the Respondent of where any of those emails were sent.

77. The Solicitor Member asked to be talked through the role of the Adjudicator and their relationship with the Respondent. Mr Miller explained that the way the process normally worked was that a member of staff prepared a report setting out the relevant facts and evidence, which was provided to the solicitor for comment. The solicitor was invited to answer the points and provide any evidence upon which he relied. The

Adjudicator will have the SRA's report and the solicitor's response. The report was prepared in order to obtain a response from the solicitor and was factually accurate and based on the SRA's own investigations. There was a panel of Adjudicators, some of whom were employees of the SRA and some of whom were independent and paid a daily rate to make decisions. They operated as a separate group within the SRA and were led by the Chief Adjudicator with responsibility for monitoring standards. The Adjudicators have no other roles within the SRA. They also undergo extensive training for their roles.

78. The Lay member queried with Mr Miller whether there was a typing error in finding 9.3.3 which referred to Mr Hafiz in the context of conduct found to be reckless. Mr Miller confirmed that the reference should be to the Solicitor, Mr Haque.

79. The Chairman noted that his definition in relation to the non-declaration was "making a statement not caring whether it was true or not". He invited Mr Miller to comment and to provide a definition of "reckless" in relation to the conduct alleged. Mr Miller explained his difficulty, which was that the Adjudication Panel had used the word "reckless", not him. It was not for him to put his own gloss on the Adjudication Panel's finding. There were 2 grounds for imposing a rebuke, namely being reckless and not following the rules.

80. The Tribunal invited Mr Saini to address the Tribunal on matters of law raised by Mr Miller. Mr Saini stated that it was important for the Tribunal to remember when considering the failure to nominate a COLP and COFA that the nomination was sent by post. This would render the Appellants not specifically in breach, as they had acted or had tried to take action in some way or form. Mr Saini emphasised that even if the Tribunal considered that there was a technical breach, it would not necessarily be something for which the Appellants were culpable given the facts as played out in the evidence. The Appellants seemed to be under the impression that nomination was to be carried out by means of mySRA. The Adjudication Panel said in their Decision that this was not the case. This definitive stance should be contrasted with the contents of the email from the Compliance team to the Appellants dated 20 December 2012, in which it was stated that COLPs and COFAs should be nominated online only via mySRA. If even the Compliance team was not sure how the online nomination process was to work, it was somewhat churlish to criticise solicitors for not knowing. The Appellants accepted in their response to the Respondent dated 9 March 2013 that they had not nominated using the "prescribed e-portal service mySRA". They said that they did not know they would have to use that method or that there was any such prescribed method to be used. This was contemporaneous evidence of the Solicitor inadvertently admitting that he was not previously aware of any other method, had been informed of the online mySRA method, and said that he was not aware of the prescribed method (Mr Saini's emphasis).

Tribunal's Decision on the Appeal

81. The Tribunal had due regard to the Appellants' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"). On behalf of their respective clients, the advocates had made detailed and well-considered written

and oral submissions, which was of great assistance. The Tribunal took careful note of all the submissions.

82. The Tribunal was mindful that, absent any error of law, it must pay considerable respect to the decisions of the Adjudication Panel. The Tribunal followed the provisions of the Civil Procedure Rules 52.11 (being those applied by the High Court to appeals to it from decisions of the Tribunal). An appeal would be allowed where the decision of the Adjudication Panel was (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings before the Adjudication Panel.

83. The Tribunal observed generally that the Adjudication Panel did not follow Rule 11.6 of the SRA Disciplinary Procedure Rules 2011 in its decision making process. Rule 11.6 required appeals to the Adjudication Panel to be "limited to a review of the decision which is being appealed, taking into account the reasoned arguments provided by the person bringing the appeal." At paragraph 1.6 of the Adjudication Panel's Decision dated 24 February 2014 it was clearly stated that "Hafiz and Haque Solicitors appealed on 3 December 2013. We have considered this matter afresh." This had no bearing on the Tribunal's decision, but the Tribunal's observations should be noted by the Respondent and its Chief Adjudicator. Further, the Decision contained a number of typing errors, for example at paragraphs 5.2, 5.4 and 9.3.3 which did not assist in understanding with clarity the reasons for the Decision.

84. In summary, the Tribunal had concluded that the Adjudication Panel took insufficient account of information and evidence available to the Adjudication Panel at the time of its deliberations and determination of the appeal from the decision of the Adjudicator dated 17 July 2013.

85. Finding 5.1 was that the Firm failed to nominate a COLP and COFA by 31 July 2012 and failed to respond to a written notice, reminders and communications from the SRA in breach of Principle 7 (comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner) and Outcome 10.8 (comply promptly with any written notice from the SRA). The Tribunal agreed with the Adjudication Panel that the Appellants had failed to nominate a COLP and COFA by 31 July 2012 using the procedure prescribed by the SRA. This was a factually accurate statement. The evidence from the Appellants was that a letter nominating the COLP and COFA was sent to the SRA on 31 July 2012. There was no clear evidence that the SRA had properly communicated to the Appellants the method the SRA had prescribed for nominating a COLP and COFA, and it was in the absence of that communication that the Appellants had written to the SRA. The Respondent's evidence was that it did not receive that letter, and in any event if sent by post as asserted by the Appellants it would have arrived after the deadline of 31 July 2012. It was unclear from the Adjudication Panel's findings what written notices, reminders and communications from the SRA the Appellants were said to have failed to respond to. On the documentary evidence before the Tribunal, a number of emails sent by the SRA to the Appellants were clearly addressed to the wrong email address, namely variations on bar_nizam@yahoo.co.uk, a personal email address for the Solicitor Appellant, rather than the Firm's generic email address of info@hafizandhaque.co.uk. There was persuasive evidence that when the SRA sent the Appellants the letter dated 10 December 2012 it was responded to by the

Appellants promptly by 2 emails on 11 December 2012 the day it was received. It was correct to say that the response was sent to the compliance officers' email, but this was unsurprising bearing in mind that in bold on the second page of the letter that was the address to which the Appellants were told to write if they needed to be resent the link to nominate their COLP and COFA. The Tribunal noted that the correspondence in December 2012 took place before a COLP and COFA had to be approved and in place (by 1 January 2013). The Tribunal considered that it was essential for regulators alleging that there had been a failure to respond to a written notice, reminders and communications to see the documents and be clear in their findings as to which written notice, reminders and communications were under discussion. This was in order to prove that the communication had been properly sent and, in particular, addressed which was an essential first step before concluding that someone had failed to respond to such communication. The Tribunal accepted that on 31 July 2012 the Appellants had prepared a communication to be sent to the SRA as set out in SAKP's statement. The Tribunal accepted that the communication was sent by post, but that the SRA did not have a record of receiving it. The Tribunal rejected the Adjudication Panel's finding that the Appellants had failed to respond to a written notice, reminders and communications from the SRA. The only specific document in evidence from the Respondent addressed to the Appellants at the correct address was the letter dated 10 December 2012, to which the Appellants responded immediately by email. Other communications from the SRA were sent to multiple incorrect email addresses. Further, when the Compliance Officers contacted the Appellants by email on 20 December 2012 they stated that "10,000 firms in England & Wales were invited (via various emails and letters on various dates) to nominate their COLP and COFA (online only) via mySRA on or before 31 July 2012". Even the Compliance Officers were unable to be more specific as to any emails or letters the SRA had actually sent to these Appellants. More importantly in the context of this case, it was stated by the Compliance Officers that nomination was via mySRA, which was also incorrect, as found by the Adjudication Panel. This email replied to the Solicitor's emails dated 11 December 2012 which he had sent in immediate response to the letter from the Respondent dated 10 December 2012. The Tribunal agreed with Mr Saini's submission that there appeared to be a lack of clarity on the instructions given to the profession. This Tribunal had no evidence save for that referred to above and therefore drew the inference that the Appellants were correct in saying that they had not received communications from the Respondent because they had been sent by the SRA to incorrect email addresses. For the avoidance of doubt, there was also no evidence that any letter from the SRA dated 13 July 2012 had actually been sent to the Appellants either by way of a copy letter retained by the SRA or otherwise.

86. The Tribunal had therefore concluded that the decision of the Adjudication Panel was wrong based on the evidence before that Panel when it reached its Decision. The Appellants had responded to communications from the SRA when they were received. There was positive evidence in that regard. Equally the Panel had no evidence before it that any other correspondence had been properly sent to the Appellants. The Panel could therefore not conclude that the Appellants had failed to respond to such correspondence. On that basis, the Tribunal found that the Appellants were not in breach of Principle 7. Further, breach of Outcome 10.8 was not pleaded in the allegations put before the Adjudication Panel (see allegation 1.1 which made no reference to Outcome 10.8). Absent a pleaded allegation, the Tribunal found that the Adjudication Panel was wrong to find that there was a breach of Outcome 10.8. In

any event, the written notice with which the Appellants were said not to have complied was not specified in the Decision, and it could not therefore be said that in law a breach had been committed.

87. The Tribunal considered finding 5.2, that Hafiz and Haque did not have a COLP and COFA in place whose designation was approved by the SRA by 31 January 2013, in breach of Rule 8.5 SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011. The Tribunal noted the typing error: the date to which reference was made should have been 1 January 2013 as stated in the allegation 1.2. It was factually correct that the approved COLP and COFA were not in place by 1 January 2013. They were in place by 15 January 2013. The Tribunal had concluded that the Adjudication Panel had not taken sufficient account of the explanations provided by the Appellants in relation to the difficulties encountered in respect of receipt of communications from the SRA. The Adjudication Panel recorded at paragraph 8.2 of the Decision that there had been an error (this Tribunal said multiple errors) in the use by the SRA of the Solicitor's personal email address, and that the Firm may not have received some emails from the SRA. The Tribunal questioned the purpose of the SRA spending time and money sending emails to members of the profession setting out the process for nomination if it was unimportant that the intended recipients received the emails so that they could act on them. The intention behind the emails must have been to communicate information. Successful communication was a two-way process; messages had to be received as well as sent in order to be effective. The email reminder sent by the SRA on 24 July 2012 was sent to the wrong email address. It was reasonable to assume that the reminder emails referred to in that email and apparently dated 31 May and 3 July were also sent to the wrong address. It was the email dated 31 May 2012 which was said to contain the link to the online nomination process. The Respondent had been unable to produce a copy of the specific letter said to have been sent to the Appellants dated 13 July 2012; they had provided a template of a letter that might have been sent supported by no evidence that it was sent. On 5 October 2012, a further reminder was sent by the SRA to the Appellants, and that too was sent to the wrong email address. As soon as the Appellants received the letter from the SRA dated 10 December 2012, they sent an email to the address provided for the purpose of obtaining the link. This seemed to the Tribunal to be the first occasion on which the Appellants could reasonably have been expected to nominate their COLP and COFA using the prescribed process. The Appellants could not comply with the process without receiving the link and personalised password to effect the online nomination. In the view of the Tribunal, the Adjudication Panel had not paid sufficient notice to the explanations provided. The Tribunal found those explanations to be reasonable in all the specific circumstances of this case and that the Adjudication Panel was wrong to find a breach of Rule 8.5.

88. The Adjudication Panel found that the Solicitor did not disclose all relevant character and suitability issues when making his nomination, in breach of Principle 7 as referred to above. The Tribunal had concluded that the Solicitor made a genuine mistake when he completed his questionnaire on 21 January 2013. The form for completion was sent to him by the Respondent on 16 January 2013. It was noteworthy that the Solicitor returned it within 3 working days. There was no evidence before the Adjudication Panel to contradict the Solicitor's explanation that his mother had died on 18 January 2013, having become unwell abroad some days previously. In those circumstances it was unsurprising that a mistake had been made. The Tribunal found it significant that

the Appellant disclosed to the SRA a complaint to the Ombudsman (which was, the Tribunal was told by Mr Saini, ultimately challenged and overturned by the Appellants at Judicial Review). The Solicitor provided this information because he did not know whether the SRA was aware of it. The Tribunal felt entitled to, and did, draw an inference as to whether the Appellant had made a mistake or was deliberately concealing matters by comparing this disclosure of something unknown to the SRA as compared to the non-disclosure of something known to the SRA. The question to which he incorrectly answered "no", as he had accepted and for which he had apologised by 6 February 2013, referred to a rebuke or reprimand from "a regulatory body". It did not refer to the SRA by name nor did it refer to "your regulatory body" (in contrast to the reference to "your regulator or to any Ombudsman" to which he had answered "yes"). It was not unreasonable for the Appellants to assume that the SRA knew of its own decisions, and that the question therefore related to other regulators. The Tribunal concluded that the Adjudication Panel had failed to pay sufficient regard to the Appellant's explanation, the circumstances under which the questionnaire was completed, and the lack of consistency and clarity on the face of the form. There was ample evidence that the Solicitor had applied his mind to answering the questions correctly, but that he had made an innocent mistake. Indeed, all the evidence in front of the Panel lead to that conclusion. It seemed to the Tribunal reasonable for a solicitor to apply his mind to answering the questions and, in exceptional circumstances, to make an innocent mistake without being referred to an SRA Adjudicator. It was reasonable in these circumstances for the Appellant to assume that the SRA would check the regulatory history against its own records (which was in fact what happened). There was accordingly no breach of Principle 7 that had been proved.

89. These were the Tribunal's findings regardless of whether the standard of proof applied was the civil standard or the criminal standard. The Tribunal therefore did not need to decide the standard of proof applicable to appeals to the SDT from decisions of the SRA under its 2011 Rules. That was a discussion which would have to wait for another day.

90. The Tribunal could not agree with the Adjudication Panel that the conduct of the Appellants in relation to the allegations found proved was reckless (it being accepted by the Adjudication Panel that it was not deliberate, intentional or purposeful). The Finding of recklessness was, in the view of the Tribunal, largely incompatible with a Finding that the conduct was not deliberate, intentional or purposeful. In any event the Adjudication Panel had provided no reasons to substantiate their finding that the conduct was reckless at any point in their Decision. They should have done so; this failure was wrong and a serious procedural irregularity. The Adjudication Panel had not stated which conduct in particular it had determined to be reckless. It had found three allegations proved. Were the Appellants to assume that the finding that they were reckless applied to all three, to two or solely to one, and if so which? Further, the Tribunal did not accept that there had been a breach such as to justify a finding against the Appellants under SRA Rules, Rule 3.1(a)(iii), and in any event this indicator was not specifically referred to in the findings in support of the rebuke. The Adjudication Panel had given insufficient reasons for their decision to rebuke the Appellants. The Tribunal had decided that the sanction of rebuke was not a proportionate outcome in the public interest bearing in mind the factual matrix (Rule

3.1(b)). The Tribunal therefore did not need to consider whether the act or omission was otherwise than trivial or justifiably inadvertent under Rule 3.1(c).

91. There was no evidence of bias on the part of the Adjudication Panel and its Decision was not perverse or irrational, but rather wrong on the facts and, where indicated, in law.

92. The Tribunal therefore upheld the appeal and revoked the Decision of the Adjudication Panel of the SRA dated 24 February 2014.

Costs

93. Mr Saini addressed the Tribunal on the matter of costs. The Tribunal had before it the Appellants' Schedule of Costs as at 15 December 2014, dated 12 December 2014 (an updated schedule was handed up during the course of the hearing). He sought an order in favour of the Appellants for costs in the sum of £12,267.60. The Solicitor with conduct of the matter was Mr Haque. The Chairman mentioned that the Tribunal would not normally order the Respondent to pay costs incurred by the Appellant in respect of acting on his own behalf in appeal proceedings. Mr Saini indicated that he understood the Chairman's reasoning as the solicitor was a party to the appeal. The rates applied and the amount of work done was not beyond what would have been incurred if the Appellants had instructed independent solicitors. The Chairman observed that they did not do so. Mr Saini submitted that work had been performed and that a litigant in person would receive an award of some sort in these circumstances. His own drafting of the Appellants' Skeleton Argument had taken place over the previous weekend (13 – 14 December 2014). The updated total for Counsel's fees was £4,750 plus VAT. Mr Saini invited the Tribunal (on instructions from the Appellants) to award a proportion of the Appellants' costs. They had paid a court fee to the High Court in lodging the appeal (the appeal should have been lodged at the Tribunal). A letter from the SRA to the Appellants indicated that the High Court was where the appeal should be lodged. Mr Saini was instructed to apply for an award for loss of remuneration for attending to the appeal and at the hearing. The Chairman indicated that his earlier comments on this issue continued to apply.

94. Mr Miller adopted the Chairman's point, with the addition that the hourly rate seemed high. He commented on Counsel's fees. An earlier schedule provided by the Appellants recorded Counsel's fees as being £2,500 plus VAT. Counsel was instructed to act on behalf of the Appellants, with a conference taking place on 11 December 2014 and the hearing on 15 December 2014.

95. The Tribunal retired so that Mr Miller could consider the updated schedule and take instructions from his client.

96. On resuming the hearing, Mr Miller confirmed that he had spoken to Mr Saini and had a proposal to put to the Tribunal. Three items related to Counsel's fees. The third item relating to the court hearing attendance should have been incorporated into the Brief Fee. Mr Miller suggested that the Brief Fee should be increased to its original £2,500 with the conference fee left at £750, giving a total of £3,250. Mr Miller noted that the schedule included a VAT number, which meant that the VAT paid on

Counsel's fees would be recoverable by the Solicitor from HM Revenue and Customs on presentation of Counsel's fee note.

97. Mr Saini submitted that Mr Miller's submission was "unreasonable". The Brief Fee was based upon a seven hour hearing and a full day hearing had taken place. The work undertaken in respect of preparation and the drafting of the Skeleton Argument formed was separate. The hearing fee and the Brief Fee were not necessarily universally the same. The figures were for work approved and work performed. They were not in any way embellished. Mr Saini did not "automatically defer" to Mr Miller's submissions on VAT. Counsel's fees in judicial review matters usually included VAT. He would usually have to charge VAT because he is VAT registered. The Chairman made it clear that Mr Saini was not being asked to waive VAT. It was not the position of the Tribunal to make a costs order that improved the trading position of the Appellant Firm, and the Chairman saw the force of Mr Miller's argument.

Tribunal Decision on Costs

98. The Tribunal decided that the Appellants should be awarded costs payable by the Respondent in respect of Counsel's fees. It adopted Mr Miller's suggestion on VAT but intended to deal with the claim for Counsel's fees on a full claim basis. The work had plainly been done. Counsel was instructed a short while ago and had performed work over the weekend. He had not charged "double time" for that work. The Respondent was therefore ordered to pay Counsel's fees in full less VAT.

99. The Chairman asked whether the Appellants had paid any costs to the Respondent as a result of the Decision of the Adjudication Panel. Mr Miller confirmed that no costs had been paid by the Appellants to the Respondent. In respect of the court fee paid by the Appellants to the High Court, the Chairman noted that no fee would have been payable if the Appellants had correctly lodged their appeal with the Tribunal. It was not the Respondent that lodged the appeal incorrectly but the Appellants. Mr Saini referred the Tribunal to a letter sent by the Respondent to the Appellants dated 11 March 2014 in which it was stated that the appeal should be made to the High Court within 28 days of receipt of the letter. The Chairman noted that Mr Saini must make what applications he could in accordance with his instructions but the Tribunal would make the decision on costs it felt was appropriate. It was however worth observing that although the Tribunal had decided that the Adjudication Panel Decision was wrong, the Appellants would need to "up their game" in relation to their regulatory obligations in future. Possibly now was the time for the Appellants, having succeeded in obtaining an order revoking the Adjudicator's Decision and Counsel's fees, to rest on their laurels.

Statement of Full Order

100. The Tribunal Ordered that the appeal of the Appellants HAFIZ AND HAQUE and MD NIZAMUL HAQUE under Section 44(E) of the Solicitors Act 1974 (as amended) be UPHELD.

The Tribunal further Ordered that the decision (including the decision on costs) of the Solicitors Regulation Authority Adjudication Panel dated 24 February 2014 be HEREBY REVOKED with immediate effect.

The Tribunal further Ordered that the Respondent do pay the Appellants' costs of and incidental to this appeal limited to Counsel's fees (excluding VAT) in the total sum of £4,750.00.

Dated this 25th day of February 2015
On behalf of the Tribunal

J. C. Chesterton
Chairman

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11253-2014

BETWEEN:

HAFIZ & HAQUE (A FIRM) — Appellants

MD NIZMUL HAQUE

and

SOLICITORS REGULATION AUTHORITY — Respondent

Before:

Mr J.C. Chesterton (in the chair)
Mr S. Tinkler
Mrs L. McMahon-Hathway

Date of Hearing: 15 December 2014

APPENDIX 1

Section 44D (1) – (4) Solicitors Act 1974 (As Amended)

Disciplinary powers of the Society

(1) This section applies where the Society is satisfied-

(a) that a solicitor or an employee of a solicitor has failed to comply with a requirement imposed by or by virtue of this Act or any rules made by the Society, or

(b) that there has been professional misconduct by a solicitor.

(2) The Society may do one or both of the following-

(a) give the person a written rebuke

(b) direct the person to pay a penalty not exceeding £2,000.

(3) The Society may publish details of any action it has taken under subsection (2)(a) or (b) if it considers it to be in the public interest to do so.

(4) Where the Society takes action against a person under subsection (2)(b), or decides to publish under subsection (3) details of any action taken under subsection (2)(a) or (b), it must notify the person in writing that it has done so.

(5) …

(6) The Society may not publish under subsection (3) details of any action under subsection (2)(a) or (b)-

(a) during the period within which an appeal against-

(i) the decision to take the action,
(ii) in the case of action under subsection (2)(b), the amount of the penalty, or
(iii) the decision to publish the details,

may be made under section 44E, or

(b) if such an appeal has been made, until such time as it is determined or withdrawn.

(7) The Society must make rules-

(a) prescribing the circumstances in which the Society may decide to take action under subsection (2)(a) or (b);

(b) about the practice and procedure to be followed by the Society in relation to such an action;

(c) governing the publication under subsection (3) of details of action taken under subsection (2)(a) or (b);

and the Society may make such other rules in connection with the exercise of its powers under this section as it considers appropriate.

(8) Before making rules under subsection (7), the Society must consult the Tribunal.

Section 44E Solicitors Act 1974 (As Amended)

Appeals against disciplinary action under section 44D

(1) A person may appeal against-

(a) a decision by the Society to rebuke that person under section 44D (2)(a) if a decision is also made to publish details of the rebuke;

(b) a decision by the Society to impose a penalty on that person under section 44D(2)(b) or the amount of that penalty;

(c) a decision by the Society to publish under section 44D(3) details of any action taken against that person under section 44D(2)(a) or (b).

(2) Subsections (9)(b), (10)(a) and (b), (11) and (12) of section 46 (Tribunal rules about procedure for hearings etc) apply in relation to appeals under this section as they apply in relation to applications or complaints, except that subsection (11) of that section is to be read as if for "the applicant" to "application" there were substituted "any party to the appeal"

(3) Rules under section 46(9)(b) may, in particular, make provision about the period during which an appeal under this section may be made.

(4) On an appeal under this section, the Tribunal has power to make such order as it thinks fit, and such an order may in particular-

(a) affirm the decision of the Society;

(b) revoke the decision of the Society;

(c) in the case of a penalty imposed under section 44D(2)(b), vary the amount of the penalty;

(d) in the case of a solicitor, contain provision for any of the matters mentioned in paragraphs (a) to (d) of section 47(2);

(e) in the case of an employee of a solicitor, contain provision for any of the matters mentioned in section 47(2E);

(f) make such provision as the Tribunal thinks fit as to payment of costs.

(5) Where by virtue of subsection (4)(e) an order contains provision for any of the matters mentioned in section 47(2E)(c), section 47(2F) and (2G) apply as if the order had been made under section 47(2E)(c).

(6) An appeal from the Tribunal shall lie to the High Court, at the instance of the Society or the person in respect of whom the order of the Tribunal was made.

(7) The High Court shall have power to make such order on an appeal under this section as it may think fit.

(8) Any decision of the High Court on an appeal under this section shall be final.

(9) This section is without prejudice to any power conferred on the Tribunal in connection with an application or complaint made to it.

Section 47(2) of the Solicitors Act 1974 (As Amended)

Jurisdiction and powers of Tribunal

(2) Subject to subsections (2E) and (3) and to section 54, on the hearing of any application or complaint made to the Tribunal under this Act, other than an application under section 43, the Tribunal shall have power to make such order as it may think fit, and any such order may in particular include provision for any of the following matters-

(a) the striking off the roll of the name of the solicitor to whom the application or complaint relates;

(b) the suspension of that solicitor from practice indefinitely or for a specified period;

(ba) the revocation of that solicitor's sole solicitor endorsement (if any);

(bb) the suspension of that solicitor from practice as a sole solicitor indefinitely or for a specified period;

(c) the payment by that solicitor or former solicitor of a penalty, which shall be forfeit to Her Majesty;

(d) in the circumstances referred to in subsection (2A), the exclusion of that solicitor from criminal legal aid work (either permanently or for a specified period);

(e) the termination of that solicitor's unspecified period of suspension from practice;

(ea) the termination of that solicitor's unspecified period of suspension from practice as a sole solicitor;

(f) the restoration to the roll of the name of a former solicitor whose name has been struck off the roll and to whom the application relates;

(g) in the case of a former solicitor whose name has been removed from the roll, a direction prohibiting the restoration of his name to the roll except by order of the Tribunal;

(h) in the case of an application under subsection (1)(f), the restoration of the applicant's name to the roll;

(i) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable.

Civil Procedure Rules 52.11

Hearing of appeals

(1) Every appeal will be limited to a review of the decision of the lower court unless-

(a) a practice direction makes different provision for a particular category of appeal; or

(b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(2) …

(3) The appeal court will allow an appeal where the decision of the lower court was-

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

(4) The appeal court may draw any inference of fact which it considers justified on the evidence.

Solicitors Disciplinary Procedure Rules 2011

Part 1 Rule 3 Disciplinary Powers

3.1 The circumstances in which the SRA may make a disciplinary decision to give a regulated person a written rebuke or to direct a regulated person to pay a penalty are when the following three conditions are met:

(a) the first condition is that the SRA is satisfied that the act or omission by the regulated person which gives rise to the SRA finding fulfils one or more of the following in that it:

(i) was deliberate or reckless;
(ii) …
(iii) was or was related to a failure or refusal to ascertain, recognise or comply with the regulated person's professional or regulatory obligations such as, but not limited to, compliance with requirements imposed by legislation or rules made pursuant to legislation, the SRA, the Law Society, the Legal Ombudsman, the Tribunal or the court;

(iv) – (ix) …

(b) the second condition is that a proportionate outcome in the public interest is one or both of the following:

(i) a written rebuke;

(ii) a direction to pay a penalty; and

(c) the third condition is that the act or omission by the regulated person which gives rise to the SRA finding was neither trivial nor justifiably inadvertent.

3.2 – 3.4 …

3.5 The SRA may make a disciplinary decision to publish details of a written rebuke or a direction to pay a penalty when it considers it to be in the public interest to do so in accordance with the publication criteria in appendix 2 to these rules.

3.6 Nothing in this rule shall prevent the SRA making an application to the Tribunal in accordance with rule 10.

Part 3 Rule 7 Decisions

7.7 The Standard of Proof shall be the civil standard.

Part 4 Rule 11 Appeals, Reviews and Reconsideration

Rule 11: Internal Appeals

11.6 Appeals will be limited to a review of the decision which is being appealed, taking into account the reasoned arguments provided by the person bringing the appeal. Failure to provide reasoned arguments either at all or in sufficient or clear terms may result in summary dismissal of the appeal.

SRA Code Of Conduct 2011

Principle 7

These are mandatory Principles which apply to all.

You must:

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

Outcome 10.8

You must achieve these outcomes:

10.8 you comply promptly with any written notice from the SRA

SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011

Rule 8.5

Compliance officers

(a) An authorised body must have suitable arrangements in place to ensure that its compliance officers are able to discharge their duties in accordance with these rules.

(b) Subject to Rule 8.5(h), an authorised body must at all times have an individual:
    (i) who is a manager or an employee of the authorised body;
    (ii) who is designated as its COLP;
    (iii) who is of sufficient seniority and in a position of sufficient responsibility to fulfil the role; and
    (iv) whose designation is approved by the SRA.