Respondent appealed to the High Court (Administrative Court) against the Tribunal's decisions dated 4 August 2016 and 19 September 2016 in respect of findings, sanction and costs, and refusal to grant a rehearing. The appeal was heard by Mr Justice William Davis on 17 January 2017. The appeal was dismissed with costs payable by the Respondent to the Applicant.
Blacker v Solicitors Regulation Authority [2017] EWHC 892 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11428-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ALAN BLACKER Respondent

Before:

Mr P. S. L. Housego (in the chair)
Mr J. C. Chesterton
Mr S. Marquez

Date of Hearing: 12 and 13 July 2016

Appearances

Edward Levey, Counsel of Fountain Court Chambers, Fountain Court, Temple, London, EC4Y 9DH (instructed by Daniel Purcell, solicitor of Capsticks Solicitors LLP) for the Applicant

The Respondent was not present or represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were that he, while in practice as a Solicitor at JAFLAS, a charity:-

1.1 Failed to maintain properly written up accounts to show dealings with client money and in doing so breached rules 29.1 (a) and 29.2 of the SRA Account Rules 2011 ("SAR");

1.2 Failed to maintain properly written up accounts to show dealings with office money relating to client matters and in doing so breached SAR 29.1(b);

1.3 Failed to obtain an accountant's report within six months or at all, for the accounting period including October 2013 during which he held client money and in doing so breached SAR 32.1(a);

1.4 Between 2011 and August 2014 made, or caused or allowed to be made, statements concerning his academic qualifications which were inaccurate and misleading, and in doing so breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles");

1.5 Between 2011 and August 2014 made, or caused or allowed to be made, claims as to appointments or accreditations awarded by, or memberships of, organisations which were inaccurate and misleading, and in doing so breached Principles 2 and 6 of the Principles;

1.6 Between 2011 and August 2014, made or caused or allowed to be made, claims to be entitled to use titles which were inaccurate and misleading, and in doing so breached Principles 2 and 6 of the Principles;

1.7 On 28 August 2014, while appearing before His Honour Judge Wynn Morgan at Cardiff Crown Court, recklessly misled the Court and in doing so breached Principle 2 of the Principles and failed to achieve Outcome O (5.1) of the SRA Code of Conduct 2011 ("SCC");

1.8 Between March 2015 and June 2015 and (sic), failed to co-operate with the Solicitors Regulation Authority ("SRA"), and in doing so breached Principles 7 of the Principles and SAR 31.1 and failed to achieve Outcomes O(10.6), O(10.8) and O(10.9) of the SCC;

2 Acted dishonestly in respect of the matters set out at paragraphs 1.4 and 1.5 above or any of them. Whilst dishonesty is alleged in respect of allegations 1.4 and 1.5 above, proof of dishonesty is not an essential ingredient for proof of any of the allegations.

Documents

3. The Tribunal considered all the documents in the case, which ran to approximately 1200 pages and included:

Applicant

- Application and Rule 5 Statement with exhibit DWRP1 dated 11 September 2015
- Forensic Investigation Report of Alice Evans dated 1 June 2015 and Witness Statement dated 31 December 2015
- Cost Schedules dated 11 September 2015, 29 January 2016 and 5 July 2016
- Witness Statement of Caroline Thomas dated 18 June 2015
- Witness Statement of Michelle Gretton dated 17 June 2015
- Witness Statement of Dennis Peter Moore dated 17 June 2015
- Witness Statement of Sinead MacBride dated 17 June 2015
- Witness Statement of Helen Jackson dated 22 June 2015.
- Witness Statement of Judith Anne Davison dated 29 July 2015.
- Witness Statement of John Randall Lewis dated 5 August 2015.
- Witness Statement of Professor Robert McCorquodale dated 18 June 2015
- Witness Statement of John Carlin dated 11 August 2015
- Witness Statement of the RT Hon Lord Donald Martin Thomas of Gresford OBE QC dated 22 July 2015
- Witness Statement of Keith Milburn OBE dated 17 June 2015
- Witness Statement of Francine Alexander dated 9 September 2015
- Witness Statement of Allan Solly dated 4 September 2015
- Witness Statement of Vice-Admiral Sir Paul Lambert KCB dated 15 July 2015
- Witness Statement of Lorraine Trench dated 5 January 2016
- Witness Statement of Steven McWhirter dated 18 December 2015
- Notes on behalf of the Applicant dated 13 October 2015, 29 January 2016 and 11 July 2016
- Waiver granted to the Respondent by the Applicant under Rule 5.02 (1) Solicitors' Code of Conduct (undated but granted until 4 May 2013)

Respondent

- Defence Notice of Response to Standard Directions dated 18 September 2015
- Defence Request to refrain from publication of allegations and other matters dated 18 September 2015
- Defence Statement as to his position dated 18 September 2015
- Second Notice to the Tribunal by the Respondent dated 18 September 2015
- Second Defence request to transfer the matter to allocation in Manchester or the Borough of Rochdale dated 18 September 2015.
- Defence statement for the directions hearing 4 November 2015 dated 13 November 2015
- Defence Substantive Answer to Allegations dated 19 November 2015
- Defence Notice of Response to Further Directions dated 18 January 2016
- Defence Notice of Response to Case Management Hearing dated 5 February 2016
- Fifth Defence request to transfer the matter to a location in Manchester or the borough of Rochdale dated 7 June 2016
- Defence Statement undated but received at the Tribunal Offices by email on 9 July 2016 together with 308 pages of exhibits (including various witness statements detailed below)
- Witness Statement of Francois Smith (nee Blancher) dated 14 January 2016

- Witness Statement of Mr Glenn Smith dated 19 November 2015
- Witness Statement of Andrew Clarbour Chief Petty Officer (undated)
- Witness Statement of Margaret Brodie dated 20 November 2015
- Witness Statement of Eric Bradbury dated 26 November 2015
- Letter from Charles Roach dated 9 December 2015
- Letter from Gary and Diane Ward dated 3 December 2015
- Witness Statement of Allison and Ryan Bromfield dated 30 November 2015
- Witness Statement of Michelle Warburton dated 5 January 2016
- Reference from Jim Baker, County Field Welfare Officer (undated)
- Letter from Craig R Hughes, Oldham Business Management School to Mr Jenkins dated 1/12/3(sic)
- Email from Jacqueline Panter dated 30 August 2014
- Letter from E Hibbert, Headteacher dated 23 March 2009
- Letter from G R Shahzad, chairman Rochdale Law Centre dated 25 April 2009
- Letter from A B Sherwood, SSAFA Forces Help dated 15 March 2009
- Letter from G P Waddell, SSAFA Forces Help dated 28 March 2009
- Witness Statement of David Marsh dated 25 January 2016
- Email entitled 'Note to The Tribunal' dated 11 July 2016 timed at 11.33
- Email entitled 'Lord Harley' dated 11 July 2016 timed at 12.45
- Email to the chairman dated 13 July 2016

Preliminary Matters – Service and Application to Proceed in the Absence of the Respondent

4. The Respondent did not attend the hearing and the Applicant made a preliminary application to proceed in the absence of the Respondent. The Applicant invited the Tribunal to consider whether the Respondent had been properly served and if the Tribunal was satisfied he had been served, to proceed in his absence.

The Applicant's Submissions

5. The Applicant's position was that there was no doubt that the Respondent was fully aware of the hearing dates. He had engaged in the process to a large extent, albeit in an unsatisfactory manner. The Respondent had served a number of documents including his witness statement and exhibits, which had been received by the Tribunal over the preceding weekend.

6. Mr Levey had provided a "Note on behalf of the SRA in relation to non-attendance" dated 11 July 2016. This had been emailed to the Respondent on 11 July 2016. This Note set out the Applicant's position as to why the Tribunal should proceed in the Respondent's absence. Mr Levey drew the Tribunal's attention to the fact that the Note stated no evidence had been received from the Respondent which was incorrect as he had submitted his evidence as the Note was being finalised.

7. The Applicant invited the Tribunal to consider the principles (laid down in the context of criminal proceedings) by the Court of Appeal in R v. Hayward, Jones & Purvis QB 862 [2001], as qualified and explained by the House of Lords in R v. Jones [2002] UKHL 5; [2003] 1 AC 1. Mr Levey submitted that these guidelines were regularly applied - with appropriate modifications - in a regulatory context and drew the

Tribunal's attention to General Medical Council v. Adeogba [2016] EWCA Civ 162; Schools v. SRA [2015] EWHC 872 (Admin); and SRA v. Ogunniyi Case No 11265-2014 (1 July 2015).

8. The Tribunal were referred to paragraphs 13 – 20 of Adeogba which set out the principles as applicable in a regulatory context:

> "13. Assuming that service can be established within the Rules, it was not in dispute between the GMC and Dr Adeogba that the relevant Panel (as appropriately advised by its legal assessor) must approach the decision under Rule 31 whether to proceed in the absence of the medical practitioner by reference to the principles developed by the criminal law in relation to trial in the absence of a defendant. Thus, the starting point is *R v Hayward, R v Jones, R v Purvis* QB 862 [2001], EWCA Crim 168 [2001] in which an experienced Court of Appeal (Rose LJ, Hooper and Goldring JJ) distilled the domestic and Convention authorities and set out guidance which, insofar as it is relevant to Rule 31 provides (at [22(3)-(5)]):
>
> > "3. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
> >
> > 4. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
> >
> > 5. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
> >
> > (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> > (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;
> > (iii) the likely length of such an adjournment;
> > (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> > (v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
(vii) the risk of the jury reaching an improper conclusion about the absence of the defendant;
(viii) the seriousness of the offence, which affects defendant, victim and public;
(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
(x) the effect of delay on the memories of witnesses;
(xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present."

14. The decision in relation to the second of the three cases then considered by the court was the subject of further appeal to the House of Lords (*R v Jones* [2002] UKHL 5; [2003] 1 AC 1) where Lord Bingham (with whom Lord Nolan, Lord Hoffmann, Lord Hutton and Lord Rodger agreed) approved the guidance set out above (with the specific exception of that contained in [22(5)(viii)]) and emphasised, at [6], that the discretion to continue in the absence of a defendant should be "exercised with great caution and with close regard to the overall fairness of the proceedings". Lord Bingham observed that if attributable to involuntary illness or incapacity it would very rarely "if ever" be right to exercise discretion in favour of commencing the trial unless the defendant is represented and asks that the trial should begin. As for the guidance, Lord Bingham considered it "generally desirable" that a defendant be represented even if he had voluntarily absconded but also made it clear (at [14]):

> "I do not think that "the seriousness of the offence, which affects defendant, victim and public"… is a matter which should be considered. The judge's overriding concern will be to ensure that the trial, if conducted in the absence of the defendant, will be as fair as circumstances permit and lead to a just outcome. These objects are equally important, whether the offence charged be serious or relatively minor."

15. Lord Hoffmann (agreeing with Lord Rodger) expressed himself (at [19]) "not comfortable" with the notion of waiver which required "consciousness of the rights which have been waived"; he preferred to say that they "deliberately chose not to exercise their right to be present or to give adequate instructions to enable lawyers to represent them".

16. These principles were considered by the Judicial Committee in Tait v Royal College of Veterinary Surgeons ([2003] UKPC 34, (2003) WL 1822941), which concerned an application for a second adjournment of

a disciplinary hearing on the grounds of ill health (hypertension) unsupported by medical evidence. The refusal to adjourn was quashed on the grounds that the direction did not comply with the requirements in *Jones*. Although citing the Court of Appeal's checklist in *Hayward* as approved by the House of Lords on appeal in *Jones*, the Board identified (at [5]) "the seriousness of the case against the defendant" as a relevant factor. In that regard, it does not appear that the Board's attention was drawn to the exception that Lord Bingham specifically made in relation to seriousness of the offence constituting an exception to Lord Bingham's approval.

17. In my judgment, the principles set out in *Hayward*, as qualified and explained by Lord Bingham in *Jones*, provide a useful starting point for any direction that a legal assessor provides and any decision that a Panel makes under Rule 31 of the 2004 Rules. Having said that, however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision under Rule 31 to continue a disciplinary hearing. This latter decision must also be guided by the context provided by the main statutory objective of the GMC, namely, the protection, promotion and maintenance of the health and safety of the public as set out in s. 1(1A) of the 1983 Act. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance.

18. It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC (described in this context as the prosecution in *Hayward* at [22(5)]). In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.

19. There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.

20. Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."

9. The Applicant's position was that this was a difficult case. The Respondent was not seeking an adjournment but was stating that he was not able to attend. The Respondent had made unsuccessful applications for the matter to be transferred to Manchester. He had not provided medical evidence. The Applicant was aware that there were one or two GP letters but had not seen these documents. The Respondent had appealed the refusal to transfer the matter to Manchester to the High Court and on 6 May 2016, Mr Justice Warby had determined that the "Appellant's Notice is totally without merit" and had dismissed his application for the proceedings to be held in Manchester.

10. The Applicant's starting point was that the discretion to proceed in the absence of the Respondent must be exercised with great care and should only be exercised in rare or exceptional circumstances. The aim of the SRA was to give effect to the regulatory objectives set out in section 1 of the Legal Services Act 2007, which include (i) protecting and promoting the public interest and the interests of consumers; and (ii) promoting and maintaining adherence to the professional principles. It was also part of the Tribunal's Overriding Objective, when managing cases, to ensure that they are dealt with efficiently and expeditiously. As well as fairness to the Respondent, the Tribunal had to consider the fairness to the SRA. Unlike criminal proceedings, the Respondent's attendance before the Tribunal could not be compelled and so the analogy with criminal proceedings should not be taken too far.

11. The SRA represented the public interest in relation to the provision of legal services. It would run entirely counter to the regulatory objectives referred to above if solicitors could effectively frustrate the process and challenge a refusal to adjourn when that solicitor had deliberately failed to engage in the process. There was a burden on solicitors, as there was with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That was part of the responsibility to which they sign up when being admitted to the profession.

12. In the SRA's submission, the Tribunal could be confident that the Respondent had voluntarily absented himself from the proceedings and that, despite his protestations to the contrary, he had no genuine interest in contesting the allegations levelled against him or engaging on the merits.

13. The Applicant did not accept that the three reasons put forward by the Respondent for his non-attendance at the hearing were such that there should be an adjournment. Further, it was its case that it was in the public interest to proceed, the matter had attracted attention from the press and members of the public.

<u>The Respondent's Position</u>

14. In the Respondent's "Fifth Defence request to transfer the matter to a location in Manchester or the borough of Rochdale" dated 7 June 1016 it was stated (the Respondent entitling himself "Lord Harley") that:

"8. Lord Harley will not be attending for the following reasons: -

1) It is his birthday, a fact not outside the tribunals (sic) knowledge when it set down the hearing;
2) Lord Harley did not receive the directions to make his lordships availability known until after the notice setting the date for the tribunal.
3) He is unable to attend a tribunal in London for the reasons set out in two sets of medical evidence served upon and received by the tribunal.

9. Accordingly no adverse inference of the kind alluded to in practice direction 5 may be made as Lord Harley is fully willing to cooperate with a tribunal which makes reasonable adjustments for him as requested under sections 19, 20 and so on of the Equality Act.

10. Lord Harley relishes the opportunity to attend a hearing and dispose of these baseless allegations.

11. This is a request made under the Act and is fair just and reasonable and is proportionate given the risk to life and health and is not prejudicial in any way to the other parties hereunder affected."

The Tribunal's Decision

15. The Tribunal were satisfied that there was proper service of notice of this hearing. The hearing date was listed after a Case Management Hearing ("CMH") heard on 5 February 2016, and the note of that hearing was sent to the Respondent on 17 February 2016, dates to be avoided to be provided by 19 February 2016 and that note was emailed and posted to him. On 26 February 2016 a letter was posted with these hearing dates, which he does not say he did not receive.

16. The Tribunal had to decide whether to proceed in the absence of the Respondent. This was a discretion to be exercised with the utmost care and caution. ***Jones***, a criminal case, and ***Adeogba***, for regulatory tribunals, gave the case law guidance to the Tribunal. The Tribunal also considered the Tribunal's Policy and Practice Note on Adjournments.

17. Where there are medical grounds an adjournment is usual. However there was no medical evidence produced to the Tribunal by the Respondent. The Respondent did send one or two GP letters to the Tribunal some time ago, but on condition that they were not shown to the SRA. This Division of the Tribunal had not seen those letters as there was no place for a party to send papers to the Tribunal on condition that they are not shown to the other party.

18. The Respondent had previously asked for the matter to be heard in Manchester. The Tribunal refused that application, though was prepared to consider this afresh on medical evidence being provided. It had not been. The Respondent's challenge to this decision in the High Court was described as "plainly lacks any substantive merit".

19. The fundamental duty of the Tribunal was to make sure a hearing was compliant with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal also had a duty to uphold the reputation of the profession and to protect the public. There was a public interest in the swift resolution of matters such as this. ***Adeogba*** at paragraph 19, in effect, said that the Tribunal should get on with cases unless there was good reason not to do so.

20. The Tribunal considered the reasons advanced by the Respondent. Firstly, that he could not travel to London - there was no evidence of this. Secondly, it was his birthday - this was not a good reason for an adjournment. Thirdly, he did not agree to the date (though not that the dates were difficult for him). Plainly the Respondent was able to deal with the matter as he had prepared very detailed documentation. On considering the way the matter had been dealt with by the Respondent throughout the Tribunal did not think it likely that the Respondent would attend any adjourned hearing.

21. The Tribunal considered the guidance in ***Jones*** and in ***Adeogba***, the Applicant's written and oral submissions and the Respondent's position. The Tribunal decided that the Respondent had voluntarily (and deliberately) absented himself from the hearing, and decided to proceed in his absence.

Factual Background

22. The Respondent was admitted to the Roll of Solicitors on 4 May 2010. The Respondent held himself out to be an in-house solicitor at the Joint Armed Forces Legal Advocacy Service ("JAFLAS"), a charity he had set up and which was regulated by the Charities Commission. The Respondent was the sole solicitor engaged in JAFLAS' work, and there was no one else engaged in the work of the charity.

23. At the time of the hearing the Respondent held a current Practising Certificate and his last known business address was in Heywood, Rochdale, where he was allowed the use of office space by a firm of solicitors. . The Respondent adopted the style of "Dr Alan Blacker & Co", "In House Lawyers of the Joint Armed Forces Legal Advocacy Service" and "Chambers of the Rt. Hon. The Lord Harley, Senior Counsel".

24. As a result of information provided to the SRA, the SRA commenced an investigation in August 2014. As part of its investigation the SRA corresponded with the Respondent and officers of the SRA visited the Respondent. A Forensic Investigation Report ("FIR"), dated 1 June 2015, was produced by the Investigation Officer ("FIO"), Alice Evans.

25. A notice, dated 1 May 2015, was served on the Respondent pursuant to S44B of the Solicitors Act 1974 requiring the production of documents and information.

26. The Rule 5 Statement was dated 11 September 2015 and Standard Directions were issued on 16 September 2015. CMHs had taken place on 4 November 2015 and 5 February 2015. The Respondent had made a number of applications for the proceedings to be transferred to the Manchester area which had been refused. The

Respondent had sent two emails to the Tribunal dated 11 July 2016. The first confirmed his non-attendance and asserted discrimination against him. The second asked for confirmation that the Tribunal Chairman had seen the Respondent's last two applications for transfer to Manchester, which was the case as the last application had, been determined by the Chairman and one other Member of this Division of the Tribunal on the papers

Witnesses

27. The following witness gave written and oral evidence:

- Alice Evans – FIO

28. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The Members of the Tribunal had received the documentation in advance of the hearing and had ensured that they had read that documentation prior to the hearing.

29. The Applicant had served Civil Evidence Act Notices in respect of its witness evidence. The Respondent had not served any Counter Notices but had stated in his Fifth Defence request to transfer the matter to a location in Manchester or the Borough of Rochdale dated 7 June 2016 that "None of the applicant's witnesses are accepted and all will be required to be cross-examined." The Applicant's witnesses were available to give evidence but as the Respondent had not attended the hearing there was no-one to cross examine them and the Applicant called only Alice Evans to give oral evidence. All the witness statements of the Applicant were properly prepared with statements of truth.

30. The Respondent's witness evidence was not received until 9 July 2016. Neither the Respondent nor his witnesses attended the hearing. The Applicant asked the Tribunal to give limited weight to the Respondent's witness evidence submitting that the witness statements had to be treated with a great deal of caution. The witnesses were not at the hearing to give evidence and be cross-examined. The Tribunal did not know who the people were and it appeared that the witness statements had been drafted by the Respondent, albeit that a solicitor may draft witnesses' statements. The Respondent's own witness statement did not contain a statement of truth in the required format. He had made a number of assertions but Mr Levey submitted that these assertions did not amount to evidence.

31. The Tribunal considered Practice Direction Number 5 dated 4 February 2013 entitled "Inference To Be Drawn Where the Respondent Does Not Give Evidence". The Respondent's non-attendance at the hearing meant that he was not able to be cross-examined by the Applicant. The Tribunal decided not to draw any adverse inference from the Respondent's non-attendance at the hearing. This was not a case where the Respondent had ignored the proceedings.

32. The Tribunal is an expert Tribunal and accords different weight to different types of evidence. The evidence of the person who gives evidence before the Tribunal on oath and is cross examined or gives evidence in a statement which includes a statement of truth, are towards one end of a graduated scale and hearsay evidence is at the other. The Tribunal considered all of the evidence in that light before it in reaching its findings of fact.

Findings of Fact and Law

33. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

34. The Applicant had proceeded with a limited number of exemplified matters which the Applicant had to prove beyond reasonable doubt. Further, the Applicant had to prove a number of negatives.

35. In respect of allegations 1.4 and 1.5 the Applicant had focussed down on a number of examples arising out of the Respondent's LinkedIn Profile. The Tribunal did not consider all of the examples exemplified by the Applicant in relation to these two allegations. The Tribunal limited its specific findings to one or two of the exemplified matters for allegations 1.4 and 1.5 given that once it had concluded that the allegation was proved beyond reasonable doubt on some of the facts it was unnecessary to consider any additional examples.

36. **Allegation 1.1 - Failed to maintain properly written up accounts to show dealings with client money and in doing so breached rules 29.1 (a) and 29.2 of the SAR.**

36.1 The Applicant submitted that the Respondent was asked by the SRA to provide records of his dealings with client monies, including reconciliation statements (required under SAR 29.12(c)), records of his client cash account (SAR 29.2(a) and 29.12(a)), and the balances on his client ledgers (SAR 29.12(b)). The Respondent had failed to provide this requested information in breach of SAR 31.1. The FIR provided a detailed account of the communication between the SRA and the Respondent during the course of the SRA's investigation.

36.2 After an initial meeting with SRA officers on 16 March 2015, the Respondent was asked, by email dated 13 April 2015, to provide copies of documents relevant to his handling of client monies, including bank statements, reconciliation statements, cash books and bills. The Respondent, on receiving the request, suggested postponement of a meeting scheduled for 16 April 2015, and referred to being in a trial during that week. The FIO declined to postpone the meeting and asked for details of the trial.

36.3 On the evening of 14 April 2015, an email was received from an email address carrying the Respondent's name asserting that the Respondent had been injured "performing CPR" during the course of a trial and would be unable to attend the meeting. The ensuing correspondence was recited in the FIR; the Respondent declined to meet with the FIO, and claimed to be recuperating from his injuries until going on a ten week holiday.

36.4 At the date of the Rule 5 Statement the Respondent had not provided to the SRA the documents requested. The Respondent claimed to hold several waivers from the SRA but declined, despite requests, to produce them, unless the SRA placed an advertisement in the Law Society Gazette stating that the Respondent's practice had received a "clean bill of health". The Respondent did hold a waiver in respect of being a sole practitioner and in relation to supervision and training which was granted until 4 May 2013 but according to the Applicant he did not hold any waiver in respect of the SAR and had never had such a waiver..

36.5 The Respondent had failed to maintain properly written up accounts to show dealings with client money. The FIO had not been able to give an opinion on the books of account in relation to client monies held by the Respondent. The FIO had identified a matter, in which the Respondent acted for the Defendant, where there was an entry on the ledger held on the client file (in the columns relating to client account) for £950 received on 12 February 2015. This was the value of the claim and the amount that the Respondent's client was prepared to offer in settlement. A copy of this ledger was before the Tribunal. According to paragraph 20 of the FIR, the Respondent had accepted that he was holding client monies on behalf of a client in this sum and that he was also holding £20.00 which was money held by a judgment debtor.

36.6 Although the Respondent's position was that he worked under Conditional Fee Arrangements if he was successful then the monies that he received from the other side would be client monies.

36.7 The evidence of Alice Evans was that her report referred to the £950 that the Respondent was holding and not the £900 he subsequently referred to in his witness statement as being £900 for costs. Ms Evans had no knowledge of £900 for costs.

<u>The Respondent's Case</u>

36.8 The Respondent denied the allegation. The Tribunal noted that the Respondent's witness statement set out his position in respect of 'Bills and invoices, client money and funding" at paragraphs 154 to 172; 'Client advice letters' at paragraph 173; 'Accounts' at paragraphs 174 to 176 and 'Accountants Reports' at paragraphs 177 to 188.

36.9 The Respondent's witness statement[1] stated at paragraphs 128 to 131 that:

> "128. So now I can say that when the staff attending they asked for six months back statements from my bank and details of my current files.
>
> **129.** Instead of complying with this request I gave them details **of all my bank statements** since they started **going back several years** and in addition I provided photocopies of the client files even though strictly speaking the SRA is not entitled to require me to breach confidentiality. **I did not however provide account records all client care information as this is of course privileged.** Nevertheless this information is available and is stored

[1] The Respondent's witness evidence has been reproduced as it was provided to the Tribunal, including the use of bold type and any typographical errors.

electronically rather than mechanically on the file. This is a security measure under my quality mark. **It strikes me that some might say that I could backdate these records, well I cannot backdate the date of origin, which is clearly visible on the documents file.**

130. Dealing with paragraph 13, I provided details of the client and office bank account and I provided substantially more information than was required of me under the notice that they refer to at paragraph 12 under section 44B. I therefore complied with the **notice and did more than was required to.**

131. The tribunal may see for themselves on public record copies of any of the accounts which we publish quarterly to HMRC or annual returns or annual accounts to both the Charity Commission and Companies House."

36.10 At paragraphs 160 to 162 of his statement the Respondent stated that:

"160. In respect of the current files that were requested of me no account monies have been taken from clients and the witness statements of the witnesses under those files confirm that I have taken no money off them.

161. All disbursements are recorded on ledger cards on each file, and this is shown in the applicant evidence to be true.

162. There is only one transaction attracting client money, which was paid on account in advance of our profit costs, as agreed. £900 was paid on account, £900.00 was paid over onto office account and the ledger card reflects this."

36.11 At paragraph 351 of his witness statement the Respondent stated that "all the funds sown (sic) on the accounts were held as a non-professional trustee for a close family relative".

36.12 The Respondent had sent the Applicant a document entitled "Answers to questions and allegations dated 24th June 2015" and in that document in relation to the Defendant referred to in paragraph 36.5 above stated that the file "contained a ledger card with one entry for £950.00 which was a deposit that was all that happened on that account and so that is all that should appear. The only other file was a file at taxation, and these funds will become our shortly." The document also stated "I said I handled client money on a very short term basis only, i.e. to pay disbursements or settlement monies. I had set the account up in anticipation of handling client monies but to date had only handled a handful of transactions, totalling little more than one thousand pounds. There were only two client files on which money had been held and these both carried ledger cards with full transactions."

<u>The Tribunal's Findings</u>

36.13 Rule 29.1 of the SAR states:

"You must at all times keep accounting records properly written up to show your dealings with:

(a) client money received, held or paid by you, including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and
(b) any office money relating to any client or trust matter."

36.14 Rule 29.2 states:

"All dealings with client money must be appropriately recorded:
(a) in a client cash account or in a record of sums transferred from one client ledger to another; and
(b) on the client side of a separate client ledger account for each client (or other person or trust)"

36.15 Rule 15 related to client money withheld from client account on client's instructions and Rule 16 to other client money withheld form a client account.

36.16 At paragraph 162 of his witness statement the Respondent admitted that there was one transaction involving client money. The Respondent had admitted to the FIO during her visit that he was holding client monies on behalf of a client in the sum of £950.00 and that he was also holding £20.00 which was money held by a judgment debtor. In his document dated 24 June 2015 the Respondent had confirmed that he had handled client money on a very short term basis.

36.17 The allegation that had been made was that the Respondent failed to maintain properly written up accounts to show dealings with client money and in doing so breached rules 29.1(a) and 29.2 of the SAR. The Respondent had not provided accounting records that showed his dealings with client monies as required by the SAR. He had not complied with the S44B Solicitors Act 1974 Notice. He had been asked to produce these records and had not produced them. The Respondent's statement at paragraph 351 of his witness statement that "all the funds sown (sic) on the accounts were held as a non-professional trustee for a close family relative" contradicted his statement made to the FIO during her visit and his statement in his document dated 24 June 2015.

36.18 The FIO, at paragraph 8 of her report stated that "The Officer was not able to give an opinion on Dr Blacker's books of account as no client cash account, list of client balances, nor reconciliation statements were provided during the investigation."

36.19 The Tribunal was satisfied beyond reasonable doubt that Allegation 1.1 was proved. The Respondent had acknowledged that he held client monies and there was no evidence that he had maintained properly written up accounts or any records to show dealings with client money in accordance with the requirement set out in rules 29.1 (a) and 29.2 of the SAR.

37. **Allegation 1.2 - Failed to maintain properly written up accounts to show dealings with office money relating to client matters and in doing so breached SAR 29.1 (b).**

37.1 The Applicant's case was that the Respondent was asked to provide copies of his bills or other notifications of costs (required under SAR 29.15) and that he failed to provide these documents. The Applicant considered that the Respondent had failed to

comply with his obligation to maintain properly written up accounts to show dealings with office money pursuant to Rule 29.1(b) of the SARs or to produce to the person appointed by the SRA documents required by the SRA for preparation of a report on compliance with the SARs. The Respondent was obliged to keep bills readily accessible and it was unacceptable to state that bills were unavailable.

The Respondent's Case

37.2 The Respondent denied the allegation. The Respondent had produced a witness statement from Mr David Marsh, a Costs Draftsman, dated 25 January 2016. Mr Marsh confirmed that he had looked after the costs affairs of Dr Alan Blacker & Co for approximately five years. He confirmed, at paragraph 2 that "Dr Blacker has had a number of successful wins in criminal cases in which the paying party has been Central Funds". The statement confirmed that bills in both criminal and civil matters had been prepared appropriately and that it would have, in Mr Marsh's view, been inappropriate to withdraw the files that were with Central Funds from them as suggested by the FIO as "this would have represented and led to a disproportionate delay" (paragraph 10).

37.3 The Respondent's witness statement set out that he did not provide the FIO with bills or other notification of costs as he had none to produce as his bills were dealt with by a law costs draftsman firm and the only bills produced were currently with central taxation. At paragraphs 163 to 171 of his witness statement the Respondent stated that:

> "163. I do not profit from any monies taken from the reserved legal activities of this practice as I am a volunteer.
>
> 164. Profit costs which are derived from winning successful civil cases are taxed in the normal fashion through default costs certificates and are paid by the third party into office account.
>
> 165. Costs which come from successful criminal cases are taxed by the National taxation team and paid to the charity's office account. These are accounted for by way of in respect of civil and criminal cases bills which are produced by taxation experts and for whom I am not one of their number.
>
> 166. I haven't the slightest interest in costs and I leave that to the law firms that represent JAFLAS in their collection of costs from civil and criminal sources.
>
> 167. I have engaged a specialist trustee to deal with costs matters as it is her bent.
>
> 168. Once having produced a Bill which has been taxed it then becomes a matter for the trustees of my charity and I have no more concern over it.
>
> 169. Accordingly the allegation that I have not produced copies of bills or other notifications as to costs must fail.

> 170. As to my dealings with office monies these of improper recorded in the office account which are audited every three months when they are dealt with by HMRC for the purposes of VAT relief as we are an exempt charity, we produce these accounts quarterly in order to reclaim VAT from our output tax. In addition these are produced on a regular basis scrutiny by the trustees at trustees meetings.
>
> 171. They are not kept in any written form rather they are maintained electronically in accordance with our office protocols and quality mark."

The Tribunal's Findings

37.4 As stated above in respect of Allegation 1.1 the Respondent had been asked to provide information and he had not done so. The allegation made was that the Respondent had failed to maintain properly written up accounts to show dealings with office money relating to client matters and in doing so breached SAR 29.1 (b).

37.5 The Tribunal had before it Office Account Bank Statements for "JAFLAS Dr Alan Blacker & Co" dated from 31 October 2014 to 25 February 2015 and a transaction list from 15 November 2013 to 24 October 2014. There were a number of transactions shown on these documents. The Respondent had acknowledged that profit costs were paid by third parties into office account. There was a statement from a Mr David Marsh, a Costs Draftsman, filed by the Respondent, which referred to working for the Respondent for at least five years in relation to costs being payable from Central Funds but there were no accounting records to support this assertion.

37.6 The Tribunal was satisfied that Allegation 1.2 was proved beyond reasonable doubt. There was clear evidence before the Tribunal that the Respondent had operated an office account (and he did not deny it) but there was no evidence before the Tribunal that the Respondent had maintained the accounts as required by SAR 29.1 (b). The case of the Respondent did not address the simple point that there should have been an office account and such records as there were did not comply with the rules relating to such accounts.

38. **Allegation 1.3 - Failed to obtain an accountant's report within six months or at all, for the accounting period including October 2013 during which he held client money and in doing so breached SAR 32.1 (a).**

38.1 The Applicant's case was that the Respondent produced to the SRA client account bank statements showing the receipt of client funds on 4 October 2013. The account continued to hold client funds until February 2015. According to the FIR, the Respondent failed to produce an Accountant's Report and stated that his first financial year end did not occur until April 2015. The SRA held no record of a waiver of the requirement to obtain an Accountant's Report under SAR 32 being granted to the Respondent. The Respondent therefore failed to obtain an Accountant's Report for an accounting period during which he held or received client money, contrary to SAR 32.

38.2 The Respondent's terms of business set out hourly charging rates for Dr Alan Blacker & Co. The FIR noted that the Officers had asked the Respondent whether he ever charged clients for the work he did and he had said that he did. Mr Levey submitted

that the Respondent's refusal to co-operate meant that the Applicant knew little about what the Respondent was actually doing. However if he was charging clients an hourly rate he was not simply working as an in-house solicitor and could not rely on Guidance Note (x) to Rule 32 which stated that 'Rule 32 does not apply to a solicitor or registered European lawyer, employed as an in-house lawyer by a non-solicitor employer, who operates the account of the employer or a related body of the employer."

38.3 Ms Evans accepted that the Respondent had asked for information in respect of a waiver. She was not the person to provide this and had referred the query to the right department of the SRA who had replied to the Respondent.

38.4 In respect of the matter where the Respondent held £950 in client monies the General Form of Judgment or Order dated 10 January 2015 had been sent to " Dr Alan Blacker & Co Solicitors". This related to a claim against the Respondent's client in respect of the installation of a LPG system on a car. The Respondent had represented the same client in a driving matter at Cardiff Crown Court.

38.5 The FIR also detailed the Respondent acting for Mr and Mrs Bromfield. The Respondent had acted for Mr Bromfield in a debt matter and Mrs Bromfield in respect of a parking charge. The FIR exhibited the Acknowledgement of Service in the Mr Bromfield matter, which stated that documents about the claim should be sent to "Dr Alan Blacker & Co". The Respondent had also completed a Notice of Acting in this matter which stated that "Dr Alan Blacker & Company" had been appointed as solicitors for the Respondent. The Respondent had proceeded to file a defence in this claim. The Respondent had produced a witness statement from Mr and Mrs Bromfield that stated at paragraph 2 that "Dr Blacker has been the Bromfield family solicitor for at least five years". This statement was dated 30 November 2015.

38.6 The FIO had also found reference to the Respondent acting for a Mr B in respect of the compulsory purchase of a property. The Applicant's position was that the Respondent had some clients meaning he was not simply working as an in-house solicitor and that he was holding a small amount of client money.

<u>The Respondent's Case</u>

38.7 The Respondent denied the allegation. Paragraphs 174 to 188 of his witness statement stated:

> "174. Full accounts are available at the click of a button in a variety of different and exciting fashions which comply both the HMRC and the statement of financial affairs under the charities commission rules and companies Acts versions and a variety of others, including HMRC and VAT requirements.
>
> 175. Accounts prior to January 2015 were kept under a easy books accounting system which was changed to Paxton's charities accounting system which is the market leader for all sizes of charity.

176. These accounts are succinct yet detailed and as I say available on the number of different formats. I perform weekly reconciliations against bank statements and indeed any transactions which take place on an ad hoc basis are usually reconciled individually.

Accountants Report.

177. In accordance with solicitors accounts Rule 32 we are a (sic) specifically exempt from the requirement to produce an accountants report as we are an in-house law firm dealing with in-house monies. In addition we are entitled to apply for a waiver.

178. Having applied for a waiver on three occasions Alice Evans failed to provide responses to my request for a waiver application form and details of how to apply, notwithstanding that we are technically exempt. In any event we cannot be prosecuted for this offence because at the time we were investigated and charged with having **failed to comply we were still within the six-month period during which we could have obtained an accountant report had one being required. Accordingly this allegation must fail. Another example of bad faith of the SRA.**

179. Speaking frankly if we were required to produce an accountants report I would make a formal complaint because to hold less than £1000 in client account and to pay around £600 and accountants report is a breach of my duties as a trustee.

180. As my duties as a trustee are statutory they trump any regulatory requirements made by the SRA.

181. In any event these monies were office monies a short while after being deposited.

182. It is nonsense to suggest that the absence of an accountant report makes a good any bad elements of an account; it is also nonsense to suggest that with bad accounts you cannot go through an accountant report procedure.

183. I would rather have accurate accounts than waste valuable donations on accountant's reports.

184. I cannot spend donations on accountants reports in any event as this would be a breach of the purpose of the donation, being a criminal matter.

185. What we have are regularly audited accounts which show a limited and infinitesimally small amount of client money being handled in a very responsible fashion, usually in advance of disbursements such as court fees and experts expenses.

186. Notwithstanding that the client money was actually to be transferred to others as office monies on account of profit costs from a private paying client.

187. Accordingly the has (sic) been no breach of the rules but even if there had been unjustified as to require us to comply with the rules would breach our duties as trustees.

188. Additionally a separate client account called a compliance account was established to handle monies which were held by the charity and not the law firm; **these are not regulated by the SRA in any sense and are connected with duties outside the SRA's governance."**

38.8 At paragraphs 351 to 352 the Respondent stated:

"350. The SRA alleges that while in practice as a solicitor at Lancashire firm Joint Armed Forces Legal Advocacy Service, I failed to maintain properly written-up accounts to show dealings with client money, and failed to maintain accounts to show dealing with office money. This allegation must fail as I produced accounts on a monthly management basis for the trustees along with bank statements and I had all payments verified by a compliance committee. My door is always open and the SRA have been invited back at any time to view my accounts whenever they wish.

351. The SRA also alleges that I failed to obtain an accountant's report, within six months or at all, for the accounting period including October 2013 during which he held client money. This allegation was raised for a period noit (sic) yet complete and thereby was premature and in addition no monies were held as a solcitor (sic) in client account; a separate compliance account was opened to keep these monies separate and these accounts are all reported to my trustees. This allegation must fail in that either I am exempt under rule X to the SAR 32 and even if I were not exempt I would only have to account for monies held as a solicitor and as all the funds sown on the accounts were held as a non-professional trustee for a close family relative, no accounts are required of me."

38.9 The Respondent in his document "Answer to questions and allegations dated 24th June 2015" had stated "I have sought exemption from the requirement to produce accountants reports as we are both beneath the statutory turnover limit for the charity Commission and as things stand we only have a handful of cases (three) and in any event very few where we would handle client money save for disbursements. I have not had the courtesy of a response from Alice Evans despite asking twice for such paperwork for filling in and filing." It also stated "Additionally, as a charity in house firm I have pointed Alice Evans to the guidance note which suggests in the strongest terms we are exempt in any event."

The Tribunal's Findings

38.10 Rule 32 of the SAR is no longer in force but was in force at the time of the FIO's visit and the Rule 5 statement. Rule 32 provided that:

> "32.1 Subject to rule 32.1A, if you have, at any time during an accounting period, held or received client money, or operated a client's own account as signatory, you must:-
>
> (a) obtain an accountant's report for that accounting period within six months of the end of the accounting period; and
> (b) if the report has been qualified, deliver it to the SRA within six months of the end of the accounting period.
>
> This duty extends to the directors of a company, or the members of an LLP, which is subject to this rule.
>
> 32.1A Subject to rule 32.2, you are not required to obtain or deliver an accountant's report if all of the client money held or received during an accounting period is money held or received from the Legal Aid Agency or in the circumstances set out in rule 19.3.
>
> 32.2 The SRA may require the delivery of an accountant's report in circumstances other than those set out in rules 32.1 and in the circumstances set out in rule 32.1A if the SRA has reason to believe that it is in the public interest to do so."

38.11 Rule 19.3 related to payments from a third party.

38.12 The Tribunal needed to be satisfied that the Respondent was not simply the in-house lawyer for JAFLAS and therefore exempt from the requirement to provide an accountants report under Guidance Note (x). The Tribunal noted that the Respondent stated in his witness statement that:

> "275. **In any event insurance mediation is not a regulated feature**; we are not regulated by the SRA and our insurance mediation work is in proportion and directly allied to the litigation we undertake as a firm providing reserved legal activities; this is yet another example of the huge problems rule 4 causes for the unregulated in-house law firms."

38.13 The Tribunal noted the fact that the Respondent acknowledged that he was providing reserved activities. The Respondent had provided email correspondence between him and the SRA in respect of an application for a waiver of the need to hold a policy of qualifying insurance. The advice provided to him was that only if the firm was providing professional services to the charity without remuneration would he fall outside the definition of private practice but if he was to work for other clients that were charged a fee the firm would be a private practice. The Respondent had told the SRA that he was undertaking unregulated work, civil litigation and criminal practices. The telephone attendance note of this conversation (dated 18 March 2013) was produced by the Respondent and noted 'He makes his money for the charity from the

success fee and conditional fee arrangements". Making money for his charity was not the same as only acting as in-house solicitor for his charity. There was evidence in the Respondent's own documents that he had acted for Mr Broomfield under the auspices of Dr Alan Blacker & Co. His client care letters referred to hourly charging rates.

38.14 The Tribunal was satisfied that the Respondent was acting as an in-house solicitor and representing clients under the auspices of Dr Blacker and Co. This meant that he could not rely on the Guidance Note (x) exemption. The fact that accounts were available in other formats was irrelevant. The Respondent did not hold a waiver from the SRA in respect of the Accountants Report requirements. The Respondent should have provided an Accountant's Report under Rule 32. He had not done so and the Tribunal found Allegation 1.3 proved beyond reasonable doubt.

39. **Allegation 1.4 - Between 2011 and August 2014 made, or caused or allowed to be made, statements concerning his academic qualifications which were inaccurate and misleading, and in doing so breached Principles 2 and 6 of the Principles.**

39.1 Principle 2 of the Principles requires that a solicitor must act with integrity. Principle 6 stipulates that a solicitor must behave in a way that maintains the trust the public places in them and in the provision of legal services.

<u>The Applicant's Case</u>

39.2 The Applicant produced to the Tribunal a printed version of the Respondent's profile on the LinkedIn network, as it appeared on 11 November 2014. The Respondent had accepted, in a response sent to the SRA on 28 November 2014, authorship of his LinkedIn profile and had asserted its accuracy. An additional version of the Respondent's LinkedIn profile as it appeared on or around 29 August 2014 was before the Tribunal. Mr Levey sought to admit a further more recent version of the Respondent's LinkedIn Profile, which his clerk had printed off in order to demonstrate that the Respondent's profile could be accessed by anyone on LinkedIn but the Tribunal declined to view it as it had not been served on the Respondent. The Respondent's LinkedIn profile was available to anyone on LinkedIn. In turn anyone could sign up to be a member of LinkedIn and unlike Facebook there was no need for somebody to accept a "friend request" before they could see information. The Respondent's email signature contained a hyperlink to his LinkedIn profile. The Applicant did not accept the Respondent's assertion that his LinkedIn profile was not public.

39.3 A copy of a paper document prepared by the Respondent, and received from the Respondent by John Smith, a Solicitor, was before the Tribunal exhibited to the witness statement of Mr Smith. The document was described as a "biographical account of the professional development and skills of Dr Alan Blacker, Lawyer, psychologist, anthropologist, advocate, advisor and consultant".

39.4 The Applicant had filed and served the witness statement of John Lewis, of the Charity Commission for England and Wales. Mr Lewis produced documents in which claims were made by the Respondent as to his academic qualifications, including claims to hold "DPhil", "MA (Hons)" and "LLB (DHons)". In the witness statement of Francine Alexander, of the Royal College of Surgeons ("the RCS") a document

entitled "LinkedIn CV" was produced that was sent by the Respondent in an email dated 16 October 2014 to the RCS. The Applicant also filed and served copies of documents supplied by the Respondent to the SRA in respect of a waiver application.

39.5 The Applicant's case was that the Respondent had claimed in various documents that he held an "LLB (D Hons)" in Law. In the paper document exhibited to Mr Smith's statement, it stated that the Respondent's "Professional Qualifications" included "LL.B. (Double Honours) Law Oldham Business University College" with an explanatory footnote "A franchised degree from Huddersfield through Oldham Business Management School". The same claim appeared in a document that was submitted by the Respondent to the SRA on 24 October 2010 in respect of a waiver application.

39.6 The statement of Judith Davison of the University of Huddersfield confirmed that the Respondent was registered as a student on the BA in Law course with the University of Huddersfield (a course delivered by the Oldham Business Management School under a franchise arrangement) from September 2002 until July 2005. However, Ms Davison confirmed that the Respondent was awarded a BA degree in Law from the University of Huddersfield in July 2005 and that the Respondent was awarded an Ordinary degree, not an Honours degree.

39.7 The Respondent claimed, in his LinkedIn profile, to hold the qualification "DPhil" from "Trinity College". In his paper "biographical account" the Respondent claimed to hold a "doctorate in law from University and Trinity Colleges Oxford" ("accredited in UK, USA and Canada"). A logo purporting to be that of the University of Oxford appeared on the paper "biographical account". The Respondent further claimed to hold a qualification of "Master of Science (MSc)" in clinical forensic psychiatry, awarded "Summa cum laude (With highest honour)" from "Trinity College". The Respondent did not identify which, if any, Trinity College awarded this degree, nor had he provided written evidence to support the claim.

39.8 The statement of Dennis Moore stated that the Respondent had not studied at Trinity College Oxford and had not been awarded a degree by or accredited by Trinity College Oxford. The statement of Helen Jackson stated that the Respondent had not studied at Trinity College Cambridge and had not been awarded a degree by or accredited by Trinity College Cambridge. The statement of Sinead MacBride stated that the Respondent had not studied at Trinity College Dublin and had not been awarded a degree by or accredited by Trinity College Dublin.

39.9 It was the Applicant's case that the Respondent had therefore made, or caused or allowed to be made, statements as to his academic qualifications which were not accurate and which may cause a reader to be misled. Its position was that exaggerated or inaccurate claims as to academic qualifications, relating directly to his professional practice or otherwise, amounted to a failure to act with integrity and/or a failure to behave in a way that maintains the trust the public placed in the Respondent and in the provision of legal services. Further, that making statements relevant to professional practice, concerning academic qualifications, in a public forum amounted to a failure to act with integrity in that it lacked steady adherence to an ethical code.

39.10 At paragraph 42 of the Rule 5 Statement the Applicant stated that:

> "The allegation of a lack of integrity was supported by the following:
>
> - the claims to hold qualifications of a particular type of grade, such as "First Class Honours", where such assertions operate as an indicator of particular aptitude or merit beyond that required to hold the qualification, and where it is known to the Respondent that no such award was made;
>
> - the claims to hold qualifications awarded by academic institutions, such as the University of Oxford, which were not attended;
>
> - the adoption, and application to publicity material, of the logo of an academic institution, the University of Oxford, which the Respondent did not attend;
>
> - a repeated failure to respond to queries raised by his regulator as to the legitimacy of the claims which he had made."

39.11 In respect of lack of integrity, Mr Levey referred the Tribunal to the decision in Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin). In that case Sharp LJ said:

> "37. Some reliance in this context is placed on the fact that when directing itself on the meaning of "integrity" the SDT did so by reference to an inaccurate quotation from Hoodless and Blackwell v. FSA [2003] UKFTT FSM007 (3 October 2003).
>
> 38. Hoodless was a case which involved the application of the regulatory regime provided for by the Financial Services and Markets Act 2000; and para 19 of its judgment, the Financial Services and Markets Tribunal, said as follows:
>
> > "In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)"
>
> 39. At paragraph 65.15 of its judgment the SDT however said this:
>
> > "In determining the issue of integrity, the Tribunal had regard to the guidance in the case of Hoodless and Blackwell where it was stated:
> >
> > "that a person lacks integrity if he/she acts in a way which, although falling short of dishonesty, lacks moral soundness, rectitude and steady adherence to an ethical code. For this purpose a person may lack integrity even though it is not established that he/she has been dishonest."

40. One explanation for the difference might be that the SDT was quoting from a summary or digest of the effect of Hoodless rather than from the decision itself. But I do not think the difference is material, or that the appellant would have been better off if the SDT had quoted Hoodless accurately, or indeed (presciently) had taken the approach subsequently adopted in SRA v Chan and ors, where Davis LJ, with whom Ousely J agreed, said this at para 48:

> "As to want of integrity, there have been a number of decisions commenting on the import this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case."

41. I would respectfully agree with that approach."

39.12 During the course of the hearing Mr Levey produced to the Tribunal a document explaining what he said "ACTDEC" was, namely that it was the Accreditation Council for TESOL Distance Education Courses and that it accredits TESOL/TEFL course providers at different course levels graded from introductory to advanced. The Respondent had not produced his certificates to the Applicant.

<u>The Respondent's Case</u>

39.13 The Respondent denied the allegation. The Respondent's case was that the LinkedIn Profile was not a public profile. At paragraphs 192 to 196 he stated:

> "192. The LinkedIn profile is a document produced in order to gain connections within the professional world, **it is not for public viewing and indeed the profile is not a public profile.** It is a restricted profile in which the general public can only receive very limited elements of it for viewing. None of my qualifications or memberships are available to the public for viewing, an example of my profile is in the bundle.
>
> 193. The remainder of the profile is there to optimise search engine activity so that when somebody searching for a particular type of person can get details of those individuals that meet their requirements in common with all search engine optimisation the more keywords you use the more links you are likely to make.
>
> 194. The purpose of LinkedIn from the charity's perspective is in order to make connections with experts and other lawyers who might be tempted to do work for the charities clients on a pro bono or low-cost basis.
>
> 195. It is a published rule of LinkedIn that you do not attempt to link with anyone you do not already know, so we have to search for candidates and then contact them before securing a link. Cold calling/linking is a seriously frowned upon activity and leads ultimately to suspension and closure of your account.

196. We have never received any work from the general public and we do not market ourselves to the general public through LinkedIn as I say it is not a public profile."

39.14 Further at paragraphs 240 to 246 he stated:

"240. Each accreditation on LinkedIn is verified by the connecting body, so if you say you are a member of The Law Society for instance, they receive an email asking them to verify your entry, accordingly each entry is verified.

241. Each endorsement is verifiable as it is linked to a profile of the person making the endorsement, so each endorsement is verifiable, it is not simply Fred Bloggs of Wavertree, it links to **his profile and contact details so you can phone him up** and discuss his endorsement personally; indeed the SRA have done this to each of those who have endorsed me.

242. They (The SRA) have been told that my service and professionalism have been of the highest degree and that my integrity is beyond reproach. They publish this freely online.

243. I say again that my LinkedIn profile **is not a public profile** and can only be used by full members of LinkedIn who I allow to see it by accepting the invitation to connect. They must know me and I them before connecting. This is enshrined in the online rules which are clearly readable.

244. In any event if a member of the public were to stumble upon my profile they would suffer no harm or be in the slightest manner misled.

245. The purpose of some entries in my profile such as the patents section is attract attention through search engine optimisation; so that persons researching my family may come across my details and contacts me.

246. As an example of this, say you sell fruit; instead of just using "greengrocer" in your profile you would list the entire range of fruit and veg you sell; thus attracting more 'hits' on search engines."

39.15 In respect of Mr Smith and his evidence relating to the biographical account the Respondent stated at paragraphs 198 to 201 of his witness statement that:

"198. John Smith is a cretin of the first order, I first met him through a Rolls-Royce enthusiasts club meeting and have only met in (sic) once, and once was more than sufficient. He was rude, arrogant and offensive and has generally been asked to leave more Rolls-Royce events than I care to imagine.

199. As a committee member of the RREC myself I have been faced with numerous complaints about him and his attitude in character and I wouldn't give him the time of day. He probably came across my academic biography by some other means but his evidence is a load of rubbish. The contents of it, however is completely accurate.

200. The purpose of the biographical account is so that academics can do research on you and read papers that you have written and speak to colleagues so that they consider you for research programmes or if they wish to ask you to do some research on their behalf.

They may also wish to use your material and need to seek permission to do so."

39.16 The Respondent addressed his academic standing at paragraphs 202 to 239 of his witness statement:

"202. I'm known to my University's (sic) as "Dr" and my academic profile is extant and valid I do not propose to go into in detail here, for to do so would be wholly inappropriate. The account given by the Vice Chancellor's office is largely inaccurate and I was surprised to find out that we even had a Vice Chancellor as we are Polytechnic University and had contact been made with my actual course leaders a more accurate picture of my academic position would have been obtained.

203. In any event my academic results were not acceptable to me and I had them verified independently to reassess their integrity. I did this after taking both LMU and MMU to tribunals funded by the then Disability Rights Commission and the EHRC as it is now known. I believed and subsequently proved I had been discriminated against on and for political, religious and disability grounds.

204. The GLD and LPC grades were not part of this process but were included in the independent invigilation.

205. I was granted exemption from the ALS by the Law Society and the GLD provider, MMU. If the clerk at MMU does not know what ALS on a GDL course is, she should perhaps throw her cards in.

206. In addition to being a disabled person I've had my academic results independently verified under the personal learning plan by a national charity which enhances one's results to give a proper reflection of one's academic standing. They do this by a formulaic calculation based on your actual performance and strong medical evidence and independent examination and reporting.

207. I was granted an uplift of fifteen marks providing I passed the credit mark of sixty per cent, thus making a credit a distinction. This was to allow for the obvious difficulties as described below.

208. All of my examinations have been moderated by an independent invigilator and have been conducted in this fashion because I cannot write my answers, they have to be dictated to an amanuensis and the amanuensis has to be moderated as do I.

209. Accordingly, I would be given extra time of around fifty per cent, I never used the extra time myself but the amanuensis needed this to recover from handwriting my answers for long periods of time.

210. These exam results are then double-blind marked and enhanced under the ACTDEC protocol for disabled persons.

211. Being of more than one nationality I have accumulated qualifications from Canada and American universities and these have similarly been accredited and confirmed.

212. My doctorate was awarded as a D.Litt which is superior to DPhil but in order to have it recognised in the UK I've had to have it downgraded in accordance with the appropriate academic rules.

213. I have not and will not produce details of my lecturers other than through a private note to the tribunal as along with many other of my associates my academic contacts have been subjected to rigorous abuse by members of the press and notwithstanding that that might be legitimate, there have been several other imbeciles from websites such as lawbytes and Legal Cheek which I will discuss later whose only interest is to cause mischief and nuisance. I will not expose these professionals to such abuse.

214. Accordingly all of my academic qualifications and indeed every other elements of my profile are correct and properly identified.

215. I will deal with the allegations at paragraph 28 one (sic) I come to them in full.

216. At this stage allegations 1.1 1.2 1.3 must fail. Allegation 1.4 must also fail as result of the above information and further information below.

217. Having been discriminated against in my final exams by the college and Huddersfield University who are the franchisees of my degree I had to take the University to the High Court in Manchester and following an out-of-court settlement I went to Leeds to complete the Law of property and equity modules of my LLB on this course.

218. As a result of this agreement and given the extra work that I've done I was awarded double honours as under the system described in paragraphs 104 and 105 above. I also had to take LMU and MMU to court over the same allegations that followed my action at Huddersfield and the results of those actions and out-of-court settlement my academic position was scrutinised by the SRA and they granted me admission and completion of the academic stage.

219. Accordingly I was accredited independently as having been admitted to a first class LLB double honours.

220. Having been unsatisfied with the scoring of my work at Oldham College (Huddersfield University) for the reasons set out in court proceedings; I engaged an independent assessment through the internationally recognised ACTDEC system and asked for my papers to be validated by Trinity College Oxford law school; this was undertaken and as per the regulations and adoption information in the bundled of evidence, this was done to my specific requirements.

221. Had the SRA had the courtesy to contact meal (sic) that this they would have a full and substantive response referring them to the law files. This is another example of bad faith. Accordingly the allegations summarised in para 43 and 44 must fail.

222. The evidence of Mrs Gretton and Judith Davies is completely irrelevant and completely out of line with what I've said above and does not reflect the actual procedure, or the outcome of several stages of academic processes some of which were governed by agreement as laid out in paragraphs above.

223. My academic standing as illustrated in the LinkedIn profile gives the best representation of academic position and I will not waver from.

224. It is a truthful and honest depiction of my true academic standing and I will not enter into the debate about the matter with this tribunal or any other.

225. My DPhil (D.Litt) was accredited by a tri-partite agreement between my university under ACTDEC and Trinity Oxford, and they are members of two schemes of which details are provided in the bundle.

226. I believe I have already dealt with the issue of the DPhil, and these qualifications. I hold a superior qualification which in coordination with my university in Canada has been accredited in the UK as a DPhil in accordance with the regulations governing such recognition.

227. This is in line with universities international recognition under APPLE (Approved previous professional learning and experience) and international recognition of other awards. MMU regularly accept APPLE and PPL performance as an ingredient in reducing the amount of modules required to complete a course at MMU.

228. My academic biography but for now being out of date is stated is correct, accurate and causes no one the slightest difficulty in my professional life.

229. Whilst some of the elements of paragraphs 32 to 40 are technically correct they do not tell the whole picture as I've laid out he (sic) and accordingly have these questions been put me in an openhanded and civilised fashion they would have received an openhanded and civilised response.

230. As it stands all of my qualifications are as stated and in accordance with paragraph 36 of the allegation they are accredited across the UK and USA and Canada.

231. There will be no dishonesty in the representation of my academic qualifications and therefore allegation 1.4 must fail.

232. Additionally my issuing University issued certificates which were on display in my office **and yet when Alice Evans and her colleague were invited to inspect them she refused without giving any reason**.

233. Additionally as student representative on the school council I regularly came into real conflict with the universities as a Labour Students Union representative on a partisan body, which lived by the motto, let sleeping dogs lie; I raised real issues which caused problems for department heads and senior staff. I implemented policies which caused waves, but for those I represented, they meant real change.

234. I made every effort to attract the SRA's attention to my certificates and to view my offices where they were displayed and to address each enquiry made of me; therefore the allegations in para 42 must fail.

235. I do not propose to insert into evidence copies of my exam certificates because this would inevitably lead to the kind of abuse that the SRA are now facing injunctive relief proceedings and the damages claim for.

236. In any event my certificates are available for inspection by my clients not that they're in the slightest bit interested as their only concern with me is whether I can help them and to what extent they have not the slightest interest in my academic position.

237. As for any experts that have contacted me they have been more than satisfied with their research and not one client nor academic nor has any expert been in the slightest bit concerned about my position.

238. What has been far more relevant is when my experience and the public record of my achievements whilst practising law. Of this there can be no doubt is upon this the general public relies.

239. I also received a Law Society award during my degree as an exemplary student."

The Tribunal's Findings

39.17 The Applicant produced evidence in respect of the Respondent's claim to hold a "PGDL Law of Property and Equity" qualification with "First Class Honours" from Leeds Metropolitan University. It also produced evidence in respect of the Respondent's claim, in his LinkedIn profile, to hold a "Law and Common Professional Exam in Law and Legal Practice (Qualifying)" qualification with "First Class Honours" from Manchester Metropolitan University. The reference to first class honours is marked by an asterisk, and stated to be "by reference to ACTDEC independent validation".

39.18 The Tribunal did not make findings in respect of these qualifications. However the absence of findings does not mean that the Tribunal considered that these parts of the allegation could not be proved. The Tribunal having made its findings detailed below did not consider it necessary to continue to make further findings in respect of any other qualifications. The Tribunal did not take into account the document in respect of ACTDEC provided by the Applicant. There was no evidence that this document related to the process the Respondent was describing; it appeared to relate to qualifications and teaching English as a foreign language.

39.19 At paragraph 229 of the Respondent's witness statement he stated "Whilst some of the elements of paragraphs 32 to 40 are technically correct they do not tell the whole picture as I've laid out he (sic)". The Applicant's position in respect of Huddersfield University is set out at paragraphs 35a to c of the Rule 5 Statement and its position in respect of the DPhil at paragraphs 36 to 40. The Respondent did not set out what he accepted and denied nor did he provide evidence of the qualifications he claimed he had by way of the ACTDEC process of adjustment. There was no evidence as to what upgrade had been awarded, by whom and what process had been used. It was incumbent on the Respondent to show how his qualifications had been augmented from what he had actually achieved, and he had not done so.

39.20 In the biographical account sent to John Smith the Respondent stated that he held an "LL.B. (Double Honours) Law Oldham Business University College". This appeared qualified by two footnotes one stating "A franchised degree from Huddersfield through Oldham Business Management School" and the other "ACDEC (sic) accredited off campus and graded by peer review".

39.21 There was a letter exhibited to the Respondent's witness statement at page 28 from Oldham Business Management School. This letter was dated "1/12/3" and was a reply to a letter dated 23 October 2003. It stated that "We anticipate that Alan will achieve a lower 2.2 or even a 3rd". The statement of Judith Davison stated that the Respondent was awarded a BA degree in Law from the University of Huddersfield in July 2005 and this was an ordinary degree, not an Honours degree.

39.22 The biographical account stated that the Respondent held a "Doctorate in Law, Trinity and University Colleges, Oxford, accredited in UK, USA and Canada (I am a national of all three nations)" and was subject to a footnote which stated "Alan is a dual national of Canada, Ireland, Denmark and the UK". The document also used the University of Oxford logo.

39.23 The witness statement of Dennis Moore stated that the Respondent had not studied at Trinity College Oxford and had not been awarded a degree by or accredited by Trinity College Oxford. On the Respondent's LinkedIn Profile under Education he stated he had a "Doctorate of Philosophy (DPhil), Law with Economics, Summa cum laude (With highest honour)" obtained in 2000 to 2004. This profile stated "Acc. Canadian Franchise". At paragraph 225 of the Respondent's witness statement he stated: "My DPhil (D.Litt) was accredited by a tri-partite agreement between my university under ACTDEC and Trinity Oxford, and they are members of two schemes of which details are provided in the bundle." The Tribunal preferred the evidence of Dennis Moore to that of the Respondent. The Respondent did not provide any evidence to support his assertions and had at paragraph 229 of his witness statement accepted that some of

elements of the Applicant's case were "technically correct". There was no evidence before the Tribunal to show that the Respondent's statements in respect of his academic qualifications were accurate. The Tribunal was satisfied beyond reasonable doubt that between 2011 and August 2014 the Respondent made, or caused or allowed to be made, statements concerning his academic qualifications which were inaccurate and misleading.

39.24 The Tribunal then considered whether the Respondent had breached Principles 2 and 6. Applying *Scott* the Tribunal was satisfied that the Respondent had breached Principle 2 and had not acted with integrity. The inclusion of the inaccurate and misleading statements and the continued assertion at paragraph 223 of his witness statement that "My academic standing as illustrated in the LinkedIn profile gives the best representation of academic position and I will not waver from" did not demonstrate moral soundness or steady adherence to an ethical code.

39.25 The Tribunal was satisfied that the Respondent's LinkedIn Profile was a public document. It was available to anyone who was a Member of LinkedIn and anybody could become a member of LinkedIn. The Respondent drew peoples' attention to the LinkedIn Profile by including a link to it in his email signature. If a solicitor stated on a document that was available to any member of the public on LinkedIn that they had certain qualifications that solicitor should be able to produce evidence of those qualifications when requested. The Applicant had produced numerous witness statements to show that the Respondent did not hold the qualifications he claimed to hold. The Respondent had made assertions but had produced no evidence to contradict the witness statements provided by the Applicant. The Respondent stated that his certificates were available for inspection at his offices but did not provide copies of them as exhibits to his witness statement. The Tribunal did not consider that the Respondent had behaved in a way that maintained the trust the public placed in him and in the provision of legal services. Allegation 1.4 was found proved beyond reasonable doubt.

40. **Allegation 1.5 - Between 2011 and August 2014 made, or caused or allowed to be made, claims as to appointments or accreditations awarded by, or memberships of, organisations which were inaccurate and misleading, and in doing so breached Principles 2 and 6 of the Principles.**

The Applicant's Case

40.1 The Applicant submitted that the Respondent had made a number of claims to hold awards, accreditations and memberships himself or in some cases through the organisation through which he provides services to the public.

40.2 The Respondent claimed to be a member of, and adviser to British Institute of International and Comparative Law ("BIICL"). A statement by Professor Robert McCorquodale, Institute Director of the BIICL confirmed that no-one by the name of Alan Blacker (or Lord Harley) or similar was, or had been, a member of or adviser to the BIICL.

40.3 When asked by the SRA to explain his claim, the Respondent stated "I have been a member as stated; I cannot help you further other than to say that the journal they send me is very interesting, I find other jurisdictions most interesting and makes for interesting debating material. I provide free independent advice to members and will continue to do so when asked".

40.4 The letterhead used by the Respondent, under the style "Dr Alan Blacker & Co", carried the "PQASSO" logo, and the wording "Operating to the PQASSO Quality standard". The Applicant produced example letters dated 8 October 2014 and 27 October 2014 both of which had the PQASSO logo in the bottom right hand corner of the first page. The Respondent's LinkedIn profile claimed an "outstanding" PQASSO score.

40.5 The Respondent's Terms of Business dated 1 June 2014 obtained by the SRA from the Respondent, stated, under the heading "Confidentiality":

> "We have achieved the PQASSO Quality Standard. Each year the firm is subject to an audit in respect of this award. As part of this process, the auditors will ask to consider individual files of papers to ensure that we are complying our own strict internal procedure and supervision standards in such circumstances, a file appertaining to you may be considered by those auditors."

40.6 PQASSO is a quality standard development and managed by the National Council for Voluntary Organisations ("NCVO"), relating to the management and governance of voluntary organisations. It was the Applicant's case that the wording used on the Respondent's letterhead, use of the PQASSO logo, and the wording used in the Terms of Business, amounted to a claim to hold PQASSO accreditation.

40.7 The Statement of John Carlin of the NCVO, confirmed that none of Dr Alan Blacker & Co, JAFLAS, Alan Blacker or Lord Harley held PQASSO accreditation, or had purchased the PQASSO standards documentation. Mr Carlin also pointed out that the Respondent's LinkedIn profile incorrectly identified PQASSO's name, and used a mode of description of performance against PQASSO standards ("outstanding") which was not used by PQASSO for whom "fully met" was the apogee. Mr Carlin also stated that, contrary to the claim in the Respondent's Terms of Business that "Each year the firm is subject to an audit in respect of [the PQASSO Quality Standard]" neither Dr Alan Blacker & Co nor JAFLAS have had an external assessment against the PQASSO standards, nor was there a record of any audit or review of any kind being undertaken by the NCVO of Dr Alan Blacker & Co or JAFLAS.

40.8 It was the Applicant's case that the use of the PQASSO logo, and the wording used by the Respondent on his letterhead and LinkedIn profile, amounted to a claim to hold PQASSO accreditation, which was misleading. It was also its case that Respondent's claim in the Terms of Business dated 1 June 2014 to be subject to an audit in respect of PQASSO accreditation was false and misleading.

40.9 The Respondent claimed, in his LinkedIn profile, to be an "accredited member" of the Association of Military Courts Advocates (AMCA). A statement was filed and served by the Applicant from the Rt Hon Lord Martin Thomas of Gresford OBE QC, the Chairman of the AMCA. He stated that no one by the name of Alan Blacker or Lord Harley was or had been a member of the AMCA in the last three years. The AMCA did not accredit its members.

40.10 The Applicant's submission was that the Respondent had made inaccurate and misleading claims as to his accreditations, awards and memberships and that the claims to accreditations which were not in fact held, or to non-existent accreditations, relating to the provision of legal or other services or otherwise, were inaccurate and misleading. In the context of materials describing the Respondent's professional services amounted to a failure to act with integrity and/or a failure behave in a way that maintained the trust the public places in the Respondent and in the provision of legal services.

40.11 The Applicant made an allegation of failure to act with integrity in respect of each of the claims exemplified above. It was its case that in making these statements relevant to professional practice amounted to a failure to act with integrity in that it lacked steady adherence to an ethical code. Paragraph 67 of the Rule 5 Statement stated:

> "The allegation of a lack of integrity is supported by the following:
>
> - the claim to independent (PQASSO) accreditation as to service delivery, and use of the PQASSO logo awarded following independent verification, where such accreditation had not been awarded and an entitlement to use the logo did not arise;
>
> - the claim to be registered with the FCA to provide insurance mediation activities where no such registration exists;
>
> - the knowingly incorrect claim to membership of organisations (such as AMCA) capable of indicating, to potential purchasers of legal services, a degree of experience and proficiency in specialist areas;
>
> - a repeated failure to respond to queries raised by his regulator as to the legitimacy of the claims which he had made."

<u>The Respondent's Case</u>

40.12 The Respondent denied the allegation. At paragraphs 248 to 249 of his witness statement the Respondent stated, in respect of BIICL, that:

> "248. I joined the British Institute of International and comparative Law online and through my online membership of the LinkedIn group have submitted a number of entries called posts, which are articles and observations and in some cases narrative for other members of the group to read and discuss. My LinkedIn profile record disproves the view that I've not made any posts and that I was not a member.

249. It is an online community of which I've been a member and could only have made the posts I have by being accepted as a member. In any event it is neither a regulatory body nor professional institution; this is essentially a trade association and carries no academic weight or standing."

40.13 At paragraphs 285 to 287 of his witness statement the Respondent stated, in respect of AMCA, that:

"285. We have been a member of the AMCA for about three years having jined (sic) their online group; we do not say we are accredited by them, we are accredited by other military and ex-service bodies, we regularly post on the AMCA threads and receive enquiries from AMCA members

286. AMCA does nothing for its members and does not provide any real benefits but we joined so that others might find us and instruct us if they needed an agent firm or counsel.

287. We do not claim AMCA accredited us, we claim we have undertaken accredited training and indeed have been funded and provided with this training and materials by the publishers!"

40.14 At paragraphs 254 to 266 of his witness statement the Respondent addresses the position in respect of PQASSO. Paragraphs 254 to 263 stated that:

"254. I undertook the process of PQASSO through a training course with Rochdale Council for Voluntary Service and was recognised as working to level I standard by that organisation.

255. The officer in charge was Michelle Warburton.

256. I have confirmed with her that I am entitled to say what I do at paragraph 49 and confirm that she confirms that I am entitled to use the words PQASSO quality standard and say that we operate according to the PQASSO Quality Standard and that if the Charity Evaluation Service had anything to say about me they would have done so.

257. The rolling out of level two and three accreditation since I took initial accreditation has been under the NCVO, which probably has no knowledge of my charity.

258. The quality standard was awarded in three levels 1 to 3, level I (sic) at that time was a voluntary subscription to the 16 heads of quality under a manual which has since been enlarged but is essentially a global view of the areas of quality in which a charity can be assessed.

259. Having completed the training which was a necessary part of the process of being assessed you have to sign an agreement that you would maintain the charity within the bounds and standards of your training.

260. In return you are entitled to say that you operate according to the PQASSO quality standard, which is what we do.

261. We do not use any of the accreditation marks or logos and do not use the Charity Evaluation Services Logo.

262. I use the typeface logo *Pqasso* as per my entitlement.

263. It has been confirmed to me that I am keeping within the rules and can properly say I work under the PQASSO rules for preserving the quality standard."

40.15 The witness statement of Michelle Burton, a licenced PQASSO mentor who works for the Council for Voluntary Service, Rochdale was dated 5 January 2016 and produced by the Respondent. This stated at paragraphs 2 to 6 that:

"2 I have known Dr Blacker for around ten years and delivered his initial training for the Implementation of PQASSO, part of which included the receipt of PQASSO 3rd edition workbook. Dr Blacker underwent the Charity Evaluation Service PQASSO Mentor Licensed training. It is my belief that he is entitled to state on his website and correspondence that he works to the PQASSO quality standard, and is entitled to say this and use the word PQASSO as a marketing tool for his charity. He pretends no accreditation as this for his charity and he confirms to me he does not now nor ever has used any of the PQASSO accreditation marks, or logo's (sic).

3.I am not myself entitled to accredit organisations but I am however happy for you to say that you received training for implementation of PQASSO from CVS Rochdale and as a result of this you have completed the self assessment and are meeting the quality indicators at level 1

4. Accordingly he is working within the guidelines and continues to enshrine PQASSO guidance and the self-assessment framework in his law practice, been a registered charity in Rochdale and a member of CVS.

5. Alan assures me he has not nor ever will use the word accredited to reflect his adherence to PQASSO unless he was awarded such by the new accreditation body NCVO.

6. There is no mischief in him using the word PQASSO or referring to his form (sic) as working to standard."

The Tribunal's Findings

40.16 The Applicant produced evidence in respect of the Respondent's claims relating to the Royal Artillery Association, the Financial Conduct Authority, the term "Senior Trial Counsel" and the Royal College of Surgeons. The Tribunal did not make findings in respect of these claims. However the absence of findings does not mean that the Tribunal considered that these parts of the allegation could not be proved. The

Tribunal having made its findings detailed below did not consider it necessary to continue to make further findings in respect of any other claims.

40.17 At paragraph 248 of the Respondent's witness statement (set out at paragraph 40.12 above) he accepted that he only had online membership of the BIICL group. However his LinkedIn Profile stated that he was a "Member and Advisor" from January 2014 to present (10 months). The evidence of Professor McCorquodale was that he was not a member and was not an adviser and never had been. The Tribunal were satisfied beyond reasonable doubt that this was an inaccurate and misleading claim.

40.18 The Respondent's LinkedIn Profile stated under a heading "Professional Quality Assurance Scheme for Small Organisations" that "We collectively embrace PQASSO standards across our business model and consistently achieve outstanding six monthly audits". The witness statement of John Carlin stated that neither "Dr Alan Blacker & Co" nor "JAFLAS" had been awarded with the PQASSO Quality Mark, had not been externally assessed against the PQASSO standards. Further that the term "outstanding" was not used as a PQASSO standard indicator scoring option. The Tribunal accepted that evidence as true.

40.19 The client care letter commencing at page 277 of the Respondent's bundle had the "PQASSO" logo on the bottom right hand corner and at page 289 stated, under the heading "Confidentiality" "We are accredited to quality standards, PQASSO the Practical Quality Assurance Standard for Small Organisations" and went on to state "External auditors from these organisations will from time to time carry out confidential inspections to ensure that we continue to maintain our high standards". Whilst this letter is dated 9 July 2016 and outside of the time frame of Allegation 1.5 the Tribunal considered that this evidence produced by the Respondent undermined the explanation provided in his witness statement, because it stated that external auditors from PQASSO might look at their files. Further the evidence from Michelle Warburton produced by the Respondent (and set out at paragraph 40.15) is contradicted by the documentary evidence.

40.20 In addition the Terms of Business provided to the FIO by the Respondent stated that "We have achieved the PQASSO Quality Standard. Each year the firm is subject to an audit in respect of this award. As part of this process, the auditors will ask to consider individual files of papers to ensure that we are complying with our own strict internal procedure and supervision standards". The Tribunal was satisfied beyond reasonable doubt that this was an inaccurate and misleading claim.

40.21 The Respondent's LinkedIn Profile stated under a heading "Accredited Member" "Association of Military Court Advocates 2012 Civil Rights and Social Action". The witness statement of the RT Hon Lord Donald Thomas of Gresford OBE QC (dated 22 July 2015) stated that the AMCA had never accredited its members and that no one by the name of Alan Blacker, Lord Harley or similar was or had been a member of the AMCA in the last three years. The Tribunal were satisfied beyond reasonable doubt that this was an inaccurate and misleading claim.

40.22 The Tribunal then considered whether the Respondent had breached Principles 2 and 6. Applying ***Scott*** the Tribunal was satisfied that the Respondent had breached Principle 2 and had not acted with integrity. The inclusion of the inaccurate and

misleading claims as to appointments or accreditations awarded by, or memberships of, organisations did not demonstrate moral soundness or steady adherence to a moral or ethical code.

40.23 If a solicitor stated on a document that was available to any member of the public on LinkedIn that he had certain appointments, accreditations or memberships these statements should be correct. It had been found that the Respondent had made inaccurate and misleading claims. The Tribunal did not consider that the Respondent had behaved in a way that maintained the trust the public placed in him and in the provision of legal services. Allegation 1.5 was found proved beyond reasonable doubt.

41. **Allegation 1.6 - Between 2011 and August 2014, made or caused or allowed to be made, claims to be entitled to use titles which were inaccurate and misleading, and in doing so breached Principles 2 and 6 of the Principles.**

The Applicant's Case

41.1 The Applicant submitted that the Respondent had adopted the post-nominal letters KGCStJ and claimed to hold the "decoration" of the "Order of St John" in various publications and documents including his LinkedIn profile and in the letterhead used by the Respondent. The Respondent further claimed, before the Cardiff Crown Court, to have served as an officer in the St John Ambulance Service.

41.2 The Respondent had denied that the use of the letters KGCStJ amounted to a claim to hold the title of "Knight of Justice of the Order of St John". However, in the Respondent's Response of November 2014 he had not sought to explain his use of the title "Order of St John Knight of Justice" in his LinkedIn profile.

41.3 A statement had been provided by Vice-Admiral Sir Paul Lambert KCB, Secretary General of the Order of St John. He explained that no-one by the name of Alan Blacker or Lord Harley appeared on the membership roll of any of the eleven worldwide priories of the Order of St John. These included England, Scotland, Wales, Northern Ireland, Australia, Canada and the USA.

41.4 The Applicant's case was that the Respondent had sought to adopt titles, including during the course of his professional practice, to which he had no entitlement and that the inaccurate claims to titles, when made during the course of and for the purpose of the provision of legal services, or in materials describing the Respondent's professional services, amounted to a failure to act with integrity and/or a failure behave in a way that maintained the trust the public places in the Respondent and in the provision of legal services.

41.5 In particular the Applicant brought an allegation of failure to act with integrity in respect of the claim to hold a Knighthood or title similar to or pertaining to the "Order of St John". The Applicant did not accept that the Respondent was a member of the Order nor that he had ever been a member. It was its case that making statements concerning appointments or titles, in a public forum and in relation to or during the course of professional practice, amounted to a failure to act with integrity in that it lacked steady adherence to an ethical code.

The Respondent's Case

41.6 The Respondent denied the allegation. The Respondent's case was set out at paragraphs 302 to 313 of his witness statement, paragraphs 302 to 313 stated:

> "302. The allegation is false. I am and remain an officer of the Order of St John, an official order dating back to the eleventh century.
>
> 303. The papers set out by the English order, which was created in 1880 is not the same order and is a manufacturing of the British Crown to reward civil servants of lower ranks such as Lord lieutenants and such like for public service; whilst carrying a knighthood they are not entitled to prefixes of honour.
>
> 304. The suggestion that the order of St John and the Venerable Order of of (sic) St John are the same body is untrue, the Order of St John has never ceased to be in existence and the evidence in the bundle shows by the orders management to try and attach itself to the original orders history is a farce.
>
> 305. The difference in post nominal letters and ranks clearly indicates my knighthood as being distinct from the modern English model, nothing whatsoever to do with the original Order.
>
> 306. I have never claimed association with the modern English order as it is a political vehicle and the st john (sic) ambulance organisation treats its members appallingly, as per the exhibits and witness evidence.
>
> 307. For the modern English order to suggest it has been around for 900 years is utterly false and a lie; it is as if they have bought a company off the shelf and started trading saying they have been trading since the original firm was registered; clearly pompous rubbish.
>
> 308. I have been an officer of the St John Ambulance Brigade but went on to more professional qualifications and left the organisation when the branch at Heywood closed. I found the brigade to be amateurish and filled with emotionally and intellectually damaged people.
>
> 309. Most organisations use private ambulance services now and st john (sic) is not competitive, as they are simply not qualified enough. First aid simply doesn't cut it in the public protection field now, I have a FREC level five award, the highest st john (sic) offer is FREC 2.
>
> 310. I did receive the service medal of St John, but contrary to the comments of the St John, this is not awarded after fifteen years' service, it can and is awarded for single acts of service or for differing periods of service per se. It is not a long service medal, it is a service medal.
>
> **311.** The English order tried to issue an injunction and when they were told to get on with it and I served them with Part 18 notices, they decided to drop the

> whole affair, if they cannot bring a civil case, **how can this tribunal then consider their evidence under a criminal burden?**"

41.7 At paragraph 39 the Respondent stated:

> "39. My reputation is amplified in the annotated remarks and endorsements made on Linkedin (sic) and by personal references made about me; none more so that my nomination for an honour and my eventual receipt of a Knighthood and several other awards and decorations made by nomination."

The Tribunal's Findings

41.8 The Tribunal considered the evidence put forward by both the Applicant and the Respondent. The Tribunal paid particular attention to the witness statement of Vice-Admiral Sir Paul Lambert, KCB noting that at paragraph 3 he stated:-

> "The Order of the Hospital of St John of Jerusalem is over 900 years old and originated in a hospice founded in around 1070. The history of the Order of St John is very detailed, but from these origins, the modern Order of St John in England was granted a Royal Charter by Queen Victoria in 1888'

41.9 The Tribunal was satisfied that Vice-Admiral Sir Paul Lambert KCB's evidence addressed the defence put forward by the Respondent. The Respondent stated at paragraph 302 that he was an officer of the order dating back to the eleventh century and at paragraph 305 he stated "The difference in post nominal letters and ranks clearly indicates my knighthood as being distinct from the modern English model, nothing whatsoever to do with the original Order.". The Tribunal preferred Vice-Admiral Sir Paul Lambert KCB's evidence to the assertions of the Respondent. The Respondent had proffered no evidence of connection with the ancient order which he said had conferred a knighthood upon him, whereas the Applicant had produced compelling and exhaustive evidence that the ancient order had sought Royal Charter Status in the 19th Century and been accorded that status and utilised it thenceforth.

41.10 There was no evidence before the Tribunal that the Respondent had received a knighthood as asserted at paragraph 39 of his witness statement. The Tribunal limited its findings in respect of allegation 1.6 to the use of the post-nominal letters KGCStJ. The Tribunal was satisfied, beyond reasonable doubt, that the Respondent had no entitlement to use these letters. He is not a Knight of St John.

41.11 Principle 2 requires that a solicitor must act with integrity. The Tribunal did not consider that using the letters 'KGCStJ' without entitlement was acting with integrity and nor was it behaving in a way that maintained the trust the public placed in the Respondent and in the provision of legal services. The public would not expect a solicitor to hold himself out as a member of an Order of which he was not a member, let alone as a Knight of that Order. Allegation 1.6 was found proved beyond reasonable doubt.

42. **Allegation 1.7 - On 28 August 2014, while appearing before His Honour Judge Wynn Morgan at Cardiff Crown Court, recklessly misled the Court and in doing so breached Principle 2 of the Principles and failed to achieve Outcome O (5.1) of the SCC.**

42.1 Principle 2 is set out above. Outcome O (5.1) states that "You do not attempt to deceive or knowingly or recklessly mislead the court".

The Applicant's Case

42.2 The Applicant's case was that before the Crown Court at Cardiff on 28 August 2014, the Respondent claimed that his "regimental association" had funded part of his legal education. On the Respondent's LinkedIn profile he claimed to be the Branch Secretary and Honorary Colonel of 24th Batt. (Irish) and 1st Btn of the Royal Artillery Association.

42.3 The membership secretary of the Royal Artillery Association, Mr Allan Solly stated in his witness statement that the Respondent did not hold a secretarial, managerial or ceremonial role in the Royal Regiment of Artillery or Royal Artillery Association. Mr Solly further stated that financial assistance in respect of education would be paid by the Royal Artillery Charitable Fund and, according to the database held in respect of recipients of financial support, the Royal Artillery Charitable Fund had not made any contribution towards the Respondent's legal or other education.

42.4 The Applicant's position was that the Respondent therefore caused the Court to be misled in the submissions which he made to the Court. An allegation of failure to act with integrity was made in respect of the claim. It was the Applicant's case that making a statement to the Court as to a matter within the Respondent's own knowledge which was not accurate amounted to a failure to act with integrity in that it lacked steady adherence to an ethical code. The Respondent was being questioned by a Judge, following proceedings in which he had appeared for a party, and it was the Applicant's case that the Respondent should have ensured that any statements made on matters within his own knowledge, in response to such questions, were accurate. In making a statement which was not accurate, and in failing to correct the inaccurate statements once it had been made, the Respondent failed to act with integrity.

The Respondent's Case

42.5 The Respondent denied the allegation. The Respondent's case was that during the trial in question he attended Court wearing a solicitor's stuff gown and on the right-hand sleeve at the bottom on the inside of the sleeve wore a small badge, the cipher of his regiment with which he said that his family had been associated since its inception. He said that additionally, he wore a discreet number of medal ribbons which were very dark, worn in an appropriate fashion in the correct order (in very minute bands in size) and according to all protocol. These were for daywear and resembled those worn on uniform when the actual metals were not worn.

42.6 After sending the Respondent's client down, the Judge asked the Respondent a number of questions which the Respondent stated that he answered diligently. The Respondent's witness statement explained that this was done in front of the jury and in a full courtroom. Paragraphs 315 to 317 of the Respondent's witness statement stated:

"315. I never told the court the RAA funded my legal training as it indeed did not; whilst allied to the Regiment and a full member of an association branch, my regiment is somewhat different.

316. A charitable grant to my legal studies was applied for under the process of almonisation, by Blanche Turner of SSAFA Forces Help and five hundred pounds was given to me by my regimental association.

317. As a regimental officer and standard bearer and parade marshal I have been responsible for over a hundred military funerals and other parades, clearly ceremonial duties and clearly as a branch secretary I have a secretarial role."

The Tribunal's Findings

42.7 The transcript of the conversation between the Respondent and Judge Morgan was before the Tribunal. The Judge had asked the Respondent about the badges attached to his gown. In answering, the Respondent informed the Judge that he had the badge of his regimental association and that they had "paid for a substantial part of my education in the law and as an advocate". The Judge had responded "All credit to them, I am sure." The information as to the payment for the Respondent's education was irrelevant. This was not the information that the Judge had requested. It was gratuitously provided, by way of a bit of flummery.

42.8 The Tribunal did not like the idea of a solicitor providing incorrect information and did not have before it any evidence to substantiate that the regimental association had paid for a substantial part of the Respondent's education in law and as an advocate. However, the allegation before the Tribunal was that on 28 August 2014, while appearing before His Honour Judge Wynn Morgan at Cardiff Crown Court, the Respondent recklessly misled the Court and in doing so breached Principle 2 of the Principles and failed to achieve Outcome O (5.1) of the SCC. The allegation was not whether or not what was said was untrue, but that as a result of what was said the Judge was recklessly misled. The Tribunal was not satisfied beyond reasonable doubt that the Respondent had recklessly misled the Court. There was no evidence that the Judge was interested in this piece of information let alone recklessly misled by it. Accordingly, Allegation 1.7 was found not proved.

43. **Allegation 1.8 - Between March 2015 and June 2015, failed to co-operate with the SRA, and in doing so breached Principle 7 of the Principles and SAR 31.1 and failed to achieve Outcomes 0(10.6), O(10.8) and O(10.9) of the SCC.**

43.1 Principle 7 of the Principles requires that a solicitor must comply with her or his legal and regulatory obligations and deal with her or his regulators and ombudsmen in an open, timely and co-operative manner.

43.2 Outcome 10.6 requires that a solicitor "co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you;"

43.3 Outcome 10.8 requires that a solicitor must "comply promptly with any written notice from the SRA" and Outcome 10.9 requires that:

> "pursuant to a notice under Outcome 10.8, you:
>
> (a) produce for inspection by the SRA documents held by you, or held under your control;
>
> (b) provide all information and explanations requested; and
>
> (c) comply with all requests from the SRA as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away;
>
> in connection with your practice or in connection with any trust of which you are, or formerly were a trustee;"

The Applicant's Case

43.4 The FIR of Alice Evans dated 1 June 2015 provided a detailed account of the communication between the SRA and the Respondent during the course of the SRA's investigation. This is set out at paragraphs 36.2 to 36.3 above in respect of allegation 1.1. Following the refusal of the Respondent's request to postpone a meeting scheduled for 16 April 2015, an email was received from an email address carrying the Respondent's name asserting that the Respondent had been injured "performing CPR" and would be unable to attend the meeting. The ensuing correspondence was recited in the FIR; in brief the Respondent declined to meet with the FIO and claimed to be recuperating from his injuries until going on a 10-week holiday. Paragraphs 67 to 70 of the FIR stated:

> "67. The Officer received a response in Wednesday 15 April 2015, a copy of which is attached at Appendix G22. The email said-
>
> > "Dictated
> >
> > Which part of "injured" do you not understand?"
>
> 68. The Officer's reply of Wednesday 15 April 2015 is attached as Appendix G23. The email stated –
>
> > "Dear Sir/Madam,
> >
> > I am assuming that you yourself person taking the dictation and sending the emails are not injured, and was enquiring whether, in Dr Blacker's absence, the documents requested can be made available from the firm's records by someone other than Dr Blacker.
> >
> > Can you also confirm in which court Dr Blacker was appearing, and which client/matter he was representing.

Kind regards,"

69. The Officer received a response on Wednesday 15th of April 2015, a copy of which is attached at Appendix G24. The email stated –

> "I am a carer on Dr Blacker's phone. Dr Blacker is finally asleep."

70. The Officer received a further email on Wednesday 15 April 2015, a copy of which is attached at Appendix G25. The email stated –

> "I have just spoken with Dr Blacker who tells me to inform you that the documents you have asked for will be with you by Tuesday. Dr Blacker is resting from his ordeal until next week."

43.5 Ms Evans gave evidence to the Tribunal that she had met with the Respondent in a downstairs interview room and had the Respondent offered her the opportunity to view his office she would have done so. She acknowledged that she had been invited to a Trustees meeting but had declined as there was nothing that she needed to ask the Trustees that she could not ask the Respondent. She did not recall being offered the opportunity to view the computerised case management and client care paperwork but said that had she been offered this opportunity she would have taken up the offer.

43.6 Ms Evans denied that she had wasted six hours of the Respondent's time and had decided not to visit. The visit had been postponed because the Respondent had said he would be in bed until Tuesday and would not be available. Ms Evans stated that if the Respondent had offered to show her his qualifications she would have declined as she would not have been qualified to determine them by looking at the certificates.

43.7 At the date of the Rule 5 statement the Respondent had not provided to the SRA the documents requested. The Respondent claimed to hold several waivers from the SRA but declined, despite requests, to produce them unless the SRA placed an advertisement in the Law Society Gazette claiming that the Respondent's practice had received a "clean bill of health".

43.8 The Respondent had stated in his witness statement that Ms Evans had failed to provide responses to his request for a waiver. Ms Evans explained, in evidence, that she was not the person who could grant this request and she had forwarded an email from the Respondent enquiring as to how to apply to the supervision department who had responded to the Respondent copying in Ms Evans. The Respondent had had the details he required, not from Ms Evans but through her.

43.9 The Respondent was asked to provide copies of his bills or other notifications of costs. He failed to do so. Under cover of a letter dated 1 May 2015, a Notice was served on the Respondent by the Solicitors Regulation Authority pursuant to S44B of the Solicitors Act 1974 requiring him to provide information and documents. The Respondent failed to comply with that Notice, within the time specified or at all.

43.10 The Respondent acknowledged receipt of the letter by which the S44B Notice was served, in a letter sent to the SRA on 14 May 2015. The Respondent's non-compliance with the S44B Notice was deliberate and flagrant. In the final paragraph of the letter referred to above, it is stated that a "substantive response" would be provided only after the satisfaction of the pre-conditions which the Respondent purported to impose. No entitlement to impose such pre-conditions on compliance with a S44B notice arises, whether under S44B of the Solicitors Act 1974 or otherwise, and, by failing to comply with the S44B Notice, the Respondent breached his obligations to co-operate with the SRA and to comply with Notices and requests for information made of him by the SRA.

43.11 The Applicant's position was that the Respondent had therefore failed to co-operate with the SRA and had failed to provide documents requested by the SRA.

The Respondent's Case

43.12 The Respondent denied the allegation and asserted that he had fully complied with his regulator. He set out in his witness statement what he had done to co-operate. At paragraphs 99 to 103 of the Respondent's witness statement he stated:

> "99. Much as what has actually been published today got back to the SRA who followed a similar line and instead of actually engaging with me properly and with diligence and in a civilised fashion, they jumped to conclusions and without seeking comments over a period of almost 12 months. They would bring an allegation then ask me to get out of it; if they were doing the job properly they would seek my comments them raise an allegation.
>
> 100. During which time I gave proper answers and had given detailed explanations as to why they are wrong why my bona fides are correct.
>
> 101. I was sent three bundles of allegations with a twenty eight day response time; I responded by email the very next day with full answers. (This is noted by the SRA in their documents)
>
> 102. In addition I was visited by the SRA who failed to come up into my office and see my qualifications and refused to attend the trustees meeting which had been arranged for them that evening whereby they could speak to my Trustees in camera and asked them any questions they wish to have answered.
>
> 103. In addition copies of my accounts were laid out for them and access to my computerised accounting system made available despite all this they refuse point-blank."

43.13 At paragraphs 123 and 124 of the witness statement the Respondent stated:

> "123. When the SRA came to visit me at my premises I saw them in the downstairs interview room, I invited them up into my office to see my certificates and my files and my general layout and they refused. This is another illustration of their bad faith as many of the allegation raised could have been quashed had they done so.

124 They also refused to attend the trustees meeting which was organised for the day that the SRA attended specifically so that they could ask trustees questions and dispose of any accounts or financially related issues that they wish to do so. Their point-blank refusal is another illustration of their bad faith.

125. I offered to show them my computerised case management and client care paperwork system but they refused. This is another illustration of the bad faith.

126. Dealing with paragraph 10 of the allegation you will see that I've substantially and fully answered every question put to me and you will notice that rather than using the entire allocation of time I responded the following day on many occasions. I also provided additional evidence and information of work to seek additional information which will assist the tribunal."

43.14 Paragraphs 128 to 131 are set out at paragraph 36.9 above in respect of the Respondent's response to the request for various financial information. The Respondent's witness statement further stated at paragraphs 132 to 137 that:

"132. Dealing with paragraphs 14 and 15 the initial visit was without notice and despite this I gave up attendance at an important medical appointment to attend so that I could dispose of the enquiry being made of me.

133. I was not prepared to have further incursion into my time having had a first initial meeting I was unimpressed by the level of commitment the SRA will (sic) showing despite having made several offers of further information they refused to cooperate.

134. I organised an emergency meeting with the trustees so they could interview them in camera or with myself in attendance; they point blank refused on three occasions even when I urged them most forcefully.

135. I couldn't therefore see what another visit would achieve.

136. I further felt it was unqualified and unnecessary incursion into my limited resources time and energy to allow them to waste yet more time when what they could have requested could be put in writing, and indeed having asked them to do so I responded punctiliously with that evidence.

137. This was a matter of the design and have their treated with courtesy and respect in the first instance a second meeting would have been completely unnecessary."

43.15 And at paragraphs 189 and 190 stated:

"189. Additionally when Alice Evans asked for a second appointment I had to chase her for a list of documents she wanted to see, I have evidence of six emails chasing her and in the end, having exhausted myself she finally replied with a list. To this request I responded: "It is not going to be possible to provide this material by Thursday as many files are not with me and are at

NTT [the governments national taxing team either at Manchester Birmingham or London] and in addition my time is consumed by a trial this week. I recommend postponing the meeting until I have been able to produce the copy documents in a bundle. Additionally some documents will have to be ordered."

190. In the end she decided not to come. Having wasted six hours of my time before deciding not to bother."

43.16 In paragraphs 321 to 323 the Respondent stated:

"321. In respect of failing to cooperate with our regulator, this is facile, it is them who have not cooperated; they have made false assertions which are easily disproved, simply by referring to their own materials, rules or their emails to me. The Accreditation and PQASSO assertions are two of those easily proven to be false.

322. In addition I sent Alice Evans an email, in it I reiterated what I had done to cooperate.

323. This is published below: -

Let us refresh our memories on the situation for a moment, following your formal visit, I was asked for copies of my current files and bank statements for the last six months. I provided voluntarily: -

1. The entire files including financials on the cases which were currently open;

2. Bank statements from the start of my bank accounts, going back several years; with some statements missing but these were updated latterly;

3. I have provided a full history of our insurance position, though you did not ask for such information;

4. I have entered into a formal statement which your colleague wanted to try and stop me from making, on three occasions, and was forced eventually to take;

5. I have been regularly audited by my trustees who all see the bank statements at each board meeting and who scrutinise my conduct of cases;

6. I have told you all about how we operate according to a heightened office procedure manual which enables me to hand over my law firm intact at a moment's notice should I die or be injured or fall ill and etc;

7. I have provided our three client care brochures and client care letters;

8. I have provided details of how cases are managed;

9. I have detailed my route to qualification; even though you should know it;

> 10. I have provided details of numerous credentials and waivers and other such information, which you were reluctant to engage me with;
>
> 11. And I have made a solemn promise that you can come and see me by appointment each year if you so wish, to suggest improvements, recommend activities or actions I could implement or make suggestions about how my practice records its handling of client affairs including client money.
>
> 12. I have asked for a waiver from rule 32 under either exception x which details the exemption for in-house law firms or by the protocol for exemption by discretion on the basis we handle so little client money it is commercially unsound for us to engage an accountant for what is a paltry matter both in terms of transactions and value."

43.17 The Respondent had stated that he was unable to meet with Ms Evans due to being injured whilst performing CPR. The Respondent had filed a statement purportedly from a Mrs Brodie dated 20 November 2015 which confirmed that she had "recently this year" called upon him to perform emergency life-saving techniques, upon a casualty who had suffered a heart attack in Court whilst the Respondent was visiting the court building. The Respondent's position was that he was significantly injured by the incident and was at home in bed rest.

The Tribunal's Findings

43.18 The Applicant had asked the Respondent for information in relation to the CPR incident at Court for a considerable period of time. Despite the witness statement of Mrs Brodie being dated 20 November 2015 it was only provided to the Tribunal in early July 2016. In any event this witness statement did not state when the Respondent had been called upon to perform CPR – it stated "recently this year". There was no evidence that this occurred in April 2015. The Respondent had not complied with Ms Evans' requests for information in response to the emails she received from the Respondent in relation to this incident. Generally, the Respondent had not produced the requested evidence at the required time.

43.19 The Respondent had not provided accounts records on the basis that all client care information was privileged (though it is not, from the professional regulator). The Applicant had never received the accounts information requested despite the fact that the Respondent had accepted that he was holding money as a non-professional trustee for a close family relative. The Respondent had not produced evidence of his qualifications despite stating in his witness statements that his certificates were available for inspection at his offices.

43.20 At paragraph 151 of his witness statement the Respondent stated:

> "151. There have been substantial press coverage of the trial at Cardiff and the SRA's actions thereafter and it was necessary for me to preserve the position of the charity in respect of its performance on record so that the public could have confidence in continuing to use the charity for vulnerable people, in order to do this I demanded that I would be given a clean bill of health for the financial management of the charity and in return I would hand up copies of

the waivers which the SRA said they had lost, they had not told me they had lost their records and publish this information online and in response to Freedom of information requests in breach of the Data Protection Act. They published in the media that they had lost the files and I offered to replace them in order to secure a reputation hard fought for."

43.21 The Tribunal considered that the Respondent's proposed co-operation in respect of the production of the waivers was expressed to be conditional. This was not the action of someone who was co-operating with his regulator.

43.22 The Tribunal was satisfied that between March 2015 and June 2015, the Respondent failed to co-operate with the SRA, and in doing so breached Principle 7 of the Principles and SAR 31.1 and failed to achieve Outcomes 0(10.6), O(10.8) and O(10.9) of the SCC. Allegation 1.8 was found proved beyond reasonable doubt.

44. **Allegation 2 - Acted dishonestly in respect of the matters set out at paragraphs 1.4 and 1.5 above or any of them. Whilst dishonesty is alleged in respect of allegations 1.4 and 1.5 above, proof of dishonesty is not an essential ingredient for proof of any of the allegations.**

The Applicant's Case

44.1 The Applicant submitted that the Respondent's actions were dishonest according to the test laid down in Twinsectra v Yardley and others [2002] UKHL 12. The Twinsectra test requires that the person has a) acted dishonestly by the ordinary standards of reasonable and honest people and b) realised that by those standards he was acting dishonestly.

44.2 The Applicant's position in respect of Allegation 1.4 was that an allegation of dishonesty was made in respect of the Respondent's claims, or any of them, to hold "first class honours" qualifications from LMU and MMU and a DPhil. It was the Applicant's case that a reasonable and honest person would regard as dishonest a solicitor holding himself out as holding academic qualifications of a type of standing which he did not hold, particularly where such qualifications had a bearing on his professional practice. It was the Applicant's case that the Respondent knew, and must have known, that a reasonable and honest person would regard such conduct as dishonest, particularly by reference to the degree of reliance placed on such qualifications by the Respondent in published materials.

44.3 The Applicant also made an allegation of dishonesty in respect of Allegation 1.5 and the Respondent's claims, or any of them, to be a member of the BIICL, an accredited member of the AMCA, and to hold PQASSO accreditation. It was its case that a reasonable and honest person would regard as dishonest a solicitor holding himself out as holding accreditations, awards and memberships which had a direct bearing on his professional practice, and where they were recited in documents created in order to inform readers of and publicise the Respondent's professional practice. Further, the Applicant submitted that the Respondent knew, and must have known, that a reasonable and honest person would regard such conduct as dishonest, particularly by reference to the degree of reliance placed on such accreditations and memberships by the Respondent in published materials.

44.4 In addition at Paragraph 70 of the Rule 5 Statement it stated:

> "70. The SRA relies on the following in support of the allegation that the subject (sic) element of dishonesty is made out:
>
> - the Respondent was aware that the claims which were made were highly relevant to his professional practice;
>
> - the Respondent held himself out as experienced in acting for military personnel, and the false claim to membership of and "*accreditation*" by the AMCA was capable of inducing clients to instruct the Respondent in reliance on a level of expertise and experience implicit in the claimed membership;
>
> - the claim to independent (PQASSO) accreditation as to service delivery, and use of the PQASSO logo awarded following independent verification, was made in the knowledge that such accreditation had not been awarded and an entitlement to use the logo did not arise;
>
> - the claim in JAFLAS's Terms of Business dated 1 June 2014 that it is subject to an audit in respect of its PQASSO accreditation was made in the knowledge that no such audit or review has ever been carried out by or on behalf of NCVO."

44.5 Mr Levey submitted that no-one could honestly say that they hold important academic qualifications that they do not hold. This was not a case where the Respondent was objectively but not subjectively dishonest. The Respondent had not exaggerated a little bit. He knew what he was doing was dishonest. The Respondent stated he had these important qualifications and if he did not have them, which the Applicant said he did not, this was dishonest. The Respondent was not present to be cross-examined on his claim that he was not dishonest.

44.6 There was the possibility that if he was so deluded that he believed his claims to be true that he may not be subjectively dishonest but in considering that possibility Mr Levey drew the Tribunal's attention to paragraph 213 and 214 of the Respondent's witness statement which stated:

> "213. I have not and will not produce details of my lecturers other than through a private note to the tribunal as along with many other of my associates my academic contacts have been subjected to rigorous abuse by members of the press and notwithstanding that that might be legitimate, there have been several other imbeciles from websites such as lawbytes and Legal Cheek which I will discuss later whose only interest is to cause mischief and nuisance. I will not expose these professionals to such abuse.
>
> 214. Accordingly all of my academic qualifications and indeed every other elements of my profile are correct and properly identified."

44.7 The Respondent was asserting that he had these qualifications and could prove this but would not provide the information. In respect of dishonesty Mr Levey's submission was that if it looked like a duck, quacked like a duck and swam like a duck then it was a duck. Accordingly, he invited the Tribunal to find that the objective and subjective limbs of Twinsectra were satisfied.

The Respondent's Case

44.8 The Respondent denied the allegation. The Respondent's witness statement at paragraphs 332 to 340 stated:-

> "332. The allegations are said to point to dishonesty on the part of the respondent, this is strenuously denied.
>
> 333. By rebuttal bad faith is pleaded.
>
> 334. Bad faith arises where an allegation is carried forward from the point the accuser is notified of their error or lack of knowledge and they decide to pursue those allegations.
>
> 335. There are over a dozen examples of bad faith in this case and these are signposted in each case.
>
> 336. Since no material, fiscal or social benefit has been derived from any of the activities of the charity and saving the return of some out of pocket expenses, there has been no fiscal or pecuniary benefit derived, it is hard to understand how one can suggest any level of dishonesty.
>
> 337. Dishonesty is dealt with in a two stage test; first it must be discovered if the ordinary person of sound mind and reasonable business acumen would find the behaviour of the accused dishonest; since the respondent has complied with every regulatory requirement and has provided more information that requested it cannot be said that he has failed to cooperate, furthermore he has complied demonstrably with statutory and good practice requirements to have regular audits, publish accounts and make returns to his two statutory regulator, without fault.
>
> 338. In addition I have surrounded himself with practitioners who have a low tolerance for risk and as they have several years' experience in the legal industry would not tolerate anything but minor and genuine deviations from minor regulatory requirements, where it was felt this best served the interests of justice.
>
> 339. Secondly, the test requires that if the answer to the first test is no, it is not dishonest; did the accused know it to be dishnoset (sic). Since he was constantly seeking the advice and formal written advice at that, he has complied with that advice from his regulator. Being that he sits in an unusual position under rule 4, and is described by his regulator as "operating an unusual practicing arrangements; the basis on which he currently practices to

> be PFR's compliant [and will remain so until in-house firms become regulated.]
>
> 340. Accordingly, how can anyone find him dishonest when he is accused of breaking rules and then he refers the regulator to letters telling him he is not bound by those rules and that what he is doing is compliant and acceptable?"

The Tribunal's Findings

44.9 Applying the objective limb of Twinsectra the Tribunal had to be satisfied beyond reasonable doubt that the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. The Tribunal had found Allegations 1.4 and 1.5 proved beyond reasonable doubt. These allegations were that between 2011 and August 2014 the Respondent made, or caused or allowed to be made (a) statements concerning his academic qualifications which were inaccurate and misleading and (b) claims as to appointments or accreditations awarded by, or memberships of, organisations which were inaccurate and misleading. The Tribunal considered that this was clearly dishonest by the ordinary standards of reasonable and honest people.

44.10 The subjective limb of Twinsectra requires the Respondent to have realised that by the ordinary standards of reasonable and honest people he was acting dishonestly. The Respondent had denied dishonesty. The Tribunal asked itself whether if the Respondent believed his own "propaganda" the subjective limb of the Twinsectra could be satisfied. The Tribunal was mindful that this was not the Respondent's case.

44.11 The Tribunal considered Uddin v The General Medical Council [2012] EWHC 2669 (Admin). At paragraph 31 of the Judgment it states:

> "31. The second observation to bear in mind is that even in the criminal context it is not general practice to give the so-called Ghosh two-part direction. In many cases, the advice which is given now by the Judicial College to judges who sit in the Crown Court is that no direction is required on the meaning of dishonesty. One context in which the twofold Ghosh direction may be required is where, on behalf of a defendant in criminal proceedings, an issue is raised whether he or she realised that the conduct charged was dishonest by the standards of reasonable and honest people. In many cases, there will be no such issue of fact raised. It will be perfectly apparent that if the conduct alleged did take place then it clearly was dishonest. The real issue in many cases may be whether the conduct took place and with what state of mind. For example, was a false representation made? But even if it was, was it done knowing that it was false or may it have been, for example, innocent or even a negligent mistake?"

44.12 The Tribunal concluded that in the Respondent's witness statement he started to modify his position and that this indicated a rational understanding of the position. The Tribunal was particularly mindful of the Respondent's explanation in respect of BIICL at paragraph 248 of his witness statement (set out at paragraph 40.12 above) and the explanation in respect of the funding from his regimental association at paragraph 316 of his witness statement (set out at paragraph 42.6 above). Further at paragraph 197 of his witness statement the Respondent stated:

> "197. It is taken for granted that experts would necessarily check up on a person's credentials so that they can satisfy themselves that the individual is bona fide. So that when I say that I am an expert in child welfare they would be able to make relevant checks of the organisations I express to be a member of by way of checking up with those organisations."

44.13 At paragraph 240 of his witness statement the Respondent offered a different explanation:

> "240. Each accreditation on LinkedIn is verified by the connecting body, so if you say you are a member of The Law Society for instance, they receive an email asking them to verify your entry, accordingly each entry is verified."

44.14 The fact that it did not appear that the Respondent had gained any, or at most limited, fiscal or pecuniary advantage was irrelevant. The suggestion that somebody would verify the credentials for themselves or that each accreditation on LinkedIn would be verified by the connecting body was irrelevant. Nobody qualified as a solicitor could think it was honest to make, or cause or allow to be made (a) statements concerning his/her academic qualifications which were inaccurate and misleading and (b) claims as to appointments or accreditations awarded by, or memberships of, organisations which were inaccurate and misleading. The Respondent had not made an innocent or negligent mistake. This was not a case where there was one minor inaccuracy. The Tribunal were satisfied that the subjective limb of Twinsectra was met and found Allegation 2 proved beyond reasonable doubt. The Respondent said both that LinkedIn would verify academic claims and also that those who read the claims would themselves check them. This dichotomy epitomised the dishonesty of the Respondent.

Previous Disciplinary Matters

45. None.

Mitigation

46. The Respondent did not attend the hearing. His witness evidence was before the Tribunal. The Respondent's witness statement did not have a statement of truth in the standard format but stated at paragraph 3 that "Where the facts are within my knowledge, they are true. Where they are not within my own knowledge, they are true to the best of my information and belief" and after paragraph 358 stated "This is my statement, made as a peer of the realm and a knight of the Order of St John, and as an officer of the Supreme Court, true, clear, precise and unequivocal" . The witness statement was fully taken into account. However, no mitigation had been provided by the Respondent who had denied all of the allegations. There were numerous references to the Respondent's health in the documentation before the Tribunal but there was no medical evidence before the Tribunal. Given this, the Tribunal did not consider the Respondent's health as a mitigating factor.

Sanction

47. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction.

48. The Respondent was entirely culpable for his misconduct. The Respondent's motivation for the misconduct appeared to be self-aggrandisement. The misconduct was planned. The Respondent did not act in breach of a position of trust but had complete control of and responsibility for the circumstances giving rise to the misconduct. The Respondent purported to have a considerable level of experience. Any harm caused was unknown but the potential for harm to be caused was substantial. If the Respondent's practice continued and expanded the lack of accounts was a significant risk. The Respondent's actions had harmed the legal profession's reputation – he had made it a laughing stock. The harm caused was totally foreseeable.

49. Aggravating factors were that dishonesty was alleged and proved; the misconduct was deliberate, calculated, repeated and had occurred over a period of time. The misconduct had been getting worse over time. Although there was no evidence that the Respondent had taken advantage of a vulnerable person there was a significant risk. JAFLAS held itself out as providing services to the armed forces and former military personnel who might be vulnerable. The Tribunal considered that the Respondent had concealed his wrongdoing and had tried to bluff his way out of the situation. He must have known that his conduct was a material breach of his obligations to protect the public and the reputation of the profession. There were no mitigating factors. The Respondent had not demonstrated any insight and had not co-operated with his Regulator. While he had engaged with the process, his involvement had been almost wholly negative.

50. The Tribunal assessed what sanction to impose, starting from no order. Given that dishonesty had been alleged and proved the Tribunal moved swiftly through the lower levels of sanction. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances. The Tribunal considered that the seriousness of the misconduct was at the highest level and that a lesser sanction than striking the Respondent's name of the Roll of Solicitors was, on the face of it, not appropriate. The protection of the public and the protection of the reputation of the legal profession required the imposition of the most serious sanction available.

51. Quite distinct from the issue of dishonesty there was a complete abdication, by the Respondent, of compliance with the SRA's accounting requirements. It did not matter that the amount of client money held was seemingly modest, (the amounts being unknown as, the FIO was unable to compute a true figure), running full and true accounting records was central to the role of a Solicitor for the protection of the public and the profession. The Tribunal considered Weston v Law Society [1998] Times, 15th July in which Lord Bingham LCJ said:

> "….the tribunal had been at pains to make the point, which was a good one, that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that,

> because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed."

52 The Respondent was culpable for all of the misconduct found proved. The Tribunal noted that the allegations related to the SAR were serious and should not be overlooked when considering sanction. Failure to comply with fundamental requirements of the profession could result in a solicitor being strike off absent any other misconduct. The Tribunal did not need to consider whether the breaches of the SAR were sufficient serious to warrant the removal of the Respondent's name from the Roll of Solicitors in their own right given the other allegations found proved.

53 Before finalising sanction, the Tribunal considered the case of SRA v Sharma [2010] EWHC 2022 (Admin). Exceptional circumstances had not been argued by the Respondent. Whilst sanction was a matter for the Tribunal, the Applicant had drawn the Tribunal's attention to the case of SRA v Spence [2012] EWHC 2977 (Admin). In that case the Tribunal had found exceptional circumstances which had led the Tribunal to conclude that it was not necessary to strike that Respondent off the Roll. On appeal the order for suspension was quashed and substituted with an order for striking off. The Applicant submitted that this case did not come within the very small residual category of dishonesty cases where striking off was not appropriate. The Applicant argued that, when considering sanction, it was irrelevant whether or not the Respondent derived financial benefit from his actions; there were not two tiers of dishonesty.

54. In the Respondent's absence the Tribunal asked itself, on the evidence before it, whether there were any exceptional circumstances and concluded that there were not. This was not a case which fell into the very small residual category of dishonesty cases where striking off was not appropriate. The appropriate sanction was to strike the Respondent's name off the Roll of Solicitors.

Costs

55. The Applicant applied for its costs supported by a schedule totalling £93,108.54. Mr Levey stated that this sum needed to be reduced as the hearing had lasted two days not three, but there needed to be an increase to reflect the work undertaken since receipt of the Respondent's evidence very late in the day. The Tribunal had no information as to the Respondent's means. He had not submitted a statement of means and there was no application for costs not to be enforced without leave of the Tribunal.

56. The Tribunal considered the costs schedule and reduced the time claimed for attendance at the hearing and the time for travel to and from the hearing for the Applicant's solicitors. The Tribunal also reduced Counsel's fees as only one refresher had been incurred. The late production of the Respondent's witness statement and exhibits meant that the Applicant had incurred additional costs in considering the Respondent's evidence and these were not detailed on the costs schedule as it was dated 5 July 2016 and the evidence had not been received by that time.

57. The Respondent had made an unsuccessful application in the High Court to have the case heard in Manchester. He had made several like applications in the Tribunal, which whilst unsuccessful, had to be addressed by the Applicant. The Respondent filed his Statement and substantial bundle of documents the weekend before the hearing, in breach of the Tribunal's Directions. The fact that the Respondent's documentation was served very late was not the fault of the Applicant. Further, the dishonesty element of the allegations was attached to the Respondent's alleged qualifications and Titles. It is hard for an accuser to prove a negative, and by reason of the assertions of the Respondent the Applicant had needed to show that there was no merit in those assertions. The Applicant was put to proof with inevitable cost consequences. This was of the Respondent's own making. The Tribunal considered that the Applicant had, in what was plainly a rather difficult case, done a good job in following up the numerous spurious explanations and assertions of the Respondent and this had inevitably incurred substantial costs.

58. The Tribunal assessed the costs that the Respondent should pay at £86,000.00.

Statement of Full Order

59. The Tribunal Ordered that the Respondent, ALAN BLACKER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £86,000.00.

Dated this 4th day of August 2016
On behalf of the Tribunal

P.S.L. Housego
Chairman